

Standard Terms and Conditions

Purpose

This document details the Standard Terms and Conditions of supply for products and services to the Southern Queensland Natural Resources Management Ltd trading as Southern Queensland Landscapes (ABN: 40 627 143 202), herein referred to as “**SQ Landscapes**”.

The Terms and Conditions set out in this document apply to products and services sourced from external parties for the delivery of company outcomes and objectives. These parties are herein referred to as “**Supplier**” and the products and or services delivered are herein referred to as “**Services**”.

1 DEFINITIONS & INTERPRETATIONS

In this Agreement the following definitions will apply, except where the context otherwise requires.

“**Aboriginal Tradition**” has the same meaning as it has in section 3 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

“**Adviser**” means the financial or legal advisers of a Party; and the respective officers and employees of those financial or legal advisers.

“**Affected Party**” means the party affected by a Force Majeure Event.

“**Agreement**” means this document plus any schedules and/or appendices referred to in this document.

“**Assurance Framework**” means the audit framework which establishes the processes for undertaking audits, audit frequency, the triggers that would result in targeted audits, and the roles and responsibilities in relation to audits, as updated from time to time by notice in writing by SQ Landscapes to the Supplier.

“**Australian Accounting Standards**” means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the *Australian Securities and Investments Commission Act 2001* (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.

“**Australian Information Commissioner**” means the office established under the *Australian Information Commissioner Act 2010* (Cth).

“**Business Day**” means any day that is not a Saturday or Sunday or a national public holiday in the location where the Services are being performed.

“**Change in Control**” means in relation to a body corporate, where the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities):

- (1) to control more than half of the voting power of the body;
- (2) to control the composition of the board of directors of the body;
- (3) to control more than half of the issued share capital of the body, or excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital, resides with persons other than those holding that power on the Commencement Date.



“Claim” means any claim, demand, debt, allegation, liability or proceeding of any nature whatsoever however arising and whether present or future, fixed or unascertained, actual or contingent.

“Commencement Date” means the date on which this Agreement is executed.

“Confidential Information” means information that is by its nature confidential and:

- (1) in respect of the Supplier’s and/or SQ Landscapes information, is designated by the Supplier and/or SQ Landscapes as confidential;
- (2) in respect of the Supplier’s information, is designated by the Supplier as confidential and accepted by the Supplier and/or SQ Landscapes as confidential;
- (3) a Party knows or ought to know is confidential;
- (4) is personal information under the Privacy Act; or
- (5) is Secret and Sacred Material,

but does not include information that is or becomes public knowledge otherwise than by breach of:

- (a) this Agreement;
- (b) the Privacy Act; or
- (c) has been independently developed or acquired by a Party without breach of any obligation of confidence.

“Conflict” means any conflict of interest, any risk of conflict of interest and any apparent conflict of interest arising through the Supplier (or its officers, employees, servants, agents or subcontractors) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Supplier in performing the Services fairly and independently.

“Control”:

- (1) has the meaning given in section 50AA of the Corporations Act;
- (2) in respect of an ‘entity’ (as defined in the Corporations Act) also includes the direct or indirect power to directly or indirectly direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity (whether or not the power has statutory, legal or equitable force or rises by means of statutory, legal or equitable rights or trusts, agreements, arrangements, understandings, practices, the ownership of any interest in a ‘marketable security’ (as defined in section 9 of the Corporations Act), bonds or instruments of the entity or otherwise); and
- (3) also includes owning or controlling, directly or indirectly, more than 50% of the shares or units in an entity.

“Corporations Act” means the *Corporations Act 2001* (Cth).

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“Damages” means all liabilities, losses, damages, costs and expenses (including legal costs on a full indemnity basis) whether incurred or awarded against a party and disbursements and costs of investigation, litigation, settlement, judgment, interest, fines and penalties, regardless of the Claim under which they arise.

“Force Majeure Event” means any event or circumstance not within the reasonable control of the Affected Party, including:



- (1) acts of God, including storms or cyclones, action of the elements, epidemics, pandemics, landslides, earthquakes, floods, fire, road or rail closures due to washouts or impassability and natural disaster;
- (2) strikes, stoppages, restraints of labour, or other industrial disturbances;
- (3) riots, malicious damage, sabotage and civil disturbance;
- (4) accident (including accidental emissions of pollutants or hazardous substances), fire, explosion, radioactive contamination and toxic or dangerous chemical contamination;
- (5) the adverse application of any Australian laws or enforcement actions of any Commonwealth or State court or governmental agency not resulting from any wrongful act or omission of the Affected Party;
- (6) the refusal of or delay in obtaining any necessary consents from any government agency, provided that the Affected Party has acted in a timely manner in endeavouring to secure them;

and which the affected party is not reasonably able to prevent or overcome, or the effects of which the Affected Party is not reasonably able to predict and take measures to avoid, by the exercise of reasonable technical and commercial diligence and prudence. The lack of funds or inability to use any funds will not constitute a Force Majeure Event.

“Freedom of Information Commissioner” means the office established under the *Australian Information Commissioner Act 2010* (Cth).

“Government Authority” means any international, federal, state or local government, semi-government, quasi-government or other department, body or authority (statutory or otherwise).

“GST” means a goods and services tax, or any similar tax, levy or impost imposed by the Commonwealth of Australia.

“Illegal Worker” means a person who:

- (1) has unlawfully entered and remains in Australia;
- (2) has lawfully entered Australia, but remains in Australia after his or her visa has expired; or
- (3) is working in breach of his or her visa conditions.

“Intellectual Property Rights” means all intellectual property rights, including the following rights:

- (1) rights in relation to patents, copyright (including Moral Rights), circuit layout rights, trade marks (including goodwill in those marks), business names and any right to have confidential information (including trade secrets and know-how) kept confidential and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world;
- (2) any application or right to apply for registration of any of the rights referred to in paragraph (1); and
- (3) all rights of a similar nature to any of the rights in paragraphs (1) and (2) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.

“Key Personnel” means those specified individuals, who are specifically named in the Schedule by approval of SQ Landscapes, and whose involvement is crucial for the successful completion of the parties’ obligations under the Agreement.

“Law” means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law as applicable from time to time.



“Material” includes documents, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same.

“Milestone Schedule” means the schedule specified as such

“Moral Rights” means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).

“Party” means a Party to the Agreement.

“Personal Information” has the same meaning as in section 6 of the Privacy Act.

“Personnel” means in relation to a Party, and any natural person who carries out work in any capacity for the Party, including work as an officer, employee, contractor, subcontractor, labour hire employee, agent or representative (including a volunteer) of that Party, or in the case of the Supplier, of a subcontractor (except that SQ Landscapes’ Personnel excludes the Supplier and the Supplier’s Personnel). **“Person”** has the corresponding meaning.

“Specified Personnel” means approved individuals or contractors, specifically named or described in the Schedule whose involvement is crucial for the successful performance of the contract’s obligations. NB: any proposed changes to Specified Personnel requires SQ Landscapes approval.

“Pre-Existing Material” means Material, other than Third-Party Material, that:

- (1) is in existence at the Commencement Date or is subsequently brought into existence other than as a result of the performance of this Agreement; and
- (2) is embodied in, or attaches to, the Services or is otherwise necessarily related to the functioning or operation of the Services.

“Privacy Act” means the *Privacy Act 1988* (Cth).

“Project” means the project as described in the Services Schedule

“Privacy Commissioner” means the office established under the *Australian Information Commissioner Act 2010* (Cth).

“Project Material” means all material brought or required to be brought into existence by the parties in the performance of the Services, including but not limited to all Intellectual Property Rights which are created under or otherwise in connection with this Agreement, other than Third-Party Material.

“Related Body Corporate” means a ‘related body corporate’ within the meaning given to that term in section 50 of the Corporations Act. **“Related Companies”** has a corresponding meaning.

“Secret and Sacred Material” is any information or knowledge of special religious, spiritual or customary significance considered to be secret, exclusive or restricted by an Aboriginal person or according to Aboriginal Tradition.

“Services” means the program of work to be performed by the Supplier, as specified in the Services Schedule.

“Services Schedule” means the schedule specified as such.

“Supplier” is a Party engaged to perform the Services relative to the project in the Agreement.

“Tax Invoice” is defined as a document which complies with Clause 29-70 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).



“**Third Party IT Provider**” means an entity contracted by the Supplier to provide information technology services to the Supplier for the purposes of providing the Services, and includes a third-party hosting entity and an outsourced information technology service provider.

“**Third-Party Material**” means Material owned by another person that is:

- (1) included, embodied in or attached to the Project Material; or
- (2) used in undertaking the Services.

“**WHS Act**” means the *Work Health and Safety Act 2011* (Cth).

“**WHS Law**” means any Law which has as its object, purpose or effect the protection of health and safety, including:

- (1) the WHS Act and regulations made under the WHS Act; and
- (2) all relevant guidelines, guidance notes, standards, codes and requirements of any Government Authority responsible for the health and safety matters.

“**Work Health and Safety Plan**” has the meaning given in clause 23.5.

2 PRODUCTS AND SERVICES

- 2.1 The Supplier agrees to deliver the Services detailed in the request to supply document (contract, purchase order, e-mail, letter or other written agreement), as negotiated and agreed by both Parties within the timeframe specified, herein referred to as the Agreement.
- 2.2 The Supplier will ensure that the Services are performed:
 - (1) in an appropriate and skilful manner and with reasonable care and skill in accordance with all relevant laws and legal requirements;
 - (2) with all due skill, care and diligence, and in accordance with accepted professional and business practices, to the satisfaction of SQ Landscape and commensurate with the Suppliers qualifications to a high standard, efficiently and effectively;
 - (3) from such location as may be specified at any time by the SQ Landscapes to the Supplier; and
 - (4) in a manner that aligns with the SQ Landscapes philosophy and priorities.
- 2.3 Should the Supplier not perform the Services to a standard acceptable to SQ Landscapes, the Supplier will be required to remedy this at the Supplier’s own cost.
- 2.4 The Supplier must exercise their duty of care to towards SQ Landscapes and all Clients and other persons within SQ Landscapes premises and at the Location.
- 2.5 The Supplier will act with the utmost good faith in all dealings with the Business and their Clients.
- 2.6 The Supplier is to conduct themselves in a proper and professional manner whilst performing the Services.
- 2.7 The Supplier will not be liable to complete the Services under this Agreement due to an act or event that is beyond their reasonable control.

3 RATE OF PAYMENT

- 3.1 SQ Landscapes agrees to pay the Supplier for Services in accordance with the Services Schedule, subject to the terms of this Agreement.
- 3.2 The Supplier agrees to deliver the Services incurring expenses only in accordance with the Agreement. Further, any expenditure (including but not limited to any fees, charges, costs, expenses or other amounts) for any Services outside of the Agreement will not be honoured by SQ Landscapes.

- 3.3 Any superannuation contributions required to be made by the Supplier (as amended by legislation from time to time) will be absorbed into the cost of Services as executed in the Agreement.
- 3.4 The Supplier shall submit a legal tax invoice including the prescribed rate of GST to SQ Landscapes according to the agreed schedule of payment, except where the supplier is not currently registered for GST, in which case:
 - (1) Where a Supplier holds an ABN but is not registered for GST, they must submit a legal invoice for the required entity status; or
 - (2) Where a Supplier does not hold an ABN, they must submit a "Statement by Supplier" form along with their signed Agreement.
- 3.5 SQ Landscapes will be entitled to defer part or full payment of an instalment under clause 3.1 until such time as the Supplier has completed to SQ Landscapes' reasonable satisfaction that part of the Services to which the instalment relates.
- 3.6 Notwithstanding clause 3.5, SQ Landscapes will not be entitled to defer payment of an instalment where non-completion of a part of the Services by the Supplier is a result of a failure by SQ Landscapes to provide prerequisite inputs or perform its obligations under this Agreement.
- 3.7 SQ Landscapes will pay the amounts agreed upon receipt of legal tax invoices together with all required supporting documentation within 20 days of being received by SQ Landscapes, subject to clause 3.5.
- 3.8 If a legal tax invoice that is submitted by the Supplier is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Supplier, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently owed by SQ Landscapes to the Supplier.
- 3.9 The Supplier must pay all stamp duty (including penalties and interest) assessed or payable in respect of this Agreement and the undertaking of the Services.
- 3.10 The Supplier must pay all other taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.

4 REPORTING AND RECORD KEEPING

- 4.1 The Supplier must:
 - (1) Report to and keep SQ Landscapes informed of its operations relating to the Services in the manner specified in the supply document;
 - (2) Provide to SQ Landscapes such other reports, documents and information in relation to those operations as SQ Landscapes reasonably requires and in the manner directed;
 - (3) Keep and require its subcontractors to keep adequate books and records, in accordance with Australian Accounting Standards, in sufficient detail to enable the amounts payable by SQ Landscapes under this Agreement to be determined, and to keep comprehensive records of the conduct and provision of the Services required under the Agreement; and
 - (4) Retain and require its subcontractors to retain all records referred to in this clause 4 for the Agreement period and a further period of seven years from the expiry or termination of the Agreement or such longer period as may be required by Law.
- 4.2 The Supplier must bear its own costs of complying with this clause 4.

5 AUDITS AND ACCESS

- 5.1 Audits and access generally:
 - (1) The Supplier acknowledges and agrees that SQ Landscapes, may, at reasonable times and on giving reasonable notice to the Supplier:
 - (a) access and inspect the Supplier's premises, service delivery locations and any Assets, wherever they may be located, to the extent relevant to the performance of the Agreement; and



(b) require the Supplier (including its personnel) to provide records, documents and information relevant to the performance of the Agreement in a data format and storage medium accessible by SQ Landscapes.

(2) The Supplier acknowledges and agrees to meet with the SQ Landscapes as and when required by the SQ Landscapes for the purposes of discussing the Services being provided by the Supplier.

5.2 Right to conduct audits:

(1) SQ Landscapes may conduct audits relevant to the performance of the Supplier's obligations under this Agreement, including against the Assurance Framework. Audits may be conducted of:

- (a) The Supplier's operational practices and procedures as they relate to this Agreement, including security procedures;
- (b) The accuracy of the Supplier's invoices and reports in relation to the provision of the Services under this Agreement;
- (c) The Supplier's compliance with its confidentiality, privacy and security obligations under this Agreement;
- (d) Material (including books and records) in the possession of the Supplier relevant to the Services or this Agreement;
- (e) The financial statements of the Supplier; and
- (f) Any other matters determined by SQ Landscapes to be relevant to the Services or this Agreement.

5.3 Access by SQ Landscapes:

(1) SQ Landscapes may, at reasonable times and on giving reasonable notice to the Supplier:

- (a) access the premises of the Supplier to the extent relevant to the performance of this Agreement;
- (b) require that the Supplier provide access to any sites where the Services will be or have been performed and that the Supplier accompany SQ Landscapes' Personnel to the relevant site;
- (c) require the provision by the Supplier, or its Personnel, of records and information relating to the provision of the Services in a data format and storage medium accessible by SQ Landscapes by use of SQ Landscapes' existing computer hardware and software;
- (d) inspect and copy documentation, books and records relating to the provision of the Services, however stored, in the custody or under the control of the Supplier or its Personnel; and
- (e) require assistance in respect of any inquiry into or concerning the Services or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to SQ Landscapes), any request for information directed to SQ Landscapes.

(2) The Supplier must provide access to its electronic records to the extent necessary for SQ Landscapes to exercise its rights under this clause 5, and provide any reasonable assistance requested by SQ Landscapes.

(3) The Supplier must provide reasonable access to:

- (a) any sites where the Services will be or have been performed and the Supplier must accompany SQ Landscapes Personnel to the relevant site if required;
- (b) all Material; and
- (c) its Key Personnel and Personnel,

to the extent necessary for SQ Landscapes to exercise its rights under this clause 5.

- (4) Following an audit, SQ Landscapes may inform the Supplier in writing of its audit findings and follow up with a further audit if required by SQ Landscapes by Notice to the Supplier.

5.4 No reduction in responsibility:

- (1) The requirement for, and participation in, audits does not in any way reduce the Supplier's responsibility to perform its obligations in accordance with this Agreement.

5.5 Subcontracting:

- (1) The Supplier must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 5.
- (2) The Supplier acknowledges and agrees to provide its subcontractor's names to SQ Landscapes, and that SQ Landscapes may disclose the names of the Supplier and its subcontractors publicly.

5.6 Costs:

- (1) Each Party must bear its own costs of any inspections, reviews and audits and enquiries conducted pursuant to this clause 5.

5.7 Survival:

- (1) This clause 5 applies for the duration of the Agreement and for a period of seven years from the termination or expiry of the Agreement.

6 REMOVAL AND REPLACEMENT OF SUPPLIER

6.1 The Supplier acknowledges and agrees that if SQ Landscapes has concerns about the Supplier's performance, and the Supplier cannot demonstrate to SQ Landscapes reasonable satisfaction that it is able to address those concerns in a timeframe determined by SQ Landscapes, that SQ Landscapes may remove the Supplier by written notice.

6.2 The Supplier acknowledges and agrees that upon receipt of a written notice from SQ Landscapes' of their removal under clause 6.1, the Supplier must as soon as practicable (and in any event no later than 10 Business Days after request under clause 6.1, cease performing the Services, unless SQ Landscapes directs that the Supplier be removed immediately in which case the Supplier must comply with that direction.

7 INDEPENDENT CONTRACTOR

7.1 The Supplier is an independent contractor and neither the Supplier nor the Supplier's staff is or shall be deemed to be employed by SQ Landscapes.

7.2 SQ Landscapes is hereby contracting with the Supplier for the Services described in the Agreement and the Supplier reserves the right to determine the method, manner and means by which the Services will be performed. The Supplier is not required to perform the Services during a fixed hourly or daily time and if the services are performed at SQ Landscapes premises, then the Supplier's time spent at the premises is to be at the discretion of the Supplier, subject to SQ Landscapes normal business hours and security requirements. The Supplier shall not be required to devote the Supplier's full time nor the full time of the Supplier's staff to the performance of the Services required hereunder, and it is acknowledged that the Supplier has other clients and the Supplier offers Services to the general public. The order or sequence in which the work is to be performed shall be under the control of the Supplier.

7.3 The Supplier hereby confirms that SQ Landscapes will not be required to furnish or provide any training to the Supplier to enable the Supplier to perform the Services required. The Services shall be performed by the Supplier or Supplier's staff, and SQ Landscapes shall not be required to hire, supervise or pay any assistants to help the Supplier who performs the Services under this agreement. Except to the extent that the Supplier's work must be performed on or with SQ Landscapes computers or SQ Landscapes existing software, all materials used in providing the Services shall be provided by the Supplier.

- 7.4 SQ Landscapes shall not provide any insurance coverage of any kind for the Supplier or Supplier's staff, and SQ Landscapes will not withhold any amount that would normally be withheld from an employee's pay.
- 7.5 The Supplier has no authority to incur, and will not incur, any obligation on behalf of SQ Landscapes except with the prior written approval of the SQ Landscapes.
- 7.6 The Supplier shall take appropriate measures to ensure that the Supplier's staff is competent.

8 TERMINATION

- 8.1 The Supplier's Services can be terminated or cancelled:
 - (1) By breach of any obligation or condition under this Agreement which is capable of remedy, and does not remedy that breach to the satisfaction of SQ Landscapes (in its ultimate discretion) within seven (7) days of receipt of a Notice from SQ Landscapes specifying the breach and requiring it to be remedied;
 - (2) due to the Supplier's failure to deliver the Services as agreed
 - (3) the Supplier commits a breach of this Agreement which is incapable of remedy;
 - (4) the Supplier commits a breach of a term of this Agreement that is expressed as 'essential';
 - (5) the Supplier engages in Serious Misconduct;
 - (6) the Supplier does anything that materially damages or is likely to materially damage the brand or reputation of SQ Landscapes;
 - (7) the Supplier commits any act of fraud or dishonesty in relation to this Agreement;
 - (8) an Insolvency Event occurs in relation to the Supplier;
 - (9) the Supplier fails to inform SQ Landscapes of a complaint about the provision of the Services within three (3) Business Days after receiving the complaint or fails to cooperate with SQ Landscapes or fails to respond reasonably to a complaint in either case;
 - (10) the Supplier, because of an incapacity that arises from injury, illness or misadventure, is prevented from performing their obligations under this Agreement for a period of three (3) months or more; and
 - (11) in the event that SQ Landscapes funding is reduced or terminated, including but not limited to where SQ Landscapes' funding agreement has been terminated.
- 8.2 Upon receipt of a notice of reduction from SQ Landscapes pursuant to clause 8.1, the Supplier must cease carrying out the Agreement to the extent specified in the notice, take all available steps to minimise any losses resulting from that reduction and continue carrying out those parts of the project not affected by the notice.
- 8.3 In the event of such termination pursuant to clause 8.1, the Supplier must cease carrying out the Agreement to the extent specified in the notice, take all available steps to minimise any losses resulting from that termination.
- 8.4 Each of the Parties hereto agrees that, while performing Services under the Agreement, and for a period of six (6) months following the termination of the Agreement, neither Party will, except with the other Parties written approval, solicit or offer employment to the other Parties employees or staff engaged in any efforts under the Agreement.

Termination by the Supplier

- 8.5 The Supplier may terminate this Agreement immediately upon written Notice to SQ Landscapes if:
 - (1) SQ Landscapes commits a material breach of an obligation of this Agreement and does not remedy that breach within four weeks' of receipt of a Notice from the Supplier specifying the breach and requiring the breach to be remedied; or

- (2) an Insolvency Event occurs in relation to the Business.

9 FORCE MAJEURE

- 9.1 An Affected Party claiming the benefit or protection of Force Majeure will:
 - (1) promptly give written notice to the other party of the occurrence and circumstances in respect of which the claim of Force Majeure arises;
 - (2) take all reasonable steps to ameliorate and remedy the consequences of that occurrence without delay;
 - (3) maintain regular communication with the other party to describe what is being done to remedy the Force Majeure; and
 - (4) resume performance in full of its obligations under this Agreement as soon as reasonably practicable, but the settlement of strikes, lockouts, or other industrial disputes or disturbances which constitute Force Majeure will be entirely within the discretion of the affected party and the affected party may refrain from settling the strike, lockout or dispute or may settle it at such time and on such terms as it considers to be in its best interests.
- 9.2 An Affected Party will be excused from the performance of and will not be liable to the other party for any failure in carrying out any of its obligations under this Agreement if and only to the extent and for the time that it is prevented in whole or in part from doing so by Force Majeure.
- 9.3 As soon as possible after the beginning of an occurrence which affects the ability of the affected party to observe or perform any of its covenants or obligations under this Agreement, it shall give notice to the other party of the specific nature of the occurrence, and, as far as possible, estimate its duration.
- 9.4 The Affected Party shall use all reasonable endeavours promptly to overcome the effects of the Force Majeure Event in question.

10 SUPPLIER WARRANTIES

- 10.1 The Supplier warrants that it:
 - (1) is compliant with the *Workplace Gender Equality Act 2012* (Cth);
 - (2) is not listed as a terrorist under section 15 of the *Charter of the United Nations Act 1945* (Cth);
 - (3) will comply with the Supplier's obligations under this Agreement;
 - (4) will have the requisite expertise, qualifications, registrations, licences, insurances and alike to perform the Services, including (but in no way limited to) those required by the Act or by relevant legislation and regulations;
 - (5) will perform the Services in an efficient and professional manner;
 - (6) will have the requisite ability and legal rights to render the Services;
 - (7) will act in the best interest of SQ Landscapes at all times (this is an essential term of the Agreement);
 - (8) will not put itself in a position that conflicts (or appears to conflict) with the interests of SQ Landscapes
 - (9) will refrain from using its position for an improper purpose or for private benefit;
 - (10) will on discovery, not allow a potential or actual conflict of interest to remain unmanaged;
 - (11) will refrain from withholding from SQ Landscapes any opportunity or advantage that may arise during the course of this Agreement;
 - (12) will observe all policies and procedures of SQ Landscapes in force from time to time; and
 - (13) will comply with all applicable Laws.

11 APPOINTMENT OF SUBCONTRACTORS

- 11.1 Where the Supplier wishes to engage another Party to deliver or assist in the delivery of any of the Services required in the agreement, the Supplier must;
- (1) obtain written approval from SQ Landscapes to enter into an approved subcontracting arrangement with such Party;
 - (2) ensure that agreement with that Party is consistent with the terms of this Agreement, including but not limited to clause 23 (Work, Health & Safety);
 - (3) upon request provide SQ Landscapes a copy of all executed subcontract agreements; and
 - (4) agree to pay the subcontractor within 30 days of the receipt of a tax invoice.
- 11.2 The Supplier is responsible for the performance of the Supplier's responsibilities under the Agreement regardless of whether the Supplier has sub-contracted any of its obligations.
- 11.3 The Supplier must not enter into a subcontract under this Agreement with a subcontractor that is not compliant with the *Workplace Gender Equality Act 2012* (Cth).
- 11.4 If requested the Supplier must promptly provide to SQ Landscapes a copy of any contract or any material relating to the engagement of the subcontractor.

12 CONFIDENTIAL INFORMATION

- 12.1 Confidential information not to be disclosed:
- (1) Subject to clause 12.3, a Party must not, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to a third party.
 - (2) In giving written consent to the disclosure of Confidential Information, a Party may impose such conditions as it thinks fit, and the other Party agrees to comply with these conditions.
- 12.2 Written undertakings:
- (1) SQ Landscapes may at any time require the Supplier to arrange for:
 - (a) its Advisers; or
 - (b) any other third party,to give a written undertaking in a form required by SQ Landscapes relating to the use and non-disclosure of the SQ Landscapes' Confidential Information.
 - (2) If the Supplier receives a request under clause 12.2(1), it must promptly arrange for all such undertakings to be given.
- 12.3 Exceptions to obligations:
- (1) The obligations on the Parties under this clause 12 will not be taken to have been breached to the extent that Confidential Information:
 - (a) Is disclosed by a Party to its Advisers or Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
 - (b) Is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of Agreement related activities;
 - (c) Is authorised or required by Law, including under this Agreement, under a licence or otherwise, to be disclosed; or
 - (d) Is in the public domain otherwise than due to a breach of this clause 12.
- 12.4 Obligation on disclosure:
- (1) Where a Party discloses Confidential Information to another person:
 - (a) Pursuant to clauses 12.3(1)(a), 12.3(1)(b), or 12.3(1)(e), the disclosing Party must:



- (i) notify the receiving person that the information is Confidential Information; and
- (ii) not provide the information unless the receiving person agrees to keep the information confidential; or

12.5 Additional confidential information:

- (1) The Parties may agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.
- (2) Where the Parties agree in writing after the Commencement Date that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of this Agreement, on the date by which both parties have signed this documentation.

12.6 Period of confidentiality:

- (1) The obligations under this clause 12 continue, notwithstanding the expiry or termination of this Agreement.

12.7 No reduction in privacy obligations:

- (1) Nothing in this clause 12 derogates from any obligation which either Party may have either under the Privacy Act as amended from time to time, or under this Agreement, in relation to the protection of Personal Information.

13 PRIVACY AND PERSONAL INFORMATION

13.1 Application of this clause:

- (1) This clause 13 applies only where the Supplier deals with Personal Information when, and for the purpose of, performing the Services, but does not derogate from any obligation the Supplier may have under the Law or under this Agreement in relation to the protection of Personal Information.

13.2 Definitions:

- (1) In this clause 13:
 - (a) **agency** has the meaning given in the Privacy Act.
 - (b) **approved privacy code** or **APC** means a code approved or registered under the Privacy Act.
 - (c) **Australian Privacy Principles** or **APPs** means the Australian Privacy Principles set out in Schedule 1 of the Privacy Act.
 - (d) **organisation** has the meaning given in the Privacy Act.

13.3 Obligations:

- (1) The Supplier acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the Privacy Act, and agrees in respect of the performance of the Services:
 - (a) To use or disclose Personal Information obtained during the course of performing the Services only for the purposes of this Agreement or as otherwise permitted or required by law;
 - (b) To maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of Personal Information held in connection with this Agreement;
 - (c) To comply with, and at all times act in a manner that is consistent with, the APPs which apply to organisations including:
 - (i) developing and implementing practices, procedures and systems:



- (A) to ensure the Supplier complies with the APPs;
 - (B) that will enable SQ Landscapes to comply with the APPs; and
 - (C) that will enable the Supplier to deal with inquiries or Complaints from individuals about the Supplier's or the Services' compliance with the APPs or any approved APP code binding on the Supplier; and
- (ii) maintaining records of the Personal Information held by the Supplier in relation to this Agreement;
- (d) Not to do any act or engage in any practice that would breach an APP if done or engaged in by an agency;
- (e) To carry out and discharge the obligations contained in the APPs as if it were an agency under the Privacy Act;
- (f) To notify individuals whose Personal Information the Supplier holds that:
- (i) complaints about acts or practices of the Supplier may be investigated by the Australian Information Commissioner and/or the Privacy Commissioner who has power to award compensation against the Supplier in appropriate circumstances; and
 - (ii) their Personal Information may be disclosed and passed on to SQ Landscapes and to other persons in relation to providing the Services;
- (g) Not to use or disclose Personal Information for the purpose of direct marketing unless the Supplier collected the information for the purpose of meeting (directly or indirectly) an obligation under this Agreement and the use or disclosure is necessary to meet (directly or indirectly) such an obligation;
- (h) To comply with any request under section 95C of the Privacy Act;
- (i) To the extent required by law and in performing this Agreement, to comply with the APPs and in particular Australian Privacy Principle 12 relating to access to records;
- (j) Not to store or disclose any Personal Information held in relation to this Agreement outside Australia, or to allow parties outside Australia to have access to it, without the written prior consent of SQ Landscapes;
- (k) To comply with any directions, rules, guidelines, determinations or recommendations of the Australian Information Commissioner and/or the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 13;
- (l) That if the Supplier suspends or terminates Personnel:
- (i) to remove any access that the Personnel have to any Personal Information; and
 - (ii) to require that the Personnel return to the Supplier any Personal Information held in that Personnel's possession; and
- (m) To ensure that any of the Supplier's Personnel who are required to deal with Personal Information for the purposes of this Agreement are made aware of, and undertake in writing to observe, the APPs and other obligations of the Supplier set out in this clause 13.

13.4 Notification to SQ Landscapes:

- (1) The Supplier must immediately notify SQ Landscapes if it becomes aware:
- (a) Of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 13 by the Supplier or any subcontractor;
 - (b) That a disclosure by the Supplier or any subcontractor of Personal Information obtained under this Agreement or during the course of performing the Services may be required by Law; or

- (c) Of an approach to the Supplier by the Australian Information Commissioner and/or the Privacy Commissioner or by a person claiming that their privacy has been interfered with, in relation to Personal Information obtained under this Agreement or during the course of performing the Services.

13.5 Subcontracts:

- (1) The Supplier must ensure that any sub-contract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Supplier has under this clause 13 including the requirement in relation to sub-contracts.

13.6 Indemnity:

- (1) The Supplier agrees to indemnify SQ Landscapes in respect of any Damages suffered or incurred by SQ Landscapes which arises directly or indirectly from a breach of any of the obligations of the Supplier under this clause 13, or a Subcontractor under the subcontract provisions referred to in clause 13.5.

14 COLLATERAL

14.1 The Supplier is required to obtain written approval (hardcopy or electronic) from SQ Landscapes' for all collateral and media releases (including but not limited to all promotional, publicity and advertising material relating to the Agreement, including speeches, media releases, conferences, print advertisements, newsletters, magazine articles, outdoor signage, brochures, factsheets, invitations, and posters) which are produced under this Agreement before its use. The process for obtaining approval is as follows:

- (1) Requests for SQ Landscapes' approval are to be sent to PO Box 1670, Toowoomba Queensland 4350 or admin@sqlandscapes.org.au.
- (2) SQ Landscapes shall provide signoff or feedback within 14 days of receipt of the request.

14.2 The Supplier agrees to provide electronically (on CD or USB drive) any and all images collected during the life of the Agreement as applicable. Images must be correctly labelled including but not limited to identifying persons, places and events. SQ Landscapes and other nominated parties in relation to clause 14 will retain the right to use, reproduce, adapt and exploit the images in any reporting or promotional activities.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 Intellectual Property Rights in Project Material:

- (1) Subject to clause 15.2, all Intellectual Property Rights in the Project Material created by the Supplier will vest, upon creation, in the Supplier; and
- (2) This clause 15 does not affect the ownership of the Intellectual Property Rights in any Third-Party Material or any Pre-existing Material.

15.2 Licensing of Pre-existing Material, Project Material and Third-Party Material:

- (1) The Supplier grants to SQ Landscapes a perpetual, irrevocable, world-wide, royalty-free, non-exclusive licence (including the right to novate or assign the licence, and to sublicense, including under a perpetual Creative Commons Attribution License (CC-BY 3.0) that SQ Landscapes considers appropriate) to use, reproduce, adapt, modify, communicate, broadcast, distribute and publish the Pre-existing Material, Project Material and Third-Party Material (excluding any Secret and Sacred Material in each case) for any purpose.

15.3 Third-Party Material:

- (1) The Supplier must provide all Third-Party Material necessary or appropriate to perform its obligations under the Agreement;



- (2) If the Supplier cannot obtain the licenses as described in clauses 15.2 for any Third-Party Material, the Supplier must:
 - (a) notify SQ Landscapes of the best alternative license terms for that Third Party Material and not use that Third-Party Material unless SQ Landscapes consents to those terms; and
 - (b) If SQ Landscapes does not consent to those terms, notify SQ Landscapes of any comparable Third-Party Material and comply with its obligations under this clause 15.3(2) in respect of comparable Third-Party Material.

15.4 Managing Intellectual Property Rights:

- (1) The Supplier must:
 - (a) if requested by SQ Landscapes to do so, bring into existence, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 15; and
 - (b) not deal with the Intellectual Property Rights in the Project Material, except as expressly provided for in this Agreement.

15.5 Project Material Copies:

- (1) On termination or expiry of the Agreement, or earlier if requested by SQ Landscapes the Supplier must promptly deliver a copy of all Agreement and service-related material that is in existence to SQ Landscapes in an agreed format (including in an electronic format), or as otherwise directed by SQ Landscapes.

15.6 Intellectual Property Rights warranties:

- (1) The Supplier warrants that anything done by the Supplier in the course of the Agreement including in developing the reports, will not infringe the Intellectual Property Rights of any person.
- (2) The Supplier warrants that it has the necessary right to vest the Intellectual Property Rights and grant the licences as provided for in this clause 15.
- (3) The Supplier further warrants that SQ Landscapes nor any other nominated Party nor any of their sublicensees will not, at any time, be infringing the Intellectual Property Rights of any person when undertaking an activity allowed for under the Agreement or using Project Material (excluding Secret and Sacred Material) in a manner consistent with the licenses granted or to be granted, to SQ Landscapes and the other nominated parties under this clause 15.
- (4) If SQ Landscapes reasonably believes that someone claims, or is likely to claim, that all or part of the materials warranted by the Supplier under this clause 15 infringe their Intellectual Property Rights, the Supplier must, in addition to the indemnity under clause 29 and to any other rights that SQ Landscapes or the nominated other parties may have against it, promptly, at the Supplier's expense:
- (5) use its best efforts to secure the rights for SQ Landscapes and other nominated parties to continue to use the affected materials free of any claim
 - (a) or liability for infringement; or
 - (b) replace or modify the affected materials so that the material or use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected materials.

16 PROTECTION OF SQ LANDSCAPES DATA

- 16.1 To the extent that the Supplier has access to and/or uses SQ Landscapes Data, the Supplier must not (and must ensure that its personnel do not):



- (1) Use SQ Landscapes Data held by the Supplier, or which the Supplier has access to, other than for the purposes of fulfilling its obligations under this Agreement;
- (2) Allow any person, unless authorised by SQ Landscapes, to access or use SQ Landscapes Data;
- (3) Purport to sell, let for hire, assign rights in or otherwise dispose of SQ Landscapes Data;
- (4) Purport to commercially exploit SQ Landscapes Data (or allow any subcontractor or a subcontractor's personnel to do so); or
- (5) Alter SQ Landscapes Data in any way, other than in the course of and to the extent necessary in providing the Services as required under this Agreement.

16.2 In respect of safeguarding SQ Landscapes Data:

- (1) The Supplier must establish and maintain safeguards against the destruction, loss or alteration of SQ Landscapes Data in the possession or control of the Supplier that:
 - (a) are no less rigorous than those notified by SQ Landscapes from time to time; and
 - (b) comply with all Laws and any procedures or requirements specified by SQ Landscapes from time to time; and
- (2) The Supplier agrees that SQ Landscapes may, at any time, with reasonable notice, conduct a security audit of the Supplier's compliance with this clause 16.2, including the right to undertake a security risk assessment, threat risk assessment or privacy impact assessment.

16.3 To the extent that the Supplier has access to and/or uses SQ Landscapes Data, the Supplier must not, and must ensure that the Supplier's personnel do not:

- (1) Remove SQ Landscapes Data or allow SQ Landscapes Data to be removed from SQ Landscapes premises; or
- (2) Take, transfer, transmit or disclose SQ Landscapes Data or allow SQ Landscapes Data to be taken, transferred, transmitted, accessed or disclosed outside of Australia, without SQ Landscapes prior written consent.

16.4 The Supplier must ensure that any sub-contract entered into for the purpose of fulfilling its obligations under this Agreement imposes on the subcontractor the same obligations as the Supplier has under this clause 16, including the requirement in relation to subcontracts.

16.5 The Supplier agrees to indemnify SQ Landscapes in respect of any Damages suffered or incurred by SQ Landscapes which arises directly or indirectly from a breach of any of the obligations of the Supplier under this clause 16, or a subcontractor under the sub-contract provisions referred to in clause 16.4.

17 CONFLICT OF INTEREST

17.1 The Supplier warrants, to the best of its knowledge, as at the Commencement Date, that no Conflict exists or is likely to arise in the performance of the Supplier's obligations under the Agreement.

17.2 If during the Agreement period, a Conflict arises, or appears likely to arise, the Supplier must immediately notify SQ Landscapes in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Supplier proposes to take to resolve or otherwise deal with the Conflict, and take such steps as the SQ Landscapes may reasonably require to resolve or otherwise deal with that Conflict.

17.3 If the Supplier fails to notify SQ Landscapes under this clause 17, or is unable or unwilling to resolve or deal with the Conflict as required by SQ Landscapes, SQ Landscapes may terminate this Agreement in accordance with clause 8.

17.4 The Supplier agrees that it will not, and will use its best endeavours to ensure that any of the Supplier's Personnel do not engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Supplier in undertaking the Services fairly and independently.



18 SECURITY

- 18.1 The Supplier must:
- (1) Comply with any security requirements set out in this Agreement or given by SQ Landscapes from time to time regarding any aspect of security of or access to, SQ Landscapes information, Material or premises;
 - (2) Inform SQ Landscapes by telephone immediately after it becomes aware of any Security Incident, and as soon as practicable (and at least within 24 hours) confirm the details by notice in writing. In the event of any Security Incident, the Supplier must comply with all directions of SQ Landscapes to resolve the incident, including in relation to:
 - (a) obtaining evidence about how, when and by whom the Supplier's information system and/or SQ Landscapes Material has or may have been compromised, providing it to SQ Landscapes on request, and preserving and protecting that evidence for a period of up to 12 months;
 - (b) implementing any mitigation strategies to reduce the impact of the Security Incident or the likelihood or impact of any future similar incident; and
 - (c) preserving and protecting SQ Landscapes Material (including as necessary reverting to any backup or alternative site or taking other action to recover SQ Landscapes Material).

19 COMPLIANCE WITH POLICIES AND LAW

- 19.1 The Supplier and the Supplier's Personnel must comply with all applicable Laws; including (but not limited to):
- (1) Crimes Act 1914 (Cth);
 - (2) Criminal Code Act 1995 (Cth);
 - (3) Fair Work Act 2009 (Cth);
 - (4) Racial Discrimination Act 1975 (Cth);
 - (5) Sex Discrimination Act 1984 (Cth);
 - (6) Disability Discrimination Act 1992 (Cth);
 - (7) Workplace Gender Equality Act 2012 (Cth);
 - (8) Age Discrimination Act 2004 (Cth);
 - (9) Ombudsman Act 1976 (Cth);
 - (10) relevant workers compensation legislation.
- 19.2 The Supplier must, in relation to this Agreement, at all times, act in a manner that maintains the good reputation of the Services.
- 19.3 The Supplier must not engage in any practice that dishonestly or improperly manipulates the Services with the intention of maximising payments to, or otherwise obtaining a benefit for, the Supplier, a Related Body Corporate or any other person.
- 19.4 The Supplier must advise its officers and employees that acting with the intention of dishonestly obtaining a benefit for any person is punishable by penalties including imprisonment.

20 FREEDOM OF INFORMATION

- 20.1 Where SQ Landscapes has received a request for access to a document created by, or in the possession of, the Supplier or any subcontractor or any Third Party IT Provider that relates to the performance of this Agreement (and not to the entry into this Agreement), SQ Landscapes may at any

time by written notice require the Supplier to provide the document to SQ Landscapes and the Supplier must, at no additional cost to SQ Landscapes, promptly comply with the notice.

- 20.2 The Supplier must assist SQ Landscapes in respect of SQ Landscapes obligations under the *Freedom of Information Act 1982* (Cth).
- 20.3 The Supplier must include in any subcontract or contract with a Third Party IT Provider relating to the performance of this Agreement provisions that will enable the Supplier to comply with its obligations under this clause 20.

21 ILLEGAL WORKERS

- 21.1 The Supplier must ensure that its employees, agents, volunteers, and any other person engaged to carry out the Services, including those engaged by any subcontractors, are at all times:
- (1) Australian citizens; or
 - (2) In the case of persons who are not Australian citizens, not Illegal Workers.
- 21.2 The Supplier must remove or cause to be removed any Illegal Workers from any involvement in the carrying out of Services and arrange for his or her replacement at no cost to SQ Landscapes immediately on becoming aware of the involvement of the Illegal workers.
- 21.3 The Supplier must immediately notify SQ Landscapes of the involvement of the Illegal Workers and their removal.
- 21.4 To avoid doubt, compliance with the Supplier's obligations under this clause 21 will not give rise to an entitlement to claim any delay or otherwise excuse the Supplier from compliance with its obligations under this Agreement.
- 21.5 When requested by SQ Landscapes, the Supplier will provide evidence that it has taken all reasonable steps to ensure it has complied and is complying with its obligations under this clause 21, including in relation to its subcontractors.
- 21.6 The Supplier must provide SQ Landscapes with evidence referred to in clause 21.4 within five Business Days of receiving SQ Landscapes' request.

22 FRAUD

- 22.1 The Supplier must not engage in fraudulent activity in relation to this Agreement.
- 22.2 The Supplier must take all reasonable steps to prevent fraud, including the development and implementation of an appropriate fraud control plan, a copy of which must be provided to SQ Landscapes on request.
- 22.3 If, after investigation, SQ Landscapes determines that the Supplier has been engaged in fraudulent activity, SQ Landscapes may immediately terminate this Agreement under clause 8.

23 WORK, HEALTH AND SAFETY

- 23.1 Definitions:
- (1) In this clause 23, Construction Project, Inspector, Notifiable Incident, Person Conducting a Business or Undertaking, Principal Contractor, Regulator and WHS Entry Permit Holder have the meanings given in the WHS Laws.
- 23.2 General Obligations:
- (1) The Supplier acknowledges and agrees that Work Health and Safety (WHS) is of paramount importance to them, their work colleagues, SQ Landscapes and its business, and that the Supplier must ensure the Services are performed in a safe manner.



- (2) The Supplier must not, and must ensure that the Supplier's Personnel do not, by act or omission place SQ Landscapes in breach of their obligations under the WHS Laws.
- (3) The Supplier must, and must ensure that the Supplier's Personnel, if using or accessing SQ Landscapes premises or facilities, comply with all instructions, directions, policies and procedures relating to work health and safety in operation at those premises or facilities whether specifically drawn to the attention of the Supplier or as might reasonably be inferred from the circumstances.
- (4) Where the health and safety of any person may be affected by the performance of the Services, the Supplier must consult, cooperate and coordinate with SQ Landscapes, or any other relevant Person Conducting a Business or Undertaking, in relation to the health and safety issue.
- (5) The Supplier must inform itself of and comply with, and ensure that the Supplier's Personnel inform themselves of and comply with, SQ Landscapes work health and safety policies and procedures relevant to the Services.
- (6) The Supplier must, and must ensure that the Supplier's Personnel:
 - (a) comply with the WHS Laws in relation to the Services;
 - (b) perform the Services in accordance with the Work Health and Safety Plan;
 - (c) comply with all relevant work health and safety policies and procedures of SQ Landscapes whether specifically drawn to the attention of the Supplier or as might reasonably be inferred from the circumstances; and
 - (d) immediately comply with any instruction or direction from SQ Landscapes regarding work health and safety in relation to the Services, including to suspend the Services under this clause.
- (7) To the extent that the Services, or any part of the Services, are a Construction Project, SQ Landscapes as Principal Contractor for the Construction Project is authorised to have management or control of the workplace and to discharge the duties of a Principal Contractor under the WHS Laws.
- (8) Notwithstanding any engagement at clause 11, SQ Landscapes has management and control of any workplace where the Services are being performed.

23.3 Notification:

- (1) The Supplier must notify SQ Landscapes as soon as practicable of any concern the Supplier has regarding work health and safety in relation to the Services.
- (2) The Supplier must immediately (and in any event within 24 hours of becoming aware) notify SQ Landscapes of any:
 - (a) breach or suspected breach of the WHS Laws in relation to the Services;
 - (b) incident or event that occurred in connection with the Services that had the potential to cause (but did not cause) a serious injury or death to any person, including any Notifiable Incident;
 - (c) cessation of work on the Services, or direction to cease work on the Services from any person having authority under the WHS Laws to do so, due to unsafe work;
 - (d) entry by a WHS Entry Permit Holder or Inspector to any place where Services are being performed; or
 - (e) proceedings against, decision by the Regulator in relation to, or request from the Regulator to, the Supplier or the Supplier's Personnel under the WHS Laws.
- (3) In respect of each item referred to in clause 23.2, if required by SQ Landscapes, the Supplier must provide SQ Landscapes with the following information in writing in the timeframe specified by SQ Landscapes, and if no timeframe is specified, within 24 hours:
 - (a) a brief description of how the incident occurred;

- (b) the precise location where the incident occurred;
 - (c) when the incident occurred;
 - (d) the names, positions and employers (if any) of the persons involved;
 - (e) details of any known injuries or property damage;
 - (f) the names, positions and employers (if any) of the persons who saw the incident or were present when it occurred; and
 - (g) any additional information identified by SQ Landscapes as being necessary for them to comply with their own notification and reporting obligations under the WHS Laws.
- (4) The Supplier must provide to SQ Landscapes a copy of any notice issued to the Supplier under the WHS Laws in relation to Services performed as soon as possible and in any event within 24 hours after receipt.
- (5) If a Notifiable Incident occurs with respect to the Services, the Supplier must:
- (a) in accordance with the WHS Laws, notify the Regulator of the Notifiable Incident and at the same time and in any event provide a copy of any written notice to SQ Landscapes; and
 - (b) if requested by SQ Landscapes, provide within the timeframe specified by SQ Landscapes (as the case may be) a report on the Notifiable Incident that contains the information clause 23.3(3), the results of any investigations into its cause, and any recommendations for prevention in the future.
- (6) If SQ Landscapes wishes to conduct its own investigation of any incident connected with the Services, the Supplier must, and must ensure that the Supplier's Personnel, cooperate fully with SQ Landscapes investigation including by promptly providing all information and documents requested by SQ Landscapes and access to the Supplier's Personnel, including for the purpose of SQ Landscapes conducting interviews with them.
- (7) If SQ Landscapes (acting reasonably) considers that action or intervention is required to respond to an incident listed in clause 23.3(2) or a direction is given by a Regulator under any WHS Laws that action or intervention is required, SQ Landscapes may, if and to the extent that the Supplier is responsible for the relevant incident:
- (a) direct the Supplier to take the action or intervention, in which case the Supplier must take whatever action or intervention is required at its own cost; or
 - (b) where SQ Landscapes considers it reasonable in the circumstances, take the action or intervention itself, in which case the reasonable costs and charges incurred by SQ Landscapes are a debt due and payable by the Supplier to SQ Landscapes.

23.4 Health and safety audits:

- (1) SQ Landscapes (or any third party engaged by SQ Landscapes) may carry out audits of the Supplier's compliance with the health and safety requirements of this Agreement at any time. During any audit, the Supplier must provide all documents, access and assistance requested by SQ Landscapes.
- (2) An audit undertaken pursuant to this clause 23.4 may include a check on the Supplier's policies, procedures and records.
- (3) If any non-conformance or non-compliance is detected by the Supplier or SQ Landscapes with the WHS Laws, the Work Health and Safety Plan or direction or requirement of SQ Landscapes, the Supplier must immediately rectify the nonconformance or non-compliance at its cost.

23.5 Work Health and Safety Plan:

The Supplier must develop and implement a Work Health and Safety Plan in respect of the Services, prior to the Commencement Date and provide to SQ Landscapes upon request, wherein the Work Health and Safety Plan must:

- (1) Identify work health and safety risks associated with the delivery of the Services and Project (including with regard to employees, subcontractors, volunteers and any other individuals or organisations associated with the Services or Project); and
- (2) Identify appropriate strategies and actions to reduce the likelihood and impact of these work health and safety risks, and outline how these strategies and actions will be implemented.

23.6 Relationship to other obligations:

- (1) If there is any inconsistency between this clause 23 and the WHS Laws, the WHS Laws prevail to the extent of the inconsistency.
- (2) The Supplier acknowledges that it is responsible for:
 - (a) complying with its obligations under WHS Laws; and
 - (b) performing the Services in accordance with this Agreement,
and will not be relieved of that responsibility because of:
 - (c) anything in this clause 23 or in any policy or procedure referred to in this clause 23;
 - (d) any instruction or direction or failure to give an instruction or direction under this clause 23;
 - (e) any exercise of, or failure to exercise, SQ Landscapes rights under this clause 23; or
 - (f) any notice or other document or communication from the Supplier under this clause 23.
- (3) To the extent permitted by Law, SQ Landscapes is not liable to the Supplier for any Losses in connection with work health and safety in relation to the Supplier or the Supplier's Personnel.

23.7 Non-compliance:

- (1) If, during the performance of any work under this Agreement, SQ Landscapes notifies the Supplier that SQ Landscapes is satisfied that the Supplier is:
 - (a) not performing the work in compliance with the Work Health and Safety Plan, work health and safety management procedures, WHS Laws or the work health and safety procedures provided by SQ Landscapes from time to time; or
 - (b) performing the work in such a way as to endanger the health and safety of the Supplier,
the Supplier must promptly remedy that breach of health and safety.
- (2) SQ Landscapes may direct the Supplier to suspend the work until such time as the Supplier satisfies SQ Landscapes that the work will be resumed in conformity with applicable work health and safety provisions. During periods of suspension referred to above, SQ Landscapes will not be required to make any payment whatsoever to the Supplier.
- (3) If the Supplier fails to rectify any breach of health and safety for which the work has been suspended within a reasonable period but no later than 10 Business Days after receiving notification from SQ Landscapes to do so, or if the Supplier's performance has involved recurring breaches of health and safety, SQ Landscapes may, at their option, immediately terminate this Agreement or reduce the scope of this Agreement, without further obligation to the Supplier. In this event, SQ Landscapes' liability will be limited to payment for the Services performed and costs incurred by the Supplier up to the time of termination or reduction in scope.

24 CHANGE IN CONTROL

24.1 Change in Control:

- (1) The Supplier must promptly notify and fully disclose to SQ Landscapes, in writing, of:



- (a) a Change in Control of the Supplier; or
- (b) any event or occurrence actual or threatened during the performance of this Agreement which may materially affect the Supplier's ability to perform any of its obligations under this Agreement or the Services or how the Services are perceived publicly.

24.2 Resolution:

- (1) Within five Business Days after giving notice under clause 24.1(1)(b), the Supplier must inform SQ Landscapes of the steps it will take to resolve the issue. If SQ Landscapes considers those steps are inadequate, it may direct the Supplier to resolve the issue in a manner proposed by SQ Landscapes.
- (2) If the Supplier is unable or unwilling to resolve the issue in the required manner under clause 24.2(1), SQ Landscapes may, without limitation to any other rights or remedies SQ Landscapes may have under this Agreement or at Law, give the Supplier a notice of termination for cause under clause 8.

25 INSURANCE

25.1 The Supplier shall effect and maintain for itself and ensure similarly that any suppliers, contractors or subcontractors it engages for any activity effect and maintain the following insurances for the duration of the Agreement, in connection with the Services being supplied:

- (1) Workers' Compensation Insurance as required by Law;
- (2) Public Liability Insurance for an amount not less than \$20 million per claim and unlimited in aggregate;
- (3) Professional Indemnity Insurance for an amount not less than \$5 million per occurrence and \$10 million in the aggregate, if relevant to the services being supplied; and
- (4) compulsory third party motor vehicle insurance for all registrable vehicles used in the performance of this Agreement.

25.2 If requested in writing by SQ Landscapes to do so, the Supplier must produce evidence to SQ Landscapes satisfaction and approval that the insurance required by this clause 25 has been effected and maintained.

25.3 The effecting and maintaining of insurance shall not limit the liabilities or obligations of the Supplier under other provisions of the Agreement.

25.4 Wherever possible, the Supplier shall require professional suppliers, contractors and subcontractors to maintain Professional Indemnity insurance for the amount of loss likely to be suffered by the Supplier in the event that the Supplier, contractor or subcontractor provides Services in a negligent manner.

26 ENVIRONMENTAL MANAGEMENT

26.1 The Supplier acknowledges and agrees that environmental management is of paramount importance to them, their work colleagues, SQ Landscapes and its business.

26.2 To give effect to clause 26.1, the Supplier agrees to do all things necessary to implement environmental management practices and procedures whilst delivering the Services as specified in the Agreement.

27 PROPERTY AND EQUIPMENT

27.1 SQ Landscapes may provide equipment and property to the Supplier to assist in the delivery of Services. SQ Landscapes reserves the right to record the equipment and or property provided under the *Personal Properties and Securities Act 2009* (Cth) ("**PPSA**") and the Supplier agrees to sign all necessary documentation as required by SQ Landscapes to effect same.



- 27.2 As collateral for the return of each item and the performance of the Suppliers' obligations under the Agreement, the Supplier grants to SQ Landscapes a Security Interest over the equipment and / or provided that:
- (1) Nothing in the agreement gives the Supplier the right, title or interest in the SQ Landscapes equipment and or property other than the right of possession and use pursuant to the terms of the Agreement;
 - (2) If the Supplier is in default of any provision of the agreement SQ Landscapes may seize the property by any method permitted by law;
 - (3) The Supplier gives its consent to the registration of the SQ Landscapes Security Interest on the Personal Property Securities Register;
 - (4) The Supplier waives its right pursuant to section 157 (3) of the PPSA to receive a notice in relation to registration events to which this clause 27 applies; and
 - (5) The Supplier co-operates fully to enable SQ Landscapes to protect and maintain the perfection of its Security Interest.

28 SQ LANDSCAPES REPRESENTATIVE

- 28.1 The Chief Executive Officer (CEO) or nominated officer shall represent SQ Landscapes during the performance of the Agreement with respect to the Services and deliverables and has authority to execute written modifications or additions to the agreement as defined in clauses 32 and 37.

29 INDEMNITY

- 29.1 The Supplier indemnifies SQ Landscapes, their employees, servants, contractors, workers and agents against all damages, costs, expenses, loss or damage which they may incur or sustain in relation to the Agreement and all actions, proceedings, claims and demands whatsoever which may be brought or made against it or any person in respect of, by reason of or arising out of:
- (1) The performance or non-performance by or on behalf of the Supplier;
 - (2) Any negligence or other deliberate or wrongful act or omission of the Supplier or its employees, subcontractors or sub-suppliers or of any other persons for whose acts or omissions the Supplier is vicariously liable;
 - (3) Any negligence or other deliberate or wrongful act or omission of the Supplier's visitors, invitees or licensees;
 - (4) The death, injury, loss of or damage to the Supplier, its employees, agents, Sub Suppliers, licensees, invitees or visitors; and
 - (5) any tax or statutory charge which may be levied or charged or which may fall due to be levied or paid in relation to any fees payable in accordance with this Agreement or for any other sum payable as a consequence of the performance or non-performance of the Contractor.
 - (6) Any breach of this Agreement by the Supplier.
- 29.2 The indemnity under clause 29.1 is a continuing obligation separate and independent of each Parties other obligations and shall survive the expiration or, where relevant, the earlier termination of the Agreement.
- 29.3 The Supplier may engage contractors, suppliers or organisations entirely at its own risk and SQ Landscapes will not be liable for any loss, cost, damage, expense or other liability incurred or suffered by the Supplier in engaging any contractor, Supplier or organisation except as explicitly set out in the Agreement or arising as a direct consequence of any deliberately wrongful or negligent act or omission of SQ Landscapes.

30 NOTICES

- 30.1 Any notice to be given by either Party will be in writing and forwarded to the other Party either by post, or electronic mail.
- 30.2 All correspondence in respect of this Agreement will be directed to the nominal contact officer as detailed in the Schedule to a Services Agreement issued by SQ Landscapes.

31 DISPUTES

- 31.1 SQ Landscapes and the Supplier must make every effort to avoid disputes arising but acknowledge that despite those efforts' disputes may still arise.
- 31.2 If a dispute or difference arises between SQ Landscapes and the Supplier at any time as to the construction of the Agreement or as to any matter or thing of whatever nature arising under or in connection with the Agreement, then either Party must promptly give to the other notice in writing adequately identifying the matters of that dispute or difference.
- 31.3 Once a Notice of dispute has been provided in accordance with clause 31.2, the parties must convene within 10 Business Days to conduct a 'without prejudice dispute resolution' conference in an attempt to resolve the dispute.
- 31.4 If the 'without prejudice resolution' conference is unsuccessful or is not settled within ten Business Days after receipt by a Party of a notice of dispute, the dispute must be referred to a mediator agreed to by the parties or if the parties are unable to agree on a mediator, then a mediator appointed by the President of the Queensland Law Society. Such mediation is to be conducted on such terms as agreed by the parties, or if the parties are unable to agree, then on such terms as directed by the appointed mediator.

32 DEFECTIVE WORKS

- 32.1 The Supplier agrees to indemnify SQ Landscapes against all costs and expenses that SQ Landscapes incurs or sustains in relation to this Agreement which result from or in relation to any defective Services of the Supplier.
- 32.2 SQ Landscapes will issue a Notice to Rectify to the Supplier stipulating the rectification Services required and the time in which such rectification is to be affected. The Supplier agrees that any such rectification work will be conducted at the Supplier's own expense and within the timeframe stipulated in the Notice to Rectify.
- 32.3 In the event that the Supplier fails to rectify the defect within the stipulated timeframe, then SQ Landscapes reserves the right to engage another contractor or Supplier to complete the rectification work and to recover the costs of same from the Supplier.
- 32.4 The indemnity under clause 32.1 is a continuing obligation separate and independent of each Parties other obligations and will survive the expiration or, where relevant, the earlier termination of this Agreement.

33 DISCLOSURE

- 33.1 By executing a supply Agreement, the Supplier agrees that SQ Landscapes may release information regarding the Agreement including the Supplier name, Funding Source/s, Funding Group, Nature of Support provided, Value of Agreement and Value of In-Kind Contribution/s to funding providers and other key stakeholders.
- 33.2 The Supplier may access their personal information or find out if SQ Landscapes holds personal information about the Supplier, by contacting SQ Landscapes in writing as per clause 30. SQ Landscapes will endeavour to comply with the request but may refuse access if they have a legal right or requirement to do so in accordance with the Privacy Act.
- 33.3 If the Supplier believes that the personal information held is incorrect, they may request that it be corrected. This request should be in writing and be directed as per clause 30. SQ Landscapes will



endeavour to comply with your request to correct information or notify that the correction has not been made giving the reason why SQ Landscapes is unable to comply with the Suppliers request.

34 COMPLETE AGREEMENT

- 34.1 The Agreement to supply consists of the following documents the Agreement and Standard Terms and Conditions. These documents together contain the entire Agreement between the parties hereto with respect to the matters covered herein. No other Agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of a Supplier by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. SQ Landscapes acknowledges that it is entering into the Agreement solely on the basis of the representations contained herein.

35 APPLICABLE LAW

- 35.1 The Agreement shall in all respects 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.
- 35.2 Unless the parties agree otherwise, the Supplier shall ensure that it obtains any approvals, authorities, licences, and permits which are required under Commonwealth, State and Local Authority legislation to undertake the Services described in the Agreement.

36 SCOPE OF AGREEMENT

- 36.1 If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

37 VARIATIONS / ADDITIONS

- 37.1 The parties may vary any of the terms of the Agreement, but any variation will be effective only if evidenced in writing signed by the parties. No Agreement or understanding that varies or amends the agreement shall bind either Party unless and until agreed to in writing by both parties.
- 37.2 After receipt of a SQ Landscapes Agreement variation which adds to the Services, the Supplier may take reasonable action and expend reasonable amounts of time and money based on the agreed variation.
- 37.3 SQ Landscapes agrees to pay the Supplier for such action and expenditure as set forth in the variation of the original Agreement for payments related to Services.

38 SPECIAL CONDITIONS

- 38.1 Where the supply of Services requires additional conditions of supply, the conditions will be specified in the documented Agreement and are considered to be in addition to these Standard Terms and Conditions.

39 ASSIGNMENT

- 39.1 The Agreement may not be assigned by either Party without the prior written consent of the other Party. Except for the prohibition on assignment contained in the preceding sentence, the Agreement shall be binding upon and inure to the benefits of the heirs, successors and assigns of the parties hereto.
- 39.2 Should an assignment of rights and obligations become necessary under the Agreement, the Party requesting said assignment must give reasonable notice of not less than seven (7) days to the other Party of its intention to transfer or assign its rights or obligations under this Agreement.



- 39.3 The Supplier must authorise and return any documentation required by SQ Landscapes to complete the transfer or assignment in clause 39.1, and the Supplier can employ within its fee set out in the Agreement, persons or companies it deems appropriate to assist it in completing the transfer or assignment.

40 MISCELLANEOUS

- 40.1 No omission by either Party to require the performance by the other of any of the terms and conditions of the Agreement nor any forbearance or indulgence shown by a Party to the other will in any manner affect or prejudice the rights of a Party at any time to require strict and full performance by the other Party of any or all of the terms and conditions of the Agreement.
- 40.2 If any of the provisions of the Agreement is or becomes or is held to be invalid, illegal or unenforceable in any respect then the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired unless this Agreement is thereby rendered impracticable or impossible of performance.