

# Professional Services Contract

Contract No.	Date
<b>Parties</b>	<b>Ipswich City Council</b> PO Box 191, Ipswich QLD 4305 Email: [insert] ("Council")
	<b>[Insert full company or individual name]</b> ACN [insert] [Insert address] Email: [insert] ("Supplier")
<b>Description</b>	[Insert short description of the background to the contract and what it is about]

By signing below, the parties are entering into a contract that consists of this cover page and the attached terms and Schedules.

<b>Signed by [Insert Name and Position] on [Insert Date] as duly authorised Council delegate</b> [under section 238 of the <i>Local Government Regulation 2012</i> /in accordance with section 236 of the <i>Local Government Act 2009</i> ]
Signature of [Insert Name and Position]
Signature of Witness:
Full name of Witness:

<b>Signed for and on behalf of the Supplier in accordance with s.127 of the Corporations Act 2001 (Cth):</b>
Signature of Director
Full name of Director
Signature of Director or Company Secretary
Full name of Director or Company Secretary

OR

<b>Signed for and on behalf of the Supplier by its authorised CEO:</b>
Signature of CEO
Full name of CEO

## Schedule 1 - Contract Details

### 1. Supplier Personnel and Rates

Position description	Names (if applicable)	Rate
(insert details)	(insert details)	(insert details)

### 2. Minimum insurance

Professional indemnity [\$10 million per claim and for an unlimited number of claims]

Public liability [\$20 million per claim and for an unlimited number of claims]

### 3. Additional Insurance

Policy Type	Amount of Cover

### 4. Contract Specific Terms

[Insert "Not applicable" or include relevant clauses.]

## Schedule 2 - Contract Order

## Contract Order

This Contract Order, once it is completed and signed by both parties, creates a binding obligation between Council and the Supplier for the supply of the services specified in this Contract Order under the Professional Services Contract between the parties.

1. Contract Order Details	
1.1 Council Representative	[insert name and position]
1.2 Council Executive	(insert position of person who is escalation point for dispute resolution)
1.3 Supplier Representative	Name: Position: Telephone: Email:
1.4 Supplier Executive	[insert position of person who is escalation point for dispute resolution]
1.5 Contract Order number	[Insert only once Contract Order is finalised and ready to be signed]
1.6 Services Commencement Date	(e.g. 1 January 2017)
1.7 Service Period	[Council preference is to have timing based on Deliverables, In which case specify "On completion of Deliverables".  Only insert a time period if the nature of the Services is such that they are determined only on the duration.]

2. Scope of Services
<p><b>Scope of Services</b></p> <p>[Insert Scope of Services]</p> <p>[May include references to relevant existing documents]</p>
<p><b>Specifications</b></p> <p>1.[insert]</p> <p>2.[insert]</p> <p>[Where there are 2 or more documents, list them in order of priority and then add the following text: "and to the extent of any inconsistency between these specifications, the specifications listed earlier in this definition prevail over those listed later."]</p>

Supplier Personnel	
Position title	Names (where specific people are required)

3. Deliverables		
Deliverable No.	Deliverable	Due date

4. Fees and invoicing	
<b>4.1 Fees (exclusive of GST)</b>	\$            per hour \$            per day \$            per month \$            (fixed fee) [delete those which are not applicable]
<b>4.2 Approved expenses</b>	[specify any reimbursable expenses which Council wishes to approve in advance, and any applicable rules or rates for the expenses]
<b>4.3 Timing of invoices</b>	
(a) Monthly in arrears	[Yes/No]
OR (b) By schedule	
<b>Deliverable (Description or No.)</b>	<b>Payment amount</b>

5. Progress Reports and Meetings	
<b>5.1 Timing of Progress Reports</b>	
(a) Intervals	[(Daily/weekly/monthly) commencing from [date]]
OR (b) By milestones	
[List the milestones at which reports are required]	
<b>5.2 Content of Progress Reports</b>	
[Describe what report must contain or refer to attached format]	
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## Operative terms

### 1. Definitions

In this Contract:

**Additional Disclosee** means a third party to whom Confidential Information is disclosed pursuant to clause 9.2.

**Authorised Subcontractor** means a contractor of the Supplier approved under clause 21.16.

**Business Day** means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in Ipswich, Queensland.

**Commencement Date** means the earlier of:

- (a) the date of this Contract; and
- (b) the first Service Commencement Date.

**Confidential Information** means (subject to clause 11.1(b)) information of or provided by the Discloser to the Receiving Party that is by its nature confidential information, is designated by the Discloser as confidential, or the Receiving Party knows or ought to know is confidential but does not include information which is or becomes, without a breach of confidentiality, public knowledge.

**Contract** means this document and any other document incorporated by reference.

**Contract Material** means New Material and Existing Material.

**Contract Order** means an order in the form specified in Schedule 2, which the parties agree is to be entered on the terms of this document as contemplated by clause 4.

**Council Representative** means the person specified in the Contract Order, or any other person notified by Council to the Supplier.

**Council Property** means any property or information of Council (including information created or obtained by the Supplier in the course of this Contract that relates to Council or its residents, customers, businesses or other interests) in the custody or control of the Supplier or its Personnel.

**Deliverable** means anything the Supplier delivers or is required to deliver under this Contract, including a deliverable described in the Contract Order.

**Discloser** means the party providing or disclosing Confidential Information.

**Executive**, in relation to a party, means the person specified in the Contract Order, or any other person notified by the party to the other party.

**Existing Material** means Material, other than New Material, that is:

- (a) incorporated in New Material by or on behalf of the Supplier; or
- (b) supplied or required to be supplied under this Contract by the Supplier.

**Force Majeure** means an event beyond the reasonable control of the affected party, which occurs without the fault or negligence of the affected party but, in the case of the Supplier, does not include acts or omissions of Supplier Personnel or other customers of the Supplier.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Information Privacy Act** means the *Information Privacy Act 2009* (Qld).

**Intellectual Property Rights** includes all present and future rights in relation to copyright, trade marks, designs, patents or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this Contract, and whether existing in Australia or otherwise.

**Inventions** means any process, improvement or discovery which the Supplier may make in connection with provision of the Services.

**Local Government Act** means the *Local Government Act 2009* (Qld).

**Material** means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever.

**Moral Rights** means the moral rights granted under the *Copyright Act 1968 (Cth)*, and any similar rights existing under foreign laws.

**New Material** means Material that is created, written, developed or otherwise brought into existence by or on behalf of the Supplier in the course of the Services.

**Personal Information** has the meaning given in the Information Privacy Act.

**Personnel** of a person means that person's directors, officers, employees, agents, contractors and their respective Personnel but in respect of Council, includes the Councillors and excludes the Supplier and its Personnel.

**Privacy Laws** means the Information Privacy Act, the *Privacy Act 1988 (Cth)* and any other applicable law, statute, regulation, ordinance, code, standard or requirement of any government, governmental or semi-governmental body which relates to privacy or the use or protection of information about individuals.

**Receiving Party** means the party who receives Confidential Information from the Discloser.

**Regulatory Requirements** means:

- (a) any Commonwealth, State or Territory Act, regulation, order, by-law or other regulatory instrument of any kind;
- (b) any condition or requirement of an authority, permit or licence which the Supplier must hold by law or in connection with fulfilling its obligations under the Contract;
- (c) any code or other instrument made, or agreement required to be entered into (including network use of system, co-ordination or access agreement, community service obligation, concession or rebate agreements), under any Act, regulation, order or instrument referred to in paragraph (a); and
- (d) any condition or requirement of an authority, permit or licence held by Council,

with which Council or the Supplier must comply, together with any voluntary code or other instrument which Council from time to time advises the Supplier is a regulatory requirement with which the Supplier must comply.

**Related Body Corporate** has the meaning given in section 50 of the *Corporations Act 2001 (Cth)*.

**Service Commencement Date** means the date specified as such in a Contract Order.

**Service Period** means the period of a Contract Order defined in clause 4.2.

**Services** means the services specified in a Contract Order.

**Supplier Representative** means the person specified in the Contract Order, or any replacement person notified by the Supplier to Council.

**Term** means the period of the Contract defined in clause 3.

**WHS Legislation** means the *Work Health and Safety Act 2011 (Qld)* and the *Work Health and Safety Regulation 2011 (Qld)* any relevant codes of practice, guidelines and advisory standards.

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## 2. Services

### 2.1 Supply of Services

The Supplier will supply and Council will acquire the Services on the terms of this Contract.

### 2.2 Service requirements

The Supplier will:

- (a) perform the Services:
  - (i) in accordance with the requirements of the relevant Contract Order;
  - (ii) with due care and skill and in a professional, punctual and diligent manner; and
  - (iii) in the manner Council reasonably requires;
- (b) inform itself of Council's requirements;
- (c) comply with directions of the Council Representative when providing the Services at the location specified in the Contract Order; and
- (d) provide Deliverables by the date(s) specified in the Contract Order which:
  - (i) comply with requirements in the Contract Order;



- (ii) are fit for the purpose for which they are intended; and
- (iii) are of acceptable quality.

### **2.3 Supplier Personnel**

- (a) The Supplier will provide the Services using the personnel in the Contract Order, including:
  - (i) the named Supplier Personnel (if any); and
  - (ii) Authorised Subcontractors (if any).
- (b) The Supplier warrants that the Supplier Personnel providing the Services possess and will use the specific skills, qualifications and experience required for the Services.
- (c) Council may, in its reasonable discretion, require the Supplier to remove Personnel from providing the Services. The Supplier will promptly at no additional cost to Council arrange for the removal of those personnel and their replacement with personnel reasonably acceptable to Council.

### **2.4 Reports on performance**

- (a) The Supplier must submit progress reports to Council:
  - (i) in the form directed by Council; and
  - (ii) at the intervals or milestones specified in the Contract Order; and
- (b) The Supplier Representative must meet with the Council Representative to review the performance of the Contract:
  - (i) at Council's request, with the provision of reasonable notice; and
  - (ii) at the intervals specified in the Contract Order.

### **2.5 Review of Deliverables**

Council may review Deliverables within a reasonable time after they are supplied to confirm that they comply with this Contract. Where a Deliverable does not comply with this Contract, Council will give the Supplier a reasonable opportunity to rectify or replace the Deliverable (at the Supplier's expense), before Council reviews it again. If the Deliverable still does not comply with this Contract, Council may, without prejudice to Council's other rights and remedies, at its option:

- (a) accept the Deliverable subject to a reasonable reduction in the fees;
- (b) reject the Deliverable in which case no amount is payable by Council in respect of the Deliverable; or
- (c) accept the Deliverable on terms acceptable to the parties.

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## **3. Term**

This Contract commences on the Commencement Date and continues until the Contract is terminated under clause 16.

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## **4. Management of Contract Orders**

### **4.1 Ordering procedure**

- (a) If Council wishes to acquire Services, Council may send to the Supplier a Contract Order substantially in the form of Schedule 2.
- (b) Council and the Supplier may then negotiate the terms of the Contract Order. The Supplier warrants it will not seek to negotiate fees that exceed the rates set out in Schedule 1 or amendments to the terms of this Contract.
- (c) Upon execution of the Contract Order by both parties, the terms of the Contract Order are included as part of this Contract. The parties may enter more than 1 Contract Order, and the details in each Contract Order only apply to the Services to be provided under that Contract Order.
- (d) For each Contract Order, the Supplier is not required to commence work and Council is not required to make any payments unless and until the Contract Order is executed by both parties. The Contract Order may be executed in counterparts.

#### 4.2 Service period for Contract Orders

The Supplier will provide Services under a Contract Order commencing on the Service Commencement Date and continuing:

- (a) where a Service Period is specified in the Contract Order - for that Service Period; or
- (b) where no Service Period is specified in the Contract Order - until the Deliverables have been provided and other requirements of the Contract Order have been met.

#### 4.3 Cancellation of Contract Orders

- (a) Council may notify the Supplier that it wishes to cancel a Contract Order at any time.
- (b) Within 3 days after receiving a notice under clause 4.3(a), the Supplier will notify Council of the costs (if any) that have been or will be incurred by the Supplier as a direct result of the cancellation of the Contract Order and which the Supplier cannot recoup from a third party or avoid.
- (c) Upon receiving the Supplier's notice under clause 4.3(b), Council may confirm that the Contract Order is to be cancelled by notifying the Supplier, in which case Council will pay the Supplier the costs set out in the Supplier's notice, subject to the Supplier providing Council with an invoice and satisfactory documentary evidence of such costs being incurred. A Contract Order will not be cancelled unless Council gives notice confirming the cancellation under this clause 4.3(c).

#### 4.4 No guaranteed volume or value of Services

- (a) Any forecasts, estimates or volumes discussed between the parties, advised by Council or otherwise arising before or during the Term are indicative only, are not binding on Council and are not a guarantee in any form or manner as to the volume or value of Services that will be required under this Contract.
- (b) The parties acknowledge that unless and until it is specified in an executed Contract Order, nothing in this Contract requires Council to acquire from the Supplier any Service or any particular quantity of Services during the Term.

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### 5. Fees and expenses

#### 5.1 Fees

The fees for the Services are set out in the Contract Order.

#### 5.2 Expenses

Council will only reimburse expenses incurred by the Supplier which have the prior written approval of Council and, where applicable, are in accordance with any rules or rates set out in the Contract Order.

#### 5.3 Invoices

The Supplier may invoice Council at the times set out in the Contract Order.

#### 5.4 Payment

- (a) Subject to clause 5.4(b), Council will pay the Supplier the amount due under an invoice within 30 days after the date of receipt of a correctly rendered invoice. An invoice is correctly rendered if:
  - (i) the amount claimed in the invoice is due for payment in accordance with the Contract Order;
  - (ii) the Supplier has complied with its obligations as at the date of the invoice;
  - (iii) the invoice identifies the Services for which payment is being invoiced;
  - (iv) the invoice separately identifies and itemises any approved expenses;
  - (v) the invoice specifies a correct Contract Order number allocated by Council and notified by Council to the Supplier; and
  - (vi) the invoice is a tax invoice in the proper form for the purposes of the GST Act.
- (b) Council is not liable to pay fees or expenses in respect of any part of the Services which Council reasonably determines as not being performed in accordance with this Contract.
- (c) If there is a dispute regarding fees or expenses, Council does not have to pay the relevant portion of the invoice until the query or dispute is resolved.

- (d) If an invoice is found to have been incorrectly rendered after payment by Council, the underpayment or overpayment will be recovered by or from the Supplier.

### 5.5 Services on a time basis

- (a) If Services are to be charged on a time basis, the Supplier:
- (i) will perform the Services in a reasonable number of person hours; and
  - (ii) will provide to Council with each invoice, details of the work performed by its Personnel (including their position, the number of hours of work performed and the Deliverable (if any) to which the work relates), as well as the total fees accrued to date.
- (b) Council may notify the Supplier of a limit for the fees (which must be greater than the fees payable for the work performed by the Supplier at the time the limit is set), or require the Supplier to provide an estimate of the expected total cost ("**Fee Cap**").
- (c) The Supplier will notify Council:
- (i) at any time when based on the work still to be completed, the Fee Cap is likely to be, or has been, exceeded; and
  - (ii) when the total of fees charged and hours worked but not yet charged reaches 90% of the Fee Cap.
- (d) Where the fees exceed the Fee Cap, the Supplier may request Council to increase the Fee Cap, which Council may do in its absolute discretion. So long as the Supplier has given reasonable notice, if Council does not increase the Fee Cap, the Supplier may cease work once the fees exceed the Fee Cap. Council is not liable for fees in excess of a Fee Cap unless it expressly agrees to increase or remove the Fee Cap, even if the Supplier has warned Council that the fees may exceed the Fee Cap.

### 5.6 GST

- (a) Terms used in this clause 5.6 have the meaning given to them in the GST Act.
- (b) If a party is a member of a GST group, references to GST which the party must pay and to input tax credits to which the party is entitled, include GST which the representative member of the GST group must pay and input tax credits to which the representative member of the group is entitled.
- (c) All amounts stated in and payable under this Contract include GST unless otherwise indicated. Where GST is payable by an entity in relation to a supply that it makes under or in connection with this Contract, and the consideration for that supply excludes GST, the party providing the consideration will pay an additional amount equal to the GST when any part of the consideration is first payable.
- (d) The amount of GST will be calculated at the prevailing GST rate. If the GST rate is varied, the consideration payable for any supply under this Contract will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.
- (e) Where GST applies to any supply made under this Contract, the supplier will deliver to the recipient a valid tax invoice or adjustment note at or before the time payment for the supply is required.
- (f) If this Contract requires a party to reimburse or indemnify the other party for any expense, loss or outgoings ("**Reimbursable Expense**") the amount required to be paid by the first party will be the sum of:
- (i) the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense; and
  - (ii) if the other party's recovery of the Reimbursable Expense from the first party is a taxable supply, any GST payable in respect of that supply.

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## 6. Variations

### 6.1 Council request to vary

Council may by notice ("**Variation Notice**") request the Supplier to vary the Contract Order.

### 6.2 Quotation on variation

Within 7 days after receiving a Variation Notice, the Supplier will provide to Council a reasonable quotation ("**Variation Quotation**") which details:

- (a) the variation as requested by the Variation Notice;

- (b) a reasonable variation (if any) to the fees including evidence justifying the variation; and
- (c) all relevant specifications, time frames and operational requirements relating to the varied Contract Order additional to but not inconsistent with those in the Variation Notice.

### 6.3 Supplier request to vary

The Supplier may request a variation to a Contract Order by providing the Council with a Variation Quotation.

### 6.4 Acceptance or rejection of variation

Council may by notice to the Supplier:

- (a) accept the Variation Quotation within 14 days after receiving it;
- (b) reject the Variation Quotation at any time if that Variation Quotation has not already been accepted; or
- (c) require the Supplier to give effect to the Variation Notice in a reasonable time and for:
  - (i) a variation in fees based on the fees specified in this Contract;
  - (ii) if paragraph (i) is not applicable, a variation in fees based on the rates usually charged by the Supplier in the ordinary course of its business; or
  - (iii) if neither paragraph (i) nor paragraph (ii) is applicable, a reasonable variation in fees having regard to the reasonable cost to the Supplier of effecting the variation.

### 6.5 When variation takes effect

A variation takes effect under this clause only if and when Council accepts the Variation Quotation under clause 6.4(a) or requires the Supplier to effect the variation under clause 6.4(c).

### 6.6 Extension

Council may by written notice to the Supplier, extend by a reasonable time the date on which a Deliverable is due.

### 6.7 Other variations

Except as set out in this clause, this Contract may only be varied by a legally binding agreement signed by or on behalf of each party.

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## 7. Intellectual property

### 7.1 New Material

Intellectual Property Rights in New Material are immediately assigned to and vest in Council as those rights are created.

### 7.2 Existing Material

Clause 7.1 does not affect the Intellectual Property Rights in Existing Material. The Supplier grants to Council a non-exclusive and non-transferable licence to exercise the Intellectual Property Rights in Existing Material (and to sublicense these rights).

### 7.3 Moral Rights

- (a) To the extent that the Supplier has Moral Rights in the Contract Material, the Supplier gives a Moral Rights Consent. To the extent that a person, other than the Supplier or Council Personnel, has Moral Rights in the Contract Material, the Supplier will obtain a Moral Rights Consent from that person, and provide it on request by and in a form acceptable to Council.
- (b) A "**Moral Rights Consent**" means a waiver of Moral Rights to the extent permitted by law and an unconditional consent to any act or omission in relation to the Contract Material by or on behalf of Council, its Personnel or any licensee or subsequent owner of copyright in the Contract Material.

### 7.4 Warranty

The Supplier warrants that the Contract Material and the acts of Council or a person authorised by Council in relation to the Contract Material, other than those prohibited by this Contract, do not infringe the Intellectual Property Rights or Moral Rights of any person. The Supplier warrants that it has the right to assign and grant the rights under this clause.

## 7.5 Inventions

The Supplier will:

- (a) immediately advise Council of any Inventions including full particulars of them; and
- (b) on request by Council, perform (at Council's expense) all acts which are necessary or reasonable to obtain protection for the Inventions and to assign to Council all of the Supplier's rights in relation to the Inventions and to vest title in them in Council, or its nominee, absolutely.

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## 8. Compliance

### 8.1 Compliance with applicable laws and policies

The Supplier will, in providing the Services, comply with and ensure its Personnel comply with:

- (a) applicable Regulatory Requirements; and
- (b) Council's policies (including privacy, harassment, discrimination, environmental, use of IT resources, workplace health and safety and security policies and any codes of conduct), when on Council's premises, lands for which Council has access rights, or when using Council Property.

### 8.2 Induction

If requested by Council, the Personnel of the Supplier will:

- (a) attend and complete any induction session required by Council; and
- (b) comply with all requirements communicated by Council in that induction session.

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## 9. Confidentiality

### 9.1 Confidential Information

Subject to clause 9.2 and 9.3, each party must not, during or after this Contract, disclose Confidential Information directly or indirectly to any third party.

### 9.2 Exceptions

A party may disclose Confidential Information:

- (a) to comply with the law, or any Regulatory Requirements;
- (b) to any of its Personnel, but only to the extent that it is necessary to disclose the information for use by the party in relation to this Contract;
- (c) to obtain the consent of a third party to a term of, or to an act under, this Contract; or
- (d) to enforce its rights or to defend a claim or action under this Contract.

### 9.3 Disclosure by Council

In addition to the disclosures permitted by clause 9.2, Council may disclose Confidential Information:

- (a) to any person for the purpose of the operations of the Council;
- (b) to any Minister and their personal and departmental advisers; and
- (c) where disclosure is required to be made in accordance with established governmental policies, procedures or for public accountability purposes.

### 9.4 Breach of confidentiality

If the Receiving Party becomes aware of a suspected or actual breach of this clause by the Receiving Party or an Additional Disclosee, the Receiving Party will immediately notify the Discloser and take reasonable steps required to prevent or stop the suspected or actual breach.

### 9.5 Use of Confidential Information

The Supplier will only use Council's Confidential Information for the purposes of this Contract.

### 9.6 Return of Confidential Information

The Supplier will return or destroy (at Council's direction) Materials containing Confidential Information when they are no longer required by the Supplier, or otherwise when directed by Council.

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**10. Privacy**

The Supplier acknowledges that it is a contracted service provider within the meaning of section 34 of the Information Privacy Act, and agrees in respect of all Personal Information collected, used, disclosed or otherwise handled by or on behalf of the Supplier or under or in connection with this Contract to:

- (a) comply, and ensure that all Personnel also comply, with:
  - (i) the Information Privacy Act, as if the Supplier or relevant Personnel was the Council; and
  - (ii) all other Privacy Laws,in respect of that Personal Information;
- (b) ensure Personal Information is protected against misuse, interference and loss and against unauthorised access, use, modification or disclosure;
- (c) not use or otherwise deal with Personal Information other than for the purposes of this Contract, unless required by law;
- (d) not disclose Personal Information without the written consent of Council, unless required by law;
- (e) ensure that only authorised Personnel have access to Personal Information and that Personnel will only be authorised for access on a need to know basis;
- (f) immediately notify Council if:
  - (i) it becomes aware or suspects there has been an unauthorised use, copying or disclosure of, or other security breach in relation to Personal Information, or
  - (ii) it becomes aware that a disclosure of Personal Information is, or may be, required by law;
- (g) not do anything with Personal Information that will cause the Council to breach any Privacy Law;
- (h) comply with any reasonable request, direction or inquiry made by the Council in relation to Personal Information or the Privacy Laws; and
- (i) at Council's request, arrange for its Personnel to execute a document in a form reasonably required by Council to protect Personal Information.

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**11. Council Property****11.1 Property of Council**

- (a) Council Property remains the property of Council and the Supplier will treat Council Property accordingly, including ensuring that Council Property, to the extent practicable, is marked, or otherwise signified as the property of Council.
- (b) Council Property is the Confidential Information of Council and not of the Supplier.

**11.2 Use of Council Property**

The Supplier will not use or modify Council Property except in the proper performance of this Contract or unless agreed in writing by both parties. Council may use or disclose Council Property for any purpose.

**11.3 Preservation of Council Property**

The Supplier will take reasonable care (including adhering to security procedures) of Council Property and with the preservation, installation or handling of it. The Supplier indemnifies Council for loss or destruction of, or damage to, Council Property that is caused by an act or omission of the Supplier or its Personnel and will promptly inform Council of damage to Council Property.

**11.4 Return of Council Property**

- (a) The Supplier will hand over to Council any Council Property, within 7 days after a request by Council. For electronic materials, the Supplier will provide them to Council in an editable form and on media, both as reasonably required by Council.
- (b) If the Supplier fails to deliver up all things in accordance with clause 11.4(a), Council may enter the Supplier's premises during normal business hours on not less than 12 hours' prior notice in order to collect such things and the Supplier will at all reasonable times permit or assist a person authorised by Council to do so.

## 11.5 Title

Title in New Material passes to Council on creation and title in other Deliverables passes to Council on delivery. This clause does not affect Intellectual Property Rights in the Deliverables.

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## 12. Indemnity

### 12.1 Indemnity by the Supplier

The Supplier indemnifies and will defend Council and its employees, agents and contractors ("**Those Indemnified**") against all claims, liabilities, losses, damages, costs and expenses (including legal fees, costs and disbursements) made or awarded against, or suffered or incurred by, Those Indemnified arising from or incurred in connection with:

- (a) a breach of clauses 8, 9, 10 or 11 of this Contract by the Supplier; or
- (b) an infringement or alleged infringement of a person's Intellectual Property Rights or Moral Rights by the Contract Material or arising from an act (which is not prohibited by this Contract) of Council, or a person authorised by Council, in relation to the Contract Material

except to the extent that the loss or damage is due to any negligent or unlawful act or omission or conduct by the Council or its Personnel.

### 12.2 Compliance with Council's directions

In conducting a claim, suit or action in respect of which the Supplier indemnifies Those Indemnified, the Supplier will, at the Supplier's expense, comply with Council's reasonable directions.

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## 13. Insurance

### 13.1 Insurance policies

The Supplier will maintain during the Term:

- (a) professional indemnity insurance of at least the amount specified in Schedule 1;
- (b) public liability insurance of at least the amount specified in Schedule 1;
- (c) workers' compensation insurance as required by law; and
- (d) any additional or increased insurance specified in the Contract Order,

with a reputable insurer which is reasonably satisfactory to Council. The Supplier will maintain any claims-made insurance policy for 3 years after the Term.

### 13.2 Evidence of insurance

The Supplier will provide Council with a copy of the insurance policies (if requested) and certificates of currency within 7 days after:

- (a) the date of this Contract;
- (b) a renewal or amendment of a policy; or
- (c) a request by Council.

### 13.3 Notification

Council may request the Supplier to notify an insurer of an event arising in connection with this Contract. If the Supplier fails to provide Council with evidence of that notification within 14 days after a request by the Council, Council may notify the insurer on the Supplier's behalf.

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## 14. Audit

- (a) The Supplier will, upon 7 days' notice during normal business hours or as otherwise agreed, permit and provide persons ("**Auditors**") nominated by Council supervised access to the Supplier's premises, books, records, documents, computer systems, equipment and other property to verify compliance by the Supplier with its obligations under this Contract and its likely capacity to continue to comply with its obligations in the future. Council is not entitled to use this right of access for purposes that are not related to this Contract.
- (b) The Auditors may make copies of books, records, documents and other materials, and the Supplier will provide the Auditors with the necessary facilities to enable them to do so.

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**15. Dispute resolution****15.1 Dispute resolution process**

- (a) The Supplier and Council will adhere to the following procedure in respect of any dispute arising out of or in connection with this Contract prior to either of them commencing litigation or other external dispute resolution procedure.
- (b) The Council Representative or Supplier Representative may notify the other in writing of the occurrence of a dispute and they will meet within 7 days after receipt of the notice at a mutually convenient time and place or by telephone conference.
- (c) If after 7 days after a notice is issued under (b), the Council Representative and Supplier Representative cannot resolve the dispute to their satisfaction as agreed in writing, then either of them may give notice of the inability to resolve such dispute to their respective nominated Executives. Within 14 days after receipt of the notice, the Executives will meet (at a mutually convenient place or by telephone conference) and attempt to resolve the dispute.
- (d) If after 30 days after a notice is issued under (c) the Executives have not resolved the dispute to their satisfaction as agreed in writing then either party may proceed in accordance with its remedies at law.
- (e) The parties may agree to escalate the dispute to any level at any time, or to attempt to resolve the dispute through mediation.

**15.2 Continuity during dispute**

Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this Contract.

**15.3 Urgent interlocutory relief**

Nothing in this clause prevents either party from commencing court proceedings relating to any dispute arising from this Contract at any time where that party seeks urgent interlocutory relief.

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**16. Termination****16.1 Termination by Council for cause**

Council may terminate any Contract Order or this Contract, immediately by notifying the Supplier if:

- (a) the Supplier is in breach of any term of this Contract and has failed to remedy the breach within 21 days after notice by Council;
- (b) the Supplier has in the sole opinion of Council, committed an unacceptable breach of a requirement under clause 8.1(b);
- (c) the Supplier becomes subject to any form of insolvency or bankruptcy administration;
- (d) the Supplier (where the Supplier is an individual) or a member of the Supplier's board of directors (where the Supplier is a company), the Supplier Representative or one of the Supplier's Personnel involved in supplying the Services, is convicted of, or is being investigated or prosecuted for, any offence involving fraud or dishonesty, or any other offence which is punishable by imprisonment; or
- (e) this Contract is or becomes contrary to any law.

**16.2 Termination by the Supplier for cause**

The Supplier may terminate this Contract immediately by notifying Council if Council:

- (a) is in breach of any terms of this Contract and has failed to remedy the breach within 30 days after notice by the Supplier; or
- (b) becomes subject to any form of insolvency or bankruptcy administration.

**16.3 Effect of termination or expiry**

- (a) Termination or expiry of this Contract will not affect the operation of clauses 5.5, 7, 9, 10, 11.4, 12, 13, 14, 15, 17, and 21 or any rights or remedies already accrued to either party under, or in respect of any breach of, this Contract.
- (b) In addition, unless specifically stated, termination or expiry of this Contract does not affect any other contract between the parties.



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## 17. Transition Out Services

### 17.1 Services provided by the Supplier

On request by Council, the Supplier will:

- (a) provide Council or its nominee with cooperation, assistance, advice, explanations and information reasonably requested by Council;
- (b) do acts and things and execute deeds, documents and instruments as are necessary or desirable; and
- (c) comply with Council's reasonable directions,

to ensure the completion and continuity of the Services (**Transition Out Services**).

### 17.2 Examples of Transition Out Services

Without limiting the generality of clause 17.1, the Transition Out Services may include:

- (a) developing or modifying, together with Council, a plan for the continuity and orderly transition of responsibility for the Services to Council or another person;
- (b) continuing to perform, for a reasonable period (as determined by Council) any or all of the Services and charge prices (if any) at the rates set out in the applicable Contract Order;
- (c) providing all cooperation, assistance, advice, access to equipment and systems, explanations, information, documentation, training, details of data formats and fields (including database schema), reasonably necessary or desirable in order to ensure the efficient continuity and transition;
- (d) transferring data, documentation and records to Council or its nominee; and
- (e) using its best endeavours to cause any subcontractor of the Supplier or other third parties which are utilised by the Supplier in the provision of the Services, to enter into agreements with Council or its nominee on terms and conditions no less favourable than those offered to the Supplier.

### 17.3 Time

Unless otherwise agreed between the parties the time required to carry out the Transition Out Services will be a reasonable time having regard to the amount of work required by the Supplier.

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## 18. Work health and safety

### 18.1 General obligations

The Supplier must ensure:

- (a) that it and its Personnel, comply with their work health and safety duties and obligations including compliance with the WHS Legislation;
- (b) that Personnel performing the Services are appropriately trained, inducted, licenced, experienced, competent and qualified to perform the Services;
- (c) the health and safety of Council Personnel are not put at risk or affected by the Supplier or its Personnel in performance of the Services;
- (d) that it and its Personnel do not do anything or fail to do anything that causes Council to be in breach of the WHS Legislation or obstructs, hinders or interferes with any action Council believes is reasonably required to comply with the WHS Legislation;

### 18.2 Incident reporting

- (a) The Supplier must report to Council:
  - (i) any breach of the WHS Legislation, as soon as practicable; and
  - (ii) any notifiable incident as defined by the WHS Legislation, within the timeframe required by the WHS Legislation (as if Council was the regulator for the purposes of the WHS Legislation).
- (b) If any notifiable incident occurs in relation to the Services, the Supplier is responsible for notifying the regulator in accordance with the WHS Legislation.
- (c) Council reserves its rights to:
  - (i) require the Supplier to undertake an investigation in relation to any notifiable incident;

- (ii) conduct its own investigation in relation to any notifiable incident, in which case the Supplier must cooperate with Council and provide any assistance Council requires.
- (d) On request from Council, the Supplier must provide to Council as soon as practicable, copies of any investigation report or other information relevant to any incident, including any notices or correspondence issued by the regulator.

### 18.3 Mutual obligations

- (a) To the extent the Supplier and Council have a duty in relation to the same matter under WHS Legislation, so far as reasonably practicable, the parties must consult, cooperate and coordinate activities with each other and any other person who has a duty in relation to the same matter under the WHS Legislation.
- (b) The Supplier and Council agree that any dispute about work health and safety, including disputes about compliance with WHS Legislation or this clause 19, will be managed under clause 15.

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## 19. Relationship

### 19.1 Parties' relationship

The relationship between Council and the Supplier is that of principal and independent contractor. Nothing in this Contract will be taken as establishing the Supplier or any Supplier Personnel as an employee or agent of Council without the express written authority of Council.

### 19.2 No claims in respect of employee entitlements

The Supplier and its Personnel have no claim upon Council in respect of:

- (a) remuneration to employees (if any) including superannuation, leave, other entitlements, taxes or duties;
- (b) claims under workers' compensation, industrial relations or anti-discrimination legislation; and
- (c) claims under any other law affecting or relating to the relationship between an employer and employee.

### 19.3 Payment of tax

The Supplier is solely responsible for payment of any taxes imposed on the Supplier arising directly or indirectly from the provision of the Services (including, without limitation, income tax). Council may deduct instalments of tax from payments to the Supplier if required to do so under tax legislation. This does not constitute an admission or representation by Council that the Supplier or any of its Personnel are an employee of Council.

### 19.4 No authority to bind Council

The Supplier does not have the authority to bind Council by contract or otherwise. The Supplier will not represent to any party that the Supplier is an employee or agent of Council.

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## 20. Assignment by Council

Council may assign without the consent of the Supplier, the benefit or obligations of this Contract to any present or future corporation or other entity with which the Council is consolidated, amalgamated, corporatized or merged into or to which all or substantially all of its assets are transferred, and in that event Council will notify the Supplier of the assignment.

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## 21. General

### 21.1 Assignment

The Supplier will not transfer or assign its rights under this Contract without the prior consent of Council (which will not be unreasonably withheld).

### 21.2 Conflicts of interest

The Supplier warrants that to the best of its knowledge, information and belief, no conflict of interest exists or is likely to arise in the performance of this Contract, and will notify Council if any conflict of interest arises.

### 21.3 Disclosure

If the Supplier becomes aware of a matter which is likely to affect materially the ability of the Supplier to perform this Contract, it will immediately notify Council of it.

### 21.4 Entire agreement

This Contract constitutes the entire agreement between Council and the Supplier in relation to its subject matter.

### 21.5 Force majeure

If a party is prevented from or delayed in performing an obligation by Force Majeure, and promptly acts to mitigate or remove the Force Majeure and its effect, then the obligation is suspended during, but for no longer than, the period the Force Majeure continues and any further period that is reasonable in the circumstances.

### 21.6 Further assurance

Each party will promptly do further acts and execute and deliver further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this Contract.

### 21.7 Governing law and jurisdiction

This Contract is governed by and construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

### 21.8 Indemnities

- (a) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Contract.
- (b) It is not necessary for Council to incur expense or to make any payment before enforcing a right of indemnity conferred by this Contract.
- (c) The Supplier must pay on demand any amount it must pay under an indemnity in this Contract.

### 21.9 Interpretation

In this Contract:

- (a) the "Description" section and clause headings are inserted for convenience only and do not affect interpretation;
- (b) to the extent of any inconsistency between clauses 1 to 21 and a Contract Order, clauses 1 to 21 prevail; and
- (c) unless the context otherwise requires:
  - (i) a reference to a "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (ii) words importing the singular include the plural and vice versa;
  - (iii) words importing a gender include other genders;
  - (iv) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (v) "**includes**" in any form is not a word of limitation; and
  - (vi) a reference to "\$" or "**dollar**" is to Australian currency and an obligation to pay money is an obligation to pay in Australian dollars.

### 21.10 No commissions

The Supplier will ensure that none of:

- (a) the Supplier;
- (b) a Related Body Corporate of the Supplier; or
- (c) the Personnel of the Supplier or of a Related Body Corporate of the Supplier,

receives any money, payment or thing of value (including any disclosed or undisclosed commission, rebate, allowance or other benefit) relating in any way to the performance of any of the Services unless approved in writing by Council, other than payment of salaries, wages and entitlements in the ordinary course of business by an employer to its employees.

### 21.11 No exclusivity

The Supplier's appointment is non-exclusive. Council may acquire similar services from other persons or perform similar services itself.

**21.12 Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Contract:

- (a) must be in writing;
- (b) must be addressed as set out on the cover page (or as otherwise notified by a party to the other party from time to time);
- (c) must be signed by (or, in the case of email, sent by) the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by email, in accordance with clause 21.12(b) except that communications pursuant to clause 16 cannot be sent by email;
- (e) subject to clause 21.12(f), is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the fourth day after the date of posting;
  - (ii) (in the case of email) when the email enters the information system of the addressee;
  - (iii) (in the case of prepaid post sent to an address in another country) on the seventh day after the date of posting by airmail; and
  - (iv) (in the case of delivery by hand) on delivery; and
- (f) if taken to be received under clause 21.12(e) on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

**21.13 Public announcements**

The Supplier will not issue or make statements or comments to the public, the press or other persons or authorise a person to do those things, regarding this Contract or matters arising in relation to it (including referring to Council as a reference site for the Supplier) without Council's consent, which it will not unreasonably withhold.

**21.14 Set-off**

Council may set off money due to Council from the Supplier, or damages, costs or expenses recoverable by Council from the Supplier, against money due to the Supplier under this Contract or another contract between the parties.

**21.15 Severability**

If any part of this Contract is or becomes illegal, void or unenforceable, this does not invalidate the rest of this Contract.

**21.16 Subcontracting**

The Supplier will not subcontract the Services without obtaining the prior approval of Council. The Supplier is responsible for the acts or omissions of its subcontractor as if they were the acts or omissions of the Supplier. The Supplier will provide Council with copies of its contracts with subcontractors upon request.

**21.17 Supplier not to employ Council employees**

The Supplier will not, without the prior written consent of Council, during and for 12 months after the Term, engage, employ or seek to engage or employ (including via a Related Body Corporate) any person who was an employee of Council during the Term or induce another person to do those things.

**21.18 Warranties**

The Supplier warrants that prior to the execution of this Contract and any Contract Order, it did not engage in any unlawful behaviour or make any misrepresentations in relation to:

- (a) the tender process conducted for the Services (if applicable); or
- (b) the negotiation and execution of this Contract or any Contract Order.

**21.19 Waiver**

Failure or omission by a party to require strict or timely compliance with any provision of this Contract will not affect any right of that party to remedies it may have in respect of any breach of a provision.