

# Maintenance Services (QBuild)



**Date Issued:** ..... **Contact Name:** ..... **Telephone:** .....  
**Reference No:** ..... **Facsimile:** ..... **Email:** .....

**Invitation to submit offers**

Offers are invited for the performance of the Services described below in accordance with the Offer documents herein and any other information issued by the Principal for the purposes of tendering.  
 Offers ~~may~~ / may not be submitted by electronic offer.

**Offers close at (for hard copy offers):** .....  
**or at (for electronic offers if applicable):** N/A ..... **on (date):** ..... **at (time):** 2 p.m.

**Location and Description of Services** ..... **Contract No:** .....  
 .....  
 .....  
 .....  
 Quality Assurance System (clause A2.9): .....  
 Date for commencement (clause B22): .....  
 Date for completion (clause B23): .....  
 Limitation-Breakdown Maintenance Services (clause B3): ..... (If none stated, \$300.00 exclusive of GST)

**Offer to: The State of Queensland through QBuild, a business unit of the Department of Public Works (the Principal)**

**I/We (the Offerer) (Full Name in BLOCK LETTERS of Individual or Company)** .....  
 .....  
**Address:** .....  
**Telephone:** ..... **Australian Company Number (if a Company):** .....  
**Facsimile:** ..... **Australian Business Number:** .....  
 hereby offer to provide the materials and/or perform the Services described above for the Annual Contract Sum for the first year (inclusive of GST) of: ..... (words only)

Calculation of GST Component of the Annual Contract Sum

Net Annual Contract Sum (Contract Sum exclusive of GST) for the first year of the Services	\$ .....
GST Component of Annual Contract Sum for the first year of the Services	\$ .....
Annual Contract Sum (as above) for the first year of the Services	\$ .....

I/We have received the following Addenda to the documents and my/our offered sum includes allowances for their provisions.  
 Addenda designated: ..... inclusive (If none received state NIL).

Relevant licensing requirements under the *Queensland Building Services Authority Act, Electricity Act, Electrical Safety Act* or other licensing legislation required to complete the Services shall be entered below:

Licence Number: .....	Licence Number: .....
Category: .....	Category: .....
Trade: .....	Trade: .....
Conditions (if any): .....	Conditions (if any): .....

The Offerers' insurance policies as follows are current:

INSURANCE POLICIES	INSURER AND POLICY NO	CURRENT UNTIL
Clause B11 Public Liability Insurance	.....	.....
Clause B12 Insurance of Employees / Operators	.....	.....

**Name of Offerer or Authorised Person (s):** .....  
 (Print Name)  
**Signature:** ..... **Date:** ...../...../.....

## A. CONDITIONS OF OFFER FOR MAINTENANCE SERVICES

### A1. INTERPRETATION

Meanings assigned to words and expressions shall apply to those words and expressions used in the Offer documents.

Unless the contrary intention applies, the following definitions also apply:

“Offerer” means a party invited directly or indirectly by the Principal to submit an Offer;

“Principal” means the State of Queensland through QBuild, a business unit of the Department of Public Works;

“Offer Form” means the form provided for the purpose of submitting an Offer to the Principal;

“Schedules” means the documents forming part of the Offer documents which are required to be completed and returned with the Offer.

### A2. LODGEMENT OF OFFER

A2.1 The Offer documents shall comprise the Offer Form, Schedules, and these Conditions of Offer for Maintenance Services, the Conditions of Contract for Maintenance Services and such Specifications, Drawings and any other information issued by the Principal, for the purposes of tendering and which may be inspected or obtained at the place of closing of Offers.

A2.2 For hardcopy Offers:

A2.2.1 the Offer shall be signed, fully priced where required and accompanied by any other documents required to be submitted; and

A2.2.2 Offers must be enclosed in an envelope, sealed and endorsed with the location and description of the work and reference number (if any) and lodged at the place named in the Offer form, by the date and time given. Offers sent by prepaid post or recognised carrier in time to be delivered, within the time stated, in the ordinary course of mail or delivery by the recognised carrier, may be considered.

A2.3 For electronic Offers (if applicable):

A2.3.1 the Offer shall include a completed Offer form, be fully priced where required and accompanied by any other documents required to be submitted;

A2.3.2 the Offer must be lodged electronically at the place named in the Offer form for electronic tenders by the date and time given; and

A2.3.3 an electronic Offer shall be deemed to have been delivered at the time the electronic Offer enters the Department of Public Works information system designated to receive the electronic communication. Any electronic Offer that has not entered the designated information system before the specified closing time may be rejected.

A2.4 No Offer received by telephonic, facsimile, email or direct telegraphic advice will be considered.

A2.5 The submission of this Offer shall be deemed conclusive evidence that the Offerer has obtained all the Offer documents as specified in the “Schedule of Documents” and is acquainted with all matters related to the proposed Contract prior to this submission.

A2.6 The Principal shall not be bound by any oral advice or information furnished in respect of the Offer but shall be bound only by written advice or information given or furnished by it.

A2.7 The Offerer is required to satisfy itself as to the correctness and sufficiency of its Offer. An Offer shall be deemed to be on the basis that the Offerer has full knowledge of all matters relating to the Contract and has undertaken an inspection of the Sites and any existing structures or features thereon. The Offerer is deemed to have completed an environmental risk assessment and has allowed for all necessary environmental controls to complete the Services without causing environmental harm.

A2.8 The Offerer agrees and acknowledges that it shall comply with the requirements of the **Conditions of Working with QBuild - Contractors** document and, if the Offer is accepted, prior to commencing Services under the Contract, be registered as a QBuild Registered Contractor.

A2.9 The Offerer shall have in place the quality system nominated by the Principal.

### A3. ACCEPTANCE OF OFFER

A3.1 An Offer shall not be deemed to be accepted until the Letter of Acceptance is issued to the Offerer.

A3.2 The Principal may accept an Offer that in a view of all circumstances represents the best value for money.

A3.3 Any Offer that does not comply with all the requirements of the Offer documents in every respect shall be considered to be an alternative Offer.

A3.4 The Principal in its absolute discretion may consider, accept or decline to accept the lowest, best value for money or any Offer including an alternative Offer.

#### **A4. VALIDITY PERIOD**

The Offer shall remain valid for ninety days commencing from the closing date for lodgement of Offers.

#### **A5. PRICING**

A5.1 Offerers are to provide pricing in the Offer Form and any pricing Schedules included in the Offer documents.

A5.2 All pricing in any pricing Schedules shall have the pricing shown as GST exclusive.

#### **A6. INFORMATION**

A6.1 The Principal's Contact Officer for all enquires regarding the Offer process is nominated on the Offer Form.

A6.2 The Offerer shall not communicate with any person or corporation who is the intended owner, occupant, operator or manager of any Site the subject of the Offer except with the written approval of the Principal.

#### **A7. COST OF OFFERING**

A7.1 The Principal will make no payment to any person or company for any costs, losses or expenses incurred by that person or company relating to the preparation or submission of an Offer.

A7.2 The issuing of an invitation for submissions to Offer is not intended to give rise to any legal or equitable relationship. The Offerer acknowledges and agrees that no legal rights or obligations will be deemed to have arisen between the Principal and the Offerer until an Offer is, if at all, accepted.

#### **A8. POST OFFER NEGOTIATIONS**

The Principal reserves the right to have post Offer negotiations with prospective Offerers whom have been short-listed on the basis of its Offers.

### **B. CONDITIONS OF CONTRACT FOR MAINTENANCE SERVICES**

#### **B1. INTERPRETATION**

In this Contract, unless the context otherwise requires:

"Access Approval" means the Principal's, or agent's nominated by the Principal, written authorisation for access to the Site;

"After Hours" means Services performed in time that is not during Normal Hours;

"Annual Contract Sum" means the Contract value for the first year of the term of the Contract as detailed on the Offer Form;

"Breakdown Maintenance Services" means unplanned services to restore equipment to operational condition as a result of an unforeseen failure;

"Comprehensive Maintenance Services" means the planned and preventive maintenance, repairing or replacing parts and equipment which warrants such action as a result of wear and tear, and all attendance during normal hours for Breakdown Maintenance Services, and after-hours attendance as specified within the Specification;

"Conditions" means these Conditions of Contract for Maintenance Services;

"Contract" means the agreement between the Principal and the Contractor constituted by the documents specified in clause B1.3;

"Contractor" means the person or company whose Offer for the Services has been accepted and its executors, administrators, successors or permitted assigns;

"Corrective Action Report" means a written report produced by the Principal as a result of an unsatisfactory evaluation or complaint requiring rectification by the Contractor in terms of clause B17;

"Equipment" means every item of apparatus, machinery, or service (including gaseous, liquid or electrical) or any such service attaching to such apparatus or machinery, supplied to, forming part of or comprising that for which service and maintenance is required;

"Key Performance Indicators" means the standard of Services to be maintained by the Contractor as contained in the Contract;

"Laws" means any statutes, regulations, ordinances, by-laws and subordinate legislation in force from time to time;

"Letter of Acceptance" means the letter from the Principal to the Offerer accepting the Offerer's Offer;

"Normal Hours" means from 7 a.m. to 5 p.m. Monday to Friday inclusive, other than those days that are gazetted public holidays in Queensland;

"Operator" means a worker engaged by the Contractor and designated to perform the Services required by this Contract;

"Operator's Identification" means the identification supplied by the Contractor to an Operator in accordance with the provisions of clause B15.3.5;

“Operator’s Uniform” means the uniform supplied by the Contractor to an Operator in accordance with the provisions of clause B15.3.6;

“Order” means a written order or request for a specific part of the Services that the Contractor is required to perform on specific Equipment in accordance with the Contract;

“Percentage mark up on Materials,” means the percentage mark up for any consumables or materials which the Contractor may apply to the actual cost of material purchased in order to provide the Services;

“Preventive Maintenance Services” means the planned Services to be undertaken during preventive maintenance service visits including all performance checks, adjustments and routine services to the Equipment as required to keep the Equipment in good condition and sound working order. The minimum servicing requirements and the frequency of routine service visits shall be as specified in the Specification;

“Principal” means the State of Queensland through QBuild, a business unit of the Department of Public Works;

“Principal’s Representative” means the person nominated by the Principal in the Letter of Acceptance or other written advice who is entitled to exercise all of the functions of the Principal under the Contract except those functions under clause B25 of the Contract;

“Security Clearance” means the security clearance provided by the Principal, or any agent nominated by the Principal, required for access by the Contractor or its Operators to the Site to perform the Services;

“Service Report” means a written report identifying the extent of Services performed on the Equipment by the Contractor;

“Services” means the whole of the Maintenance Services to be executed in accordance with the Contract, including variations pursuant to the Contract;

“Site” means the location referred to in the Equipment and Pricing Schedule included in this Contract, where the Services are to be performed;

“Specification” means the documents referred to in Offer Documents and any modification of that Specification approved by the Principal and notified in writing to the Contractor.

B1.2 In this Contract, unless the context otherwise requires:

B1.2.1 singular includes plural and vice versa;

B1.2.2 any gender includes every gender;

B1.2.3 reference to "people" or "person" includes individuals, corporations, associations and other legal entities;

B1.2.4 reference to "month" means calendar month;

B1.2.5 reference to a statute includes any statute amending, consolidating or replacing the statute referred to and all regulations, orders-in-Council, rules, local laws and ordinances made under that statute;

B1.2.6 reference to a section of a statute or a term defined in a statute refers to the corresponding section or defined term in the amended, consolidated or replacement statute;

B1.2.7 reference to "clause" means a clause of these Conditions;

B1.2.8 headings are used for convenience only and are not to be used in the interpretation of this Contract;

B1.2.9 if any term of this Contract is legally unenforceable or made inapplicable, it shall be severed or read down, but so as to maintain (as far as possible) all other terms of this Contract, and

B1.2.10 any obligation of the Contractor extends to the Operators, employees and agents of the Contractor.

- B1.3 This Contract between the Principal and the Contractor is constituted by:
- B1.3.1 The Contractor's completed Offer Form including Schedules;
  - B1.3.2 The Conditions of Offer for Maintenance Services;
  - B1.3.3 These Conditions of Contract for Maintenance Services;
  - B1.3.4 **Conditions of Working with QBuild - Contractors** document;
  - B1.3.5 The Schedule of Documents;
  - B1.3.6 The Specification;
  - B1.3.7 Letter of Acceptance.
- B1.4 This Contract constitutes the entire agreement between the parties and supersedes all agreements or understandings between the parties.

## **B2. PERFORMANCE OF SERVICES**

- B2.1 The Contractor shall perform the Services in accordance with the Contract and any Drawings, Specifications and other documents issued by the Principal to the Contractor under the Contract. Unless otherwise provided for by the Contract, the Contractor shall be responsible for all things, including items not expressly mentioned in the Contract, necessary for the satisfactory completion and performance of the Services. The several documents which constitute the Contract, shall be taken as mutually explanatory and anything contained in one but not in another shall be equally binding as if contained in all.
- B2.2 The Contractor shall comply and ensure its Operators, subcontractors and employees comply with all reasonable requirements of the Site in respect of access, times of access, use of tools, security measures, maintenance and continuity of operation of existing services (including electricity supply and other essential services) and daily working periods. The Contractor shall be deemed to have made itself familiar with such requirements and its Offer shall be deemed to have included allowance for compliance with them.
- B2.3 The Contractor shall comply with the requirements of all relevant legislation and the lawful requirements of public or other authorities affecting the Services, including but not limited to the Queensland Building Services Authority Act, the Workplace Health and Safety Act, the Environmental Protection Act, the Electricity Act and the Electrical Safety Act. The Contractor shall unless otherwise specified, pay all fees in connection therewith and shall give all notices and obtain all necessary consents.
- B2.4 The Contractor shall ensure all correspondence or documents related to the Contract, excluding the Contractor's Offer, whether sent via mail, facsimile, electronic-mail or hand delivered, including Service Reports, Condition Assessment Reports, breakdown reports, quotations, and invoices sent to Principal, shall clearly display the Contract Number and the Contract Equipment Number (if referring to specific equipment).
- B2.5 Where monthly Services are specified these shall be effected on a regular basis with intervals between Services of not less than three weeks. Where annual Services, generally the major Services, are listed in the description of Services Schedules, these shall be effected during the first three months of the cycle of Services in the Contract and where specified, these annual Services shall be undertaken in conjunction with the Condition Assessment Report.
- B2.6 Any other Services required shall be undertaken at the intervals specified in the Specification.

## **B3. BREAKDOWN MAINTENANCE SERVICES**

- B3.1 The Principal may direct the Contractor to perform Breakdown Maintenance Services.
- B3.2 If a "Schedule of Rates - Works and Materials" is included in the Contract, the Principal's Representative may apply such rates for any Breakdown Maintenance Services performed by the Contractor.
- B3.3 Where the Principal is not able to determine the cost of the Breakdown Maintenance Services, the financial limitation stated on the Offer Form applies and is the maximum cost that can be incurred by the Contractor until further approval is given by the Principal's Representative.
- B3.4 The Principal at its entire discretion may but is not obliged to use the Contractor for any Breakdown Maintenance Services. For Preventive Maintenance Services the Principal may request the Contractor to undertake Breakdown Maintenance Services for which the Principal will issue a separate Order for any Breakdown Maintenance Services.
- B3.5 The rates submitted by the Offerer in "Schedule of Rates - Works and Materials" for Breakdown Maintenance Services as accepted by the Principal shall be fixed for the first year of the Contract term and can be adjusted as per clause B36.

#### **B4. ASSIGNMENT AND SUBCONTRACTING**

The Contractor shall not assign the Contract without the written consent of the Principal. The Contractor shall not subcontract the Services under the Contract or any part thereof without the written approval of the Principal's Representative. Any consent given by the Principal's Representative to subcontract the Services under the Contract or any part thereof may be conditional, will not operate as an authority to transfer responsibility to the subcontractor, and will not relieve the Contractor from any of its liabilities or obligations. The Contractor shall not, without the written approval of the Principal's Representative, allow a subcontractor to subcontract any of the Services under the Contract. The Principal's Representative may in its entire discretion and without giving reasons reject any such request for approval by the Contractor.

#### **B5. WORKPLACE HEALTH AND SAFETY ACT 1995**

- B5.1 For the purpose of this clause the words "Self-employed Person", "Employer", "workplace", "serious bodily injury", "work caused illness", "work injury", "dangerous event" and "fee" have the meanings assigned to them by the Workplace Health and Safety Act 1995 ("the Act").
- B5.2 If the Services under the Contract are performed at a workplace, upon acceptance by the Principal of the Contractor's Offer, the Contractor shall be deemed to have accepted the obligations of the Workplace Health and Safety Act as a Self-employed Person or Employer within the meaning of the Act and associated Regulations in force under the Act.
- B5.3 Such obligations of the Contractor as a Self-employed Person or Employer under the Act shall be in force during the continuance of the Contract unless sooner revoked by the Principal giving 21 days notice in writing to the Contractor of its revocation or by the Principal taking over or terminating the Contract pursuant to any provision of the Contract or according to law.
- B5.4 The Contractor shall comply with the Act in relation to the safety of each employee engaged to undertake the Services.
- B5.5 The Contractor shall indemnify and keep indemnified the Principal against all liabilities which may be imposed under or which may arise out of enforcement of any section of the Act or associated Regulation.
- B5.6 The Contractor shall notify the Principal of every work caused illness, work injury, serious bodily injury and dangerous event which occur on Site as soon as possible but not later than 12 hours after such occurrence.
- B5.7 Except as may be provided for in the Contract documents, if at any time the Contractor discovers on the Site of the Services the presence of any material which may be or may contain asbestos or any other hazardous material or substance, the Contractor shall not disturb the material or substance and shall contact the Principal's Representative and inform the Principal's Representative of the existence of the material or substance. The Contractor shall ensure that personnel are protected from exposure to the material or substance until the nature of the material or substance has been determined. The Principal shall issue directions to the Contractor in respect of action to be taken.

#### **B6. ENVIRONMENTAL COMPLIANCE**

- B6.1 The Contractor shall:
- B6.1.1 Perform the Services in compliance with all requirements imposed by law;
  - B6.1.2 Without limiting the generality of the obligation in clause B6.1.1, comply with the requirements imposed pursuant to the Environmental Protection Act 1994;
  - B6.1.3 Obtain and comply with the conditions of all permits, authorities, consents or approvals, give all notices, and pay all fees necessary to perform the Services;
  - B6.1.4 Give the Principal's Representative copies of all permits, authorities, consents or approvals issued by Government authorities which have jurisdiction over the Services; and
  - B6.1.5 Give the Principal's Representative notice of any notices issued, investigations required or undertaken or prosecutions commenced by Government authorities, which have jurisdiction over the Services.
- B6.2 Upon identifying an activity that may cause or has caused environmental harm, the Contractor shall immediately report the situation to the Principal's Representative. The Contractor shall ensure it completes the Services under the Contract without causing environmental harm.
- B6.3 All fees payable in order to obtain or comply with all permits, authorities, consents or approvals necessary to perform the Services are payable by the Contractor and are not the responsibility of the Principal.

## **B7. PROTECTION OF PERSONS, PROPERTY AND ENVIRONMENT**

B7.1 The Contractor shall:

- B7.1.1 provide all things and take all measures necessary to protect people and property within the Site during the performance of the Services;
- B7.1.2 avoid unnecessary interference with the passage of people and vehicles within the Site;
- B7.1.3 prevent nuisance and unreasonable noise and disturbance from the Site; and
- B7.1.4 take all measures to prevent environmental harm.

## **B8. CARE OF WORK AND THE REINSTATEMENT OF DAMAGE**

The Contractor shall be responsible for the care of the whole of the Services and any Equipment related to the Services. If loss or damage occurs to the Services or any Equipment related to the Services, the Contractor shall at the Contractor's cost rectify such loss or damage except loss or damage caused by the negligent act or omission of the Principal, or employees or agents of the Principal, or caused by defects in the design of the work under the Contract.

## **B9. DAMAGE TO PERSONS AND PROPERTY**

B9.1 The Contractor shall indemnify the Principal against any:

- B9.1.1 Loss of or damage to property of the Principal and existing property in or upon which the Services under the Contract are being carried out; and
- B9.1.2 Claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property,

arising out of or in connection with the carrying out by the Contractor of the Services under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionately to the extent that the act or omission of the Principal or employees or agents of the Principal may have contributed to the loss, damage, death or injury.

B9.2 The indemnity by the Contractor pursuant to this clause B9 shall not extend to consequential, indirect or special damages, but the rights of the Principal to recover such damages from the Contractor at common law are preserved.

## **B10. Not Used**

## **B11. PUBLIC LIABILITY INSURANCE**

B11.1 Before the Contractor commences Services under the Contract, the Contractor shall effect a public liability policy of insurance for an amount not less than Ten Million Dollars (\$10,000,000) per event giving rise to a claim covering the Contractor's liability under this Contract.

B11.2 The Contractor warrants and acknowledges that such policy will contain no exclusions which limit the Contractor's liability under clause B9 of the Contract.

## **B12. INSURANCE OF EMPLOYEES / OPERATORS**

The Contractor shall insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law. The insurance shall be maintained until the Services under the Contract including any remedial Services or work are completed to the satisfaction of the Principal. The Contractor shall ensure that every subcontractor is similarly insured.

## **B13. INSURANCE PROVISIONS**

Before the Contractor commences any Services under the Contract and whenever requested by the Principal, the Contractor shall produce evidence to the satisfaction and approval of the Principal of the insurances effected and maintained for the term of the Contract. Failure by the Contractor to provide evidence of insurance when demanded by the Principal shall constitute a substantial breach of the Contract by the Contractor.

## **B14. MATERIALS AND WORKMANSHIP**

- B14.1 All materials used in any Services under the Contract and the standards of workmanship shall be in conformity with the provisions of the Contract. In the absence of such provisions in the Contract the material or standard of workmanship as the case may be shall be of a kind which is suitable for its purpose. Unless otherwise specified, all materials shall be new and workmanship shall be in accordance with the relevant manufacturer's recommendations or, if none, the relevant Australian Standard where applicable.
- B14.2 Apart from any tests specified, the Principal's Representative may at any time direct that any materials or work performed in connection with the Services shall be examined and/or tested. If the Contractor fails to remedy any Services not in accordance with the Contract within a period of time stipulated in writing by the Principal's Representative or a reasonable time, whichever is the less, then the Principal may have such Services remedied by other persons at the Contractor's expense or may accept the Services and deduct any reduced value or additional costs from payments or recover the reduced value or additional costs as a debt. The Contractor shall remain responsible for the suitability of the Services for its purpose under the Contract.

## **B15. CONTRACTOR'S OBLIGATIONS**

- B15.1 The Contractor warrants that it has obtained all permits, authorities, consents or approvals necessary to perform the Services.
- B15.2 The Contractor is responsible to the Principal for the actions of each Operator on or about the Site notwithstanding that such action may be outside the scope of the Services including but not limited to any negligent, fraudulent, criminal or wilful act of the Operator.
- B15.3 The Contractor shall engage sufficient numbers of Operators to carry out the Services and shall ensure that at all times each Operator:
- B15.3.1 has the appropriate training, expertise and experience to perform the Services;
  - B15.3.2 exercises due skill, care and diligence in performing the Services;
  - B15.3.3 possesses the necessary qualifications, licenses, certificates, permits or authorisations required to provide the Services;
  - B15.3.4 has obtained Access Approvals and Security Clearances;
  - B15.3.5 if requested by the Principal, provide an Operator's Identification in a format approved in writing by the Principal from time to time; and
  - B15.3.6 if requested by the Principal, provide an Operator's Uniform to each Operator in a style acceptable to the Principal and which complies in all respects with the requirements of the Workplace Health and Safety Act and any other relevant legislation.
- B15.3.7 is paid in accordance with the relevant award or industrial instrument.
- B15.4 The Principal may direct the Contractor to have removed from the Site or from any activity connected with the Services within such times as the Principal directs, any person engaged in connection with the Services who in the Principal's opinion is incompetent, negligent or guilty of misconduct. The Contractor shall not thereafter employ such person on the Site or on activities connected with the Services without the prior written approval of the Principal.
- B15.5 Failure by the Contractor to comply with a direction under this clause shall constitute a substantial breach of the Contract.

## **B16. CONTRACTOR'S WARRANTY**

The Contractor acknowledges it shall comply with the provision of any warranties provided in undertaking the Services under the Contract.

## **B17. PERFORMANCE EVALUATION**

- B17.1 During the term of the Contract, the Principal may at any time and without notice to the Contractor, conduct performance evaluations to determine whether the Contractor's performance is in accordance with the Contract.
- B17.2 If the Principal issues the Contractor with a Corrective Action Report as a result of an unsatisfactory evaluation of Services or in response to a complaint in relation to the Services, the Contractor shall:
- B17.2.1 Comply with the action stated within the Corrective Action Report;
  - B17.2.2 Rectify the defective Services within the time stated in the Corrective Action Report; and
  - B17.2.3 Advise the Principal's Representative in writing, within one business day that the corrective action has been completed.
- B17.3 If the Contractor receives two Corrective Action Reports pursuant to this clause within any one year period this shall constitute a substantial breach of the Contract.

## **B18. APPOINTMENT OF REPRESENTATIVES**

- B18.1 The Contractor shall appoint a competent person to be the Contractor's Representative. The Contractor's Representative shall be available for contact by the Principal's Representative on a 7 days a week, 24 hour basis by telephone or pager service and shall have the authority of the Contractor to bind the Contractor in any agreement with the Principal. The Contractor shall notify the Principal's Representative of any change in the appointment of the Contractor's Representative prior to the change being made.
- B18.2 The Principal's Representative may appoint a Project Representative to exercise any of the functions of the Principal's Representative in relation to any part of the Services under the Contract and shall advise the Contractor of such appointment of the Representative.

## **B19. CLEANING OF SITE**

The Contractor shall keep the Site and the Services clean and tidy and regularly remove from the Site rubbish and surplus material arising from the performance of the Services. On completion of each service visit and at the completion of the Services the Contractor shall clear away and remove from the Site all plant, surplus materials, rubbish and temporary works of every kind.

## **B20. VARIATIONS**

- B20.1 The Principal may at any time by notice in writing require the Contractor to vary the scope of the Services. Subject to clause B20.3, the Contractor shall commence performing the varied Services as set out in the written notice from the Principal.
- B20.2 Without limiting the generality of clause B20.1, the Principal may direct the Contractor to:
- B20.2.1 increase, decrease or omit any of the Services;
  - B20.2.2 change the character or content of any of the Services;
  - B20.2.3 change direction or dimensions of the Services;
  - B20.2.4 increase or decrease the frequency of performance of the Services;
  - B20.2.5 change the way in which any part of the Services is performed or undertaken; or
  - B20.2.6 add or delete Sites or Equipment from the Contract.
- B20.3 If the Principal requires a variation to the Services, the parties shall negotiate an adjustment to the Annual Contract Sum or rates.
- B20.4 If the parties fail to reach agreement as to the value of the variation within 72 hours of commencement of negotiations, the Principal's Representative will determine the value of such variation and will provide written notice to the Contractor of the value of the variation.

## **B21. PAYMENT**

- B21.1 Subject to the prior receipt by the Principal's Representative of the information required by clause 21.5, the payments made to the Contractor by the Principal shall be as follows:
- B21.1.1 Comprehensive Maintenance Services  
Equal monthly amounts for monthly servicing or for servicing for longer intervals than monthly the amounts as agreed by the Principal's Representative. Where the Contract starts after the 1st July the monthly payment or other frequency of payment in the first year of the Contract shall be pro-rata of the Annual Contract Sum.
  - B21.1.2 Preventive Maintenance Services  
The Contractor shall issue to the Principal's Representative within seven days of completion of each specified service a claim for Services performed for the interval nominated in the Contract. These amounts shall be adjusted annually pursuant to clause B36.
- B21.2 The Principal shall pay the amount of the invoice referred to in clause B21.1 within 15 business days from receipt of claim.
- B21.3 In the event that the Principal disputes the amount of the invoice, the Principal shall pay the undisputed amount of the invoice and notify the Contractor of such dispute within 10 business days after receipt of the invoice, specifying the reasons for the dispute.
- B21.4 Notwithstanding the provisions of clauses B21.1 and B21.2 the Contractor shall include in such invoices the value of work carried out by the Contractor in the performance of the Services to that time together with all amounts then due to the Contractor arising out of or in connection with the Contract or for any alleged breach thereof.
- B21.5 Claims for payment shall be accompanied by the completed Service Report certified by the nominated Officer in Charge of the Site for Preventive Maintenance Services or a completed job statement for Breakdown Maintenance Services. Where the Service is for more than one item of Equipment or Site, a single claim apportioned by Equipment shall be submitted.

- B21.6 Without limiting the Principal's rights under any other provision in the Contract and notwithstanding the provisions of clauses B21.1 and B21.2 the Principal may deduct from any monies due to the Contractor any sum which is payable by the Contractor to the Principal whether or not the Principal's right to payment arises by way of damages debt restitution or otherwise and whether or not the factual basis giving rise to the Principal's right to payment arises out of this Contract, any other contract, or is independent of any contract. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of such moneys or any balance that remains owing.
- B21.7 When submitting claims for payment the Contractor shall quote its Australian Business Number (ABN). Where the Contractor is registered for GST, the Contractor shall submit a Tax Invoice that complies with GST legislation and includes, but is not limited to the following information:
- The net amount as per the Contract;
  - The GST component; and
  - The amount including the GST component.
- B21.8 Notwithstanding any other provision of the Contract the Principal shall not be obliged to pay the Contractor until the Contractor has provided the information in clause B21.5 and supplied a tax invoice to the Principal in respect of the amount payable.
- B21.9 The Contractor shall provide a break up of the costs set out in the invoice for Breakdown Maintenance Services, if requested by the Principal's Representative.
- B21.10 GST Included in Price
- Payments for any taxable supplies under the Contract include GST.
- B21.10.1 Tax Invoices
- The Contractor must issue to the Principal a tax invoice or adjustment note (as the case may require) within 5 business days after each of the following occurring in relation to that taxable supply:
- (a) the Contractor submitting a claim for payment that is not in the form of a valid tax invoice;
  - (b) the Principal's Representative certifying an amount for payment different to the amount claimed;
  - (c) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.
- B21.10.2 PAYG Withholding
- Whenever the Principal reasonably considers itself bound by law to do so, the Principal shall be entitled to withhold from any payment otherwise due to the Contractor, amounts calculated and to be withheld in accordance with the law.

## **B22. DATE FOR COMMENCEMENT**

The Contractor shall commence the performance of the Services under the Contract on the date specified in the Offer Form.

## **B23. DATE FOR COMPLETION**

The Contractor shall perform the Services under the Contract up to and including the date for completion specified in the Offer Form unless the Contract has been earlier terminated pursuant to clause B25 or extended pursuant to clause B24.1.

## **B24. OPTION TO EXTEND CONTRACT**

B24.1 Not less than 1 month before the completion date of this Contract, the Principal may give the Contractor written notice that the Principal wishes to extend this Contract for a further term specified in the notice. The Principal may extend the Contract any number of times providing that the combined and total extended Contract term does not exceed the original term of the Contract.

B24.1.1 The dates of commencement and completion shall accord with the written notice given pursuant to clause B24.1 or otherwise agreed to by both parties; and

B24.1.2 The Annual Contract Sum and any rates shall be adjusted pursuant to clause B36.

B24.2 If the Contractor receives notice under clause B24.1, which the Contractor wishes to accept, the Contractor shall give notice of acceptance in writing to the Principal within 7 days after receipt of that notice.

## **B25. DEFAULT OF CONTRACTOR**

- B25.1 Subject to clause B25.3, if the Contractor fails to commence the Services within the time specified or fails to perform any part of the Services at the required intervals or fails to comply with these conditions, or commits any substantial breach of the Contract or indicates that it is unable or unwilling to undertake or complete the Services, the Principal may, by written notice, require the Contractor to show cause by the date specified in the notice, which shall be not more than 5 days after the date of the notice, why the Principal should not exercise a right under clause B25.2.
- B25.2 If the Contractor fails to show reasonable cause by the date specified in the notice by the Principal, then the Principal shall have the power upon notice in writing to the Contractor to terminate the Contract or suspend payment and take the Services remaining to be completed wholly or partly out of the hands of the Contractor without prejudice to any rights of the Principal under the Contract or at common law.
- B25.3 If the Contractor:
- B25.3.1 fails to comply with any applicable legislation, including without limitation a failure to hold a current licence required to perform the Services under the Contract; or
  - B25.3.2 becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
  - B25.3.3 enters into a debt agreement, a deed of assignment or a deed of arrangement under the Bankruptcy Act 1966, or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
  - B25.3.4 has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets,
- the Principal may, without giving a notice to show cause, exercise a right under clause B25.2.
- B25.4 In the event that the Principal takes any part of the Services out of the hands of the Contractor, the Principal may itself or by means of other persons, complete all the Services or any part of the Services and may without payment of compensation take possession of plant and other things on or in the vicinity of the Site as are owned by the Contractor. If the cost incurred by the Principal in completing the Services is greater than the amount which would have been paid to the Contractor if the Contractor had completed the Services, the difference shall be a debt due from the Contractor to the Principal, otherwise any difference shall be a debt due from the Principal to the Contractor.

## **B26. SETTLEMENT OF DISPUTES**

- B26.1 Not later than 14 days after a dispute has arisen, either party shall refer the dispute to the Principal's Representative. Within 28 days of receiving notice of the dispute, the Principal's Representative shall give to each party the Principal's Representative's written decision on the dispute. If the Principal's Representative fails to give a written decision on the dispute, or if either party is dissatisfied with the decision of the Principal's Representative the parties shall, within 14 days of the date of receipt of the decision, or within 14 days of the date upon which the decision should have been given by the Principal's Representative, confer at least once to attempt to resolve the dispute. In the event that the dispute cannot be so resolved the dispute may be referred by either party to arbitration or litigation. Arbitration shall be effected by a single arbitrator who shall be either:
- B26.1.1 mutually agreed upon by the parties in writing; or
  - B26.1.2 in the absence of agreement, by an arbitrator appointed in accordance with the provisions of the laws relating to arbitration in the State of Queensland.
- B26.2 The party requesting arbitration must give notice in writing to the other party within 28 days of the parties conferring.

## **B27. CONFIDENTIALITY**

- B27.1 The Contractor must not, and must ensure that any person employed or subcontracted by the Contractor to perform any part of the Services does not, use or supply or communicate confidential information provided to or obtained by the Contractor, its Operators and subcontractors in connection with the Contract or during the performance of the Services, to any other person for the purpose other than the performance of the Services in accordance with the Contract, without the Principal's prior written approval.
- B27.2 For the purpose of this Contract, 'confidential information' means any information emanating from the Principal or the Principal's clients in any form, and not in the public domain and includes, but is not limited to trade secrets, secret or confidential information, formulae, processes, dealings, know-how, designs, plans, documents, papers, drawings, business or financial information and research data, equipment or affairs of the Principal or the Principal's clients.
- B27.3 This clause will survive the date of completion or termination of this Contract.

## **B28. CONFLICT OF INTEREST**

- B28.1 The Contractor warrants that, to the best of its knowledge, information and belief, it does not and is not likely to have any conflict of interest in the awarding and performance of the Services under this Contract. If a conflict or risk of conflict of interest arises (without limitation), the Contractor will immediately give notice of the conflict of interest, or risk of it, to the Principal.
- B28.2 The Contractor will take all reasonable measures to ensure that its Operators do not engage in any activity or obtain any interest, which is in conflict with performing the Services fairly and independently. The Contractor will immediately give notice of any conflict of interest relating to the activities or interests of any of its Operators to the Principal.
- B28.3 If the Principal establishes that a conflict of interest exists, the Principal may terminate the Contract.

## **B29. INDEPENDENT CONTRACTOR**

- B29.1 In performing the Services, the Contractor is an independent Operator. Neither the Contractor, Operators engaged by Contractor or agents of the Contractor are:
- B29.1.1 to be considered to be employees or agents of the Principal; or
- B29.1.2 otherwise to have any authority to act for or assume any obligation or liability on behalf of the Principal.

## **B30. PRINCIPAL'S OBLIGATIONS**

- B30.1 The Principal, or agents nominated by the Principal, shall, subject to the provisions of the Contract relating to Security Clearance and Access Approval, arrange access to the Contractor to execute the Services on the Site.
- B30.2 The Principal shall, subject to the provisions of this Contract and any variation pursuant to clause B20, pay the Contractor the Annual Contract Sum accepted by the Principal in accordance with clauses B21 and B36.

## **B31. WAIVER**

- B31.1 Except as provided at Law or elsewhere in this Contract, none of the terms of the Contract shall be varied, waived, discharged or released except with the prior written consent of both parties.
- B31.2 Any failure by either party to enforce any clause of this Contract or any forbearance, delay or indulgence granted by either party to the other will not be construed as a waiver of rights under this Contract.

## **B32. NOTICES**

- B32.1 Notices under this Contract shall be in writing and may be delivered by prepaid postage, by hand or by facsimile to a party at the address or facsimile number set out in the Offer Form or such other address as either party may specify by notice in writing to the other.
- B32.2 Notices shall be deemed to have been received:
- B32.2.1 two days after deposit in the mail with prepaid postage; or
- B32.2.2 immediately upon delivery by hand; or
- B32.2.3 immediately upon transmission by facsimile, provided that the party receiving the facsimile transmission does not within five hours after the completion of the transmission, advise the party sending the notice that the facsimile transmission was not fully intelligible and request a re-transmission of the notice.

## **B33. RECORDS AND ACCESS TO RECORDS**

- B33.1 The Contractor shall make and keep accurate records of its Offer and of its obligations under this Contract including but not limited to all documents referred to in this Contract, diary records of daily tasks, quality system documents and records, quality assurance records and reports, all records relating in any way to variations, employment records (including all payment and taxation records) relating to all employees and all supporting documents, invoices and records, whether in writing or stored on any other medium.
- B33.2 Subject to the Contractor's right to claim legal professional privilege in respect of any record, the Principal shall have the right to inspect and to copy at any time any record referred to in clause B33.1. In the case of any records referred to in clause B33.1 stored on a medium other than in writing the Contractor shall make available upon request such facilities as may be necessary to enable a legible reproduction of the records to be provided to the Principal.
- B33.3 The Principal shall not, without the consent of the Contractor, divulge the contents of any record inspected or copied pursuant to this clause to any other person other than an employee or agent of the Principal.

**B34. APPLICABLE LAW**

The law governing the Contract is the Law of Queensland.

**B35. Not Used**

**B36. ANNUAL ADJUSTMENT OF ANNUAL CONTRACT SUM AND RATES**

- B36.1 The Annual Contract Sum and any accepted Offer rates shall be adjusted and applied from 1 July of each year of the Contract by the Consumer Price Index (CPI) to determine the adjusted Annual Contract Sum and rates.
- B36.2 The CPI figure shall be the December quarter all groups, applicable to Brisbane Percentage change (from corresponding Quarter of previous year) Consumer Price Index Catalogue 6401.0 as published by the Australian Bureau of Statistics.
- B36.3 Any price adjustments shall:
- B36.3.1 Not be effected more frequently than 12 monthly intervals starting from the date for commencement of the Contract; and
  - B36.3.2 The Principal shall issue a new Order with the adjusted Annual Contract Sum and rates to the Contractor at the start of each 12 month interval in accordance with this clause.
- B36.4 The adjusted Annual Contract Sum and adjusted rates shall be adjusted at each 12 monthly interval of the Contract by CPI using the previously adjusted Annual Contract Sum and adjusted rates.

**B37. QUALITY SYSTEM**

- B37.1 The Contactor shall have in place and maintain for the term of the Contract the quality system nominated by the Principal in the Offer Form.
- B37.2 The Contractor shall provide the Principal's Representative with access to that quality system to enable monitoring and quality auditing. The quality system shall be used only as an aid to achieving and documenting compliance with the Contract and shall not relieve the Contractor of the responsibility to comply with the Contract.