

ICT Professional Services Panel Contract - GITC Variable Conditions

(1) **Clause 68.4 - Limitations of Liability**

Not applicable. No limit of liability shall apply.

(2) **Clause 49.1 - Additional Insurances**

Clause 49.1 will apply and the following additional insurances will be required:

(i) *Professional indemnity insurance for an amount of \$5 000 000.00 in respect of each claim;*

(3) **Clause 77 - Staged Terminations**

Clauses 77.2 and 77.3 will apply.

(4) **Clause 69.1 - Liquidated Damages**

Not applicable.

(5) **Clause 55 - Acceptance Testing**

Acceptance Testing will be required and will be carried out by the successful Tenderer under the supervision of the Department for no extra charge. The acceptance tests to be carried out will be as reasonably required by the Department.

(6) **Clause 56 - Intellectual Property Ownership**

Standard position in clause 56 applies. Title to, and Intellectual Property Rights in all new Contract Material shall vest in the Customer.

(7) **Warranty Periods**

Details of all required warranty periods should be included.

(8) **Response/Remediation Timeframes**

Where applicable, details of all required response and remediation timeframes for the provision of support and warranty services should be included. Drafters may specify different requirements in relation to different products.

(9) **Additional Conditions – Clause 84**

(a) *The following additional condition will be required:*

“Operation of a Scheme

No Scheme in force

If no Scheme in force under the Professional Standards Act 2005 (“the Scheme”) applies to the Contractor, the Contractor waives all present and future rights, as against the Crown, to claim any limitation of liability provided by any future Scheme, in relation to future legal liability, claims or proceedings arising from, or attributable to, the Contractor delivering the Department’s Requirements including, but not limited to, a wrongful (including negligent) act or omission.”

- (b) *If the Specification requires a Tenderer to obtain a higher level of liability than would otherwise apply under a Scheme, the following additional condition will be required:*

“Operation of a Scheme

Scheme in force

If a scheme in force under the Professional Standards Act 2005 (“the Scheme”) applies to the Contractor at any time during the Contract, then:

- (a) *subject to sub-clause (b) below, the level of the Contractor’s liability under the Contract will be limited by the Scheme; and*
- (b) *if required by the Customer, the Contractor will immediately obtain an approval, under Section 27 of the Professional Standards Act 2005, for a level of liability under the Scheme not lower than \$5 000 000.00 loss or damage arising from a single cause of action.”*

(10) **Further Additional Conditions relating to Confidentiality – Clause 84**

The following further additional conditions will be required:

“84B Confidentiality

84B.1 Parties may disclose Contract provisions

Despite any confidentiality or Intellectual Property right subsisting in the Contract, or an annexure or attachment to it, either Party may publish, without reference to the other, all or any part of the Contract, except those parts of the Contract identified in any schedule to the Contract as confidential provisions (“Confidential Provisions”).

84B.2 Limited confidentiality for Confidential Provisions

- (a) *The Head of Agency has determined that the Confidential Provisions must remain confidential to the Parties under this clause 84B.2.*

- (b) *The Parties must maintain confidentiality of the Confidential Provisions for the period determined and approved by the Head of Agency, so far as the law allows, except to the extent that:*
- (i) *the Confidential Provisions are available to the public generally, other than by breach of this Contract;*
 - (ii) *a law requires a Party to file, record or register something that includes the Confidential Provisions;*
 - (iii) *disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;*
 - (iv) *it is necessary or advisable to disclose the Confidential Provisions to a taxation or fiscal authority;*
 - (v) *it is necessary to disclose the Confidential Provisions in answer to a question asked of a Minister in the Parliament or otherwise to comply with a Minister's obligations to Parliament;*
 - (vi) *the Confidential Provisions are disclosed confidentially to a Party's professional advisers:*
 - (A) *to get professional advice about this Contract; or*
 - (B) *to enforce this Contract; or*
 - (vii) *the Parties agree otherwise in writing.*

84B.3 Contractor must not disclose other material

Subject to clause 84B.1, the Contractor must not publicly disclose, or use for a purpose other than the Contract, any information or material acquired or produced in connection with, or by performing the Contract, including CSI or Contract Material ("Confidential Material"), without the Delegate's prior written consent, except to the extent that:

- (a) *the Confidential Material is available to the public generally, other than by breach of the Contract;*
- (b) *a law requires the Contractor to disclose, file, record or register something that includes Confidential Material;*
- (c) *disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;*

- (d) *it is necessary or advisable to disclose the Confidential Material to a taxation or fiscal authority;*
- (e) *the Confidential Material is disclosed confidentially to professional advisers:*
 - (i) *to get professional advice about the Contract; or*
 - (ii) *to enforce the Contract; or*
- (f) *the Parties agree otherwise in writing.*

84B.4 Employees to comply

The Parties must ensure that their respective employees who have access to the Confidential Provisions, Confidential Material, or both, are aware of, and comply with, all confidentiality obligations affecting it.

84B.5 Privacy obligations preserved

Nothing in this clause derogates from a Party's obligations under the Personal Information Protection Act 2004 (Tas) or the Privacy Act 1988 (Cwlth)."