

Conditions of Contract

vA01 March 2015



**For the provision of Goods
and/or Services – Section 5**

Table of contents

1 Definitions and Interpretation 3

2 Formation of Contract..... 7

3 Contract Term 8

4 Transferability / Portability of the Contract 8

5 Role of the City Contract Representative (CCR) 8

6 Provision of the Goods and/or Services 9

7 Requirements for Goods and/or Services 9

8 Contractor’s Obligations 10

9 Performance of Services by Key Personnel 11

10 List of Goods and/or Services and Pricing 11

11 Payment..... 12

12 Recipient Created Tax Invoice 13

13 General right of set-off by the principal 13

14 GST 13

15 Performance Guarantee..... 14

16 Financial Security 15

17 Commissions, incentives and collusion 15

18 Conflict of interest..... 17

19 Intellectual property rights and moral rights..... 17

20 Confidentiality..... 19

21 Privacy and Personal Information 19

22 Security and access 20

23 Liability 20

24 Indemnity..... 21

25 Insurance..... 21

26 Licensing requirements..... 22

27 Industrial relations and work health and safety 22

28 Resolution of disputes..... 23

29 Variation 23

30 Suspension of payment..... 24

31 Suspension 24

32 Termination 25

33 Notices..... 26

34 Right to information and disclosure..... 27

35 General provisions 27

1 Definitions and Interpretation

1.1 Definitions

In these Conditions of Contract, unless the context otherwise requires, the following definitions will apply:

‘Additional Provisions/Deviations’ means the departures from and additions to the Specifications or Conditions of Contract and/or any additional terms and conditions that are:

- (a) specified in Section 5 of the Invitation to Offer; and/or
- (b) agreed between the Principal and Contractor as specified in Schedule C;

‘Approved Expenses’ means the Contractor’s expenses (if any) which have been approved by the Principal prior to any expenditure being incurred, as specified in item 3 of Schedule A;

‘Business Day’ means between 8.00am and 4.40pm on a day other than a Saturday, Sunday or public holiday at the Principal’s address;

‘Commencement Date’ means:

- (a) the date specified in item 4 of Schedule A;
- (b) the date otherwise agreed in writing between the Parties; or
- (c) if neither (a) nor (b) apply, the date on which the Contractor receives the Contract Header;

‘Completion Date’ means the date specified in item 5 of Schedule A or otherwise agreed in writing between the Parties, and includes an extension of that date in accordance with Clause 28;

‘Conditions of Contract’ means these terms and conditions of Contract and includes:

- (a) the Schedules as contained in ‘Conditions of Contract (Schedules) Version A01 – dated March 2015 which is available from the City of Gold Coast website: cityofgoldcoast.com.au and any Additional Provisions;

‘Confidential Information’ means information of, or supplied by, the Principal, that:

- (a) is by its nature confidential;
- (b) is designated as confidential, including the information specified in item 4 of Section 1 of the Invitation to Offer (if applicable); or
- (c) the Contractor knows or ought to know is confidential; and includes information;
- (d) comprised in or relating to any Intellectual Property Rights of the Principal;
- (e) concerning the internal management and structure, personnel, processes and policies, commercial operations, financial arrangements or affairs of the Principal;
- (f) that is of actual or potential commercial value to the Principal; and
- (g) relating to the clients or suppliers of the Principal; but does not include information that:
 - was already in the possession of the Contractor and not subject to an obligation of confidentiality, is lawfully received from a third party or independently developed by the Contractor; or is public knowledge other than through a breach of an obligation of confidentiality;

‘Conflict of Interest’ means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under the Contract fairly and objectively;

‘Contract’ means a legally binding contract as agreed between the Principal and the Contractor constituted by the Documents specified in Clause 2.1;

‘Contract Header’ means an order or any other Document that is:

- (a) substantially in the form of Schedules A, B, C, D and E or any additional Schedules included by the Principal
- (b) in another form that is acceptable to the Principal, (e.g. a letter of acceptance)
- (c) by which the Principal accepts the Contractor’s Offer to supply the Goods and/or perform the Services as specified in the Contract.

‘Contract Material’ means New Contract Material and Existing Contract Material;

‘Contract Term’ means the term of the Contract as specified in item 5 of Schedule A;

‘Contractor’ means the entity specified in item 2 of Schedule A;

‘Correctly Rendered Tax Invoice’ means an invoice:

- (a) in which the amount claimed is due for payment in accordance with the Contract;
- (b) in which the amount claimed is correctly calculated in accordance with the Contract;
- (c) which correctly identifies the Goods and/or Services supplied;
- (d) which, if GST applies is a valid tax invoice under the GST Legislation; and
- (e) which complies with Clause 11.4;

‘City Contract Representative (CCR)’ means the person nominated by the Principal to oversee and supervise the technical requirements of the Specifications relating to the Contract, as specified in item 8 of Schedule A, or other person nominated from time to time by the Principal as the City Contract Representative;

‘Deliverables’ means the Goods and/or Services as specified in the Contract Header;

‘Delivery’ means the transfer of possession of the Goods to the Principal, at the Principal’s Site or other delivery address notified by the Principal to the Contractor in writing;

‘Delivery Date’ means the date specified in item 6 of Schedule A in which the Goods will be supplied and/or the Services will be performed by the Contractor to the Principal;

‘Delivery Period’ means the period specified in item 6 of Schedule A in which the Goods will be supplied and/or the Services will be performed by the Contractor to the Principal;

‘Document’ includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; or
- (d) a document in electronic form;

‘Existing Contract Material’ means any material that:

- (a) exists at the Commencement Date; or
- (b) is produced after the Commencement Date, independently of the Contract; and which is provided in connection with or forms part of any Deliverable;

‘Financial Security’ means the unconditional financial security in a form set out in the ‘Conditions of Offer’ document which will be attached as a Schedule of the Conditions of Contract.

‘Goods’ means the material, plant, item or equipment as specified in Schedule B (if applicable);

‘GST’ means a goods and services tax imposed by or through the GST Legislation;

‘GST Amount’ means the amount of GST payable in respect of any taxable supply under the Contract, calculated at the rate of GST applicable at the time;

‘GST Legislation’ means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related tax imposition law (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such laws;

‘Intellectual Property Rights’ includes all copyright, trade mark, design, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time, whether created before, on or after the Commencement Date, but excludes Moral Rights;

‘Invitation to Offer’ means the documentation issued by the Principal, inviting offers for the provision of the Goods and/or Services (if applicable);

‘Key Personnel’ means the representatives of the Contractor specified in item 7 of Schedule A (if applicable);

‘Moral Rights’ means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Cth)*, and rights of a similar nature anywhere in the world whether existing before, on or after the Commencement Date;

‘New Contract Material’ means any material that is created, written or otherwise brought into existence by or on behalf of the Contractor in the course of performing the Contract;

‘Notice’ means a notice in writing under or in connection with the Contract from one Party to the other Party;

‘Occurrence’ means either a single occurrence, or a series of occurrences which arise out of or in connection with the same circumstances;

‘Offer’ means the offer submitted by the Contractor in response to the Invitation to Offer; or a request for quote by the Principal or some other form of offer;

‘Party’ means each of the Principal and the Contractor;

‘Performance Guarantee’ means the performance guarantee, in a form set out in the ‘Conditions of Offer’ which will be attached as a Schedule of the Conditions of Contract.

‘Personal Information’ is information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

‘Price’ and **‘Pricing’** means the itemised prices and/or the price calculated by reference to a schedule of rates payable by the Principal for a Deliverable, as specified in Schedule B, and (unless otherwise specified in Schedule B) is inclusive of packaging, handling, freight, GST and all other duties, taxes and charges;

‘Principal’ means the Gold Coast City Council, also referred to as **‘the City’** or City of Gold Coast (ABN: 84 858 548 460) specified in item 1 of Schedule A;

‘Purchase Order’ means an order for the supply of Goods and/or Services placed by Principal;

‘Recipient Created Tax Invoice’ **‘(RCTI)’** has the meaning prescribed in the GST Legislation;

‘RCTI Agreement’ means an agreement in the form provided by the Principal pursuant to which the Parties have agreed that the Principal will issue Recipient Created Tax Invoices in respect of all Goods and/or Services;

‘Records’ means all material including but not limited to books, Documents, information, computer software, equipment, and data stored by any means disclosed, or made available, by the Principal to the Contractor in connection with the performance of the Contract and includes a copy of such material;

‘Schedule’ means the schedules which are part of the Contract;

‘Services’ means the services as specified in Schedule B (if applicable);

'Site' means the place or places as specified in item 9 of Schedule A where the Goods and/or Services are to be supplied, installed, delivered and/or maintained;

'Specifications' means the detailed description of the Principal's requirements as specified in Section 3 of the Invitation to Offer (if applicable); or as specified, attached or referenced in the Contract Header;

'the City' has the same meaning as **'Principal'**.

'Work Health and Safety' means any and all applicable occupational health and safety, work health and safety, dangerous goods, electricity safety or environmental protection related legislation together with associated regulations that are relevant to the goods/ services and the safe manner in which those goods/services are provided or supplied.

1.2 Interpretation

In these Conditions of Contract, the index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of these Conditions of Contract.

1.3 The following rules apply in interpreting these Conditions of Contract, unless the context otherwise requires:

- (a) words importing a gender include the other gender;
- (b) words in the singular include the plural and vice versa;
- (c) all dollar amounts refer to Australian currency;
- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
- (f) a party includes its executors, administrators, liquidators, successors and permitted assigns;
- (g) 'consent' means prior written consent;
- (h) 'in writing' means either by letter, email or facsimile;
- (i) a reference to a clause, attachment or annexure is a reference to a clause, attachment or annexure to these Conditions of Contract;
- (j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Parties agree otherwise;
- (k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (l) a reference to a clause is a reference to all of its sub-clauses;
- (m) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated; and
- (n) a Schedule forms part of the document to which it is attached.

2 Formation of Contract

2.1 The following Documents constitute the entire Contract between the Principal and Contractor:

- (a) the Contract Header (including Additional Provisions/Deviations);
- (b) these Conditions of Contract;
- (c) Specifications;
- (d) Offer (to the extent accepted under the Contract Header); and
- (e) any other Document, in whole or in part, forming part of the Contract, as agreed in writing between the Principal and Contractor.

- 2.2 Subject to Clause 2.3, in the event of any conflict between the Documents specified in Clause 2.1, the order of precedence to resolve the conflict will be in the above order.
- 2.3 Any Additional Provisions which purport to take away or reduce the entitlements that would otherwise be provided to the Principal under Clause 33 are null and void.
- 2.4 The contract supersedes all prior representations, agreements, statements and understandings between the Principal and Contractor, whether oral or in writing relating to the subject matter of the Contract.

3 Contract Term

- 3.1 The Contract Term will commence on the Commencement Date and, unless terminated sooner in accordance with Clause 32, will continue until the earlier of the:
 - (a) date when all Deliverables have been provided by the Contractor to the Principal and the Principal has given Notice to the Contractor that the Deliverables have been supplied and completed in accordance with the Contract; or
 - (b) Completion Date.

4 Transferability / Portability of the Contract

- 4.1 Notwithstanding any provision of the Contract, the Principal is entitled by giving a Notice to the Contractor, to freely transfer its rights and responsibilities, including the use of and title to any Goods and/or Services under the Contract, either in whole or in part, to another Queensland Local Government authority or Queensland Government Body that is not part of the same legal entity as the Principal, but only as a consequence of a Machinery of Government Change.
- 4.2 If Clause 4.1 applies the Contractor must execute a deed of novation in the form provided by the Principal, and return it to the Principal within five (5) Business Days from receipt of a Notice from the Principal advising of the transfer and requiring the Contractor to execute the deed of novation.
- 4.3 If the Goods and/or Services are transferred in accordance with Clause 4.1, the Contractor:
 - (a) must immediately notify the Principal of any reduction in costs, including but not limited to volume discounts, which may occur; and
 - (b) must notify the Principal of any proposed additional fees for any additional costs directly incurred as a result of the provision of additional overall Goods and/or Services.
- 4.4 The Contractor agrees to negotiate with the Principal in good faith to vary or consolidate the Contract to:
 - (a) adjust the Price as a result of the notification of the matters raised in Clause 4.3; and/or
 - (b) comply with any specific requirements of the Principal to which its rights and responsibilities, including the use and title to any Goods and/or Services are, or will be, freely transferred in accordance with Clause 4.1.

5 Role of the City Contract Representative (CCR)

- 5.1 The City Contract Representative is the Principal's representative responsible for evaluating contractor performance. The City Contract Representative is responsible for monitoring the day to day Work Health and Safety (WHS) performance of Contractors, reviewing and assuring WHS obligations. The City Contract Representative is not authorised either actually or ostensibly to amend the Contract or enter into any Contract on behalf of the Principal.
- 5.2 The Contractor must:
 - (a) liaise with and report to the City Contract Representative about the supply of the Goods and/or performance of the Services;

- (b) attend meetings with, or provide briefings to the City Contract Representative, as required by the CCR from time to time; and
- (c) promptly comply with any request or direction given by the City Contract Representative, in accordance with the Contract, about the supply of the Goods and/or the performance of the Services.

6 Provision of the Goods and/or Services

- 6.1 The Contractor agrees to supply the Goods and/or perform the Services, as an independent contractor, for the Contract Term in a competent and professional manner.
- 6.2 The Contractor must provide the Goods and/or Services:
 - (a) on the Delivery Date or during the Delivery Period;
 - (b) by the milestone dates (if milestones are specified in item 10 of Schedule A);
 - (c) by the Completion Date; and
 - (d) if the Services are periodic or recurrent Services, at the times, intervals and frequency as specified in item 11 of Schedule A.
- 6.3 In supplying the Goods and/or performing the Services, the Contractor must:
 - (a) inform itself of the Principal's requirements in respect of the Goods and/or Services;
 - (b) consult regularly with the Principal and/or City Contract Representative; and
 - (c) exercise due skill, care and diligence.
- 6.4 The Contractor must ensure that:
 - (a) the supply of the Goods and/or performance of the Services are in accordance with any key performance indicators or performance standards specified in item 12 of Schedule A;
 - (b) all Goods and/or Services are of a high quality, professional standard and are fit for purpose; and
 - (c) provide all labour, plant and materials required to provide the Goods and/or perform the Services.
- 6.5 The Principal will provide the assistance (if any) described in item 13 of Schedule A to the Contractor.

7 Requirements for Goods and/or Services

- 7.1 All Goods and/or Services provided by the Contractor to the Principal in accordance with the Contract, unless otherwise specified by the Principal, must comply in all aspects with:
 - (a) the terms of the Contract, including but not limited to the Specifications;
 - (b) applicable legislative requirements as required by the Principal;
 - (c) any applicable Government code, policy or guideline;
 - (d) any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant current International Standard (ISO),
 - (e) including any that may be introduced or varied during the Contract Term, which govern the provision of the Goods and/or Services;
 - (f) any applicable licensing and/or registration requirements; and
 - (g) all applicable City of Gold Coast policies and procedures.

- 7.2 All Goods supplied by the Contractor to the Principal must be in a new and unused condition and of recent origin, unless otherwise specified in item 14 of Schedule A.
- 7.3 All Goods supplied by the Contractor to the Principal must be suitably packed and otherwise appropriately prepared for transportation.
- 7.4 Risk and title in the Goods (free of all encumbrances and interests) will pass to the Principal upon Delivery.
- 7.5 Without limiting the Contractor's obligations, the Contractor must ensure that any manufacturer's or Contractor's warranty that applies to the Goods will be transferred to the Principal, at no cost to the Principal.
- 7.6 Without limiting any other rights the Principal may have, where any part of the Goods are not supplied in accordance with the Contract, the Principal may at its entire discretion, by Notice to the Contractor:
- (a) reject the Goods, or part of the Goods;
 - (b) require the Contractor to promptly supply or supply again the Goods, or part of the Goods; and/or
 - (c) require the Contractor to promptly correct any defect or omission.
- 7.7 Where the Principal rejects Goods in accordance with Clause 7.6:
- (a) the Principal is not required to pay for the rejected Goods, and any amounts paid by the Principal in respect of the rejected Goods must be refunded by the Contractor within ten (10) Business Days of the Notice given in accordance with Clause 7.6; and
 - (b) the Principal may either return any rejected Goods to the Contractor or by Notice to the Contractor, require the Contractor to remove the rejected Goods within five (5) Business Days of receipt of the Notice by the Contractor.
- 7.8 The Contractor must meet all costs of and incidental to the discharge of its obligations in accordance with Clauses 7.6 and 7.7 (b), including, but not limited to, any packaging, handling, storage, freight, disassembly and reassembly costs.

8 Contractor's Obligations

- 8.1 The Contractor will be responsible for the supply and/or performance of all personnel and/or equipment, necessary for the proper supply of the Goods and/or performance of the Services.
- 8.2 When supplying the Goods and/or performing the Services, the Contractor must:
- (a) take all measures to protect people and property;
 - (b) avoid unnecessary interference with the passage of people and vehicles; and
 - (c) prevent nuisance and unreasonable noise and disturbance.
- 8.3 The Contractor:
- (a) warrants that it has the necessary skills, expertise and licences (if required) to complete the Contract in accordance with its obligations under the contract; and
 - (b) will ensure that its officers, employees, agents and sub-contractors have the necessary skills, expertise and licences (if required) to perform those obligations of the Contract, which are allocated to them by the Contractor.

9 Performance of Services by Key Personnel

- 9.1 The Services must be performed by the Key Personnel as specified in item 7 of Schedule A, unless the Principal has consented otherwise. A person replacing one of the Key Personnel, with the Principal's consent, will be considered to be one of the Key Personnel during the person's engagement to provide the Services.
- 9.2 The Contractor must ensure that the Key Personnel are competent and have the necessary skills and expertise to perform the Services on which they will be engaged.
- 9.3 The Contractor must not, without consent from the Principal:
- (a) allow Key Personnel to delegate any part of the Services; or
 - (b) allocate tasks not connected with the Services to any of the Key Personnel who are engaged on the Services on a full time basis, until the Services allocated to that person have been completed by that person.
- 9.4 If any of the Key Personnel are not available to perform any of the Services allocated to them, the Contractor must immediately:
- (a) notify the Principal of the circumstances; and
 - (b) if so requested by the Principal, arrange for replacement of that person with a person satisfactory to the Principal, at no cost to the Principal.
- 9.5 The Principal may, on reasonable grounds, give Notice to the Contractor to remove any Key Personnel from working on the Services. Upon receipt of such Notice under this Clause 9.5, the Contractor must, at no cost to the Principal, promptly remove and replace the Key Personnel mentioned in the Notice with a person approved by the Principal.

10 List of Goods and/or Services and Pricing

- 10.1 If the Goods and/or Services are provided in accordance with the Contract, the Principal will:
- (a) upon receipt of a Correctly Rendered Tax Invoice, pay the Contractor the Price; and
 - (b) reimburse the Contractor for the Approved Expenses, after the Approved Expenses have been incurred by the Contractor.
- 10.2 The Principal will not be liable to reimburse the Contractor for expenses other than the Approved Expenses as specified in item 3 of Schedule A (if any), unless the Contractor has obtained the Principal's consent.
- 10.3 Where the Contractor seeks to increase or decrease the Price for the Goods and/or Services to take into consideration:
- (a) movements in the relevant published Australian Bureau of Statistics (ABS) Index (e.g. consumer price or producer price index), as it affects the Goods and/or Services, if specified in Schedule D;
 - (b) other factors as it affects the Goods and/or Services, if specified in Schedule B; and/or
 - (c) any variation in any tax, duty or charge as it affects the Goods and/or Services;
 - (d) the Contractor must give Notice to the Principal in accordance with Clause 29 and such Notice must include evidence to substantiate the basis of the Price increase or decrease.

10.4 If the Contractor's request to increase or decrease the Price for the Goods and/or Services is rejected by the Principal, the Contract will remain unvaried.

11 Payment

11.1 The Principal is not obliged to pay the Contractor for any part of the Goods and/or Services until the:

- (a) Contractor has delivered to the Principal the Deliverables;
- (b) Principal has certified that the Deliverables specified in the Correctly Rendered Tax Invoice have been supplied and/or performed in accordance with the Contract; and
- (c) Contractor has provided the Principal a Correctly Rendered Tax Invoice.

11.2 Despite any previous certification in accordance with Clause 11.1(b) the Contractor must promptly supply or supply again, any part of the Goods and/or promptly perform or perform again, any part of the Services, certified by the Principal as not having been supplied and/or performed in accordance with the Contract. The Principal may, without limiting any other rights it may have, defer payment for that part of the Goods and/or Services until the Principal is satisfied that the Goods and/or Services have been supplied or supplied again and/or performed or performed again, in accordance with the Contract.

11.3 The Price will be payable in the manner specified in Schedule B. The Contractor must submit a Correctly Rendered Tax Invoice to the Principal, and the Principal will pay the Correctly Rendered Tax Invoice at the times specified in Schedule B.

11.4 The Correctly Rendered Tax Invoice submitted by the Contractor must:

- (a) specify the Goods and/or Services and the name of the City Contract Representative (if applicable);
- (b) identify the Purchase Order number and item numbers pertaining to that Purchase Order (if applicable);
- (c) include sufficient details to allow the Principal to assess progress against milestones (if applicable);
- (d) for Services carried out on a time basis, be supported by records of time spent by individuals involved in the Services and verified by the Contractor;
- (e) specify contract number;
- (f) itemise Approved Expenses claimed; and
- (g) identify any discounts given.

- 11.5 Upon receipt of a Correctly Rendered Tax Invoice, the Principal may require the Contractor to provide additional information or documentary evidence to enable the Principal to determine whether or not an amount is payable.
- 11.6 Unless otherwise specified in Schedule B, the Principal will make payment within 30 days after the Contractor has submitted to the Principal a Correctly Rendered Tax Invoice. If additional information or evidence required by the Principal in accordance with Clause 11.4 is accepted by the Principal, payment will be made 30 days after receipt of the additional information or evidence.
- 11.7 The Contractor must not charge, or pass on to, the Principal any fees, costs or charges associated with the use of the corporate credit card or electronic facility.

12 Recipient Created Tax Invoice

- 12.1 This clause applies where the Contractor is registered for GST.
- 12.2 The parties agree that:
- (a) The Principal can issue tax invoices in respect of the Goods and/ or Services provided by the Contractor under or in association with this Contract; and
 - (b) The Contractor will not issue tax invoices in respect of these Goods and/ or Services.
- 12.3 The Principal warrants that it is registered for GST when it enters into this Contract and that it will notify the Contractor if it ceases to be registered.
- 12.4 The Contractor warrants that it is registered for GST when it enters into this Contract and that it will notify the Principal immediately if it ceases to be registered.
- 12.5 Terms defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* have the same meaning when used in this clause.

13 General right of set-off by the principal

- 13.1 The Principal may deduct from any moneys due to the Contractor any sum which is payable by the Contractor to the Principal whether or not the Principal's right to payment arises by way of damages, debt, restitution or otherwise and whether or not the factual basis giving rise to the Principal's right to payment arises out of the Contract, any other contract, or is independent of any contract.
- 13.2 If the moneys payable to the Contractor are insufficient to discharge the liability of the Contractor to pay such sum to the Principal, the Principal may have recourse to any Financial Security provided in accordance with Clause 16.
- 13.3 Nothing in this clause will affect the right of the Principal to recover from the Contractor the whole of such moneys or any balance that remains owing.

14 GST

- 14.1 The Price is exclusive of GST and:
- (a) the Contractor must remit the GST Amount to the Commissioner of Taxation in accordance with the GST Legislation.
- 14.2 Where the amount of GST collected by the Contractor under the Contract differs, for any reason, from the amount of GST paid or payable by the Contractor to the Commissioner of Taxation, including but not limited to:
- (b) an amendment to the GST Legislation;
 - (c) the issue of a ruling or advice by the Commissioner of Taxation;
 - (d) a refund of GST to the Contractor in respect of any supply made under the Contract; or

(e) a decision of any tribunal or court, then the Contractor must issue an appropriate GST adjustment note and the difference must be paid by or to the Principal as the case may be.

14.3 The Parties agree to exchange with each other such information as may be necessary to enable each Party to accurately assess its rights and obligations under this clause.

15 Performance Guarantee

15.1 The Contractor must, if specified in item 15 of Schedule A, or if requested by the Principal during the Contract Term, arrange within ten (10) Business Days from receipt of a Notice, or such other period agreed between the Parties, for a guarantor, approved by the Principal, to execute the Performance Guarantee in a form acceptable to the Principal.

15.2 The Performance Guarantee will be held as security for the due and proper performance of all obligations of the Contractor under the Contract.

15.3 All charges incurred by the Contractor in obtaining, maintaining and releasing the Performance Guarantee in accordance with this Clause 15 must be met by the Contractor.

15.4 A claim by the Principal against the Contractor's Performance Guarantee in relation to the Contract, will not release the Contractor from its obligations in accordance with this Clause 15.

- 15.5 The Principal and Contractor may agree to release the Performance Guarantee on terms acceptable to the Principal.
- 15.6 Notwithstanding Clause 15.5, upon termination of the Contract in accordance with Clause 32, the Principal will release the Performance Guarantee to the Contractor where the Contractor has fully performed and discharged all of its obligations under the Contract, other than the obligations as specified in Clause 35 which will survive the termination of the Contract.

16 Financial Security

- 16.1 The Contractor must, if specified in item 16 of Schedule A, or if requested by the Principal during the Contract Term, provide within ten (10) Business Days from receipt of a Notice, or such other period agreed between the Parties, a Financial Security in a form acceptable to the Principal.
- 16.2 The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution acceptable to the Principal in its entire discretion.
- 16.3 The Financial Security is to be held as security for the due and proper performance of all the obligations of the Contractor under the Contract.
- 16.4 If the Contractor fails to properly perform its obligations under the Contract and the Principal suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Principal will be entitled to make a claim upon and to receive payment for any or all such loss or damage (as ascertained and certified by the Principal, but subject to any limitation in Clause 22) from the Financial Security. If the Financial Security is not sufficient to meet such payment, the unpaid amount may be recovered from the Contractor by the Principal in any appropriate court.
- 16.5 If any claims are made upon the Financial Security at any time, the Contractor must within a period not exceeding 30 days of the claim being made, reinstate the Financial Security to the level required by the Principal in accordance with Clause 16.1.
- 16.6 The Contractor must not take nor be entitled to take any action or proceeding to obtain an injunction or otherwise prevent the Principal from making a claim upon or receiving a payment from the Financial Security.
- 16.7 The Contractor agrees that the Principal, whilst exercising its rights in accordance with this clause, will have no liability to the Contractor of any nature (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Contractor.
- 16.8 The Principal will release the Financial Security requested in accordance with Clause 16.1 to the Contractor (or to whom the Contractor directs) where:
- (a) the Contractor has fully performed and discharged all of its obligations under the Contract (other than the obligations as specified in Clause 35, which will survive the termination of the Contract); and
 - (b) in the reasonable opinion of the Principal, there is no prospect that money or damages will become owing (whether actually or contingently) by the Contractor to the Principal.
- 16.9 All charges incurred by the Contractor in obtaining, maintaining and releasing the Financial Security in accordance with this Clause 16 must be met by the Contractor.

17 Commissions, incentives and collusion

Commissions and incentives

- 17.1 The Contractor must not, and must ensure that its officers, employees, agents and/or sub-contractors do not, give or offer anything to the Principal or any officer, City of Gold Coast Councillor or employee of the Principal, or to a parent, spouse, child or associate of an officer or employee of the Principal, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to influence the Principal's actions in relation to the Contract.

17.2 If the Principal discovers at any time during the Contract Term that the Contractor has breached Clause 17.1, the Principal may, in addition to any other action, elect to suspend the Contract in accordance with Clause 31 or terminate the Contract in accordance with Clause 32.

Collusion

17.3 The Contractor warrants to the Principal that:

- (a) except as is expressly disclosed to the Principal, its Offer was not prepared (and any variations to the Contract will not be prepared) with any consultation, communication, contract, arrangement or understanding with any competitor (including a contractor under a similar contract with the Principal) regarding:
 - (i) prices;
 - (ii) methods, factors or formulas used to calculate prices;
 - (iii) the intention or decision to submit or not submit an offer (or request a variation) to the Contract;
 - (iv) the submission of an offer (or a request for variation) that is non conforming with the terms of the Contract;
 - (v) the quality, quantity, specifications or delivery particulars of goods and/or services (including the Goods and/or Services) to which the Contract relates; or
 - (vi) the terms of the Offer (or variation) or a competitor's offer (or variation);
- (b) except with the consent of the Principal:
 - (i) it has not provided any benefit (including money) directly or indirectly to, or entered into any contract, arrangement or understanding to provide any benefit (including money) directly or indirectly, to any competitor (including any contractor under a similar contract with the Principal) relating in any way to the Contract;
 - (ii) it has not received any such benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any contractor under a similar Contract similar contract with the Principal) relating in any way to the Contract; and
 - (iii) it will not provide or receive any such benefit;
- (c) except as is expressly disclosed to the Principal, it has not consulted, communicated or entered into any contract, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to the Contract, nor has it provided, nor will it provide any such benefit;
- (d) except as is fully disclosed in the Contract, at the time of entering into the Contract, the Contractor and all corporations and persons associated with the Contractor, including directors and senior management, are not and have never been subject to proceedings relating to anti-competitive conduct in Australia or overseas; and
- (e) the Contractor will notify the Principal immediately upon becoming aware that the Contractor or any corporation or person associated with the Contractor, including a director or member of senior management becomes subject to proceedings relating to anti-competitive conduct in Australia or overseas during the Contract Term by disclosing, at a minimum:
 - (i) the names of the parties to the proceedings;
 - (ii) the case number;
 - (iii) the general nature of the proceedings; and
 - (iv) the outcome or current status of the proceedings.

- 17.4 The Contractor acknowledges that the Principal has entered into the Contract in reliance of the warranties in Clause 15.2.
- 17.5 If the Contractor breaches Clause 15.2 without limiting its rights under the Contract, the Principal may:
- (a) deduct from any moneys due to the Contractor under the Contract, an equivalent sum as an amount due from the Contractor to the Principal; and
 - (b) at its entire discretion terminate the Contract in accordance with Clause 32.5(b) and claim damages for breach of the Contract.

18 Conflict of interest

- 18.1 The Contractor warrants that, to the best of its knowledge, as at the Commencement Date neither the Contractor nor any of its officers, employees, agents and/or sub-contractors have, or are likely to have, a Conflict of Interest in the performance of the Contractor's obligations under the Contract.
- 18.2 If a Conflict of Interest or risk of Conflict of Interest arises during the Contract Term (without limitation, including work undertaken by the Contractor for any entity other than the Principal), the Contractor must immediately give Notice of the Conflict of Interest, or the risk of it, to the Principal.
- 18.3 The Contractor must:
- (a) take all reasonable measures to ensure that its officers, employees, agents and sub-contractors do not engage in any activity or obtain any interest which is in conflict with the Contractor's ability to supply the Goods and/or perform the Services for the Principal in good faith and objectively; and
 - (b) immediately give Notice to the Principal of any Conflict of Interest relating to the activities or interests of any of its officers, employees, agents and/or sub-contractors.
- 18.4 Upon receipt of a Notice in accordance with Clause 18.2 or 18.3(b), or upon the Principal otherwise identifying a Conflict of Interest, the Principal may:
- (a) direct the Contractor as to how to manage the Conflict of Interest and the Contractor must comply with any reasonable direction so given by the Principal;
 - (b) suspend the Contract in accordance with Clause 31; or
 - (c) elect to terminate the Contract in accordance with Clause 32.5(c).
- 18.5 If Clause 18.4(a) or 18.4(b) applies, the Contractor must give Notice to the Principal when the Conflict of Interest or risk of Conflict of Interest is resolved.

19 Intellectual property rights and moral rights

- 19.1 Title to, and Intellectual Property Rights in, all New Contract Material will, upon its creation, vest in the Party specified in item 17 of Schedule A.
- 19.2 If item 17 of Schedule A is blank, title to, and Intellectual Property Rights in, New Contract Material vests in the Principal.
- 19.3 If item 17 of Schedule A specifies that this Clause 19.3 applies, or if Clause 19.2 applies, title to, and Intellectual Property Rights in, New Contract Material will upon its creation vest in the Principal, and:
- (a) the Contractor must ensure that during the Contract Term the New Contract Material and Records are used, copied, supplied or reproduced only for the purposes of the Contract; and
 - (b) after the expiration or sooner termination of the Contract (or some earlier date if required by the Principal), the Contractor must deliver to the Principal, in a format specified by the Principal, all New Contract Material and Records.

- 19.4 If item 17 of Schedule A specifies that this Clause 19.4 applies, title to, and Intellectual Property Rights in, New Contract Material will, upon its creation, vest in the Contractor and the Contractor grants, and will ensure that relevant third parties grant, to the Principal a paid-up, non-exclusive, non-transferable, irrevocable, perpetual licence (including the right to sub-licence) in respect of the New Contract Material (and any future development of that New Contract Material), without additional cost to the Principal to:
- (a) use, exploit and otherwise exercise all Intellectual Property Rights, for any purpose of the Principal and
 - (b) use or exploit (whether commercially or otherwise) for any purpose, if specified in item 17 of Schedule A.
- 19.5 The Contract does not affect Intellectual Property Rights in Existing Contract Material but the Contractor grants, and will ensure that relevant third parties grant, to the Principal a paid up, non-exclusive, non-transferable, irrevocable, perpetual licence (including the right to sub-licence) in respect of the Existing Contract Material but only as part of the Contract Material (and any future development of the Contract Material), without additional cost to the Principal to:
- (a) use, exploit and otherwise exercise all Intellectual Property Rights for any purpose of the Principal and
 - (b) use or exploit (whether commercially or otherwise) for any purpose, if Clauses 19.2, 19.3 or 19.4(b) applies.
- 19.6 Intellectual Property Rights in Records will remain vested in the Principal.
- 19.7 If the Contractor is an individual, the individual consents to any act or omission done by the Principal in the exercise of the Intellectual Property Rights in the Contract Material granted under the Contract that might otherwise constitute an infringement of the individual's Moral Rights and without limiting this, the individual consents to:
- (a) the Principal determining in its entire discretion whether or not the individual will be attributed as author of the Contract Material comprised in a Deliverable and if the individual will be attributed, that attribution will occur in a manner acceptable to the Principal;
 - (b) any amendments, deletion, destruction, alteration, relocation or selection of the Contract Material (or any part thereof) at the entire discretion of the Principal;
 - (c) the publication or communication, in whole or in part of the Contract Material; and
 - (d) any other acts or omissions as specified in item 17 of Schedule A.
- 19.8 If the Contractor engages an individual, whether an employee, sub-contractor or volunteer, to perform work under the Contract, the Contractor must, prior to allowing that individual to commence work in respect of a Deliverable, obtain from that individual who is to create New Contract Material:
- (a) all consents, permissions and assignments necessary to enable the Principal to exercise the Intellectual Property Rights granted under the Contract in full, without impediment or cost to the Principal; and
 - (b) without limiting Clause 19.8(a), a consent from the individual to any act or omission by the Principal in the exercise of the Intellectual Property Rights in the Contract Material granted under the Contract that might otherwise constitute an infringement of the person's Moral Rights, including a consent to the acts or omissions specified in Clause 19.7(a) to (d).

20 Confidentiality

- 20.1 The Contractor must not, and must ensure that its officers, employees, agents and sub contractors do not, use or disclose any Confidential Information without the Principal's consent, other than in accordance with this Clause 20.
- 20.2 The Contractor may disclose Confidential Information:
- (a) to its officers, employees, agents and sub-contractors to the extent necessary for the performance of the Contract, provided that the Contractor:
 - (i) makes such persons aware that the information is confidential; and
 - (ii) if specified in item 19 of Schedule A or directed by the Principal during the Contract Term, obtains from such persons a deed of confidentiality in a form acceptable to the Principal;
 - (b) where required by law; or
 - (c) where the Contract requires disclosure to a third party.
- 20.3 The Contractor must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.
- 20.4 Subject to Clause 20.6, upon receipt of a written request by the Principal either during the Contract Term or upon termination or expiration of the Contract, the Contractor must deliver to the Principal any Documents and/or Records in the Contractor's power, possession or control.
- 20.5 Subject to Clause 20.4, the Contractor must:
- (a) return any Documents and/or Records to the Principal upon the completion of the Contract; and/or
 - (b) destroy its files and any copy (but not the original) of any Documents and/or Records held in its file in accordance with usual business practice and any applicable legislative requirements.
- 20.6 If the Contractor wishes to retain a copy of any Documents and/or Records in connection with the Contract for the purposes of the Contractor's own reasonable internal credit, risk, insurance, legal and professional responsibilities, the Contractor must notify the Principal in writing prior to the termination or expiration of the Contract, identifying the Documents and/or Records and the reasons for the request for retention.
- 20.7 Any consent granted by the Principal may require the Contractor to return the copies of the Documents and/or Records to the Principal at the end of seven years after the termination or expiration of the Contract. If the Principal does not make such a request, the Contractor must destroy each copy of the Documents and/or Records at the end of the seven years after the termination or expiration of the Contract.
- 20.8 Regardless of the terms of the Principal's consent, the Contractor must maintain confidentiality and otherwise comply with the terms of the Contract and in relation to the Documents and/or Records during the period in which it retains a copy of the Documents and/or Records.

21 Privacy and Personal Information

- 21.1 If the Contractor collects or has access to Personal Information in order to provide the Goods and/or Services, the Contractor must:
- (a) if the Principal is an 'agency' other than the health department within the meaning of the *Information Privacy Act 2009 (Qld)*, comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Contract, as if the Contractor was the Principal;
 - (b) if the Principal is the 'health department' within the meaning of the *Information Privacy Act 2009 (Qld)*, comply with Parts 2 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Contract, as if the Contractor was the Principal;

- (c) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
- (d) not use Personal Information other than for the purposes of the supply of the Goods and/or performance of the Services, unless required or authorised by law;
- (e) not disclose Personal Information without the consent of the Principal, unless required or authorised by law;
- (f) not transfer Personal Information outside of Australia without the consent of the Principal;
- (g) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties under the Contract;
- (h) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties under the Contract;
- (i) ensure that its agents and sub-contractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this Clause 21;
- (j) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- (k) comply with such other privacy and security measures as the Principal reasonably advises the Contractor in writing from time to time.

21.2 The Contractor must, if specified in item 20 of Schedule A, or if requested by the Principal during the Contract Term, obtain from its officers, employees, agent and/or sub-contractors engaged for the purposes of the Contract, an executed deed of privacy in a form acceptable to the Principal.

21.3 The Contractor must immediately notify the Principal on becoming aware of any breach of Clause 21.1.

22 Security and access

22.1 The Contractor must, and must ensure that its officers, employees, agents and/or sub-contractors, when entering upon the Principal's premises, dealing with the Principal's employees or members of the public, or using the Principal's facilities, equipment or resources, comply with all applicable rules, policies, standards, codes of conduct, directions and procedures of the Principal, including those relating to security, workplace health and safety and appropriate use of information and communication technology in a like manner as if they were employees of the Principal.

22.2 The Contractor must give the City Contract Representative and/or any other person authorised in writing by the Principal reasonable access to premises occupied by the Contractor where the Goods and/or Services are being produced and/or undertaken and must permit them to inspect any Contract Material or other material related to the Goods and/or Services.

22.3 The City Contract Representative and/or any other person authorised in writing by the Principal must, when attending at the Contractor's premises or facilities, comply with all applicable rules, directions and procedures as notified by the Contractor, including those relating to security or workplace health and safety, that are in effect at the premises or facilities.

23 Liability

23.1 The liability of a Party to the other Party under the Contract for loss or damage sustained, will be reduced proportionately to the extent that the loss or damage was caused or contributed to by the other Party's negligence, unlawful act or omission and/or failure to comply with its obligations and responsibilities under and/or in connection with the Contract or otherwise at law.

- 23.2 Unless otherwise agreed in writing between the Parties, the liability of a Party arising under and/or in connection with the Contract, will exclude any liability for loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss.
- 23.3 The liability of a Party arising under and/or in connection with the Contract, will, except in relation to liability:
- (a) for personal injury (including sickness, injury, death);
 - (b) for loss of, or damage to, tangible property;
 - (c) for a breach of the Intellectual Property Rights and Moral Rights in accordance with Clause 19; or
 - (d) under an indemnity provided by the Contractor in accordance with Clause 23, be limited to the per Occurrence amount specified in item 21 of Schedule A.
- 23.4 If no amount, 'nil' or an indication of \$0 is specified in item 21 of Schedule A, then the liability of a Party will be unlimited.
- 23.5 Each Party must use all reasonable endeavours to mitigate its loss, damage and any expenses arising under and/or in connection with a breach of the Contract, or in tort, or for any other common law or legislative cause of action arising under and/or in connection with the Contract.
- 23.6 Despite any other provision of the Contract, the Contractor's liability under the Contract (including but not limited to any liability under this Clause 23 and liability to indemnify in accordance with Clause 23) is limited to the extent necessary to comply with a scheme that is in force and applies to the Contractor under the *Professional Standards Act 2004 (Qld)*.

24 Indemnity

- 24.1 In this Clause 24: 'claim' includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages and expenses, including those arising out of the terms of any settlement.
- 24.2 The Contractor releases, discharges and indemnifies the Principal and each of its officers and employees ('the Indemnified Persons') from and against any claim which may be brought against or made upon or incurred by any of them in connection with any:
- (a) negligent or unlawful act or omission of the Contractor, its officers, employees, agents or sub-contractors;
 - (b) breach of the Contract by the Contractor;
 - (c) contravention of any legislative requirement by the Contractor, its officers, employees, agents or sub-contractors; or
 - (d) infringement by the Contractor, its officers, employees, agents or sub-contractors of the Intellectual Property Rights or Moral Rights of any third party, except to the extent the claim is due to the negligent or unlawful act or omission of the Indemnified Persons.

25 Insurance

- 25.1 The Contractor warrants that it will hold and maintain for the Contract Term the following insurances to cover its obligations under the Contract:
- (a) Workers Compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003 (Qld)*;
 - (b) Public Liability insurance for the amount specified in item 22 of Schedule A;
 - (c) Professional Indemnity insurance if specified in item 23 of Schedule A for the amount specified in that Schedule in respect of each claim, and which must be maintained by the Contractor for a continuous period of four years, after the latter of the Completion Date or termination of the Contract, unless otherwise specified in item 23 of Schedule A; and
 - (d) any other insurances specified in item 24 of Schedule A.

- 25.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.
- 25.3 The Contractor warrants if it is a participating member of a scheme approved under the *Professional Standards Act 2004 (Qld)* that it will hold and maintain the minimum level of insurance as specified in item 23 of Schedule A.
- 25.4 The Contractor must, if requested by the Principal, promptly provide a certificate of currency for each insurance policy.
- 25.5 The Contractor warrants that any exclusions and deductibles that may be applicable to the insurance policies that it holds in accordance with this Clause 25, will not impact on the Contractor's ability to meet any claim or otherwise prejudice the Principal's rights under the Contract.
- 25.6 The Contractor must immediately advise the Principal if any insurance policy as required by this Clause 25, is materially modified or cancelled.

26 Licensing requirements

- 26.1 The Contractor warrants that it at the Commencement Date and for the Contract term, will hold and maintain all requisite licenses, permits, permissions and/or authorities necessary for the provision of the Goods and/or Services.
- 26.2 The Contractor must, if requested by the Principal, provide evidence of compliance with its obligations under this clause to the satisfaction of the Principal.

27 Industrial relations and work health and safety

- 27.1 The Principal will not become involved in industrial disputes between the Contractor and the Contractor's staff unless required to do so by an industrial authority.
- 27.2 During the periods of industrial disputes of any duration, the Contractor will be responsible for continued compliance with its obligations under the Contract at the Contractor's expense.
- 27.3 The main objective of the Work Health and Safety Legislation is to protect people against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work. People must be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from the Contractor providing Goods and/or Services. Without limiting the obligation of the Contractor to comply and to achieve the object of Work Health and Safety Legislation, the Contractor must:
- (a) Provide all Goods/and or perform all the Services in accordance with the Contract in a safe manner;
 - (b) Provide all Goods/and or perform all the Services in accordance with the Contract in a way that is without risk to the health, safety and welfare of any person;
 - (c) Ensure that it complies with all Work Health and Safety Legislation requirements;
 - (d) Ensure that all workers who are engaged in connection with providing the Goods and/or Services in accordance with contract comply with the requirements of this clause;
 - (e) At all times have documented safe work practices and procedures to provide the Goods/ and or Services in a manner that is safe and without risk to the health or welfare of any person;
 - (f) Ensure that there are processes in place to identify, assess and proactively control risks in the way that the Goods and/or Services are performed and provided;
 - (g) Cooperate with and do all of the things that are necessary to enable the Principal to comply with its Work Health and Safety Legislation obligations;
 - (h) Ensure that its workers are properly inducted and provided with Personal Protective Equipment, information, instruction, training and/or supervision to ensure their own health

and safety and to ensure that their own acts or omissions do not adversely affect the health and safety of other persons whilst the Goods and/or Services are performed and provided;

- (i) When requested by the Principal, provide information about and verification of the safety systems in place where the Goods and/or Services are performed and provided. This includes site specific safe work practices, policies and procedures in place for the Contract and how compliance with the safety system is audited and monitored;
- (j) When requested by the Principal, provide evidence and demonstrate compliance with Work Health and Safety Legislation obligations;
- (k) Immediately inform the Principal, if as a result of the providing Goods and/or performing Services in accordance with the Contract, the Contractor is required to report a notifiable incident or occurrence to a safety regulator under the Work Health and Safety Legislation;
- (l) Immediately inform the Principal where an inspector appointed under Work Health and Safety Legislation or any delegate or union representative entered or attended a site in relation to a work, health or safety matter where the Goods and/or Services are performed and provided in accordance with the Contract.

28 Resolution of disputes

28.1 If a dispute or difference arises between the Parties in relation to the Contract or concerning the performance or non-performance by a Party of its obligations under the Contract, whether raised during the performance of the Deliverables under the Contract or after the completion of the Deliverables, a Party may give Notice of the dispute to the other Party. The Parties must, if requested by either Party within ten (10) Business Days of receipt of a Notice of dispute by a Party, refer the dispute to mediation before commencement of any litigation, other than for injunctive relief, in relation to the dispute.

28.2 The mediator, the mediator's fees and the mediation rules must be:

- (a) mutually agreed upon by the Parties in writing; or
- (b) in the absence of agreement, within ten (10) Business Days from receipt of a Notice of a dispute, as determined by the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia.

28.3 The Parties agree to share the costs associated with the mediation in equal shares between them.

28.4 Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under the Contract where practicable, unless otherwise directed by the Principal.

29 Variation

29.1 Except for the circumstances specified in Clauses 29.2 and 29.6, the Contract may only be varied by written agreement between the Parties after the Party requesting the variation has given the other Party a Notice setting out the proposed variation.

29.2 The Principal may vary the terms and conditions of the Contract by Notice to the Contractor, when reasonably required as a result of changes in Government policy.

29.3 Where the terms and conditions of the Contract are varied as a result of Clause 29.2, the Contractor must promptly submit in writing to the Principal any proposed variation to the Contract which is required as a result of this amendment. If the Parties are unable to reach agreement in relation to the Contractor's proposed variation, the provision of Clause 28 will apply to resolve the dispute.

- 29.4 Any variation proposed by the Contractor in accordance with Clause 29.1 or 29.3 must be accompanied by evidence to substantiate such proposed variation.
- 29.5 Despite any other provision of this Clause 29, any variation proposed by the Contractor which purport to take away or reduce the entitlements of the Principal in accordance with Clause 34, will be deemed to be rejected by the Principal and the Contract will remain unvaried.
- 29.6 The Principal may at any time serve a Notice on the Contractor requiring the Contractor to decrease or omit the supply of any part of the Goods and/or Services.
- 29.7 Following issue of such Notice, the Contractor will comply with the Notice and immediately take steps necessary to minimise the loss suffered by it as a result of the Notice.
- 29.8 Where the supply of any part of the Goods and/or Service have been decreased or omitted in accordance with Clause 29.6, the Principal will pay the Contractor for the Goods and/or Services supplied or performed until served a Notice in accordance with Clause 29.6.

30 Suspension of payment

- 30.1 The Principal may suspend payments to the Contractor without penalty if the Contractor refuses, neglects or fails to supply and/or perform any part of the Contract, until the Goods are supplied and/or the Services performed in the manner acceptable to the Principal and in accordance with the Contract.

31 Suspension

- 31.1 The Principal may at any time by Notice, direct the Contractor to:
- (a) suspend work on the supply of all or any part of the Goods and/or Services for a specified period; or
 - (b) recommence work on the supply of all or any part of the suspended Goods and/or Services.
- 31.2 Where the Principal suspends the supply of the Goods and/or Services by Notice in accordance with Clause 31.1(a):
- (a) the Contractor must, following receipt of that Notice, immediately take all steps necessary to minimise the loss suffered by the Contractor as a result of the suspension, including taking all reasonable steps to prevent or minimise its liabilities to its suppliers, contractors and sub-contractors;
 - (b) the Contractor and the Principal must negotiate in good faith as to reasonable compensation payable to the Contractor for any additional costs that were reasonably and properly incurred by the Contractor as a direct result of the suspension but the compensation must not include loss of profit, revenue, goodwill or business opportunities, damage to reputation and any indirect or consequential loss, and, where the suspension is the result of any act or omission of the Contractor, the Contractor will not be entitled to payment by the Principal of any costs, expenses or any other compensation arising out of such suspension; and
 - (c) any previously agreed completion dates for the Goods and/or Services will be postponed by a period equivalent to the duration of the suspension.
- 31.3 Where the Contractor commits a breach of the Contract, the Principal may without limiting any right of action or remedy which has accrued or may accrue in favour of the Principal:
- (a) give Notice to the Contractor, by a notice of suspension, that the Contract is suspended in whole or in part from the date specified in the Notice for a nominated period; and
 - (b) provide the Contractor with reasonable directions in relation to subsequent performance of the Contract.

- 31.4 The Contractor must immediately comply with any reasonable directions given by the Principal, in accordance with Clause 31.3(b).
- 31.5 Prior to the period of suspension expiring, the Principal may notify the Contractor in writing that the:
- (a) period of suspension will cease to be effective from the date specified in the Notice based on the Principal being satisfied that the issues/concerns which gave rise to the suspension have been resolved, upon which, each Party must resume its performance under the Contract from that date;
 - (b) period of suspension will be extended for a further period of time specified in the Notice; or
 - (c) Contractor must show-cause, pursuant to a Notice issued by the Principal, why the Principal should not terminate the Contract from the date specified in the Notice.
- 31.6 If the Principal fails to notify the Contractor in writing, in accordance with Clause 31.5, the period of suspension will expire at the end of the nominated period and each Party must then resume its performance under the Contract.

32 Termination

- 32.1 The Principal may terminate the Contract, in whole or in part, for convenience by giving 30 days' Notice or such other reasonable period as determined by the Principal, to the Contractor.
- 32.2 If the Contract is terminated in accordance with Clause 32.1:
- (a) the Contractor must, following receipt of that Notice from the Principal, immediately take all steps necessary to minimise the loss suffered by the Contractor as a result of the termination, including taking all reasonable steps to prevent or minimise its liabilities to its contractors and sub-contractors;
 - (b) subject to Clause 32.2(c), the Principal must pay to the Contractor the fees and expenses reasonably incurred by the Contractor in carrying out the Contract to the date of termination together with any costs and expenses reasonably incurred by the Contractor which are directly attributable to the termination; and
 - (c) the Principal will not be liable for payment to the Contractor for any compensation relating to loss of profit, revenue, goodwill or business opportunities, damage to reputation or indirect or consequential loss, or any other reason in relation to termination nor will the Principal be liable for payment to the Contractor for any amount greater than the amount that the Principal would have paid to the Contractor had the Contract been completely performed.
- 32.3 Without limiting Clause 32.5, where the Contractor commits any breach of the Contract, the Principal may by Notice, require the Contractor to show cause by the date specified in the Notice, as to why the Principal should not terminate the Contract.
- 32.4 If the Contractor fails to show reasonable cause by the date specified in the Notice, then the Principal is entitled, upon Notice to the Contractor, to terminate the Contract.
- 32.5 The Principal may immediately terminate the Contract by Notice to the Contractor if:
- (a) the Contractor fails to provide the Performance Guarantee in accordance with Clause 15 or Financial Security in accordance with Clause 16;
 - (b) the Principal is satisfied that the Contractor has breached any part of Clause 17;
 - (c) the Contractor gives Notice in accordance with Clause 18.2 or 18.3(b) or the Principal otherwise identifies a Conflict of Interest;
 - (d) the Principal is satisfied that the Contractor has breached any part of Clause 20 or 21;
 - (e) the Contractor breaches any part of Clause 25 or 26; or
 - (f) the Contractor:

- (i) becomes insolvent or bankrupt or being a company goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation;
 - (ii) has a receiver or a receiver and manager appointed or a mortgage goes into possession of any of its assets or becomes subject to any form of external administration;
 - (iii) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
 - (iv) is wound up, voluntarily or involuntarily; or
- (g) the Contractor demonstrates that it is unable or unwilling to complete the Contract.

32.6 If the Principal terminates the Contract in accordance with Clause 32.4 or 32.5, the termination is without prejudice to any rights of the Principal under the Contract or at common law, including the right to claim damages for breach of the Contract.

33 Notices

33.1 Any Notice which may be given to or served on either Party under the Contract must be sent or delivered to the following respective addresses:

- (a) for the Principal - as specified in item 25 of Schedule A; or
- (b) for the Contractor - as specified in item 26 of Schedule A, or such other address as a Party may subsequently notify to the other Party in writing in accordance with this clause.

33.2 Notwithstanding Clause 33.1, if the Contractor is a company then the Principal may serve a Notice at any time on the Contractor's registered office.

33.3 A Notice to be given or served in accordance with Clause 31 or 32 must not be sent via email.

33.4 A Notice will be deemed to be given:

- (a) if posted – two (2) Business Days after the date of posting;
- (b) if delivered by hand during a Business Day - on the date of delivery;
- (c) if faxed - on the date the sender's facsimile machine notes a complete and successful transmission; or
- (d) if emailed - on the date recorded on the device from which the Party sent the email, unless the sending Party receives an automated message that the email has not been delivered;
- (e) except that a delivery by hand, fax or email received after 4.40pm (local time of the receiving Party) will be deemed to be given on the next Business Day.

34 Right to information and disclosure

- 34.1 *The Right to Information Act 2009 (Qld)* (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
- 34.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.
- 34.3 Information relating to the Contract is potentially subject to disclosure to third parties.
- 34.4 If disclosure under the RTI Act, and/or general disclosure of information provided by the Contractor in connection with the Contract, would be of concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this should be indicated by the Contractor at the time of disclosing the information to the Principal. The Principal cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.
- 34.5 Despite any other provision of the Contract, the Principal is entitled to publish on the City of Gold Coast website: cityofgoldcoast.com.au or by any other means, the following details:
- (a) a description of the Goods and/or Services;
 - (b) contract commencement date and/or award date; and
 - (c) procurement method.

35 General provisions

35.1 Relationship of the Parties

The relationship of the Parties under the Contract is one of principal and contractor and the Contractor is not by virtue of the Contract in partnership or joint venture with the Principal and must not represent itself or allow itself to be represented as a partner, joint venturer, officer or employee of the Principal.

35.2 No Advertising

The Contractor must not, and must ensure that its officers, employees, agents and/or sub-contractors do not, make any public announcement or advertisement in any medium in relation to the Contract without the consent of the Principal.

35.3 Waiver

- (a) Any failure by a Party at any time to enforce a clause of the Contract, or any forbearance, delay or indulgence granted by a Party to the other will not constitute a waiver of the Party's rights.
- (b) No provision of the Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving Party.
- (c) A waiver by a Party of a breach of any part of the Contract will not be a waiver of any subsequent breach of the same part nor a waiver of a breach of any other part.

35.4 No Sub-contracting

The Contractor must not sub-contract the provision of any Goods and/or Services under the Contract, without the prior consent of the Principal. Any consent given by the Principal to sub-contract:

- (a) may be conditional;
- (b) will not operate as an authority to transfer responsibility to the sub-contractor; and
- (c) will not relieve the Contractor from any of its liabilities or obligations under the Contract.

35.5 Governing Law

- (a) The Contract is governed by and construed in accordance with the laws of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.
- (b) Notwithstanding Clause 35.5a, the Parties agree to exclude the application of the *Sale of Goods (Vienna Convention) Act 1986 (Qld)* to the Contract to the fullest extent permitted by law.

35.6 Compliance with all Laws

The Contractor must comply with all relevant laws in performing its obligations under the Contract.

35.7 Severability

If any part of the Contract is determined to be invalid, unlawful or unenforceable for any reason then that part, to the extent of the invalidity, unlawfulness or unenforceability, will be severed from the rest of the Contract and the remaining terms and conditions will continue to be valid and enforceable to the fullest extent permitted by law.

35.8 Further Assistance

The Contractor must do all things reasonably required by the Principal to give effect to the Contract.

35.9 No Assignment

The Contractor must not assign, in whole or in part, its obligations or interest in the Contract, except with the consent of the Principal.

35.10 Complaint Management

If at any time during the Contract Term the Contractor considers that it has been unreasonably or unfairly treated and it has not been able to resolve the issue with the Principal, the Contractor should contact the Principal's Complaint Manager, specified in item 27 of Schedule A and ask for the matter to be dealt with in accordance with the Principal's complaint management process. The request will need to be in writing and include the following details:

- (a) dates and facts relevant to the complaint;
- (b) parties involved;
- (c) issues that require resolution;
- (d) outcomes the Contractor considers appropriate for resolving any issues; and
- (e) Contractor's contact details.

35.11 Access to Contractor's Premises

The Contractor agrees to give the Principal, or its nominee, all assistance reasonable requested for any purpose associated with this Contract or any review of the Contractor's performance under the Contract. This will include, but is not limited to, access to premises, material and personnel associated with the Goods and/or Services of the Contract. This may include taking copies of any relevant material relevant to the provision of the Goods/and or Services.

35.12 Record Keeping

The Contractor must maintain proper business and accounting records relating to the supply of the Goods and/or Services and allow the Principal or its authorised representative to inspect those records when requested. The Contractor will provide any assistance and information required.

35.13 Quality Assurance

Upon request by the Principal, the Contractor must provide the Principal and its nominees with access to the Contractor's premises to undertake quality audits and quality surveillance as

defined in the relevant Australia Quality Standards of the Contractor's quality system and/or the production processes related to the Goods and/or Services.

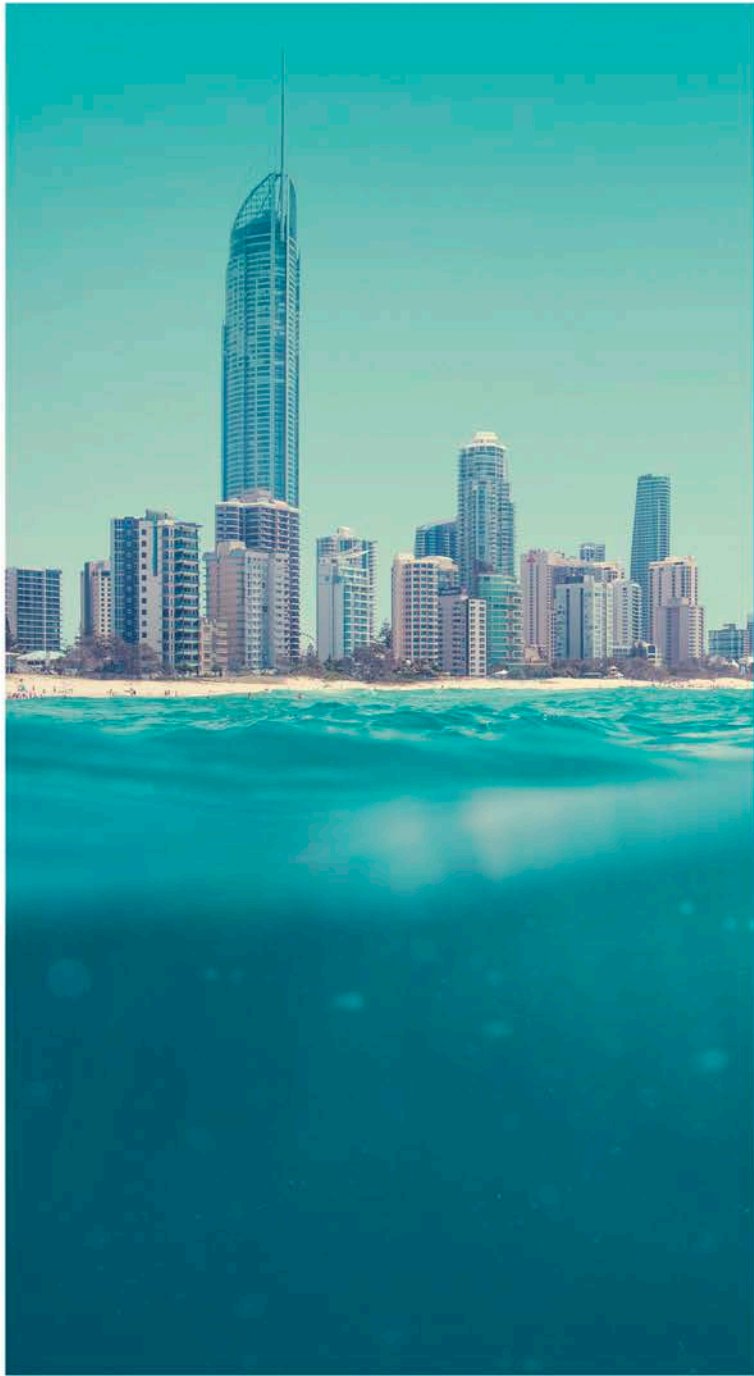
35.14 Non-Exclusivity of Goods and/or Services

This contract is not to be interpreted as providing the Contractor with the right to be a sole provider of any Goods/and or Services to the Principal or preventing the Principal from seeking the Goods/and or Services from other suppliers at the Principal's discretion.

35.15 Clauses to Survive Termination

The following clauses will survive termination or expiration of the Contract:

- Clause 1 Definitions and Interpretation;
- Clause 4 Transferability/Portability of Goods and/or Services;
- Clause 15 Performance Guarantee;
- Clause 16 Financial Security;
- Clause 19 Intellectual Property Rights and Moral Rights;
- Clause 20 Confidentiality;
- Clause 21 Privacy and Personal Information;
- Clause 23 Liability;
- Clause 24 Indemnity;
- Clause 25 Insurance;
- Clause 34 Right to Information and Disclosure;
- Clause 35.2 No Advertising;
- Clause 35.3 Waiver; and
- Clause 35.5 Governing Law.



Council of the City of Gold Coast

PO Box 5042 GCMC Qld 9729
E mail@cityofgoldcoast.com.au
W cityofgoldcoast.com.au
P 1300 GOLDCOAST