

**OFFER NO. IWSRP03/01  
STANDING OFFER ARRANGEMENT FOR  
A PANEL OF LEGAL PRACTITIONERS  
IN RELATION TO THE INDIGENOUS WAGES  
AND SAVINGS REPARATIONS PROCESS  
FOR  
DEPARTMENT OF ABORIGINAL AND TORRES STRAIT  
ISLANDER POLICY**

**TABLE OF CONTENTS**

<b><u>PART 1.</u></b>	<b><u>INVITATION TO OFFER</u></b> .....	<b>5</b>
1.1	INVITATION TO OFFER .....	5
1.2	LODGEMENT OF OFFERS .....	5
1.3	OPENING OF OFFERS .....	5
1.4	ENQUIRIES/CONTACT OFFICER .....	5
<b><u>PART 2.</u></b>	<b><u>GLOSSARY</u></b> .....	<b>6</b>
2.1	INTERPRETATION .....	6
<b><u>PART 3.</u></b>	<b><u>SPECIFICATIONS</u></b> .....	<b>9</b>
3.1	BACKGROUND .....	9
3.2	STATEMENT OF REQUIREMENTS .....	9
3.3	SERVICE DELIVERY .....	10
3.4	OFFEROR'S CURRENT STRUCTURE AND OPERATIONS .....	12
3.5	OFFEROR'S CAPABILITY .....	12
3.6	[DELETED]	
3.7	REFEREES .....	12
3.8	QUALITY ASSURANCE .....	12
3.9	PRICE SCHEDULE .....	12
3.10	TRAVEL COSTS .....	12
3.11	INSURANCES .....	13
3.12	TERM OF ARRANGEMENT .....	13
3.13	FORM OF OFFER AND SCHEDULES .....	13
<b><u>PART 4.</u></b>	<b><u>OFFER EVALUATION PROCESS AND CRITERIA</u></b> ...	<b>14</b>
<b><u>PART 5.</u></b>	<b><u>CONDITIONS OF OFFER</u></b> .....	<b>15</b>
5.1	OFFER VALIDITY PERIOD .....	15
5.2	FORMAT OF OFFER .....	15
5.3	UNDERSTANDING THE REQUIREMENT .....	16
5.4	LANGUAGE .....	16
5.5	LODGEMENT OF OFFER .....	16
5.6	PRICES .....	17
5.7	[DELETED]	
5.8	DELIVERY .....	17
5.9	NON CONFORMING OFFERS .....	17
5.10	POST OFFER NEGOTIATIONS .....	17
5.11	ORAL ADVICE .....	17
5.12	INVITATION TO OFFER PROCESS .....	17
5.13	ACCEPTANCE AND/OR REJECTION .....	18
5.14	COMMISSIONS AND INCENTIVES .....	18
5.15	SUCCESSFUL OFFERS .....	18
5.16	INSPECTION AND INVESTIGATION .....	18
5.17	FREEDOM OF INFORMATION .....	18
5.18	[DELETED]	
5.19	QUALITY ASSURANCE REQUIREMENTS .....	19
<b><u>PART 6.</u></b>	<b><u>CONDITIONS OF SUPPLY</u></b> .....	<b>20</b>
6.1	STANDING OFFER TO SUPPLY .....	20

6.2	OPTION TO EXTEND THE SOA .....	20
6.3	VARIATION .....	20
6.4	PROVISION OF SERVICES .....	20
6.5	DEFICIENT SERVICES .....	21
6.6	KEY PERSONNEL .....	21
6.7	CONTRACTOR'S OBLIGATIONS .....	21
6.8	NO SUB-CONTRACTING OR ASSIGNMENT .....	22
6.9	ARRANGMENT MANAGEMENT .....	22
6.10	SECURITY AND ACCESS .....	22
6.11	CONFIDENTIAL INFORMATION .....	23
6.12	PRIVACY AND DISCLOSURE OF PERSONAL INFORMATION .....	23
6.13	PERFORMANCE EVALUATION .....	24
6.14	COMMISSIONS AND INCENTIVES .....	24
6.15	CONFLICT OF INTEREST .....	24
6.16	FEES & REIMBURSABLE EXPENSES .....	24
6.17	GOODS AND SERVICES TAX .....	25
6.18	VARIATION OF PRICE .....	25
6.19	DELIVERY .....	25
6.20	UNAVOIDABLE DELAY .....	26
6.21	PAYMENT PROCEDURE .....	26
6.22	PAYMENT FOR REDUCED SERVICES .....	27
6.23	INSURANCE .....	27
6.24	RISK AND INDEMNITY .....	28
6.25	QUALITY ASSURANCE .....	29
6.26	INTELLECTUAL PROPERTY RIGHTS .....	29
6.27	NEGATION OF EMPLOYMENT AND AGENCY .....	29
6.28	DISPUTE RESOLUTION .....	29
6.29	INDUSTRIAL DISPUTES .....	30
6.30	STATUTORY REQUIREMENTS .....	30
6.31	JURISDICTION .....	30
6.32	SEVERABILITY .....	30
6.33	NOTICES .....	30
6.34	TERMINATION .....	31
6.35	CLAUSES TO SURVIVE TERMINATION .....	31

## **PART 1. INVITATION TO OFFER**

### **1.1. INVITATION TO OFFER**

Standing offers are invited from legal practitioners with a high level of expertise in provision of legal advice. The legal practitioners selected will be included on a panel and be employed on an as and when required basis.

Offers are to be submitted in conformance with the:

Specification at Part 3;  
Conditions of Offer at Part 5;  
Conditions of Supply at Part 6; and  
Form of Offer at Part 7

### **1.2. LODGEMENT OF OFFERS**

Offers close at 5pm (QLD) on **Friday 21 March 2003** and are to be received through the post at:

Department of Aboriginal and Torres Strait Islander Policy  
Attention: Christine Cuskelly  
PO Box 397  
Brisbane Albert Street QLD 4002;

or delivered by hand to the Work and Savings Histories Branch at Level 4A, Neville Bonner Building, 75 William Street, Brisbane.

An original plus three (3) copies of the offer document will be submitted in hard copy format, in the format specified, and in a sealed package clearly marked with

- 'Offer number IWSRP03/01- Offer for Panel of Legal Practitioners', plus
- the name of the Offeror,
- contact telephone number and
- the number of separate packages included with the offer.

### **1.3. OPENING OF OFFERS**

Offers will not be publicly opened.

### **1.4. ENQUIRIES/CONTACT OFFICER**

Queries concerning this offer and associated documents can be directed to:

Christine Cuskelly  
Phone (07) 3405 6433

**PART 2. GLOSSARY**

**2.1. INTERPRETATION**

2.1.1. In these Conditions unless the context otherwise requires, the following definitions apply:

"Agency"	Means a Queensland Government entity and other eligible non-Government bodies and includes Commonwealth Government Departments and local Government authorities;
"Arrangement or Standing Offer Arrangement or Standing Offer to Supply"	Includes a Standing Offer to Supply, a Register of Pre-Qualified Suppliers, a Panel Arrangement and a Preferred Supplier Arrangement, which will remain open for acceptance for a period of time. During that period the Offer, together with each acceptance, will form a Contract for the supply of the Goods or Services.
"Arrangement Supervisor"	The person appointed by the Contractor to manage the Arrangement, and includes that person's authorised representatives;
"Closing Date"	The time and date by which the offer must be lodged.
"Conditions of Offer"	The Conditions of Offer, included in this Invitation.
"Conditions of Supply"	The Conditions of Supply, included in this Invitation.
"Contract"	<p>The written contract between the parties constituted by:</p> <ol style="list-style-type: none"> <li>1. Invitation to offer containing:               <ol style="list-style-type: none"> <li>1.1 conditions of offer</li> <li>1.2 conditions of supply</li> <li>1.3 special conditions (if any)</li> <li>1.4 specifications</li> <li>1.5 clarification of specifications (if any)</li> </ol> </li> <li>2. Standing offer dated</li> <li>3. Letter of Acceptance</li> <li>4. An order</li> </ol> <p>If there arises an inconsistency or ambiguity between provisions in the different documents set out above, the order of precedence to resolve the inconsistency or ambiguity shall be from Document 4 to Document 1.</p>
"Contractor or Supplier"	Means a person, business, corporation or other entity accepted for inclusion on the Arrangement and includes the officers, employees, agents and authorised sub-contractors (and their employees and agents) of the Contractor or Supplier.
"Contract Material"	Means New Contract Material and Existing Contract Material.

"deliverable"	means any document, piece of equipment, data listing or other creation required to be delivered to the Principal in order to complete the performance of the Arrangement;
"Existing Contract Material"	Any material that exists at the commencement of the Contract and which is provided by the Principal in connection with the Contract.
"Force Majeure"	Any event beyond the reasonable control of the party affected and includes an event due to natural causes that happens independently of human intervention.
"Goods or Services"	The Goods or Services described in the Specifications included in the Invitation to Offer.
"DATSIP or DATSIP Regional Office"	Means the State of Queensland acting through the Department of Aboriginal & Torres Strait Islander Policy
"Intellectual Property Rights"	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 commencement date of this Contract.
"Invitation"	The Invitation to Offer given to prospective Offerors inviting offers for the supply of Goods or Services described in the Invitation.
"Letter of Acceptance"	The letter from Department of Aboriginal & Torres Strait Islander Policy to the Contractor accepting the Offer.
"New Contract Material"	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"	A response by an Offeror to the Invitation.
"Offeror"	A person or entity that submits an Offer.
"Officer"	An officer or employee of the State of Queensland, or any other person engaged by the State in relation to the Invitation or any part thereof, or any of the employees of that person.
"Order"	An order for Goods or Services placed by the Principal under the terms of the Standing Offer to Supply.
"Principal"	means the Department of Aboriginal & Torres Strait Islander Policy
"Project Manager"	means the person nominated by the Principal to manage the project;
"Services"	means the service/s described in the Specifications and which the Contractor is required to provide to the Principal in accordance with the contract;

"Specifications"	The Specifications included in the Invitation to Offer.
"Term"	The period for which the Arrangement will be in effect, as specified in the Invitation or Specification.
"will"	is mandatory

2.1.2. In these Conditions:

- (a) clause headings are inserted for ease of reference only and will not form part of, nor be used in the interpretation, of the Conditions;
- (b) words importing the singular will include the plural and vice versa, words importing a gender will include the other gender; and
- (c) a reference to a person will be construed as a reference to an individual, firm, body corporate or other entity (whether incorporated or not), or, where a position is nominated, the individual occupying that position.

### **PART 3. SPECIFICATIONS**

#### **3.1. BACKGROUND**

- 3.1.1. The Queensland Government as part of the reconciliation process with Indigenous Queenslanders has made a reparations offer ("the Offer") through the Department of Aboriginal & Torres Strait Islander Policy (DATSIP). A copy of the Offer is attached.
- 3.1.2. Eligible persons who wish to accept the Offer are required to release the State from further claims in accordance with a Deed of Agreement ("the Deed"). A copy of the Deed is attached.
- 3.1.3. The Deed requires each claimant to acknowledge and agree that he/she has received, prior to executing the Deed, independent legal advice.
- 3.1.4. The Department of Aboriginal & Torres Strait Islander Policy is establishing a panel of readily available and skilled legal practitioners. Their role will be to provide this independent legal advice at no cost to eligible claimants under the Indigenous Wages and Savings Reparations Process.
- 3.1.5. The process is expected to commence in March 2003 and is to be completed by December 2005.

#### **3.2. STATEMENT OF REQUIREMENTS**

- 3.2.1. The Principal wishes to establish a panel of legal advisers to provide legal services under a Standing Offer of Supply.

##### **3.2.2. Legal Services**

- 3.2.3. Legal advice is to be provided by a legal practitioner on an individual basis to an eligible claimant, whether by personal interview and/or telephone and/or letter of advice.
- 3.2.4. The provision of legal advice to each eligible Claimant will ensure that he or she:
  - a) Understands her or his current rights.
  - b) Understands the contents and effect of the claim form, and in particular, the Offer and Deed of Agreement.
  - c) Is fully informed as to a) and b), having regard to all the relevant circumstances (including cultural and language requirements) of the Claimant.
  - d) Where the Claimant decides to enter into the Deed of Agreement he or she completes and executes the Deed of Agreement correctly.

##### **3.2.5. Conditions of Contract**

- 3.2.6. The Contract will provide that the legal practitioner will not be the servant or agent of the Principal, but at all times will act as the independent legal adviser to eligible claimants.

##### **3.2.7. Project Planning and Relationship with the Department**



- 3.2.8. Information about numbers and location of eligible claimants requiring legal advice will be provided by the relevant DATSIP Regional Office. A map of DATSIP regions is attached.
- 3.2.9. Provisions of legal advice to discrete Aboriginal and Torres Strait Islander communities and to groups (in significant numbers) of claimants will be provided according to project plans/visitation schedules developed by the relevant DATSIP Regional Office in consultation with the legal practitioner.
- 3.2.10. The legal practitioner will be accompanied by an officer from the relevant DATSIP Regional Office who will introduce the legal practitioner to the community and be responsible for all other business arising in relation to the Reparations process during the visit/meeting. In the case of individual claimants with ready access to the office of the legal practitioner this will not be a requirement.
- 3.2.11. Claimants are to have a 24 hour grace period to consider the legal advice received before signing the Deed of Agreement (this will necessitate at least 2 days for each visit by the legal practitioner to a community/location).
- 3.2.12. In certain circumstances (urgent/emergent) it may be acceptable to deliver legal advice by phone and to have the Deed of Agreement witnessed by a local JP or government official.

### **3.3. SERVICE DELIVERY**

- 3.3.1. The legal practitioner will provide the independent legal advice in a culturally appropriate and sensitive manner, without rush or pressure, giving due regard to the age of each claimant, and to any other relevant circumstances, and using language understood by each claimant.
- 3.3.2. For each claimant advised, the legal practitioner will be required to complete the following documentation:
  - Checklist developed by the Department
  - Practitioner's certificate.
  - Witness the Deed of Agreement, where Claimant decides to execute.
  - Payment Instructions.
- 3.3.3. The legal practitioner will deliver originals of all signed Deeds of Agreement and supporting documentation (including the above) to the relevant DATSIP Regional Office within 5 working days of a community visit (or schedule of community visits).
- 3.3.4. Special arrangements may be made when claimants are in remote locations.
- 3.3.5. If the 5 day deadline cannot be met, the legal practitioner will advise the relevant Regional Office as soon as possible and within the 5 day response period. This advice must be in writing.
- 3.3.6. It is possible that some Claimants will elect to mull their position over for longer than the 24 hour grace period. The legal practitioner will advise which claimants have either declined to sign or have asked for more time.

3.3.7. Offerors shall outline how they would deliver the service in remote locations and/or emergent circumstances. Offerors shall indicate whether they tender for the whole project or parts of the project eg on a regional basis, or excluding interstate, or other variations.

### **3.3.8. Potential Clients**

3.3.9. In mainland Queensland

- Aboriginal and Torres Strait Islander claimants
- South Sea Islander claimants
- Other claimants determined eligible by the Department
- Likely distribution by region and local government area attached.

3.3.10. In Torres Strait

- Aboriginal and Torres Strait Islander claimants
- Papuan claimants
- Other claimants determined eligible by the Department
- Likely distribution by region and local government area attached.

3.3.11. Interstate

- Aboriginal and Torres Strait Islander claimants
- Other claimants determined eligible by the Department
- Likely distribution of potential Aboriginal claimants unknown
- Likely distribution of potential Torres Strait Islander claimants attached.

### **3.3.12. Attachments**

The following attachments are at **Part 8**:

- Map of DATSIP Regions
- Information and materials distributed to the Aboriginal and Torres Strait Islander communities outlining the Offer.
- Breakdown of geographic distribution of potential claimants.
- Claim form
- Practitioner's Checklist
- Practitioner's Certificate
- Deed of Agreement
- Payment Instructions

## **3.4. OFFEROR'S CURRENT STRUCTURE AND OPERATIONS**

3.4.1. At **Part 7, Schedule 1**, the offeror will provide details of its current structure and operations, including:

- a) general information on its business;

- b) ownership structure (immediate and ultimate);
- c) key personnel including details of qualifications and experience; and
- d) nomination of its principal contact for administration of the arrangement.

### **3.5. OFFEROR'S CAPABILITY**

3.5.1. At **Part 7, Schedule 2**, the offeror will provide details of its capability to meet the requirements specified at **Clauses 3.2 and 3.3** and noting the evaluation criteria at **Part 4**.

3.5.2. The Offeror and the Offeror's key personnel delivering the specified services must be suitably qualified legal practitioners and have and maintain for the term of the arrangement a Practising Certificate issued by the Queensland Law Society. Details including: Name; Qualifications and Membership of Professional Organisations will also be supplied in **Part 7, Schedule 2**.

3.6. [DELETED]

### **3.7. REFEREES**

3.7.1. At **Part 7, Schedule 3**, the Offeror will provide names and contact details of at least two (2) clients for whom similar work has been undertaken. One or more of those nominated may be contacted for reference purposes.

### **3.8. QUALITY ASSURANCE**

3.8.1. Audit deliverables will be monitored and assessed by the Project Manager, therefore a certified quality system is not essential. However, offerors who have a quality system in place, may provide details at **Part 7, Schedule 4**.

### **3.9. PRICE SCHEDULE**

3.9.1. At **Part 7, Schedule 5**, the offeror will provide a rate for the legal services to be provided as outlined at **Clauses 3.2 and 3.3**.

3.9.2. Prices quoted should be on a per eligible Claimant basis. Outlays shall be specified. Outlays not specified will not be reimbursed.

3.9.3. The pricing must state all inclusions and exclusions, and any progress payments required and full details of price variation formula including all variables.

### **3.10. TRAVEL COSTS**

3.10.1. The Offeror will be expected to book and pay for all travel and accommodation required in providing the independent legal advice. The Department will reimburse costs, as outlined below, on invoice supported by original receipts substantiating expenditure:

- a) Airfares – economy class;
- b) Private Motor Vehicle costs – consistent with allowances payable to Public Service Officers as specified in Directive No. 13/01, October 2001;

- c) Car hire costs – as approved beforehand by the relevant Regional Director;
- d) Accommodation – consistent with the 3 star rating used in RACQ accommodation directories, except where this standard is not available at a particular centre (refer Directive No. 01/02, March 2002); and
- e) Travel allowance (meals and incidentals) – consistent with allowances payable to Public Service Officers as specified in Directive No. 01/02, March 2002.

### **3.11. INSURANCES**

- 3.11.1. The Offeror must have and maintain throughout the term of the arrangement adequate workers compensation, professional indemnity and public liability insurance. Offerors should provide **at Part 7 Schedule 6** full details of insurance covers held which are relevant to this offer.

### **3.12. TERM OF ARRANGEMENT**

- 3.12.1. The initial term of the arrangement shall commence from the date of the Letter of Acceptance, accepting the Supplier's standing offer, and shall continue for a period of twelve (12) months. The Principal, at its sole discretion, retains the option to extend the arrangement for further periods up to an aggregate of two years. Potentially the total term of the arrangements is three (3) years. (Refer **Condition of Supply Clause 6.2**)

### **3.13. FORM OF OFFER AND SCHEDULES**

- 3.13.1. The Form of Offer and Schedules 1 to 10 attached to **Part 7** have been included to assist Offerors to respond to this Invitation and assist the Principal in the evaluation of offers.

## PART 4. OFFER EVALUATION PROCESS AND CRITERIA

- 4.1.1. The evaluation process will be conducted by an evaluation committee and will be undertaken by a three (3) stage process.
- 4.1.2. The evaluation process will be based on the requirements outlined in **Clauses 3.2 and 3.3** and the evaluation criteria listed in **Clauses 4.1.13 to 4.1.15**.
- 4.1.3. Stage 1**
- 4.1.4. An initial desktop assessment will be made of responses to determine compliance with the conditions of offer. Offers will be short-listed on their ability to meet the mandatory requirements. Offers that pass Stage 1 will progress to Stage 2.
- 4.1.5. Stage 2**
- 4.1.6. Short listed offers will be evaluated on their demonstrated capacity to meet the desirable requirements using a weighted matrix.
- 4.1.7. Where, in the opinion of the evaluation panel, a statement contained in the Offer is ambiguous or unclear, clarification may be sought exclusively from that Offeror. No new information may be submitted at that time.
- 4.1.8. If, in the opinion of the evaluation panel, the response from the Offeror contains new information, it may not be assessed.
- 4.1.9. Where new or additional information is required, the same information will be sought from all Offerors who have not been eliminated prior to that point.
- 4.1.10. Stage 3**
- 4.1.11. Referee checks may be undertaken.
- 4.1.12. Evaluation Criteria**
- 4.1.13. Mandatory requirements:
- A Practicing Certificate issued by the Queensland Law Society
  - Appropriate insurance arrangements (refer **Clause 6.23**).
- 4.1.14. Desirable requirements (not listed in priority order):
- Ability to meet travel requirements and to service clients for the whole project or that part of the project which the Offeror has identified, including if appropriate remote areas and/or areas outside Queensland
  - Experience of the Offeror and the Offeror's Key Personnel
  - Professional organisation membership
  - Experience in providing professional legal services to Aboriginal and/or Torres Strait Islander clients
  - Experience in communicating effectively and sensitively with Aboriginal and/or Torres Strait Islander peoples
  - Demonstrated willingness to work cooperatively with Departmental staff
  - Value for money

**PART 5. CONDITIONS OF OFFER**

**5.1. OFFER VALIDITY PERIOD**

5.1.1. Offers must remain open for a minimum period of Sixty (60) days after the closing date.

**5.2. FORMAT OF OFFER**

5.2.1. Offerors must submit one (1) original and three (3) copies.

5.2.2. The original Offer including any covering letters must be signed and marked 'Original'. All copies must be marked 'Copy Only'. The Offeror is to ensure that all copies are a true copy of the original in all respects. Should any discrepancy be discovered, the 'Original' will take precedence over copies.

5.2.3. All Offers must be executed in an appropriate manner so as to bind the Offeror and, in the case of joint offers, each Offeror. Each alteration in the Offer will be initialled by the Offeror.

5.2.4. Offerors may submit one or more Offers in response to this Invitation; including part Offers that address only part of the requirement. Innovative solutions to meet the specification requirements may be considered.

5.2.5. Every Offeror shall state in the Offer Declaration at **Part 7**:

- a) in the case of an individual, full or given names, surname and address;
- b) in the case of a business name, the names and address of all proprietors, the address of the registered place of business and registered business number;
- c) in the case of a company, the full name of the company, the address of the registered office of the company and its Australian Company Number (ACN), and the name and company title of the person signing the Offer on behalf of the company;
- d) in the case of a trust, the full names and addresses of each trustee of the trust;
- e) in the case of a public sector agency, the full name and address of the Agency and the name and title of the person signing the Offer on behalf of the agency;
- f) in the case of joint Offers, the information detailed above for each joint Offeror;
- g) in all cases, the Australian Business Number of the Offeror.

5.2.6. Failure to provide the information sought may result in non-consideration of the Offer. All pages that form the Offer are to bear the name of the Offeror.

5.2.7. Where the Offer includes any proposal for sub-contracting, the Offeror must submit full details of the proposed sub-contractors and their relevant experience.

Refer **Part 7, Schedules 7 "Sub-Contracting", 8 "Departures" and 9 "Joint Offers"**.

### 5.3. UNDERSTANDING THE REQUIREMENT

- 5.3.1. If the prospective Offeror has any doubt as to the meaning or intention of the Invitation or any document incorporated in it by reference, or if further information is required to ensure a clear and correct understanding of the nature and extent of a Contractor's obligations under a Contract, the Offeror will direct enquiries to the contact officer nominated in the Invitation.
- 5.3.2. If when submitting the Offer the Offeror still has any doubt as to the meaning of any part of the Invitation, a statement of the interpretation upon which the Offer is based will be included in the Offer.
- 5.3.3. [Deleted].
- 5.3.4. Claims for extra expenses or for an extension of time to complete the offer will not be allowed on the grounds that insufficient information was given in the Invitation to Offer.

### 5.4. LANGUAGE

- 5.4.1. Each Offer, together with any documents submitted by the Offeror, will be written in the English language.

### 5.5. LODGEMENT OF OFFER

- 5.5.1. Every Offer shall be:
- a) sealed in an appropriate package;
  - b) supplied in an original and two (2) copies as described in the Conditions of Offer, **Clause 5.2.1**;
  - c) have endorsed on the front of the package the Invitation Number and closing date;
  - d) in the manner and format specified in **Part 7 – Form of Offer**;
  - e) signed by the person or entity making the Offer; and
  - f) directed to the Principal at the address specified in the Invitation to Offer.
- 5.5.2. It is the responsibility of the Offeror to ensure that Offers are received at the Department of Aboriginal & Torres Strait Islander Policy before the time specified in the Invitation for the closing of Offers. Offers may be lodged between the hours of 8:30am and 5:00pm on normal working days. Any Offer not lodged before the closing time and date may not be considered, unless the Department is satisfied, in its absolute discretion, that the failure was not the fault of the Offeror.
- 5.5.3. Lodgement of an Offer in the manner specified in the Invitation will constitute an Offer by the Offeror to supply the Goods or Services.
- 5.5.4. Offers sent or transmitted to the Department of Aboriginal & Torres Strait Islander Policy by facsimile or other electronic means will not be considered.
- 5.5.5. The Department of Aboriginal & Torres Strait Islander Policy will retain all documents submitted in response to this Invitation to Offer.

### 5.6. PRICES

- 5.6.1. Prices offered shall:

- a) be in Australian Currency;
- b) be inclusive of Goods and Services Tax, if applicable;
- c) include the costs of suitable packaging, delivery and installation where so required in the Invitation; and
- d) if subject to fluctuation, include particulars of the price fluctuation formula and all variables.

Refer **Part 7, Schedule 5 "Pricing"**.

**5.7. [DELETED]**

**5.8. DELIVERY**

- 5.8.1. All Goods or Services are required for prompt or specified time delivery.

**5.9. NON CONFORMING OFFERS**

- 5.9.1. Failure to comply with all or any of the requirements of the Invitation or the Conditions will result in an Offer being considered non-conforming. The Principal shall not be bound to consider non-conforming Offers.

**5.10. POST OFFER NEGOTIATIONS**

- 5.10.1. The Principal reserves the right to enter into post-offer negotiations with prospective Offerors who have been short-listed on the basis of their Offer.

**5.11. ORAL ADVICE**

- 5.11.1. The Principal shall not be bound by any oral advice given or information furnished in respect of the Invitation, but shall be bound only by written advice or information.

**5.12. INVITATION TO OFFER PROCESS**

- 5.12.1. The conduct of the Invitation to Offer process is not intended to give rise to any legal or equitable relationship.
- 5.12.2. The Principal may cancel or vary the Offer process at any time, whether before or after the closing date for Offers.
- 5.12.3. No Offeror shall be entitled to claim compensation for loss from the Principal for any matter arising out of the Offer process.
- 5.12.4. The offer evaluation process will involve a formal assessment of Offers received against the criteria listed in the Invitation. The Principal reserves the right to short list Offerors during the evaluation process using any one or any combination of the evaluation criteria. The evaluation process may also involve discussions with Offerors, reference checks, and a presentation from short-listed Offerors.

**5.13. ACCEPTANCE AND/OR REJECTION**

- 5.13.1. The Principal reserves the right to:
- a) Accept one offer, or more than one offer, for the whole of its requirements;
  - b) Accept separate offers for any portion of its requirements;
  - c) Accept one offer, or more than one offer, for any portion of its requirements;



d) Accept an offer with minor departures from the specification, where, after taking all factors into consideration, it is considered that it provides the best solution; or

e) Not accept any of the offers.

5.13.2. No offer will be deemed to be accepted until advice in writing of acceptance has been given to the offeror by the Principal.

#### **5.14. COMMISSIONS AND INCENTIVES**

5.14.1. An Offer will not be considered if the Offeror, or a representative of the Offeror, gives or offers anything to any employee or agent of the Principal as an inducement or reward, which could in any way tend to influence the actions of that employee or agent in relation to the Offer. For the purposes of this clause, "agent" includes the parent, spouse, child or associate of the agent.

#### **5.15. SUCCESSFUL OFFERS**

5.15.1. If the Principal accepts a Standing Offer to Supply, the Principal may place Orders at any time until the expiry date of the Standing Offer to Supply and, upon each Order by the Principal, a Contract to supply between the Principal and the successful Offeror will come into existence.

5.15.2. Notwithstanding that the Principal accepts a Standing Offer to Supply, the Principal shall not be obligated to place any Orders under that Standing Offer to Supply.

5.15.3. No Offer shall be deemed to be accepted, for inclusion on the Arrangement, until a Letter of Acceptance has been issued by the Principal.

#### **5.16. INSPECTION AND INVESTIGATION**

5.16.1. Where the Offer is for the execution of work, Offerors must satisfy themselves of local conditions and facilities.

5.16.2. Offerors shall:

a) rely upon their own investigation as to the feasibility of their Offer and shall not rely upon representations of the Principal other than as set out in the Invitation; and

b) pay their own costs of preparing and lodging an Offer.

#### **5.17. FREEDOM OF INFORMATION**

5.17.1. Offerors are advised that information provided in Offer documents may be subject to disclosure under the Freedom of Information Act 1992 (Qld) ("FOI Act"). The FOI Act grants members of the community a statutory right of access to documents in the possession of Queensland Government agencies, with certain exceptions and exemptions.

5.17.2. Information relating to the following matters is likely to be exempt from disclosure under the FOI Act:

- business affairs;
- trade secrets;
- research; and
- information communicated in confidence.

5.17.3. Subject to the above, the identity of the successful Offeror is usually subject to disclosure. Depending on the circumstances, the identity of unsuccessful Offerors and information identifying unsuccessful Offerors may also be disclosed. Specific details of unsuccessful Offerors are usually exempt from release under the FOI Act.

5.17.4. If disclosure of its Offer would be of substantial concern to an Offeror, all documents forming the Offer should be stamped "Commercial and in Confidence". In such case, The Principal will formally consult with and obtain the views of the Offeror before any disclosure.

Refer **Part 7, Schedule 10 "Disclosure Of Offer Information "**.

5.17.5. For more detailed information about the FOI Act, please contact:

Mr Noel Ryan  
FOI Coordinator  
Corporate and Executive Services  
Telephone: (07) 3006 4007

**5.18. [DELETED]**

#### **5.19. QUALITY ASSURANCE REQUIREMENTS**

5.19.1. If the Invitation requires that Offers may only be made by potential Offerors who have, or who are able to obtain, quality assurance to a specified standard, the Offeror will maintain quality assurance certification to that standard.

## **PART 6. CONDITIONS OF SUPPLY**

### **6.1. STANDING OFFER TO SUPPLY**

6.1.1. Where the Specifications are for a Standing Offer to Supply:

- a) The Principal may place Orders at any time until the end of the term, and each Order by the Principal will be an acceptance of the Standing Offer to Supply, and a Contract to supply between the Principal and the Contractor will come into existence on each occasion.
- b) The Arrangement is not an exclusive contract and the Principal may, at its discretion, engage other contractors to provide the Services;
- c) The Services will be provided as and when required by the Principal in accordance with a written Order and may be for any quantity;
- d) The Principal is not obliged to request any or any minimum number of Services from the Contractor under the Contract;
- e) The Contractor will accept and fulfil Orders placed during the Term;
- f) The Principal may, subject to the completion of any outstanding Orders, cancel the Arrangement at any time by written notice to the Contractor; and
- g) The Contractor may, subject to the completion of any outstanding Orders, cancel the Arrangement at any time by written notice to The Principal

### **6.2. OPTION TO EXTEND THE SOA**

6.2.1. The Principal may, at its absolute discretion, offer the Contractor an option to extend the Standing Offer Arrangement under the same terms and conditions, for periods as specified (Refer **Clause 3.12**). Pending the execution of such extension, the Arrangement shall continue to regulate the relationship between the parties until the earlier of:

- a) the expiration date of the Arrangement (in which case the Arrangement shall expire); and
- b) the date on which the parties execute such an extension.

### **6.3. VARIATION**

6.3.1. Subject to these Conditions, no agreement or understanding that varies or amends the Contract will bind either party unless and until agreed to in writing by both parties.

### **6.4. PROVISION OF SERVICES**

6.4.1. The Arrangement shall commence and take effect from the date specified in the Letter of Acceptance. The Contractor will provide the Services in accordance with the Contract for the Term in a proper manner and at the times specified in the Specifications, Letter of Acceptance and Order.

6.4.2. The Contractor will be responsible for the supply and performance of all personnel and equipment, necessary for the proper supply or performance of the Services.

### **6.5. DEFICIENT SERVICES**

6.5.1. The Contractor will promptly supply or perform again any Services certified by the Principal as not being in accordance with the Contract. The Principal may, without derogating from any other right it may have on account of such

unsatisfactory performance, defer payment of that part of an invoice relating to such Services until the Principal has certified that the re-performed Services are in accordance with the Contract.

- 6.5.2. If the Contractor fails to comply with the provisions of the Contract, the Principal reserves the right to arrange for the supply of Services from an alternative source. Any expenses incurred by the Principal as a result thereof will be a debt due and recoverable from the Contractor.

## **6.6. KEY PERSONNEL**

- 6.6.1. The services will be performed by the key personnel nominated by the Contractor and accepted by the Principal, or as otherwise agreed between the Principal and the Contractor. A person replacing one of the key personnel with the Principal's consent will become one of the key personnel during the period of the person's engagement on the contract service.
- 6.6.2. The Contractor will ensure that key personnel are competent and have the necessary skills to perform the legal services on which they will be engaged. Where the Contractor provides at Part 7, Schedule 2 details of qualifications and membership of professional organisations for the key personnel proposed for the arrangement, the Contractor warrants that it and the key personnel have the qualifications, admissions and memberships.
- 6.6.3. The Contractor will not without the Principal's consent allow key personnel to delegate any part of the contract services;
- 6.6.4. If any of the key personnel are not available to perform any of the arrangement allocated to them the Contractor will immediately:
- a) give notice to the Principal of the circumstances; and
  - b) if so requested by the Principal, arrange for replacement of that person with a person satisfactory to the Principal at no cost to the Principal.
- 6.6.5. The Principal may, on reasonable grounds, give notice requiring the Contractor to remove key personnel from working on the arrangement. Upon receipt of a notice pursuant to this clause, the Contractor will, at no cost to the Principal, promptly remove and replace the key personnel referred to in the notice with a person satisfactory to the Principal.

## **6.7. CONTRACTOR'S OBLIGATIONS**

- 6.7.1. The Contractor will:
- a) take all measures to protect people and property;
  - b) avoid unnecessary interference with the passage of people and vehicles;
  - c) prevent nuisance and unreasonable noise and disturbance;
  - d) comply with all Local authority requirements;
  - e) not publish the fact of, or details of, the Standing Offer Arrangement or any Contract pursuant to the Standing Offer Arrangement, in any advertising medium without The Principal consent; and
  - f) warrants that it has the necessary skills and expertise to complete the Contract.
  - g) ensure that its employees, subcontractors and agents have the necessary skills and expertise to perform those obligations of the Contract that are allotted to them by the Contractor;

**6.8. NO SUB-CONTRACTING OR ASSIGNMENT**

6.8.1. The Contractor shall not sub-contract the provision of any Goods or Services pursuant to the Contract without the prior written consent of the Principal. Any consent given by the Principal to sub-contract:

- a) may be conditional;
- b) will not operate as an authority to transfer responsibility to the sub-contractor; and
- c) will not relieve the Contractor from any of its liabilities or obligations.

6.8.2. The Contractor will be liable to the Principal for the acts and omissions of sub-contractors and employees and agents of sub-contractors as if they were the acts or omissions of the Contractor.

6.8.3. The Contractor shall not assign the Contract or any of the benefits or obligations under the Contract unless it has the prior written approval of the Principal.

**6.9. ARRANGEMENT MANAGEMENT**

6.9.1. The Principal shall appoint a Project Manager to oversee the performance of the Contract, and advise the Contractor in writing of the appointment.

6.9.2. The Contractor shall appoint an Arrangement Supervisor to oversee the performance of the Contract, and advise the Principal in writing of the appointment.

6.9.3. The Arrangement Supervisor will liaise with and report to the Project Manager and attend briefings when reasonably required by the Project Manager. The Arrangement Supervisor shall be available for discussions as requested by the Project Manager, and reply promptly to any correspondence from the Project Manager dealing with the Contract.

6.9.4. The Arrangement Supervisor will, if required, provide written reports to the Project Manager. All reports must be submitted in the form and to a standard required by the Project Manager and shall contain such information as may be required by Project Manager.

**6.10. SECURITY AND ACCESS**

6.10.1. The Contractor will, when on the Principal's premises, facilities or site, comply with all reasonable directions and procedures as notified by the Principal including those relating to security and to occupational health and safety which are in effect at those premises, facilities or site.

6.10.2. The Contractor will at all reasonable times give to the Project Manager or to any other persons authorised in writing by the Principal, access to premises occupied by the Contractor where the Services are being undertaken and will permit those persons to inspect the performance of the Contractor of its obligations under the Contract.

6.10.3. The Project Manager and any other person authorised by the Principal, when at the Contractor's premises, will comply with all rules, directions and procedures as notified by the Contractor which are in effect at those premises including those relating to security and to occupational health and safety.

#### **6.11. CONFIDENTIAL INFORMATION**

- 6.11.1. The Contactor will, and will ensure that its employees, agents and approved sub-contractors, keep confidential any information obtained in the course of performing the Contract and observe all the incidences of the Solicitor/Client relationship as between the Contractor and eligible Claimants.
- 6.11.2. In the event of a breach of the confidentiality undertaking entered into pursuant to this clause, the Principal may terminate the Contract by notice to the Contractor as of the date specified in the notice.
- 6.11.3. At the conclusion of the Contract, all information provided by the Principal during the course of the Contract shall be returned to the Principal.

#### **6.12. PRIVACY AND DISCLOSURE OF PERSONAL INFORMATION**

- 6.12.1. Where the Contractor has access to Personal Information in order to fulfil its obligations under this Contract, it must:
- a) where the Contractor is responsible for holding Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
  - b) not use Personal Information other than for the purposes of the Contract, unless required or authorised by law;
  - c) not disclose Personal Information without the written agreement of the person in question or any other persons authorised in writing by the person in question, unless required or authorised by law;
  - d) ensure that only authorised personnel of the Contractor have access to Personal Information;
  - e) immediately notify the Project Manager and the person in question if it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law;
  - f) make its employees, agents and subcontractors aware of the Contractor's obligations under this clause; and
  - g) comply with such other privacy and security measures as the Project Manager reasonably advises the Contractor in writing from time to time.
- 6.12.2. The Contractor must immediately notify the Project Manager upon becoming aware of any breach of clause 6.12.1.

#### **6.13. PERFORMANCE EVALUATION**

- 6.13.1. The Contractor shall attend contract performance evaluation meetings and provide such documentation and data as reasonably required by the Principal, other than Solicitor/Client information.

#### **6.14. COMMISSIONS AND INCENTIVES**

- 6.14.1. The Contractor will not offer anything to any employee or agent of the Principal as an inducement or reward that could in any way tend to influence the person's actions in relation to the Contract. For the purposes of this clause, "agent" includes the parent, spouse, child or associate of the agent.
- 6.14.2. Without limitation, a breach of this clause will entitle the Principal to terminate the Contract.

### **6.15. CONFLICT OF INTEREST**

- 6.15.1. The Contractor warrants that, to the best of its knowledge, information and belief, at the date of the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If during the term of the Contract, a conflict or risk of conflict of interest arises because of work undertaken for any person other than the Principal, the Contractor undertakes to notify the Project Manager immediately in writing of that conflict of interest or risk of it.
- 6.15.2. The Contractor will take all reasonable measures to ensure that its employees, agents and subcontractors do not, during the term of the Contract, engage in any activity or obtain any interest, which is in conflict with providing the Goods or Services to the Principal. Any such activity must be disclosed in writing to the Project Manager immediately.
- 6.15.3. Where the Project Manager receives a notice of conflict of interest under this clause, the Project Manager may give the Contractor a notice to remedy the conflict.

### **6.16. FEES & REIMBURSABLE EXPENSES**

- 6.16.1. The Contractor will provide the service/s for the fee, included in the offer or as negotiated and agreed between the parties.
- 6.16.2. The Contractor will not be entitled to be paid for any part of the service/s, which the Project Manager has certified as not having been performed in accordance with this arrangement.
- 6.16.3. The Contractor will promptly perform or perform again any part of the service/s certified as not being performed in accordance with this arrangement and the Principal may, without limiting any other right it may have, defer payment for that part of the arrangement until the Project Manager has certified that the services have been performed or performed again in accordance with this arrangement.
- 6.16.4. The Contractor may include in an invoice a claim for expenses described in the fee structure submitted in the offer or as agreed between the parties, after those expenses have been incurred by the Contractor. The Principal will only reimburse the Contractor for other expenses that have been incurred by the Contractor with the Principal's consent.

### **6.17. GOODS AND SERVICES TAX**

- 6.17.1. In this Contract, "GST" means a goods and services tax imposed by the Commonwealth of Australia.
- 6.17.2. The Contractor acknowledges that in terms of the GST legislation it will, under the Contract, be a 'Contractor' and may be required to remit GST to the Commissioner of Taxation.
- 6.17.3. The Contractor will 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.
- 6.17.4. The parties agree that the agreed prices for Goods or Services under the Contract are GST inclusive prices, and that the amount payable under the Contract shall not be varied by the amount of the GST.

### **6.18. VARIATION OF PRICE**

- 6.18.1. Where specified in the Letter of Acceptance, the price (specified in Clause 6.16) may only be varied in accordance with the accepted price variation formula. The Contractor must apply in writing to the Principal for such variation.

- 6.18.2. Where the accepted offer contained a price variation formula, then:
- a) Price fluctuations in accordance with the price formula will not take effect until approved by the Principal in accordance with this clause.
  - b) The supplier must notify the Principal of a proposed price fluctuation in accordance with the price formula and provide evidence to the Principal verifying the proposal.
  - c) Within 14 days after receipt of evidence verifying the fluctuation of the relevant price variable, the Principal will approve the price fluctuation and advise the supplier in writing of the date on which it will take effect, which will be a date not more than 28 days after receipt of evidence satisfactory to the Principal that the fluctuation should be implemented.
  - d) Price fluctuations pursuant to this clause will not be effected more frequently than (3) three monthly intervals.
- 6.18.3. If the service is delivered after the date by which delivery was required by the Principal, any price fluctuation after the required delivery date will not be accepted. The price of the item will be the price that would have applied had the service been delivered on the required date.

#### **6.19. DELIVERY**

- 6.19.1. The Contractor must deliver the Goods or Services promptly after receipt of the Letter of Acceptance and Orders.
- 6.19.2. If applicable, the Contractor is to produce and furnish a delivery docket with each delivery. The delivery docket must identify the Principal's name, the purchase order number and the title of the goods being delivered.
- 6.19.3. Time shall be of the essence in all cases.

#### **6.20. UNAVOIDABLE DELAY**

- 6.20.1. A party will not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or pursuant to the Contract) if that default:
- a) is caused by Force Majeure; or
  - b) continues for less than three (3) days.
- 6.20.2. Without limitation, where the event of Force Majeure continues for a period of more than fourteen (14) days, or such other period as The Principal, in its sole discretion, considers reasonable in the circumstances, The Principal may terminate the Contract.

#### **6.21. PAYMENT PROCEDURE**

- 6.21.1. The Contractor shall submit invoices as instructed by the Principal. The Principal will not have any obligation to pay the Contractor for any part of the Services until given a correctly rendered invoice.
- 6.21.2. Invoices should be provided to the relevant DATSIP Regional Office.
- 6.21.3. All invoices must:
- a) identify the title of the Services and the name of the Principal and the purchase order number and specific details pertaining to that order (if applicable), including the number of eligible claimants advised;
  - b) provide sufficient detail to enable the Principal to assess progress against targets (if any) set by the Principal; and



- c) where Services are charged on a time basis, be supported by records of times spent by individual persons on the Services, verified by the Principal.
- 6.21.4. Upon receipt of an invoice, the Principal may require the Contractor to provide additional information to assist in determining whether or not an amount is payable.
- 6.21.5. Subject to the Principal's certification that:
- a) the Services provided are of an acceptable standard;
  - b) the Services are completed; and
  - c) the Contractor's invoice is in accordance with the Contract;
- the Principal will pay the amount due to the Contractor within thirty (30) days of receipt of the invoice (or such other period as agreed) or, if additional information is required by the Principal, within thirty (30) days (or such other agreed period) after receipt of the additional information.
- 6.21.6. 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 will:
- a) pay any underpaid amount owed to the Contractor within thirty (30) days of receipt of a correctly rendered invoice (or such other agreed period) or, if additional information is required by the Principal, thirty (30) days (or such other agreed period) after receipt of the additional information; or
  - b) 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 to the Principal.
- 6.21.7. Payment of money to the Contractor will not constitute an admission by the Principal that any of the Services have been supplied in accordance with the Contract.
- 6.21.8. Invoices, properly completed, stating order number and particulars of services delivered, must be furnished to the Principal.

## **6.22. PAYMENT FOR REDUCED SERVICES**

- 6.22.1. The Principal may at any time serve a notice on the Contractor requiring the Contractor to decrease, omit or cancel any part of the order for the Services.
- 6.22.2. Following issue of such a notice, the Contractor will reduce or cease work in accordance with the notice and immediately take all steps necessary to minimise the loss suffered by it as a result of the notice.
- 6.22.3. Where the Services have been decreased or omitted under this clause, the Principal will pay the Contractor:
- a) for the Services supplied as varied by the notice under this clause; and
  - b) any reasonable costs incurred by the Contractor, which are directly attributable to the reduction in the Services.

## **6.23. INSURANCE**

- 6.23.1. The Contractor must have and maintain:
- a) insurance under the WorkCover Queensland Act 1996 or equivalent, to cover workers, eligible persons, self employed contractors, directors, trustees and partners; and

- b) Public Liability Insurance; and
  - c) Professional Indemnity Insurance; and
  - d) such other insurance as may be specified and, as a minimum, to any value specified.
- 6.23.2. The insurances must be effected with an insurer licensed to operate in Australia, include terms and conditions acceptable to the Principal, and be maintained for the duration of the Arrangement and any Contract pursuant to the Arrangement.
- 6.23.3. The Contractor will:
- a) within 21 days of the date of the Letter of Acceptance and before supplying or performing any of the Services; or
  - b) upon request in writing at any time by the Principal,
  - c) produce evidence to the Principal that the insurances required by this clause have been effected and maintained. If the Contractor fails to produce evidence of compliance with its insurance obligations to the satisfaction of the Principal, the Principal may terminate the Contract by notice to the Contractor as of the date specified in the notice.
- 6.23.4. The effecting and maintaining of insurance will not limit the liabilities or obligations of the Contractor under other provisions of the Contract.
- 6.23.5. The Contractor shall inform the Principal in writing of any claim or of the occurrence of any event that may give rise to a claim under the policies of insurance effected pursuant to the Contract within 7 days thereof and shall ensure that the Principal is kept fully informed of subsequent actions and developments concerning the event or claim.
- 6.23.6. The Contractor shall ensure that each sub-contractor shall inform the Contractor in writing within 7 days of any claim or of any event that may give rise to a claim under the policies of insurance affected pursuant to the Contract.

#### **6.24. RISK AND INDEMNITY**

- 6.24.1. The Contractor will be liable for loss or damage however sustained (including personal injury whether or not resulting in death) suffered by The Principal, its officers, servants or agents, arising from the acts or omissions of the Contractor, its employees, subcontractors or agents, or caused by or contributed to or incidental to the use of any of the Services supplied under this Arrangement.
- 6.24.2. The Contractor releases and indemnifies The Principal and its officers, servants and agents, 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;
  - b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Contractor;

- 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, its officers, servants or agents; and
  - d) any infringement or alleged infringement of any Intellectual Property Rights or moral rights in respect of Contract Material.
- 6.24.3. In the event of a claim or action being made or brought against the State of Queensland ("the State"), the State may retain any money due to the Contractor in respect of Goods or Services provided 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 to the State.

#### **6.25. QUALITY ASSURANCE**

- 6.25.1. If the Specification requires that Offers may only be made by potential Contractors who have, or who are able to obtain, quality assurance to a specified standard, the Contractor will maintain quality assurance certification to that standard.

#### **6.26. INTELLECTUAL PROPERTY RIGHTS**

- 6.26.1. Title to and Intellectual Property Rights in all New Contract Material, including each and every stage of design and production of it, will be subject to the Solicitor/Client relationship.
- 6.26.2. This Contract does not affect Intellectual Property Rights in Existing Contract Material which shall remain vested in the Principal.

#### **6.27. NEGATION OF EMPLOYMENT AND AGENCY**

- 6.27.1. The Contractor will not:
- a) represent itself or allow itself to be represented as being an employee or agent of the Principal; or
  - b) by virtue of the Contract be or become an employee or agent of the Principal.
- 6.27.2. The Contractor will at all times act as the independent legal adviser to eligible Claimants. The Contractor will observe all the incidences of the Solicitor/Client relationship as between the Contractor and the eligible Claimants.

#### **6.28. DISPUTE RESOLUTION**

- 6.28.1. If there is a dispute as to the Contractor's performance under the Contract the Contractor may within 14 days of receipt of a notice to remedy under Clause 6.33, or the Principal may at any time, give written notice inviting the other party to participate in an alternative dispute resolution procedure and designating as the first party's representative in negotiations relating to the dispute, a person with authority to settle the dispute.
- 6.28.2. Upon receipt of a notice, the second party shall give written notice to the first party within 7 days, designating as its representative in negotiations relating to the dispute, a person with authority to settle the dispute.
- 6.28.3. The designated representatives shall seek to resolve the dispute within 10 days of their appointment.

6.28.4. If the dispute is not resolved within the 10-day period, the parties shall seek during the next 7 days to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration (such as further negotiations, mediation, conciliation, independent expert determination).

6.28.5. The rules governing any alternative dispute resolution procedure adopted by the parties, shall be as recommended by Barristers Services Pty Limited.

6.28.6. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the alternative dispute resolution procedure established by this clause for any purpose other than an attempt to settle a dispute under this Contract.

6.28.7. In the event that the dispute is not resolved by agreement within 45 days of the date upon which the first party gave notice under this clause either party may refer the dispute to arbitration or commence court proceedings.

6.28.8. Each party shall continue to perform its obligations under the Contract notwithstanding the existence of a dispute or any proceedings under this clause.

#### **6.29. INDUSTRIAL DISPUTES**

6.29.1. The Principal will not become involved in industrial disputes between the Contractor and the Contractor's staff.

6.29.2. Notwithstanding Clause 6.20, during periods of industrial disputes of any duration, the Contractor will be responsible for and will guarantee continuity of all services at the Contractor's expense.

#### **6.30. STATUTORY REQUIREMENTS**

6.30.1. The Contractor will comply with all relevant laws and the requirements of any statutory authority in supplying the Goods or performing the Services.

#### **6.31. JURISDICTION**

6.31.1. The Contract will be governed by and construed in accordance with the law 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.

#### **6.32. SEVERABILITY**

6.32.1. The invalidity or unenforceability of any one or more of the provisions of the Contract will not invalidate or render unenforceable the remaining provisions of the Contract. Any illegal or invalid provision of the Contract will be severable and all other provisions will remain in full force and effect.

#### **6.33. NOTICES**

6.33.1. Notices must be in writing and may be delivered by prepaid postage, by hand or by facsimile transmission to the parties at the address specified in the Offer, Letter of Acceptance or Order, or other address subsequently notified by a party to the other. Notices will be deemed to be given:

- a) days after deposit in the mail with postage prepaid;
- b) immediately upon delivery by hand;
- c) immediately upon an apparently successful facsimile transmission of the entire notice being noted by the sender's transmitter, prior to 5pm on any

### 6.34. TERMINATION

6.34.1. If the Contractor: -

- a) breaches any clause of the Contract;
- b) suspends payment of its debts or is unable to pay its debts;
- c) has execution levied on any of the Contractor's assets and the execution is not satisfied within 28 days;
- d) enters into an arrangement, reconstruction or compromise with its creditors or any of them;
- e) has a receiver appointed for all or any part of the Contractor's assets;
- 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 the Contractor a notice to remedy the breach.

6.34.2. If within 14 days of receiving a notice under this clause, the Contractor does not remedy the breach or conflict and a dispute notice has not been given under Clause 6.28, The Principal may immediately terminate the Contract.

### 6.35. CLAUSES TO SURVIVE TERMINATION

6.35.1. The following clauses will survive termination or expiration of this Contract:

- |        |      |   |
|--------|------|---|
| Clause | 6.11 | (Confidential Information)                        |
| Clause | 6.12 | (Privacy and disclosure of Personal Information)  |
| Clause | 6.23 | (Maintenance of Professional Indemnity Insurance) |
| Clause | 6.24 | (Risk and Indemnity); and                         |
| Clause | 6.26 | (Intellectual Property)                           |

