



ANNEX A

General Conditions of Contract (Services)

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General Conditions of Contract (Services)

INTRODUCTORY PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply to terms used in these Conditions except when the result is absurd, impossible or obviously unintended:

“Approval” means an approval, consent or permission.

“Approved Expenses” means any expenses paid or incurred by the Contractor which Council is required to reimburse or pay to the Contractor under the Contract.

“Bound Contacted Service Provider” has the meaning given to this term in the IPA

“Bank Guarantee” means a written undertaking:

- (a) issued by an authorised deposit-taking institution under the *Banking Act 1959*;
- (b) under which the issuer agrees, on demand made by Council, to make payments to Council up to a specified aggregate maximum amount;
- (c) which is otherwise unconditional;
- (d) which does not require the issuer to notify, consult with or obtain the approval of the Contractor or any other person before making a payment to Council;
- (e) which is legally enforceable; and
- (f) which is otherwise on terms and conditions acceptable to Council.

“Business Day” means a day which is not a Saturday, Sunday or public or special holiday in Ipswich, Queensland.

“Claim” means an action, proceeding, demand, liability, obligation, cost (including legal costs on a full indemnity basis), loss, damage, expense and claim, including those arising under the terms of a compromise or settlement.

“Compiled Contract Document” means a document, prepared by or for Council, embodying all the terms and conditions of the Contract.

“Confidential Information” means all information of or relating to Council or which is disclosed by Council which Council does not explicitly identify as not being confidential and, except as otherwise agreed in writing, includes without limitation:

- (a) information disclosed before the formation of the Contract;
- (b) Council’s financial and strategic information and methods of conducting business;
- (c) Council’s Intellectual Property Rights; and
- (d) information which has been derived from or with the use of any other Confidential Information.

“Conditions” means these *General Conditions of Contract (Services)*.

“Conflict of Interest” means a state of affairs, or combination of circumstances, which could reasonably be suspected to:

- (a) compromise the Contractor's ability to perform its obligations under the Contract in good faith and objectively;
- (b) give rise to the risk of such a compromise; or
- (c) cause a reasonable member of the public to apprehend such a compromise or risk.

"Contract Period" means the period commencing on the date when the Contract comes into existence and ending:

- (a) at the later of:
 - (i) when all Services required, or which could be required, to be supplied under the Contract have been supplied to Council; or
 - (ii) any expiry date specified in the Request or Contract Schedule; or
- (b) when the Contract is terminated at some earlier time.

"Contract Price" means, in relation to specific Services, the price for the Services:

- (a) specified in, or calculated under a component of the Contract which has precedence over these Conditions under subclause 2.2;
- (b) if no such component specifies the price or how to calculate it – specified in, or calculated under a Purchase Order for the Services; or
- (c) if the Services are ordered by a Council employee who, at the time of making the order, pays the Contractor for the Services using a credit card or debit card issued to Council or to the Council employee on Council's account – the amount paid.

"Contract Schedule" means a schedule, forming part of the Contract, signed or agreed to by both Council and the Contractor and which refers to or incorporates these Conditions.

"Council Material" means:

- (a) Material disclosed or made available by Council to the Contractor; and
- (b) copies or reproductions of any such Material.

"Existing Contract Material" means Material which is supplied by the Contractor to Council under the Contract as part of, or in connection with, the Services and which:

- (a) existed at the start of the Contract Period; or
- (b) was brought into existence after the start of the Contract Period but independently of the carrying out of the Contract,

or which is a copy or reproduction of any such Material.

"Force Majeure" means any event which:

- (a) is beyond the reasonable control of the party concerned; and
- (b) is, or directly arises from, any delay caused by floods, fire, any act of God, shortage of power, materials or labour, strike, lock-out or labour difficulty, change in any law, war or accident.

"GST" means the same thing as in *A New Tax System (Goods and Services Tax) Act 1999*.

"Intellectual Property Rights" means all copyright, registered and unregistered trade marks and service marks, patents and other proprietary intellectual property rights subsisting anywhere in the world, but does not include moral rights under the *Copyright Act 1968* or corresponding rights elsewhere in the world.

"IPA" means the *Information Privacy Act 2009* (Qld)

“IPP” means has the meaning given to this term in the IPA

“Letter of Acceptance” means a letter or document given by Council to the Contractor notifying the Contractor of Council’s acceptance of an Offer.

“Licence” means an Approval under a Statutory Requirement.

“Material” means:

- (a) books, documents, information, computer software and equipment;
- (b) data stored by any means; and
- (c) any other material or thing in which Intellectual Property Rights subsist.

“New Contract Material” means Material, other than Existing Contract Material, which is:

- (a) supplied by the Contractor to Council under the Contract as part of, or in connection with, the Services; or
- (b) brought into existence by or for the Contractor in carrying out the Contract, or which is a copy or reproduction of any such Material.

“Offer” means any relevant tender, quotation or proposal submitted by the Contractor to Council in response to a Request.

“Official Notice” means a notice, notification or other communication which:

- (a) the Contractor is required or permitted to give to Council or the Superintendent under the Contract; or
- (b) Council or the Superintendent is required or permitted to give to the Contractor under the Contract,

if the Contract does not expressly, or by necessary intention, provide how the notice, notification or communication is to be given (other than in clause 36).

“Personal Information” has the meaning given to this term in the IPA and, where the context requires, means Personal Information in connection with this Contract.

“Personnel” means:

- (a) in relation to the Contractor:
 - (i) its employees, officers, agents and subcontractors;
 - (ii) the employees, officers and agents of the Contractor’s agents and subcontractors; and
 - (iii) any other person for whose acts, omissions or conduct the Contractor is in law responsible; and
- (b) in relation to Council – its delegates, employees, officers and agents.

“Purchase Order” means an official document issued by Council under which Council orders Services.

“Purchasing Arrangement” means a;

- (a) approved contractor list; or
- (b) register of pre-qualified suppliers; or
- (c) preferred supplier arrangement; or
- (d) LGA arrangement

“Request” means any relevant:

- (a) invitation for tenders under s.177 of the *Local Government (Finance, Plans and Reporting) Regulation 2010*
- (b) request for quotations under s.174 of the *Local Government (Finance, Plans and Reporting) Regulation 2010*;
- (c) request for expressions of interest under s.177 of the *Local Government (Finance, Plans and Reporting) Regulation 2010*; or
- (d) request for the Services in circumstances where none of the above provisions applies, made by Council which refers to or incorporates these Conditions or otherwise states that if Council accepts an Offer by the Contractor these Conditions will apply, and includes any written terms and conditions published by Council as the terms and conditions on which the invitation or request is made.

“Services” means services to be supplied by the Contactor to Council under the Contract and, if the context allows, also includes services supplied by the Contactor purportedly under the Contract.

“Show Cause Event” occurs if:

- (a) the Contractor does not comply with an obligation under the Contract and the non-compliance is not capable of being remedied;
- (b) the Contractor does not comply with an obligation under the Contract and:
 - (i) the non-compliance is capable of being remedied;
 - (ii) Council has given notice of the non-compliance to the Contractor requiring the non-compliance to be remedied; and
 - (iii) within 5 Business Days after Council gave that notice (or within a longer period specified in the notice), the Contractor has not remedied the non-compliance; or
- (c) the Contractor otherwise:
 - (i) regularly or persistently breaches its obligations under the Contract; or
 - (ii) commits recurring breaches of its obligations under the Contract, and, regardless of whether the breaches are of the same kind or are remedied, the cumulative effect of them is material or substantial in the circumstances.

“Specification” means:

- (a) any specification for Services in or accompanying the Request or Contract Schedule; or
- (b) if there is no Request or Contract Schedule – any specification for Services in or accompanying a Purchase Order.

“Standard” means any relevant:

- (a) Australian Standard published by Standards Australia; or
- (b) if there is no relevant Australian Standard, International Standard published by standard published by the International Organization for Standardization.

“Statutory Requirement” means an obligation under any applicable:

- (a) Act of Parliament;
- (b) regulation, order, by-law, rule, proclamation or other statutory instrument or subordinate legislation under any Act of Parliament; or

- (c) approval, consent, licence, authority, permit, notice, order, direction, instrument or requirement issued, given or made under any of the above.

“Superintendent” means any person (who may be specified by reference to their name or their position title within Council) specified as such:

- (a) in the Request or Contract Schedule; or
(b) in a notice that Council has given to the Contractor,

unless Council has given notice the Contractor of that person’s removal from the role.

“Work Place” means any place where work is performed or to be performed in the course of the performance of the Contractor’s obligations under the Contract.

1.2 Other definitions of terms may be elsewhere in these Conditions.

1.3 In the interpretation of the Contract, unless it is not consistent with the context:

- (a) if the day on which any act, matter or thing is to be done under the Contract is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (b) a reference to dollars or \$ means Australian dollars and all amounts payable under the Contract are payable in Australian dollars;
- (c) a reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (d) a reference to a particular Act or statutory instrument, or to a particular provision of one, is taken to include:
- (i) a reference to that Act, statutory instrument or provision as amended from time to time;
 - (ii) a reference to any Act, statutory instrument or provision into which the original Act, statutory instrument or provision is relocated, consolidated or re-enacted from time to time;
 - (iii) a reference to any Act, statutory instrument or provision which (after the repeal or expiry of the original Act, statutory instrument or provision) deals with the same, substantially similar or the most closely similar subject matter as the original Act, statutory instrument or provision; and
 - (iv) any other Act, statutory instrument or provision which applies to or affects the interpretation of any Act, statutory instrument or provision referred to above;
- (e) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (f) an expression importing any type of person includes a natural person, company, trust, partnership, joint venture, association, body corporate and governmental agency;
- (g) another part of speech or other grammatical form of a defined term has a corresponding meaning;
- (h) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders; and

- (i) a reference to the word “include” or “including” (or to another word meaning much the same thing) is to be interpreted without limitation.
- 1.4 Headings, and any table of contents, are inserted for convenience only and cannot be used to help interpret the Contract.
- 1.5 A provision of the Contract is not to be read to the disadvantage of a party just because that party drafted the Contract or the provision or asked for or insisted on:
- (a) the inclusion of the provision in the Contract; or
 - (b) how the provision was to be drafted when included in the Contract.

2. FORMATION OF CONTRACT

- 2.1 The “Contract” consists of the following components (as relevant):
- (a) any Contract Schedule;
 - (b) any Request;
 - (c) any Letter of Acceptance;
 - (d) any Specifications;
 - (e) these Conditions;
 - (f) any correspondence passing between Council and the Contractor clarifying any aspect of any Request or Offer (to the extent that the correspondence records an agreement between Council and the Contractor);
 - (g) any Offer; and
 - (h) any other document which Council and the Contractor agree.
- 2.2 If there is a conflict between any of those components of the Contract, the descending order of precedence to resolve the conflict is as set out above.
- 2.3 The Contract comes into existence when:
- (a) Council gives the Contractor a Letter of Acceptance; or
 - (b) a Contract Schedule is signed or agreed to by both Council and the Contractor, whichever occurs first.
- 2.4 If there is not a Contract Schedule, then:
- (a) at any time after the Contract has come into existence, Council may give the Contractor a Compiled Contract Document and ask the Contractor to execute it;
 - (b) if Council does so, the Contractor must execute the Compiled Contract Document, and give a properly executed original of the complete and unamended Compiled Contract Document to Council, within 10 Business Days; and
 - (c) Council may treat a breach of this subclause as a repudiation by the Contractor of the Contract.

SERVICES

3. WHEN PURCHASE ORDERS ARE REQUIRED

- 3.1 Council makes a request to the Contractor for the supply of Services under the Contract by issuing a Purchase Order to the Contractor.
- 3.2 Unless and until Council issues a Purchase Order to the Contractor for the supply of Services under the Contract:
- (a) Council does not promise that it will engage the Contractor to supply:
 - (i) any particular quantity or kind of Services to Council; or
 - (ii) with any particular frequency; and
 - (b) the Contractor has no Claim against Council even if Council does not engage the Contractor to supply any Services to Council at all.
- 3.3 If Council issues a Purchase Order to the Contractor for the supply of Services under the Contract:
- (a) the Contractor must supply the Services in accordance with the Contract; and
 - (b) except to the extent that they are inconsistent with the Contract, the Contractor must comply with any terms and conditions on the Purchase Order or referred to in the Purchase Order as terms and conditions on which the Purchase Order is issued.
- 3.4 Council has the right to:
- (a) obtain the same, similar or alternative Services from a supplier other than the Contractor; and
 - (b) decide not to obtain the Services at all (except to the extent that Council has requested Services by issuing a Purchase Order to the Contractor under the Contract),
- at any time before, during or after the Contract Period.

4. WHEN PURCHASE ORDERS ARE NOT REQUIRED

- 4.1 Clause 3 does not apply, and a Purchase Order is not required, if a Council employee:
- (a) orders Services from the Contractor without using a Purchase Order; and,
 - (b) at the time of ordering the Services, pays the Contract Price for those Services using a credit card or debit card issued to Council or to the Council employee on Council's account.
- 4.2 If the Request or Contract Schedule:
- (a) does not specify that the Request or this Contract relates to establishing a Purchasing Arrangement; and
 - (b) specifies that the Services are to be supplied without the necessity for Council to issue a Purchase Order to the Contractor or;
 - (i) identifies specific Services to be supplied by the Contractor to Council; and

- (ii) shows an intention that the Services are to be supplied without the necessity for Council to issue a Purchase Order to the Contractor,
- then:
- (c) the Contractor's obligation to supply the Services to Council arises (subject to the other provisions of the Contract) on the Contract coming into existence; and
 - (d) clause 3 does not apply.
- 4.3 This clause does not apply if the Request or Contract Schedule specifies that the Request or this Contract relates to establishing a Purchasing Arrangement.

5. TIME AND PLACE FOR SUPPLY AND DELIVERY OF SERVICES

- 5.1 The Contractor must supply the Services to Council at any time, within any period or by any due date specified in or under:
- (a) the Request or Contract Schedule;
 - (b) any Specification relating to the Services; or
 - (c) any Purchase Order for the Services.
- 5.2 If subclause 5.1 does not apply because there is no time, period or due date specified in the Request, Contract Schedule, Specification or Purchase Order, the Contractor must supply the Services to Council promptly.
- 5.3 The Contractor must deliver the Services that it is required to supply under the Contract to Council at the place or places:
- (a) identified in any Purchase Order for the Services;
 - (b) otherwise, identified in the Request or Contract Schedule; or
 - (c) otherwise, that Council notifies to the Contractor.

6. QUALITY OF SERVICES

- 6.1 The Contractor must ensure that all Services are, and warrants that all Services will be, supplied:
- (a) promptly and with due care, skill, competence and diligence; and
 - (b) in accordance with any relevant Standard unless the Specification states otherwise.
- 6.2 The Contractor must:
- (a) consult with Council regularly, and in accordance with Council's reasonable requirements, about and in the supply of Services under the Contract; and
 - (b) fulfil all of Council's reasonable requirements and directions concerning Services supplied or to be supplied under the Contract.
- 6.3 The Contractor:
- (a) warrants that it has the necessary skills and expertise to be able to supply the Services competently and in accordance with the Contract; and

- (b) must supply all Personnel, premises, plant and equipment necessary for the proper supply of the Services.
- 6.4 If Council reasonably decides that Services supplied by the Contractor are defective or are not in accordance with the Specification, Council may give the Contractor notice:
- (a) telling the Contractor that the Services were defective or not in accordance with the Specification;
 - (b) requiring the Contractor to:
 - (i) again supply the Services, or the part of the Services which was defective or not in accordance with the Specification; or
 - (ii) rectify the defects in, or aspects of non-accordance with the Specification of, the Services; and
 - (c) which may, but does not necessarily have to, specify how the Contractor is required to do the things mentioned in paragraph (b).
- 6.5 The Contractor must promptly comply with any notice that Council gives the Contractor under subclause 7.4.
- 6.6 Council's right to give a notice under subclause 7.4 is optional and does not operate to the exclusion of any other right, power or remedy that Council may have.

7. VARIATION OF SERVICES

- 7.1 Council may from time to time, by giving the Contractor a notice ("Variation Notice"), require the Contractor to vary the nature, scope or timing of any Services that the Contractor is required to supply under the Contract.
- 7.2 A Variation Notice may, for example, require the Contractor to:
- (a) increase, decrease or omit Services;
 - (b) change the character or content of Services;
 - (c) change the direction or dimensions of Services; or
 - (d) do additional work in order to supply the Services.
- 7.3 If Council gives the Contractor a Variation Notice:
- (a) Council and the Contractor must negotiate in good faith any variations to the Contract (for example, regarding the Contract Price) to accommodate the variation specified in the Variation Notice;
 - (b) if Council and the Contractor do agree on what variations should be made to the Contract to accommodate the variation:
 - (i) the agreement must be put in writing and agreed to by both Council and the Contractor under subclause 39.1; and
 - (ii) that agreement, and the Variation Notice, then together constitute a variation of the Contract; and
 - (c) if Council and the Contractor have not made such an agreement, Council may give the Contractor a notice telling the Contractor that Council requires:

- (i) the Variation Notice to be given effect; and
- (ii) the question of any variations required to be made to the Contract to accommodate the variation to be dealt with as a dispute under clause 35, and, if Council gives the Contractor that notice:
- (iii) the Variation Notice then constitutes a variation of the Contract; and
- (iv) the question of any variations required to be made to the Contract to accommodate the variation must be dealt with as a dispute under clause 35.

8. SUSPENSION OF SERVICES

- 8.1 Council may from time to time give the Contractor notice ("Suspension Notice") requiring the Contractor to:
- (a) suspend the progress of supplying any Services, that the Contractor is required to supply under the Contract, for a period specified in the notice; or
 - (b) suspend the progress of supplying any Services, that the Contractor is required to supply under the Contract, until further notice from Council.
- 8.2 If Council has given the Contractor a Suspension Notice under paragraph 9.1(b), Council may subsequently give the Contractor a notice ("Recommencement Notice") requiring the Contractor to recommence the progress of supplying the Services.
- 8.3 If Council gives the Contractor a Suspension Notice or Recommencement Notice:
- (a) the Contractor must promptly comply with the Suspension Notice or Recommencement Notice;
 - (b) Council must pay reasonable compensation to the Contractor as a result of Council giving the Contractor the Suspension Notice or Recommencement Notice;
 - (c) the Contractor must take all reasonably available steps to mitigate or avoid any costs or expenses incurred by the Contractor as a result of Council giving the Contractor the Suspension Notice or Recommencement Notice; and
 - (d) if it was a Suspension Notice – the time by which the Contractor is required to supply the Services in question under the Contract is taken to be extended or postponed by a period equalling the period:
 - (i) specified in the Suspension Notice; or
 - (ii) until Council gives the Contractor a Recommencement Notice relating to those Services.

9. STANDARD OF CONTRACTOR'S CONDUCT

- 9.1 The Contractor must at all times in carrying out the Contract:
- (a) act professionally and courteously;
 - (b) exercise the degree of skill, care and diligence that can reasonably be expected; and
 - (c) not do any negligent acts or make any negligent omissions.

- 9.2 The Contractor must at all times in carrying out the Contract act in good faith and in Council's best interests.

10. PROTECTION OF PERSONS, PROPERTY AND THE ENVIRONMENT

- 10.1 The Contractor must comply with all Statutory Requirements under the *Workplace Health and Safety Act 1995* which:
- (a) are imposed on the Contractor (even if someone else is also subject to the same Statutory Requirement); or
 - (b) affect the performance of the Contractor's obligations under the Contract.
- 10.2 The Contractor must immediately give Council a copy of any report or notice:
- (a) that the Contractor is required by a Statutory Requirement under the *Workplace Health and Safety Act 1995* to give, file or lodge; and
 - (b) if the requirement to give, file or lodge the report or notice arises in the course of the performance of the Contractor's obligations under the Contract.
- 10.3 If the performance of the Contractor's obligations under the Contract involves any activity for which Council is obliged under the *Workplace Health and Safety Act 1995* to appoint a principal contractor, the Contractor:
- (a) accepts appointment as the principal contractor; and
 - (b) must do all things required by Council to give effect to that appointment.
- 10.4 The Contractor must:
- (a) ensure that all equipment used, or to be used, in or for the performance of the Contractor's obligations under the Contract is:
 - (i) suitably designed for safety in the use made, or to be made, of it;
 - (ii) maintained in a safe and serviceable condition; and
 - (iii) used and operated safely and competently;
 - (b) provide suitable precautions and safeguards during any unloading activity carried out in the performance of the Contractor's obligations under the Contract;
 - (c) provide protection for members of the public and workers on any Work Place; and
 - (d) ensure that each Work Place is kept in a tidy and safe condition.

11. SECURITY AND ACCESS

- 11.1 The Contractor must comply with all applicable rules, policies, standards, codes of conduct, directions and procedures notified by the Superintendent whenever, in the course of carrying out the Contract, the Contractor:
- (a) enters on Council's premises;
 - (b) uses Council's facilities, equipment or resources;
 - (c) deals with Council's employees or other contractors; or
 - (d) deals with members of the public.

12. INDUSTRIAL RELATIONS

- 12.1 The Contractor is responsible for, and must keep Council indemnified against:
- (a) all employment and employment-related payments, expenses, costs and allowances arising under any contract, award, industrial or enterprise or workplace agreement, Statutory Requirement or the common law; and
 - (b) any extension, substitution or change affecting any of those payments, expenses, costs and allowances.
- 12.2 The Contractor is responsible for, and bears the risk of, any employment or industrial issues including:
- (a) changes to work practices (including bans and limitations);
 - (b) specific or general industrial action including picketing, demonstrations, demarcation disputes, stoppages, disputation or other action whether relating to:
 - (i) employment or industrial conditions in the Contractor's business or any part of it;
 - (ii) workplace health and safety issues or concerns;
 - (iii) political or other protests; or
 - (iv) some other matter;
 - (c) increases in labour costs, wages, salaries, allowances, penalties, entitlements, payments, bonuses, site allowances, project specific site agreements, disability allowances, travel allowances and other payments due to the Contractor's Personnel; and
 - (d) any reduction in working hours per week for any reason;
- affecting or which may affect the performance of the Contractor's obligations under the Contract.
- 12.3 The Contractor must not involve Council in any:
- (a) employment or industrial issues mentioned in subclause 13.2; or
 - (b) proceedings in any court or tribunal, or before any person or authority exercising jurisdiction under any Statutory Requirement, concerning any of those employment or industrial issues.

13. LICENCES AND OTHER STATUTORY REQUIREMENTS

- 13.1 The Contractor must hold, maintain, keep current and comply with all conditions of all Licences which the Contractor needs by law in connection with:
- (a) fulfilling the Contractor's obligations under the Contract; or
 - (b) carrying on any business in the course of which the Contractor enters into the Contract.
- 13.2 The Contractor:
- (a) must, if Council asks the Contractor to do so, within 3 Business Days give Council evidence:

- (i) that the Contractor holds (or held at a time specified by Council and at which the Contractor was required by this clause to hold) a Licence required by subclause 14.1; and
 - (ii) of the terms on which the Licence is (or was) held; and
 - (b) until doing so, is taken to have been in breach of its obligation to hold (or at the relevant time to have held) the Licence.
- 13.3 The Contractor must comply with all Statutory Requirements to which the Contractor is at any time subject in connection with:
- (a) fulfilling the Contractor's obligations under the Contract; or
 - (b) carrying on any business in the course of which the Contractor enters into the Contract.

INVOICING AND PAYMENT

14. CONTRACT PRICE AND VARIATION

- 14.1 Council will, in accordance with the Contract and if the Contractor supplies the Services as required by, and otherwise complies with, the Contract:
- (a) pay the Contractor the Contract Price; and
 - (b) reimburse the Contractor for any Approved Expenses paid or incurred by the Contractor.
- 14.2 Council is not obliged to reimburse the Contractor for any expenses, other than Approved Expenses, paid or incurred by the Contractor.
- 14.3 The Contract Price, or any rate, sum or amount from which the Contract Price is calculated, is variable only if and as provided in:
- (a) a component of the Contract which has precedence over these Conditions under subclause 2.2; or
 - (b) a variation of the Contract under subclause 39.1.

15. INVOICING

- 15.1 Council is not obliged to pay the Contractor any part of the Contract Price unless and until:
- (a) the Contractor has issued a Valid Invoice; and
 - (b) the Contractor has supplied to Council any Services:
 - (i) required under the Contract to be supplied before each amount in the invoice becomes payable; and
 - (ii) in accordance with the Contract.
- 15.2 A "Valid Invoice" is an invoice which:
- (a) is a tax invoice under *A New Tax System (Goods and Services Tax) Act 1999*;
 - (b) identifies the Services for which payment is being invoiced;

- (c) correctly calculates the amount payable by Council to the Contactor in accordance with the Contract;
- (d) includes sufficient details for Council to assess progress against any milestones under the Contract;
- (e) for any Services charged on a time basis, is supported by records of the time spent by individuals involved in carrying out the Services and verified by the Contractor;
- (f) separately identifies and itemises any Approved Expenses included in the invoice;
- (g) specifies a correct order number allocated by Council and notified by Council to the Contractor; and
- (h) is issued:
 - (i) in any form notified by Council to the Contractor from time to time; and
 - (j) to any person, section or address within Council as notified by Council to the Contractor from time to time.

15.3 If Council asks the Contractor to give Council additional information or documentary evidence concerning a Valid Invoice (or an invoice purporting to be a Valid Invoice), the Contractor must promptly give Council that information or evidence.

16. PAYMENT

- 16.1 Except to the extent that the Contract Price specified in it has already been paid, Council will pay a Valid Invoice within 30 days after:
- (a) the Valid Invoice is given to Council by email to invoices@ipswich.qld.gov.au or by post to PO Box 191, Ipswich, Qld, 4305 (or in another way Council directs the Contractor from time to time);
 - (b) paragraph 16.1(b) has been satisfied; and
 - (c) the Contractor has given Council any information or evidence Council asks for under subclause 16.3.
- 16.2 Unless provided elsewhere in the Contract, Council is not required to pay interest on the amount of a Valid Invoice, even if Council does not pay the Valid Invoice on time.

17. GST

- 17.1 An amount payable by Council to the Contractor and specified in, or calculated in accordance with, the Contract is taken to be expressed on a GST inclusive basis unless it is expressly stated otherwise in the Contract.
- 17.2 If:
- (a) an amount payable by Council to the Contractor and specified in, or calculated in accordance with, the Contract is not taken to be expressed on a GST inclusive basis; and
 - (b) the amount is consideration for a supply which is a taxable supply under *A New Tax System (Goods and Services Tax) Act 1999*,

then, despite anything else in the Contract, the amount payable by Council to the Contractor is 110% of the amount.

- 17.3 The Contractor warrants that it is registered, and throughout the Contract Period will remain registered, for GST under *A New Tax System (Goods and Services Tax) Act 1999*.

18. SET-OFF

- 18.1 Council may deduct from, and set-off against, any money due by Council to the Contractor under the Contract:
- (a) a debt or other liquidated amount due by the Contractor to Council, whether or not under the Contract; and
 - (b) any unliquidated amount due by the Contractor to Council, whether or not under the Contract.
- 18.2 Council:
- (a) is not compelled to exercise that right of deduction and set-off;
 - (b) does not have to give notice to the Contractor before exercising the right; and
 - (c) may exercise any other right, remedy or power, under the Contract or otherwise, in relation to a debt or amount mentioned in subclause 19.1 regardless of whether Council exercises its right under that subclause.

CONTRACT ADMINISTRATION

19. SUPERINTENDENT

- 19.1 If there is a Superintendent, the Superintendent has Council's authority to monitor the performance of the Contract by the Contractor.
- 19.2 The Contractor must:
- (a) liaise with and report to the Superintendent about the performance of the Contract by the Contractor;
 - (b) attend meetings with, or provide briefings to, the Superintendent as required by the Superintendent from time to time; and
 - (c) promptly comply with any request or direction given by the Superintendent, in accordance with the Contract, about the performance of the Contract by the Contractor.
- 19.3 The Superintendent is not taken to have Council's authority to make a decision or perform an act (including receiving a notice or other communication from the Contractor) concerning the Contract unless:
- (a) a provision of the Contract expressly provides that the Superintendent may make the decision or perform the act; or
 - (b) the Superintendent is Council's delegate and has Council's actual authority to make the decision or perform the act.

- 19.4 If:
- (a) a provision of the Contract providing that the Superintendent may make a decision or perform an act concerning the Contract; and
 - (b) there is no Superintendent,
- Council has the power to make the decision or perform the act itself or through a delegate other than the Superintendent.
- 19.5 A provision of the Contract providing that the Superintendent may make a decision or perform an act concerning the Contract does not remove Council's power to make the decision or perform the act itself or through a delegate other than the Superintendent.

20. INSPECTIONS

- 20.1 The Contractor must give the Superintendent (or a person nominated by the Superintendent) reasonable access to premises at which the Contractor carries out the Contract for the purpose of:
- (a) inspecting the premises;
 - (b) observing the activities being performed in:
 - (i) carrying out the Contract; or
 - (ii) carrying on any business in the course of which the Contractor enters into the Contract; and
 - (c) checking whether the Contractor is complying with the Contract.
- 20.2 When the Superintendent (or a nominated person) accesses premises under subclause 21.1:
- (a) the Superintendent (or nominated person) must comply with any rules, directions and procedures which:
 - (i) the Contractor notifies to the Superintendent;
 - (ii) are reasonable; and
 - (iii) apply generally to people entering those premises; and
 - (b) the Contractor must give the Superintendent (or nominated person) all assistance and cooperation they reasonably require.

21. MEETINGS

- 21.1 Council may from time to time during the Contract Period convene meetings to be held between:
- (a) a representative or representatives of Council;
 - (b) a representative or representatives of the Contractor; and
 - (c) any other person or persons that Council decides.
- 21.2 Council may convene meetings under this clause by giving at least 5 Business Days' notice to the Contractor of the time, date and place (and, if Council chooses, an agenda) for the meeting:

- (a) as routine meetings to review the performance of the Contract – to be held not more frequently than once during any period of 3 months; or
- (b) for the purpose of addressing supply or service issues in connection with the performance of the Contract – as and when Council considers it necessary.

21.3 If:

- (a) Council convenes a meeting under this clause;
- (b) the time and date for the meeting is reasonable (with a time during working hours on a date which is a Business Day to be taken to be reasonable); and
- (c) the place for the meeting is reasonable (with a place at Council's public office or at a place of business of the Contractor to be taken to be reasonable), then the Contractor must:
- (d) have a representative or representatives of the Contractor attend the meeting;
- (e) ensure that the representative or representatives of the Contractor attending the meeting has or have the necessary knowledge of and authority concerning:
 - (i) this Contract and matters arising under it; and
 - (ii) any matters listed in an agenda included in the notice by which Council convened the meeting,
to enable the representative or representatives to:
 - (iii) actively and cooperatively participate in the meeting; and
 - (iv) make agreements binding the Contractor concerning those matters; and
- (f) ensure that the representative or representatives of the Contractor attending the meeting actively and cooperatively participate in the meeting.

21.4 A representative of Council attending a meeting convened under this clause may make minutes of the meeting and give a copy of the minutes to the Contractor or to a representative of the Contractor who attended the meeting. If that happens:

- (a) the Contractor must within 5 Business Days notify Council if the Contractor does not agree with any of the contents of the minutes; and
- (b) except to the extent that the Contractor has done so, the minutes will be taken to be an accurate record of the matters discussed at, and things agreed to, at the meeting.

22. CONFLICT OF INTEREST

22.1 The Contractor warrants that, to the best of its knowledge, no Conflict of Interest exists at the time of formation of the Contract.

22.2 If a Conflict of Interest arises during the Contract Period, the Contractor must:

- (a) immediately give notice of it to Council; and
- (b) comply with any reasonable directions that Council gives to the Contractor about how to manage the Conflict of Interest.

23. PROBITY

23.1 The Contractor will not directly or indirectly offer or give to:

- (a) Council;
- (b) any officer or employee of Council; or
- (c) any parent, spouse, child, relative or associate of an officer or employee of Council,

any commission, inducement, gift or reward which is calculated to, or could reasonably be expected as tending to, influence decisions made or to be made in connection with the Contract by Council or any person representing Council.

23.2 The Contractor will not counsel, procure, assist or encourage any other person to do a thing which would breach subclause 24.1 if it had been done by the Contractor.

CONFIDENTIALITY, INFORMATION PRIVACY AND INTELLECTUAL PROPERTY

24. CONFIDENTIALITY

24.1 The Contractor must not, and must ensure that its Personnel do not, use or disclose Confidential Information except if and to the extent that:

- (a) Council consents to the use or disclosure;
- (b) the use or disclosure is required by law;
- (c) the use or disclosure is required in order for the Contractor to comply with the Contract;
- (d) the Confidential Information is disclosed by the Contractor to any of its Personnel who need to know the Confidential Information in order to fulfil their duties to the Contractor in connection with the Contract and:
 - (i) the Contractor makes those Personnel aware that the Confidential Information is confidential, must be kept confidential and must not be used or disclosed except if and as allowed by the Contract; and
 - (ii) if required by Council, the Contractor obtains from those Personnel a confidentiality deed in a form acceptable to Council; or
- (e) the Confidential Information is disclosed on a bona fide basis by the Contractor to a lawyer, accountant or auditor for the Contractor.

24.2 If:

- (a) the Contractor uses or discloses Confidential Information;
- (b) the Confidential Information comes into the possession of, or to the knowledge of, a person as a result of the Contractor's use or disclosure of the Confidential Information (whether permitted by, or in breach of, the Contract); and
- (c) that person uses or discloses the Confidential Information in a way that would have constituted a breach of the Contract had that use or disclosure been made by the Contractor,

the Contractor is liable in relation to that last use or disclosure as if it had been made by the Contractor personally.

- 24.3 The Contractor must, on Council's written demand or at the end of the Contract Period, whichever occurs first, give to Council any documents or other media in its possession, power or control containing any Confidential Information.
- 24.4 The Contractor acknowledges that Council may be required to disclose information concerning the Contractor or the Contract in order to comply with (or to enhance compliance with) Statutory Requirements, including those arising under the *Right to Information Act 2009*, *Information Privacy Act 2009* and the *Local Government Act 2009*. The Contractor agrees not to make any claim against Council in connection with any such disclosure.

25. INFORMATION PRIVACY

- 25.1 The Contractor must comply with the requirements in the IPA which are applicable to the Contractor in relation to its performance and the fulfilment of its obligations under this Contract, including but not limited to:
- (a) ensuring that Personal Information is protected against loss and unauthorised access, use, modification or disclosure and against other misuse;
 - (b) only using or disclosing Personal Information obtained during the course of carrying out its obligations and duties under the Contract only for the purposes of the Contract;
 - (c) not doing any act or engaging in any practice that would breach an IPP, which if done or engaged in by the Council, would be a breach of that IPP;
 - (d) carrying out and discharging the obligations contained in the IPA as if it were the Council under the IPA;
 - (e) not disclosing Personal Information for sale, profit or other benefit; and
 - (f) without the prior written consent of the Council, transferring or disclosing Personal Information, or engaging in any act or practice that would result in Personal Information being transferred or disclosed, outside of Australia.
- 25.2 The Contractor must comply with all guidelines issued by the Office of the Information Commissioner in connection with the IPA which are relevant to its performance and fulfilment of its obligations under this Contract, including but not limited guidelines under section 135(1)(c) of the IPA.
- 25.3 The Contractor acknowledges that the Contractor is a Bound Contracted Service Provider.
- 25.4 The Contractor shall comply with any directions, procedures, measures and safeguards established and communicated by the Council from time to time to the Contractor for the purposes of discharging both the Council's and the Contractor's obligations with the IPA.
- 25.5 The Contractor must ensure that:
- (a) its employees, agent or personnel are made aware of the Contractor's obligations under this clause 26, and where necessary provide such persons with adequate training in respect of these obligations;

- (b) access to Personal Information is restricted on a "need to know" basis to those employees who require access in order to carry out the Contractor's duties and obligations pursuant to the Contract;
 - (c) its employees are legally bound not to access, use or disclose Personal Information other than in carrying out the Contractor's duties and obligations under the Contract;
 - (d) where requested to do so by the Council, those of its employees who carry out the Contractor's duties and obligations under this Contract attend any IPA training or awareness sessions conducted and/or required by the Council from time to time; and
 - (e) where requested to do so by the Council, those of its employees who carry out the Contractor's duties and obligations under this Contract have entered into any deed of confidentiality or privacy on such terms as stipulated by the Council from time to time.
- 25.6 The Contractor must immediately advise the Council about any of the following:
- (a) privacy complaints lodged against the [Contractor] in relation to any of the [Contractors'] acts and/or omissions in connection with this [Contract]; and
 - (b) exercise by the Office of the Information Commissioner of any of its regulatory, investigative, enforcement or other rights and powers available to the Office of the Information Commission under the IPA.
- 25.7 The Contractor must give the Council copies of any correspondence, notices, complaints, orders and any other documents connected with the matters referred to in clause 26.6 within 2 Business Days of the Contractor's receipt of any of those documents.
- 25.8 The Contractor must take any steps required by the Council in connection with the matters referred to in clause 26.6, including but not limited to any steps to comply with any directions or notices issued by the Office of the Information Commissioner.
- 25.9 The Contractor acknowledges that the Office of Information Commissioner has certain regulatory, investigative, enforcement or other rights and powers and functions under the IPA.
- 25.10 The Contractor must allow the Office of the Information Commissioner access at all times to its personnel, and premises, places of business, information systems where Personal Information is stored so as to assist the Office of the Information Commissioner in exercising its regulatory, investigative, enforcement or other rights and powers under the IPA.
- 25.11 The Contractor must keep the Council informed about any actions of the Office of Information Commissioner in connection with the Contract which the Contractor becomes aware of, including but not limited to any:
- (a) review into the Personal Information handling practices of the Contractor;
 - (b) advice, correspondence, notices or directions issued by the Office of the Information Commissioner to the Contractor; and

- (c) compliance audits conducted by the Office of the Information Commissioner to assess the Contractor's compliance with the IPA.
- 25.12 If directed by the Office of the Information Commissioner, the Contractor must give the Council copies of any correspondence or documents connected with the matters referred to in clause 26.11 in the relevant timeframes stipulated by the IPA.
- 25.13 Before the Contractor issues or makes available to any person any information or document required to be issued or made available (as the case may be) pursuant to the IPA, the Contractor must submit to the Council for approval the information or document the Contractor proposes to issue or make available (as the case may be).
- 25.14 Upon receipt of any submission by the Contractor pursuant to clause 25.13, the Council may in its sole and absolute discretion, but acting reasonably either:
- (a) approve the information or document submitted;
 - (b) approve the information or document submitted subject to any amendments as set out in its decision; or
 - (c) require alternative steps be taken by the Contractor.
- 25.15 The Council shall use its best endeavours to advise the Contractor of its decision within 10 Business Days of receipt of any submission pursuant to 25.13.
- 25.16 The Contractor must comply with the decision made by the Council pursuant to Clause 25.14
- 25.17 Requests for access to Personal Information
- (a) Upon the Contractor receiving any request from an individual for access to, or amendment of, their Personal Information, the Contractor shall:
 - (b) promptly forward such request to the Council for processing and response to the individual concerned; and
 - (c) promptly reply to the individual concerned and advise the individual that their request has been forwarded to the Council, and that the Council will correspond directly with the individual.
- 25.18 Any reply to an individual under clause 26.17(c) shall be in writing and be made on a pro-forma reply which the Council has approved beforehand for the purposes of clause 26.17.
- 25.19 The Contractor shall provide the Council with all assistance and information as is necessary for the Council to respond to any request made by an individual referred to in this clause 26.17.
- 25.20 The Contractor will ensure that any subcontract entered into for the purpose of performing and fulfilling its obligations under this Contract will contain provisions to ensure that the subcontractor will have the same obligations that the Contractor has under this clause 26 including the requirement in relation to subcontracts.
- 25.21 The Contractor will immediately notify the Council on becoming aware of any breach of this clause 26, or immediately on becoming aware of any possible breach by the

Contractor. Such notification must be made in writing and contains details of the actual or possible breach (as the case may be).

- 25.22 The Contractor acknowledges that this clause 26 will survive termination or expiry of this Contract.
- 25.23 The Contractor acknowledges that its obligations under this clause continue to apply to the Contractor until the Contractor has either destroyed or returned the Personal Information that the Contractor holds.
- 25.24 The Contractor indemnifies and keeps the Council indemnified against any claims which may be brought or made on or incurred by the Council arising from:
- (a) any breach of by the contractor of this clause 26; or
 - (b) any unlawful or negligent act or omission of the Contractor in the performance or attempted performance of its obligations under this clause 26.

26. ANNOUNCEMENTS AND PUBLICITY

- 26.1 The Contractor must:
- (a) not either itself or through its Personnel disclose to the media any information regarding the Contract or things done or omitted under the Contract;
 - (b) refer all enquiries from the media relating to any matter regarding the Contract or things done or omitted under the Contract to Council as soon as possible after receiving such an enquiry; and
 - (c) notify Council immediately on becoming aware of any event arising in the course of performing its obligations under the Contract which may receive media attention.
- 26.2 Council, when entering into contracts worth \$100,000 or more under Chapter 4 of the *Local Government (Finance, Plans and Reporting) Regulation 2010*, must:
- (a) as soon as practicable, publish relevant details of the contract on its website; and
 - (b) display relevant details of the contract in a conspicuous place in its public office.
- 26.3 "Relevant Details" in clause 26.2(a) refers to :
- (a) The name of the Contractor
 - (b) The worth of the contract
 - (c) The purpose of the contract

27. INTELLECTUAL PROPERTY

- 27.1 Title to, and all Intellectual Property Rights in, New Contract Material will vest in Council on the creation of the New Contract Material except to the extent (if any) that a component of the Contract which has precedence over these Conditions under subclause

- 2.2 provides that title to, and Intellectual Property Rights in, New Contract Material vests in the Contractor.
- 27.2 To the extent that title to, and Intellectual Property Rights in, New Contract Material vests in Council, the Contractor must:
- (a) ensure that the New Contract Material is used, copied, supplied and reproduced only for the purpose of carrying out the Contract; and
 - (b) give to Council the New Contract Material at the end of the Contract Period or at an earlier time required by Council.
- 27.3 To the extent that title to, and Intellectual Property Rights in, New Contract Material vests in the Contractor, the Contractor grants to Council (and must ensure that relevant third parties grant to Council) a non-exclusive, non-transferable, irrevocable, perpetual, royalty-free and worldwide licence to:
- (a) use, exploit and otherwise exercise all rights comprised in any Intellectual Property Rights in the New Contract Material for Council's purposes; and
 - (b) sublicense the right to use, exploit and otherwise exercise all rights comprised in any Intellectual Property Rights in the New Contract Material for Council's purposes.
- 27.4 Title to, and Intellectual Property Rights in, Existing Contract Material does not vest in Council.
- 27.5 The Contractor grants to Council (and must ensure that relevant third parties grant to Council) a non-exclusive, non-transferable, irrevocable, perpetual, royalty-free and worldwide licence to:
- (a) use, exploit and otherwise exercise all rights comprised in any Intellectual Property Rights in the Existing Contract Material for Council's purposes; and
 - (b) sublicense the right to use, exploit and otherwise exercise all rights comprised in any Intellectual Property Rights in the Existing Contract Material for Council's purposes.
- 27.6 Title to, and Intellectual Property Rights in, Council Material is and remains vested in Council.

LIABILITY

28. CONTRACTOR'S PERSONNEL

- 28.1 The Contractor must engage a sufficient number of Personnel with the necessary skills, expertise, qualifications and training for the purpose of carrying out the Contractor's obligations under the Contract.
- 28.2 The Contractor will:
- (a) ensure that the Contractor's Personnel comply with the Contractor's obligations under the Contract; and

- (b) be liable for the acts, omissions and conduct of the Contractor's Personnel as if they were the personal acts, omissions or conduct of the Contractor.
- 28.3 The Superintendent may at any time notify the Contractor to withdraw any of the Contractor's Personnel from being involved in carrying out the Contractor's obligations under the Contract if the Superintendent has a reasonable basis for deciding that the Personnel:
- (a) have breached, or caused the Contractor to breach, the Contract; or
 - (b) do not have the necessary skills, expertise, qualifications and training.
- 28.4 If the Superintendent gives notice to the Contractor under subclause 29.3:
- (a) the Contractor must ensure that the Personnel concerned cease to be involved in carrying out the Contractor's obligations under the Contract; and
 - (b) it does not stop or impair Council from exercising any other right, power or remedy under the Contract.

29. INDEMNITY

- 29.1 The Contractor indemnifies Council against any Claim brought or claimed by a third party against Council or the Contractor or both Council and the Contractor in connection with any:
- (a) negligent act, omission or conduct by the Contractor or any of its Personnel;
 - (b) breach of the Contract by the Contractor;
 - (c) infringement of any Intellectual Property Rights of a third party by the Contractor or any of its Personnel; or
 - (d) breach of a Statutory Requirement by the Contractor or any of its Personnel, except to the extent that the Claim is due to any negligent or unlawful act, omission or conduct by Council or its Personnel.
- 29.2 The Contractor releases, discharges and indemnifies Council from and against any Claim which could otherwise be brought or claimed by the Contractor against Council in connection with any:
- (a) negligent act, omission or conduct by the Contractor or any of its Personnel;
 - (b) breach of the Contract by the Contractor;
 - (c) infringement of any Intellectual Property Rights of a third party by the Contractor or any of its Personnel; or
 - (d) breach of a Statutory Requirement by the Contractor or any of its Personnel, except to the extent that the Claim is due to any negligent or unlawful act, omission or conduct by Council or its Personnel.

30. INSURANCE

- 30.1 During the Contract Period, the Contractor must hold and maintain at all times:
- (a) workers' compensation insurance under the *Workers' Compensation and Rehabilitation Act 2003*;

- (b) public liability insurance for at least \$5 million per claim and for an unlimited number of claims;
 - (c) product liability insurance for at least \$2 million per claim and for an unlimited number of claims;
 - (d) professional indemnity insurance for at least \$2 million per claim and for an unlimited number of claims;
 - (e) any other insurances specified in the Request or Contract Schedule; and
 - (f) any other insurances that Council reasonably requires.
- 30.2 In addition, for at least 6 years after the end of the Contract Period, the Contractor must hold and maintain at all times any of the insurances required by subclause 31.1 which was, during the Contract Period, held on a claims-made basis.
- 30.3 The Contractor must effect each of the insurances required by this clause:
- (a) with an insurer that is solvent, reputable and licensed to carry on the type of insurance business concerned; and
 - (b) on terms which are acceptable to Council.
- 30.4 The Contractor:
- (a) must, if Council asks the Contractor to do so, within 3 Business Days give Council evidence:
 - (i) that the Contractor holds (or held at a time specified by Council and at which the Contractor was required by this clause to hold) an insurance required by this clause; and
 - (ii) of the terms on which the insurance is (or was) held; and
 - (b) until doing so, is taken to have been in breach of its obligation to hold (or at the relevant time to have held) the insurance.
- 30.5 Council may require the evidence mentioned in paragraph 31.4(a) to be in the form of:
- (a) a copy of a certificate of currency; or
 - (b) a copy of a full policy document (including a certificate of currency), or in another form that Council specifies.
- 30.6 The Contractor must, in connection with each insurance required by this clause:
- (a) comply with all of the Contractor's obligations including:
 - (i) obligations of disclosure to the insurer; and
 - (ii) contractual and other legal obligations under or associated with the insurance;
 - (b) pay on time all premiums, excesses and other amounts payable by the Contractor;
 - (c) notify Council promptly if an event occurs which gives rise, or could give rise, to a right to claim on the insurance in connection with any event or occurrence occurring in the course of or relating to the Contractor's performance of the Contract;

- (d) keep Council fully informed of all material developments in connection with any such claim;
- (e) promptly give Council any information that Council requires concerning:
 - (i) the insurance;
 - (ii) any claim made on the insurance; or
 - (iii) any event which gives rise, or could give rise, to a right to claim on the insurance; and
- (f) promptly notify Council if:
 - (i) the insurance is cancelled; or
 - (ii) the Contractor becomes aware, or should reasonably be aware, of any matter or circumstance prejudicing, or potentially prejudicing, the insurance.

31. SECURITY

- 31.1 If the Request or Contract Schedule states that a Bank Guarantee is required under the Contract:
- (a) the Contractor must, within 10 Business Days after the formation of the Contract, give Council that Bank Guarantee (in the amount specified in, or calculated under, the Request or Contract Schedule); and
 - (b) Council holds the Bank Guarantee as security for the due and proper performance of the obligations of the Contractor under the Contract.
- 31.2 Council may have recourse to the Bank Guarantee if:
- (a) the Contractor does not duly and properly perform its obligations under the Contract and Council suffers loss or damage as a result; or
 - (b) the Contractor owes Council a debt or liquidated amount, under the Contract or otherwise, which the Contractor has not paid to Council on time,
- by making demand on the issuer of the Bank Guarantee for payment of an amount equalling the amount of the loss or damage referred to in paragraph (a) or the debt or liquidated amount referred to in paragraph (b).
- 31.3 Council does not have to give notice to the Contractor before having recourse to the Bank Guarantee.
- 31.4 If Council has recourse to the Bank Guarantee:
- (a) Council may give notice to the Contractor of that fact and of the amount for which Council had recourse to the Bank Guarantee; and
 - (b) the Contractor must, within 10 Business Days after being given that notice, give Council an additional Bank Guarantee for an amount equalling the amount for which Council had recourse to the original Bank Guarantee.
- 31.5 At the later of:
- (a) the end of the Contract Period; or
 - (b) the day after the end of the Contract Period when:

- (i) Council has no right to have recourse to the Bank Guarantee; and
- (ii) there has been no failure by the Contractor to duly and punctually perform its obligations under the Contract as a result of which Council has suffered loss or damage which the Contractor has not compensated,

Council must give the Bank Guarantee back to the Contractor by delivering it to the Contractor (unless Council has previously given the Bank Guarantee to the issuer when having recourse to it under the Contract).

31.6 So there is no doubt:

- (a) the Contractor must comply with its obligations under this clause at its own expense; and
- (b) Council's rights under this clause are additional to and cumulative with any other right, power or remedy it has.

BREACH, TERMINATION AND DISPUTES

32. BREACH

32.1 If a Show Cause Event occurs, Council may give the Contractor a notice ("Show Cause Notice") which:

- (a) describes the nature of the Show Cause Event; and
- (b) requires the Contractor to demonstrate why Council should not exercise a right which Council has under the Contract including, for example, any right to terminate the Contract,

and which may (but need not) require the Contractor to give Council information and attend meetings with Council or a representative of Council concerning the Show Cause Event.

32.2 If Council gives the Contractor a Show Cause Notice, the Contractor must:

- (a) give Council any information concerning the Show Cause Event as required by the Show Cause Notice within any time specified in the Show Cause Notice (or, if no time is specified, within 10 Business Days after the Show Cause Notice is given);
- (b) attend any meeting with Council or a representative of Council concerning the Show Cause Event as required by the Show Cause Notice; and
- (c) within 10 Business Days after the Show Cause Notice is given, give Council a written document ("Remedial Plan") setting out:
 - (i) how the Contractor proposes to remedy the Show Cause Event; and
 - (ii) measures that the Contractor proposes to implement in order to ensure that the Show Cause Event does not recur and that a future Show Cause Event of a similar nature does not occur during the Contract Period.

32.3 Council may, after being given the Remedial Plan:

- (a) by written notice to the Contractor, approve the Remedial Plan;

- (b) by written notice to the Contractor, require the Contractor to amend the Remedial Plan by varying anything it, deleting anything from it or adding anything to it (in which case, the Contractor must within 5 Business Days notify Council if the Contractor agrees to the amendment); or
- (c) decide not to approve the Remedial Plan.

32.4 The Show Cause Event is a "Remedied Show Cause Event" if:

- (a) Council gives the Contractor a Show Cause Notice;
- (b) the Contractor complies with subclause 33.2;
- (c) Council approves the Remedial Plan under paragraph 33.3(a) or the Contractor agrees to any amendment required by Council to the Remedial Plan under paragraph 33.3(b);
- (d) the Contractor complies with the Remedial Plan, as amended by any amendment required by Council and agreed to by the Contractor under paragraph 33.3(b); and
- (e) the Contractor pays to Council reasonable compensation in respect of:
 - (i) any losses incurred by Council because of the Show Cause Event; and
 - (ii) anything done by Council under this clause in relation to the Show Cause Event.

33. TERMINATION

33.1 Council may terminate the Contractor immediately on written notice to the Contractor, while preserving for Council any rights which may have accrued to Council, if:

- (a) a Show Cause Event occurs (unless it is a Remedied Show Cause Event);
- (b) the Contractor repudiates the Contract;
- (c) the Contractor becomes insolvent;
- (d) the Contractor is or includes a company which:
 - (i) becomes subject to one of the forms of external administration provided for in chapter 5 of the *Corporations Act 2001*; or
 - (ii) is wound up by resolution or an order of a court;
- (e) the Contractor is or includes an individual who:
 - (i) becomes bankrupt; or
 - (ii) becomes subject to an arrangement under part IX or X of the *Bankruptcy Act 1966*;
- (f) the Contractor ceases to carry on business or ceases to carry on or sells a significant part of its business; or
- (g) there occurs:
 - (i) the passing, commencement, amendment or repeal of any Act or statutory instrument;
 - (ii) the taking of any action under any Act or statutory instrument; or
 - (iii) any action by the executive branch of any government,

which Council reasonably determines has had, is having, will have or is reasonably likely to have the purpose or effect of:

- (iv) altering or removing Council's power, authority or jurisdiction in a way and to an extent materially adverse to Council's legal or practical ability to comply with its obligations under the Contract;
- (v) altering or removing Council's power, authority or jurisdiction in a way and to an extent materially adverse to Council's legal or practical ability to enjoy the benefit of the Contractor's obligations under the Contract; or
- (vi) frustrating the Contract.

33.2 The expiry or termination (for any reason) of the Contract does not extinguish or otherwise affect any rights of either party against the other which:

- (a) accrued before the expiry or termination; or
- (b) relate to or arise from any breach of the Contract before the expiry or termination.

34. DISPUTE RESOLUTION

34.1 Subject to any right of termination of the Contract under clause 34, the parties agree to use reasonable endeavours to resolve by negotiation any dispute that arises between them under or in connection with the Contract.

34.2 If a dispute arises under or in connection with the Contract:

- (a) a party concerned about the dispute may notify the other in writing;
- (b) management representatives of each of the parties will then endeavour, in good faith, to agree on a resolution of the dispute within 20 Business Days of the notice being given under paragraph (a);
- (c) Council may submit the dispute to mediation:
 - (i) if the management representatives fail to agree on a resolution under paragraph (b) within 25 Business Days of the notice being given under paragraph (a);
 - (ii) by a mediator selected by agreement between the parties or, in the absence of agreement, by the President of the Queensland Law Society Incorporated at the request of either party; and
 - (iii) which is to be conducted under the rules for the conduct of mediations published by the Institute of Arbitrators & Mediators Australia;
- (d) Council may submit the dispute to expert determination:
 - (i) if mediation under paragraph (c) fails, within 10 Business Days after the completion of the mediation;
 - (ii) if Council has not submitted the dispute to mediation, within 35 Business Days of the notice being given under paragraph (a);
 - (iii) by an expert selected by agreement or, in the absence of agreement, by an industry body reasonably selected by Council as being most relevant having regard to the nature of the dispute;

- (iv) which will be conducted in accordance with any relevant Statutory Requirements and (subject to those Statutory Requirements) any procedures laid down by Council; and
 - (v) with the expert's determination of the dispute being final and binding on the parties; and
 - (e) in determining the dispute under paragraph (d):
 - (i) the expert acts as an expert and not an arbitrator;
 - (ii) the parties must provide all relevant evidence and documents reasonably requested by the expert within 10 Business Days of receiving the request;
 - (iii) each party is to bear its own costs on relation to the presentation of documents, evidence and other assistance given to the expert; and
 - (iv) the costs of the expert are to be shared equally by the parties.
- 34.3 Neither party may commence proceedings in a court or tribunal about a dispute that arises between them under or in connection with the Contract unless:
- (a) the proceedings are to seek interlocutory, urgent, declaratory or injunctive relief; or
 - (b) a notice about the dispute has been given under paragraph 35.2(a) and:
 - (i) at least 25 Business Days have elapsed since the giving of the notice without Council having referred the dispute to mediation under paragraph 35.2(c) or expert determination under paragraph 35.2(d); or
 - (ii) Council referred the dispute to mediation under paragraph 35.2(c), the mediation has been completed without resolving the dispute and at least 10 Business Days have elapsed since the completion of the mediation without Council having referred the dispute to expert determination under paragraph 35.2(d).
- 34.4 Neither the existence of a dispute nor the undertaking of any of the procedures in this clause relieves either party from complying with its obligations under the Contract.

OTHER MATTERS

35. OFFICIAL NOTICES

- 35.1 An Official Notice to the Contractor is taken to have been effectively and properly given only if it is in writing, signed by or on behalf of Council (or the Superintendent, if the Contract says that the Superintendent may give the Official Notice) and:
- (a) delivered to any street address for the Contractor specified in the Offer or Contract Schedule or any additional or substitute street address that the Contractor has notified to Council for the purpose;
 - (b) sent by prepaid post to any street address or postal address for the Contractor specified in the Offer or Contract Schedule or any additional or substitute street address or postal address that the Contractor has notified to Council for the purpose;

- (c) sent by fax transmission to any fax number for the Contractor specified in the Offer or Contract Schedule or any additional or substitute fax number that the Contractor has notified to Council for the purpose;
 - (d) if the Contractor is or includes an individual – delivered to that individual; or
 - (e) if the Contractor is or includes a company – served in a way provided by s.109X of the *Corporations Act 2001*.
- 35.2 An Official Notice to the Contractor is taken to have been given at the following time:
- (a) if it is delivered – when it is delivered;
 - (b) if it is sent by prepaid post to an address in Australia – 2 Business Days after it is properly addressed and posted;
 - (c) if it is sent by prepaid post to an address outside Australia – 7 Business Days after it is properly addressed and posted;
 - (d) if it is sent by fax between the hours of 9am and 5pm on a Business Day – at the time at which, according to a report produced by the machine from which it was sent, it was successfully transmitted in full to the correct fax number; or
 - (e) if it is sent by fax before 9am or after 5pm on a Business Day, or on a day which is not a Business Day – the next time it is 9am on a Business Day but only if, according to a report produced by the machine from which it was sent, it was successfully transmitted in full to the correct fax number.
- 35.3 An Official Notice to Council is taken to have been effectively and properly given only if it is in writing, signed by or on behalf of the Contractor and served under s.238 of the *Local Government Act 2009*.
- 35.4 An Official Notice to the Superintendent is taken to have been effectively and properly given only if it is in writing, signed by or on behalf of the Contractor and:
- (a) actually delivered to the Superintendent; or
 - (b) served on Council under s.238 of the *Local Government Act 2009*.

36. RELATIONSHIP OF PARTIES

- 36.1 The relationship of the parties is one of principal (Council) and independent contractor (the Contractor).
- 36.2 The Contractor must not represent itself, or allow itself to be represented, as Council's partner, joint venturer, officer or employee.

37. CHANGES OF PARTIES AND DELEGATION

- 37.1 The Contractor must not assign or transfer any rights or obligations under the Contract except with Council's written approval.
- 37.2 Council may assign or transfer rights and obligations under the Contract to:
- (a) an corporate entity corporatised under the *Local Government Act 2009*; or

- (b) an entity which is a local government entity of Council under s.216 of the *Local Government Act 2009*; or
- (c) a corporation wholly owned by Council which is incorporated under the Corporations Act,

and, if Council gives notice to the Contractor of such an assignment or transfer and gives the Contractor evidence that the entity agrees to fulfil Council's obligations under the Contract, then from the time those things are done:

- (d) all rights that Council had under the Contract are vested in the entity (other than rights relating to acts, omissions or conduct before that time); and
- (e) all obligations that Council had under the Contract are imposed on the entity (other than obligations relating to acts, omissions or conduct before that time).

37.3 The Contractor must not subcontract the carrying out of any of the Contractor's obligations under the Contract except with Council's written approval.

37.4 Even if Council approves a subcontracting, the Contractor will:

- (a) ensure that the subcontractor complies with the Contractor's obligations under the Contract; and
- (b) be liable for the acts, omissions and conduct of the subcontractor as if they were the personal acts, omissions or conduct of the Contractor.

38. VARYING AND WAIVING THE CONTRACT

38.1 A variation of the Contract is of no force or effect against a party to the Contract unless the variation is in writing and signed by or on behalf of that party (and, in the case of Council, unless the person signing on behalf of Council is a delegate of Council having authority to do so).

38.2 A waiver of a power, right or remedy under the Contract is only effective against a party to the Contract:

- (a) if it is in writing and signed by or on behalf of that party (and, in the case of Council, if the person signing on behalf of Council is a delegate of Council having authority to do so);
- (b) in relation to a power, right or remedy identified in the waiver; and
- (c) is not to be taken as an implied waiver of the ability of the party giving the waiver to exercise the same or another power, right or remedy on another occasion or in other circumstances.

38.3 The fact that a party to the Contract does not do, or delays in doing, something the party is entitled to do under the Contract does not amount to a waiver.

39. APPROVALS

39.1 If the Contract provides or allows for Council or the Superintendent to give an Approval:

- (a) the Approval is not taken to have been given unless it is given in writing and signed by:

- (i) a delegate of Council having authority to give the Approval; or
 - (ii) the Superintendent (if the Contract provides or allows for the Superintendent to give the Approval);
- (b) if the Approval is given, it may be given on conditions, including conditions that:
- (i) operate as conditions precedent to the Approval (in which case the Approval is not taken to have been given unless those conditions are satisfied); or
 - (ii) require the Contractor to do something or refrain from doing something (in which case the Approval is not taken to have been given unless the Contractor complies with those conditions);
- (c) neither:
- (i) Council; nor
 - (ii) the Superintendent (if the Contract provides or allows for the Superintendent to give the Approval),
- is obliged to give the Contractor any reasons for a decision about the Approval (including a decision to give the Approval, to impose conditions on an Approval or not to give the Approval) unless the Contract says otherwise; and
- (d) the decision about the Approval is to be made in the absolute discretion of:
- (i) Council; or
 - (ii) the Superintendent (if the Contract provides or allows for the Superintendent to give the Approval),
- unless the Contract says otherwise.

- 39.2 If the Contract provides or allows for the Superintendent to give an Approval, either the Superintendent or Council may make a decision about whether to give the Approval.
- 39.3 Whenever the Contract refers, in words or to the effect, to a matter or thing being to the "satisfaction" of:
- (a) Council, that means to the satisfaction of Council in its absolute discretion; or
 - (b) the Superintendent, that means to the satisfaction of the Superintendent or Council in their absolute discretion.

40. FORCE MAJEURE

- 40.1 If a Force Majeure prevents or delays a party to the Contract from fulfilling an obligation under the Contract:
- (a) that obligation is suspended, so far as the party's ability to fulfil it is affected by the Force Majeure, for as long as the Force Majeure continues;
 - (b) any timeframes under the Contract which would otherwise fall due during the time of the suspension are extended by a period corresponding to the length of the time of the suspension; and
 - (c) the delay in fulfilling, or failure to fulfil, the obligation during the time while the obligation is suspended will not constitute a breach of the Contract.

- 40.2 However, a party has the benefit of subclause 41.1 only if it:
- (a) notifies the other party as soon as practicable of:
 - (i) the occurrence of the Force Majeure; and
 - (ii) the extent to which that party is unable to fulfil its obligations; and
 - (b) takes all reasonable precautions against the cause of the Force Majeure and use its reasonable endeavours to mitigate the consequences of the Force Majeure.
- 40.3 Council may terminate the Contract, cancel any outstanding Purchase Order under the Contract or do both if:
- (a) the Contractor notifies Council under paragraph 41.2(a) with respect to a Force Majeure; and
 - (b) after 10 Business Days have elapsed from the time the notice was given:
 - (i) the Contractor has not fulfilled any obligations in relation to which the Contractor has the benefit of subclause 41.1 because of the Force Majeure; or
 - (ii) the Force Majeure is still continuing.
- 40.4 Subclause 41.1 does not apply in relation to an obligation:
- (a) to pay money;
 - (b) to indemnify;
 - (c) of the Contractor under clauses 3, 6 to 14 or 20 to 32; or
 - (d) of either party under clauses 35 to 40.

41. GOVERNING LAW

- 41.1 The Contract is governed by the laws of Queensland.
- 41.2 The courts and tribunals of Queensland at Ipswich and Brisbane, and the courts and tribunals of appeal from the courts and tribunals of Queensland, have non-exclusive jurisdiction to deal with any dispute concerning or under the Contract:
- (a) within their respective jurisdictional limits as regards the subject matter of the dispute, the amount involved in the dispute and the relief sought; and
 - (b) without regard to the geographical or territorial jurisdictional limits that would otherwise apply.

42. SURVIVAL OF PROVISIONS

- 42.1 A provision of the Contract which:
- (a) by its nature is obviously intended to apply after the Contract Period;
 - (b) according to its terms is intended to apply after the Contract Period; or
 - (c) is capable of sensibly being given continued application after the Contract Period, has that continued application.

42.2 Without limiting subclause 43.1, the provisions of the Contract to be given continued application include clauses 13, 14, 24 to 31, 36, 39 and 42.

42.3 So there is no doubt:

- (a) if at the end of the Contract Period an obligation of either party was due to be fulfilled but had not been fulfilled, the ending of the Contract Period does not relieve that party from its obligation;
- (b) if at the end of the Contract Period a right of either party has accrued because of events or circumstances arising before the end of the Contract Period, the ending of the Contract Period does not extinguish the right; and
- (c) if after the end of the Contract Period a right of either party accrues due or partly due to events or circumstances arising before the end of the Contract Period, the party may still exercise the right despite the ending of the Contract Period.