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## 1. Definitions

1.1 In these Conditions of Contract, unless the context otherwise requires, all directions are directed to the Contractor and the following definitions will apply:

**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 the Contract Header.

**Business Day** means between 8am and 5pm on a day other than a Saturday, Sunday or public holiday at the Principal's address.

**Claim** means a claim for payment:

- in which the amount claimed is undisputed and due for payment in accordance with the Contract
- in which the amount claimed is correctly calculated and certified correct in accordance with the Contract
- which correctly identifies the Goods and/or Services supplied
- which, if the contractor is registered for GST, a valid tax invoice will be issued by the Principal in terms of Clause 12
- which complies with Clause 12.4.

**Commencement Date** means:

- the date specified in the Contract Header
- the date otherwise agreed in writing between the Parties
- if neither of the above apply, the date on which the Contractor receives the Contract Header.

**Completion Date** means the date specified in the Contract Header or otherwise agreed in writing between the Parties, and includes an extension of that date in accordance with Clause 30.

**Conditions of Contract** means these terms and conditions of Contract and includes the Additional Conditions of Contract or Special Conditions of Contract as specified in Invitation to Offer: Section 5.

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

- is by its nature confidential
- is designated as confidential, including the information specified in Invitation to Offer: Section 1 (if applicable)
- the Contractor knows or ought to know is confidential;
- and includes information:
  - comprised in or relating to any Intellectual Property Rights of the Principal
  - concerning the internal management and structure, personnel, processes and policies, commercial operations, financial arrangements or affairs of the Principal
  - that is of actual or potential commercial value to the Principal
  - 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.

**Consent** means prior written consent.

**Consumer Price Index (CPI)** means the applicable Consumer Price Index published by the Australian Bureau of Statistics.

**Contract** means a legally binding contract as agreed between the Principal and the Contractor constituted by the Documents specified in Clause 3.1.

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

**Contract Term** means the term of the Contract as specified in the Contract Header.

**Contractor** means the entity specified in the Contract Header, including any executor, administrator, successor, assignee, Subcontractor or Contractor's employee.

**Council Contract Representative** means the Principal's nominated representative to exercise the functions of the Principal relating to the Contract, as specified in the Contract Header, or other person nominated from time to time by the Principal as such.

**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 Period** means the period specified in the Contract Header in which the Goods will be supplied and/or the Services will be performed by the Contractor to the Principal.

**Deviations** means the deviations to the Specifications or Conditions of Contract and/or any additional terms and conditions agreed between the Principal and Contractor as specified in Response Forms: Deviations.

**Document** includes a document in any media or format.

**Existing Contract Material** means any material that:

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

**Force Majeure** means an event or circumstance which:

- is beyond the reasonable control of either party
- is not caused by either party
- can occur with or without human intervention
- was not reasonably foreseeable by the parties at the time of entering into this Contract.

**Frustration** means the Contract is unable to be performed by an event or events beyond the control of either party; Force Majeure.

**Goods** means the material, plant, item or equipment as specified in Invitation to Offer: Section 4, Response form: Price submission and Contract Header (if applicable).

**GST** means a goods and services tax imposed by or through the GST legislation (*A New Tax System (Goods and Services Tax) Act 1999 (Cth)*).

**in writing** means either by letter, email or facsimile.

**Key Personnel** mean the representatives of the Contractor specified in the Contract Header (if applicable).

**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 Clause 16, or other form acceptable to the Principal, as specified in the Response Forms: Contract Header (if applicable).

**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 Approved Expenses** means the itemised price and/or the price and Contractors expenses (if any) which have been approved by the Principal prior to expenditure being incurred as specified in the the Contract Header and contained in Response form: Price submission:

- **'Firm'** - that is the Price does not change for the Contract Term
- **'Fixed'** - that is the Price is firm in time and is subject to fluctuations only in changed economic circumstances and must be specified in Response Form: Pricing Structure, Discounts and Rebates

**Principal** means the Council of the City of Gold Coast (ABN: 84 858 548 460).

**Principal's nominated representative:** means either the Superintendent or the Council Contract Representative, as specified in the Contract Header.

**Purchase Order** means an order for the supply of Goods and/or Services placed by Principal.

**Separable portion** means a portion of the Goods and/or Services identified in Invitation to Offer: Section 4 as a separable portion in accordance with Clause 7.7.

**Security Deposit** means the unconditional financial security in a form set out in Clause 17, or other form of unconditional financial security in a form acceptable to the Principal, as specified in the Response Forms: Contract Header (if applicable).

**Services** means the services (including the execution of works) as specified in Invitation to Offer: Section 4 and the Response Forms: Contract Header (if applicable).

**Site** means the place or places as specified in the Contract Header 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 Invitation to Offer: Section 4 (if applicable) forming part of the contract.

**Superintendent** means the Principal's nominated representative, only where applicable, nominated in the Contract Header by the Principal to be the Superintendent for the purposes of the Contract.

**Subcontractor** means any person or firm who has been approved under Clause 36.6.

**Valid tax invoice** means an invoice compliant with Australian Tax Laws and satisfies Clause 12.4.

**Work Health and Safety (WHS)** 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.

## 2. Interpretation

2.1 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.

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

- words importing a gender include the other gender
- words in the singular include the plural and vice versa
- all dollar amounts refer to Australian currency
- a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it
- a reference to an entity or person includes an individual, corporation, partnership or other legal entity
- a party includes its executors, administrators, liquidators, successors and permitted assigns
- a reference to a clause, attachment or annexure is a reference to a clause, attachment or annexure to these Conditions of Contract
- 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
- if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires
- a reference to a clause is a reference to all of its sub-clauses
- 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
- a Schedule forms part of the document to which it is attached.

2.3 The Invitation to Offer comprised the following Documents:

- Section 1: Invitation to Offer Details herein referred to as Section 1
- Section 2: Conditions of Offer herein referred to as Section 2
- Section 3: Evaluation Process herein referred to as Section 3
- Section 4: Specifications herein referred to as Section 4
- Section 5: Conditions of Contract herein referred to as Section 5
- Section 6: Response Forms herein referred to as Response Forms.

## 3. Formation of Contract

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

- the Contract Header (including agreed Deviations)
- these Conditions of Contract
- Specifications
- Offer (to the extent accepted under the Contract Header)
- any other Document, in whole or in part, forming part of the Contract, as agreed in writing between the Principal and Contractor.

3.2 In the event of any conflict between the Documents specified in Clause 3.1, the order of precedence to resolve the conflict will be in the above order.

- 3.3** 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.

## **4. Contract Term**

- 4.1** The Contract Term will commence on the Commencement Date and, unless terminated sooner in accordance with Clause 33, will continue until the earlier of the:
- 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
  - Completion Date.
- 4.2** The Contract Term may be extended at the full discretion of the Principal for the period stipulated in the Contract Header, if applicable, by notice prior to the expiration of the initial Contract Term.
- 4.3** The Principal may grant the Contractor a reasonable extension of the Contract Term for any delay to the completion of the services caused by:
- An act or omission of the Principal (including a variation directed by the Principal).
  - A Force Majeure.
  - The provisions of Clause 4.2,

provided that the Contractor notifies the Principal in writing of the delay and its cause promptly after the Contractor becomes aware of the delay, and provides reasonable evidence of the cause and the duration of the delay.

## **5. Assignment/Transferability of the Contract**

### **5.1 Assignment**

Neither party may, without the prior written approval (including terms) of the other party assign, in whole or in part, its obligations, benefits or interest in the Contract nor any payment or any other right thereunder.

### **5.2 Transferability**

Notwithstanding Clause 5.1 or any other provision of the Contract the Principal is entitled by giving 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 Government Authority or Body that is not part of the same legal entity as the Principal.

- 5.3** If Clauses 5.1 and 5.2 applies the Contractor must execute a deed of assignment in the form provided by the Principal, and return it to the Principal within five Business Days from receipt of a Notice from the Principal advising of the transfer and requiring the Contractor to execute the deed of novation.
- 5.4** The Principal reserves the right to charge an administration fee for coordinating any aspect of this Clause in accordance with the applicable fees and charges which can be viewed on the City of Gold Coast website: [www.goldcoast.qld.gov.au/fees-charges](http://www.goldcoast.qld.gov.au/fees-charges)
- 5.5** If the Goods and/or Services are transferred in accordance with Clauses 5.1 and 5.2, the Contractor:
- must immediately notify the Principal of any reduction in costs, including but not limited to volume discounts, which may occur
  - 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.



- 5.6** The Contractor agrees to negotiate with the Principal in good faith to vary or consolidate the Contract to:
- adjust the Price as a result of the notification of the matters raised in this Clause
  - 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 Clauses 5.1 and 5.2.

## **6. Council Contract Representative**

- 6.1** The Council Contract Representative is:
- the primary liaison and point of contact between the Principal and the Contractor in relation to the management of the Contract, where a Superintendent has not been appointed.
  - responsible for monitoring and evaluating contractor performance and assuring legislative compliance
  - not authorised either actually or ostensibly to amend or vary the Contract or enter into any Contract on behalf of the Principal.
- 6.2** The Contractor must, where a Superintendent has not been appointed:
- liaise with and report to the Council Contract Representative about the supply of the Goods and/or performance of the Services
  - attend meetings with, or provide briefings to the Council Contract Representative, as required by the Principal from time to time
  - promptly comply with any request or direction given by the Council Contract Representative, in accordance with the Contract, about the supply of the Goods and/or the performance of the Services.

## **7. Provision of the Goods and/or Services**

- 7.1** 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.
- 7.2** The Contractor must provide the Goods and/or Services:
- on the Delivery Date or during the Delivery Period
  - by the milestone dates (if milestones are specified in in the Contract Header)
  - by the Completion Date
  - if the Services are periodic or recurrent Services, at the times, intervals and frequency as specified in in the Contract Header.
- 7.3** In supplying the Goods and/or performing the Services, the Contractor must:
- inform itself of the Principal's requirements in respect of the Goods and/or Services
  - consult regularly with the Principal
  - exercise due skill, care and diligence.
- 7.4** On delivery of the Goods and/or Services, the Contractor must supply a Delivery Docket with
- the information listed in Clause 12
  - signature of a duly authorised officer of the principal.
- 7.5** The Contractor must ensure that:
- the supply of the Goods and/or performance of the Services are in accordance with any key performance indicators or performance standards specified in the Contract Header
  - all Goods and/or Services are of a high quality, professional standard and are fit for purpose

- provide all labour, plant and materials required to provide the Goods and/or perform the Services.

**7.6** The Principal will provide the assistance (if any) described in the Contract Header to the Contractor.

**7.7** Separable portions may be directed by the Principal, who shall clearly identify for each:

- Portion of the Goods and/or Services.
- Date of Completion or Delivery Date.
- Respective amounts for security deposit, bonus, liquidated damages (if applicable) and delay damages (all calculated pro-rotta according to the ratio of the Principal's valuation of the separable portion to the Contract Sum.
- Contract Conditions shall be applied individually to separable portions to the extent that the context allows.

## **8. Requirements for Goods and/or Services**

**8.1** 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:

- the terms of the Contract, including but not limited to the Specifications
- applicable legislative requirements as required by the Principal
- any applicable Government code, policy or guideline
- any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant current International Standard (ISO)
- including any that may be introduced or varied during the Contract Term, which govern the provision of the Goods and/or Services
- any applicable licensing and/or registration requirements
- all applicable City of Gold Coast policies and procedures.

**8.2** 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 the Contract Header.

**8.3** All Goods supplied by the Contractor to the Principal must be suitably packed and otherwise appropriately prepared for transportation.

**8.4** Risk and title in the Goods (free of all encumbrances and interests) will pass to the Principal upon Delivery.

**8.5** 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.

**8.6** 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:

- reject the Goods, or part of the Goods
- require the Contractor to promptly supply or supply again the Goods, or part of the Goods
- require the Contractor to promptly correct any defect or omission.

**8.7** Where the Principal rejects Goods in accordance with Clause 8.6:

- 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 Business Days of the Notice given in accordance with Clause 8.6

- 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 Business Days of receipt of the Notice by the Contractor.

**8.8** The Contractor must meet all costs of and incidental to the discharge of its obligations in accordance with Clauses 8.6 and 8.7, including, but not limited to, any packaging, handling, storage, freight, disassembly and reassembly costs.

## **9. Contractor's obligations**

**9.1** 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.

**9.2** When supplying the Goods and/or performing the Services, the Contractor must:

- take all measures to protect people and property
- avoid unnecessary interference with the passage of people and vehicles
- prevent nuisance and unreasonable noise and disturbance.

**9.3** The Contractor warrants that:

- it has the necessary skills, expertise and licences (if required) to complete the Contract in accordance with its obligations under the contract
- it will ensure that its officers, employees, agents and subcontractors have the necessary skills, expertise and licences (if required) to perform those obligations of the Contract, which are allocated to them by the Contractor
- it has examined and acquired actual knowledge of the contents of the Invitation to Offer Documents and any other information made available by the Principal to the Contractor in order to complete the Contract.
- it has examined all information relevant to the risks, contingencies and other circumstances having an effect on the Contract and which is obtainable by the making of reasonable enquiries
- it has examined the sites and its surroundings if applicable
- it is satisfied itself as to the correctness and sufficiency of his Offer for the Goods and/or Services and that the Price covers the cost of complying with all the obligations under the Contract.

**9.4** Failure of the Contractor to do all or any of the things it warrants to have done under Clause 9.3 will not relieve the Contractor of its liability to perform and complete the Contract in accordance with the conditions of the Contract.

**9.5** The Contractor must, and must ensure that its officers, employees, agents and/or subcontractors, 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.

## **10. Performance of Services by Key Personnel**

**10.1** The Services must be performed by the Key Personnel as specified in the Contract Header, 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.

- 10.2** 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.
- 10.3** The Contractor must not, without consent from the Principal:
- allow Key Personnel to delegate any part of the Services
  - 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.
- 10.4** If any of the Key Personnel are not available to perform any of the Services allocated to them, the Contractor must immediately:
- notify the Principal of the circumstances
  - 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.
- 10.5** 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, 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.

## 11. Price and approved expenses

- 11.1** If the Goods and/or Services are provided in accordance with the Contract, the Principal will:
- upon receipt of a Correctly Rendered Invoice or Claim, pay the Contractor the Price
  - reimburse the Contractor for the Approved Expenses, after the Approved Expenses have been incurred by the Contractor.
- 11.2** The Principal will not be liable to reimburse the Contractor for expenses other than the Approved Expenses as specified in the Contract Header (if any), unless the Contractor has obtained the Principal's consent.
- 11.3 Price Adjustment**
- Where stipulated as **Firm** in the Contract Header, the Price will not change for the initial Contract Term, after which, prices may be reviewed every 12 months unless otherwise stipulated in the Contract Header, or
  - Where stipulated as **Fixed** in the Contract Header, the Price will remain **Firm** in time and is subject to fluctuation variables only in changed economic circumstances
  - Any price adjustment shall be subject to negotiation and agreement between the Principal and the Contractor.
  - The Contractor must provide documentary evidence in support of any requested price adjustment considering:
    - 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 Response Form: Pricing Structure, Discounts and Rebates
    - other factors as it affects the Goods and/or Services, if specified in if specified in Response Form: Pricing Structure, Discounts and Rebates any variation in any tax, duty or charge as it affects the Goods and/or Services
    - any variation in any tax, duty or charge as it affects the Goods and/or Services
    - the Contractor must give notice to the Principal in accordance with Clause 34
  - Any price adjustment shall be in the format prescribed by the Principal.

- If the Contractors request for a price adjustment is rejected by the Principal, the contract will remain unvaried.

## **12. Payment**

- 12.1** The Principal is not obliged to pay the Contractor for any part of the Goods and/or Services until the:
- Contractor has delivered to the Principal the Deliverables in full.
  - Principal has certified that the Deliverables specified in the correctly rendered invoice or claim for payment have been supplied and/or performed in accordance with the Contract.
  - Contractor has provided the Principal a correctly rendered invoice or an undisputed claim for payment as stipulated in the Contract Header.
- 12.2** Despite any previous certification in accordance with Clause 12.1 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.
- 12.3** The Price will be payable in the manner specified in Response Form: Price Submission and Response Form: Pricing Structure, Discounts and Rebates . The Contractor must submit a correctly rendered invoice or an undisputed claim for payment to the Principal, and the Principal will pay the correctly rendered invoice or an undisputed claim for payment at the times specified in the Contract Header or Clause 12.6 applies.
- 12.4** The correctly rendered invoice or an undisputed claim for payment submitted by the Contractor must:
- Purchase Order number and item numbers pertaining to that Purchase Order (if applicable)
  - specify the Goods and/or Services and the name of the Council Contract Representative (if applicable)
  - include sufficient details to allow the Principal to assess progress against milestones (if applicable);
  - 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
  - specify contract number
  - itemise Approved Expenses claimed
  - identify any discounts given.
- 12.5** Upon receipt of a correctly rendered invoice or an undisputed claim for payment, 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.
- 12.6** Unless otherwise specified in the Contract Header, the Principal will make payment within 30 days after the Contractor has submitted to the Principal a correctly rendered invoice or within 21 days after the Contractor has submitted an undisputed claim for payment . If additional information or evidence required by the Principal in accordance with Clause 12.4 is accepted by the Principal, payment will be made 30 days after receipt of the additional information or evidence.
- 12.7** 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.

### **12.8 PAYG Withholding**

Whenever the Principal reasonably considers itself bound by law to do so, the Principal will be entitled to withhold from any payment otherwise due, amounts calculated and to be withheld in accordance with the law.

**12.9** 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 Clause 12.8.

## **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 Security Deposit provided in accordance with Clause 17.

**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. Goods and Services Tax (GST)**

**14.1** The Price is inclusive of GST and:

- the Principal is not required to pay a GST Amount in addition to the Price
- 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:

- an amendment to the GST Legislation
- the issue of a ruling or advice by the Commissioner of Taxation
- a refund of GST to the Contractor in respect of any supply made under the Contract
- 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.

**14.4** Contractor must remit the GST Amount to the Commissioner of Taxation in accordance with the GST Legislation.

## 15. Recipient Created Tax Invoice (RCTI)

**15.1** This clause applies where the Contractor is registered for GST and Claims have been identified in the Contract Header.

- The Contractor and the Principal agree that the Council may issue recipient created tax invoices ('RCTIs') in accordance with Section 29-70 of A New Tax System (Goods and Services Tax) Act 1999 ('GST Act') and in accordance with GST ruling 2000-10.
- The Principal may issue tax invoices in respect of the supplies made in accordance with the Contract by the Contractor to the Principal. The Principal will retain the original of any tax invoice issued in accordance with this clause, and issue a copy to the Contractor.
- The Contractor may not issue tax invoices in respect of the supplies made by the Contractor to the Principal and referred to in the preceding clause.
- The Contractor warrants and acknowledges that it is registered under the GST Act for GST at the time of entering into this Contract.
- The Contractor warrants and acknowledges that it will notify the Principal immediately if the Contractor ceases to be registered for the GST and quote the contract number for the subject supplies in the notification.
- If the Contractor ceases to be registered for the GST the Contractor will be deemed to be in fundamental breach of the Contract to which the supplies relate unless, at the Principals sole discretion, the Principal and the Contractor enter into alternative arrangements satisfactory to the Principal for the issue of a tax invoice by the Contractor, or the Principal withholds an amount in accordance with Section 12-190 of Schedule 1 of the Taxation Administration Act 1953.
- The Principal acknowledges that the Principal is registered under the GST Act for GST at the time of entering into this Contract and the Australian Business Number of the Principal is 84 858 548 460.
- The Principal acknowledges that it will notify the Contractor if the Principal ceases to be registered or if the Principal ceases to satisfy any of the requirements of the determination by the Commissioner of Taxation which forms Schedule 1 to GST Ruling 2000-10.
- The Principal must not issue a document that would otherwise be an RCTI, on or after the date when the Council or the Contractor has failed to comply with any of the requirements of the determination by the Commissioner of Taxation which forms Schedule 1 to GST Ruling 2000-10.
- The Contractor will supply all such information as may be reasonably required by the Principal to allow the Principal to prepare RCTIs under this Contract.
- The Contractor will do all such things as may be necessary on its part from time to time, to enable the Principal to issue RCTIs.

**15.2** Each party must give the other an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply by that party under this Contract, within seven days after the date that party becomes aware of the adjustment event.

**15.3** The Contractor's obligations under this Clause in respect of GST do not necessitate a variation under the Conditions of Contract or give rise to any adjustments of the Contract sum or reimbursement under the terms of the Contract.

## 16. Performance guarantee

**16.1** The Contractor must, if specified in the Contract Header, or if requested by the Principal during the Contract Term, arrange within ten 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.

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



- 16.3** All charges incurred by the Contractor in obtaining, maintaining and releasing the Performance Guarantee in accordance with this clause must be met by the Contractor.
- 16.4** 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.
- 16.5** The Principal and Contractor may agree to release the Performance Guarantee on terms acceptable to the Principal.
- 16.6** Notwithstanding Clause 16.5, upon termination of the Contract in accordance with Clause 33, 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 36 which will survive the termination of the Contract.

## **17. Security Deposit**

- 17.1** The Contractor must, if specified in the Contract Header, or if requested by the Principal during the Contract Term, provide within 14 Business Days from receipt of a Notice, or such other period agreed between the Parties, a Security deposit in a form of cash, bank cheque or unconditional bank guarantee or other form acceptable to the Principal.
- 17.2** The Security Deposit must be issued by an Australian domiciled bank, insurance company or other financial institution acceptable to the Principal in its entire discretion.
- 17.3** The Security Deposit is to be held as security for the due and proper performance of all the obligations of the Contractor under the Contract.
- 17.4** 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 23) from the Security Deposit. If the Security Deposit is not sufficient to meet such payment, the unpaid amount may be recovered from the Contractor by the Principal in any appropriate court.
- 17.5** If any claims are made upon the Security Deposit at any time, the Contractor must within a period not exceeding 30 days of the claim being made, reinstate the Security Deposit to the level required by the Principal in accordance with Clause 17.1.
- 17.6** 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 Security Deposit.
- 17.7** 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.
- 17.8** The Principal will release the Security Deposit requested in accordance with Clause 17.1 to the Contractor (or to whom the Contractor directs) where:
- the Contractor has fully performed and discharged all of its obligations under the Contract (other than the obligations as specified in Clause 36.18, which will survive the termination of the Contract)
  - 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.



**17.9** All charges incurred by the Contractor in obtaining, maintaining and releasing the Security Deposit in accordance with this clause must be met by the Contractor.

## **18. Commissions, incentives and collusion**

### **18.1 Commissions and incentives**

The Contractor must not, and must ensure that its officers, employees, agents and/or subcontractors 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.

**18.2** If the Principal discovers at any time during the Contract Term that the Contractor has breached Clause 18.1, the Principal may, in addition to any other action, elect to suspend the Contract in accordance with Clause 32 or terminate the Contract in accordance with Clause 33.

### **18.3 Collusion**

The Contractor warrants to the Principal that:

- 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:
  - prices
  - methods, factors or formulas used to calculate prices
  - the intention or decision to submit or not submit an offer (or request a variation) to the Contract
  - the submission of an offer (or a request for variation) that is non conforming with the terms of the Contract
  - the quality, quantity, specifications or delivery particulars of goods and/or services (including the Goods and/or Services) to which the Contract relates
  - the terms of the Offer (or variation) or a competitor's offer (or variation)
- except with the consent of the Principal:
  - 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
  - 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
  - it will not provide or receive any such benefit
- 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
- 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

- 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:
  - the names of the parties to the proceedings
  - the case number
  - the general nature of the proceedings
  - the outcome or current status of the proceedings

**18.4** The Contractor acknowledges that the Principal has entered into the Contract in reliance of the warranties in Clause 18.3.

**18.5** If the Contractor breaches Clause 18.3 without limiting its rights under the Contract, the Principal may:

- deduct from any moneys due to the Contractor under the Contract, an equivalent sum as an amount due from the Contractor to the Principal
- at its entire discretion terminate the Contract in accordance with Clause 33 and claim damages for breach of the Contract.

## **19. Conflict of Interest**

**19.1** 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 subcontractors have, or are likely to have, a Conflict of Interest in the performance of the Contractor's obligations under the Contract.

**19.2** 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.

**19.3** The Contractor must:

- take all reasonable measures to ensure that its officers, employees, agents and subcontractors 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
- 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 subcontractors.

**19.4** Upon receipt of a Notice in accordance with Clauses 19.2 or 19.3, or upon the Principal otherwise identifying a Conflict of Interest, the Principal may:

- 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
- suspend the Contract in accordance with Clause 32
- elect to terminate the Contract in accordance with Clause 33.

**19.5** If Clause 19.4 applies, the Contractor must give Notice to the Principal when the Conflict of Interest or risk of Conflict of Interest is resolved.

## 20. Intellectual Property Rights and Moral Rights

- 20.1** Title to, and Intellectual Property Rights in, all New Contract Material will, upon its creation, vest in the Party specified in the Contract Header.
- 20.2** If not stated in the Contract Header, title to, and Intellectual Property Rights in, New Contract Material vests in the Principal.
- 20.3** If the Contract Header specifies that this clause applies, or if Clause 20.2 applies, title to, and Intellectual Property Rights in, New Contract Material will upon its creation vest in the Principal, and:
- 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
  - 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.
- 20.4** If the Contract Header specifies that this clause 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:
- use, exploit and otherwise exercise all Intellectual Property Rights, for any purpose of the Principal
  - use or exploit (whether commercially or otherwise) for any purpose, if specified in the Contract Header.
- 20.5** 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:
- use, exploit and otherwise exercise all Intellectual Property Rights for any purpose of the Principal
  - use or exploit (whether commercially or otherwise) for any purpose, if Clauses 20.2, 20.3 or 20.4 applies.
- 20.6** Intellectual Property Rights in Records will remain vested in the Principal.
- 20.7** 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:
- 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
  - any amendments, deletion, destruction, alteration, relocation or selection of the Contract Material (or any part thereof) at the entire discretion of the Principal
  - the publication or communication, in whole or in part of the Contract Material
  - any other acts or omissions as specified in the Contract Header.
- 20.8** If the Contractor engages an individual, whether an employee, subcontractor 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:

- 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
- without limiting clause 20.8, 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 20.7.

## **21. Confidentiality**

- 21.1** The Contractor must not, and must ensure that its officers, employees, agents and subcontractors do not, use or disclose any Confidential Information without the Principal's consent, other than in accordance with this clause.
- 21.2** The Contractor may disclose Confidential Information:
- to its officers, employees, agents and subcontractors to the extent necessary for the performance of the Contract, provided that the Contractor:
    - makes such persons aware that the information is confidential
    - if specified in the Contract Header or directed by the Principal during the Contract Term, obtains from such persons a deed of confidentiality in a form acceptable to the Principal
  - where required by law
  - where the Contract requires disclosure to a third party.
- 21.3** The Contractor must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.
- 21.4** Subject to Clause 21.6, 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.
- 21.5** Subject to Clause 21.4, the Contractor must:
- return any Documents and/or Records to the Principal upon the completion of the Contract
  - 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.
- 21.6** 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.
- 21.7** 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.
- 21.8** 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.

## 22. Privacy and Personal Information

- 22.1** If the Contractor collects or has access to Personal Information in order to provide the Goods and/or Services, the Contractor must:
- 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
  - 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
  - ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse
  - 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
  - not disclose Personal Information without the consent of the Principal, unless required or authorised by law
  - not transfer Personal Information outside of Australia without the consent of the Principal
  - 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
  - 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
  - ensure that its agents and subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause
  - 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
  - comply with such other privacy and security measures as the Principal reasonably advises the Contractor in writing from time to time.
- 22.2** The Contractor must, if specified in the Contract Header, or if requested by the Principal during the Contract Term, obtain from its officers, employees, agent and/or subcontractors engaged for the purposes of the Contract, an executed deed of privacy in a form acceptable to the Principal.
- 22.3** The Contractor must immediately notify the Principal on becoming aware of any breach of Clause 22.1.

## 23. Security Access

- 23.1** The Contractor must give the Council 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.
- 23.2** The Council 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.

## 24. Liability

- 24.1** 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.
- 24.2** 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.
- 24.3** The liability of a Party arising under and/or in connection with the Contract, will, except in relation to liability:
- for personal injury (including sickness, injury, death)
  - for loss of, or damage to, tangible property
  - for a breach of the Intellectual Property Rights and Moral Rights in accordance with Clause 20
  - under an indemnity provided by the Contractor in accordance with Clause 25,
  - be limited to the per occurrence amount specified in the Contract Header.
- 24.4** If no amount, 'nil' or an indication of \$0 is specified in the Contract Header, then the liability of a Party will be unlimited.
- 24.5** 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.
- 24.6** Despite any other provision of the Contract, the Contractor's liability under the Contract (including but not limited to any liability under this clause and liability to indemnify in accordance with Clause 25) 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).

## 25. Indemnity

- 25.1** In this clause '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.
- 25.2** 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:
- negligent or unlawful act or omission of the Contractor, its officers, employees, agents or subcontractors
  - breach of the Contract by the Contractor
  - contravention of any legislative requirement by the Contractor, its officers, employees, agents or subcontractors
  - infringement by the Contractor, its officers, employees, agents or subcontractors 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.

## 26. Insurance

- 26.1 The Contractor warrants that it will hold and maintain for the Contract Term the following insurances to cover its obligations under the Contract:
- Workers Compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003 (Qld)*
  - Public Liability insurance for the amount specified in the Contract Header for any single claim, if not specified then \$10,000,000 is applicable
  - Professional Indemnity insurance for the amount specified in the Contract Header 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 the Contract Header
  - any other insurances specified in the Contract Header.
- 26.2 The insurances must be effected with an insurer that is authorised and licensed to operate in Australia.
- 26.3 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 the Contract Header.
- 26.4 The Contractor must, if requested by the Principal, promptly provide a certificate of currency for each insurance policy.
- 26.5 The Contractor warrants that any exclusions and deductibles that may be applicable to the insurance policies that it holds in accordance with this clause, will not impact on the Contractor's ability to meet any claim or otherwise prejudice the Principal's rights under the Contract.
- 26.6 The Contractor must immediately advise the Principal if any insurance policy as required by this clause, is materially modified or cancelled.

## 27. Licensing requirements

- 27.1 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.
- 27.2 The Contractor must, if requested by the Principal, provide evidence of compliance with its obligations under this clause to the satisfaction of the Principal.

## 28. Industrial Relations and Work Health and Safety

### 28.1 Industrial relations

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.

- 28.2 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.



### 28.3 Work Health and Safety (WHS)

Without limiting the obligation of the Contractor to comply and achieve the objectives of the *Work Health and Safety Act 2011*(Qld)and the *Work Health and Safety Regulation 2011* (Qld)combined for the purposes of this clause to be the Work Health and Safety Legislation, the Contractor must:

- provide all Goods/and or perform all the Services in accordance with the Contract in a safe manner
- 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
- comply with all Work Health and Safety Legislation requirements
- 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
- 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
- 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
- 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
- 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
- provide, when requested by the Principal, evidence and demonstrate compliance with the Work Health and Safety Legislation obligations
- notwithstanding the provisions of this Clause provide, when requested by the Principal, 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
- immediately notify 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
- notwithstanding the provisions of this Clause take all reasonable practicable steps to secure the area until an inspector appointed under the Work Health and Safety Legislation arrives or any earlier time that an inspector directs
- immediately notify the Principal where an inspector 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.

**28.4** Without limiting any other obligation of the Contractor under this Contract and the Work Health and Safety Legislation or any other regulation, if material which might contain asbestos or other hazardous substance is discovered, the Contractor must:

- Immediately notify the Principal.
- Comply with all applicable obligations and restrictions imposed by the Work Health and Safety Legislation and any other relevant regulation.

### 28.5 Work Health and Safety Audit

The Contractor must allow parties nominated by the Principal (which may be the Principal's staff or external contractors) to enter and obtain all and any records and documents pertaining to WHS issues, and to audit the Contractor's work methods and systems. The Contractor must provide those persons with all and any assistance, information and answers as may be sought. The frequency of these Audits will be specified in the Contract Header or if not specified it is expected that quarterly audits will be conducted or as and when required by the Principal.



## 29. Resolution of disputes

- 29.1** 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 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.
- 29.2** The mediator, the mediator's fees and the mediation rules must be:
- mutually agreed upon by the Parties in writing
  - in the absence of agreement, within ten 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.
- 29.3** The Parties agree to share the costs associated with the mediation in equal shares between them.
- 29.4** 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.

## 30. Variation

- 30.1** Except for the circumstances specified in Clauses 30.2 and 30.6, 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.
- 30.2** 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 legislation.
- 30.3** Where the terms and conditions of the Contract are varied as a result of Clause 30.2, 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 29 will apply to resolve the dispute.
- 30.4** Any variation proposed by the Contractor in accordance with Clause 30.1 or 30.3 must be accompanied by evidence to substantiate such proposed variation.
- 30.5** Despite any other provision of this clause, any variation proposed by the Contractor which purport to take away or reduce the entitlements of the Principal in accordance with Clause 35, will be deemed to be rejected by the Principal and the Contract will remain unvaried.
- 30.6** 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.
- 30.7** 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.
- 30.8** Where the supply of any part of the Goods and/or Service have been decreased or omitted in accordance with Clause 30.6, the Principal will pay the Contractor for the Goods and/or Services supplied or performed until served a Notice in accordance with Clause 30.6.

## 31. Suspension of payment

**31.1** 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.

## 32. Suspension

**32.1** The Principal may at any time by Notice, direct the Contractor to:

- suspend the supply of all or any part of the Goods and/or Services for a specified period
- recommence the supply of all or any part of the suspended Goods and/or Services.

**32.2** Where the Principal suspends the supply of the Goods and/or Services by Notice in accordance with Clause 32.1:

- 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 subcontractors
- 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
- any previously agreed completion dates for the Goods and/or Services will be postponed by a period equivalent to the duration of the suspension.

**32.3** 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:

- 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
- provide the Contractor with reasonable directions in relation to subsequent performance of the Contract.

**32.4** The Contractor must immediately comply with any reasonable directions given by the Principal, in accordance with Clause 32.3.

**32.5** Prior to the period of suspension expiring, the Principal may notify the Contractor in writing that the:

- 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
- period of suspension will be extended for a further period of time specified in the Notice
- Contractor must show cause, in accordance with a Notice issued by the Principal, why the Principal should not terminate the Contract from the date specified in the Notice.

**32.6** If the Principal fails to notify the Contractor in writing, in accordance with Clause 32.5, the period of suspension will expire at the end of the nominated period and each Party must then resume its performance under the Contract.

### **33. Termination**

#### **33.1 Termination for convenience**

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.

#### **33.2** If the Contract is terminated in accordance with Clause 33.1:

- 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 subcontractors
- subject to the sub clause below, 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
- 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.

#### **33.3 Termination for breach of Contract**

Without limiting Clause 33.5, 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.

#### **33.4** 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.

#### **33.5** The Principal may immediately terminate the Contract by Notice to the Contractor if:

- the Contractor fails to provide the Performance Guarantee in accordance with clause 16 or Financial Security in accordance with clause 17
- the Principal is satisfied that the Contractor has breached any part of Clause 18
- the Contractor gives Notice in accordance with Clause 19.2 or 19.3 or the Principal otherwise identifies a Conflict of Interest
- the Principal is satisfied that the Contractor has breached any part of Clause 21 or 22
- the Contractor breaches any part of Clause 26 or 27
- the Contractor:
  - 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
  - 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
  - enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors
  - is wound up, voluntarily or involuntarily
- the Contractor demonstrates that it is unable or unwilling to complete the Contract.

#### **33.6** If the Principal terminates the Contract in accordance with Clause 33.4 or 33.5, 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.

### 33.7 Termination for frustration of Contract

If under the law governing the Contract, the Contract is frustrated and terminated, the Principal may pay the Contractor:

- For the services executed under the Contract prior to the date of frustration, the amount which would have been payable if the Contract had not been frustrated.

## 34. Notices

34.1 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:

- for the Principal - as specified in the Contract Header
- for the Contractor - as specified in the Contract Header, or such other address as a Party may subsequently notify to the other Party in writing in accordance with this clause.

34.2 Notwithstanding Clause 34.1, if the Contractor is a company then the Principal may serve a Notice at any time on the Contractor's registered office.

34.3 A Notice to be given or served in accordance with Clause 29, 32 or 33 must not be sent via email, must be sent to the address nominated in the Contract Header.

34.4 A Notice will be deemed to be given:

- if posted – two Business Days after the date of posting
- if delivered by hand during a Business Day - on the date of delivery
- if faxed - on the date the sender's facsimile machine notes a complete and successful transmission
- 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
- except that a delivery by hand, fax or email received after 5pm (local time of the receiving Party) will be deemed to be given on the next Business Day.

## 35. Right to Information and Disclosure

35.1 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.

35.2 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.

35.3 Information relating to the Contract is potentially subject to disclosure to third parties.

35.4 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.

35.5 Despite any other provision of the Contract, the Principal is entitled to publish on the City of Gold Coast website: [www.goldcoast.qld.gov.au/awarded-contracts](http://www.goldcoast.qld.gov.au/awarded-contracts) or by any other means, the following details:

- name of the person or entity awarded the Contract
- value of the Contract

- a description of the Goods and/or Services
- Contract approval date.

## 36. General Provisions

### 36.1 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.

### 36.2 No Advertising

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

### 36.3 Waiver

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.

**36.4** No provision of the Contract will be deemed to be waived unless that waiver is in writing and signed by the waiving Party.

**36.5** 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.

### 36.6 No Subcontracting

The Contractor must not subcontract or allow a subcontractor to subcontract the provision of any Goods and/or Services under the Contract, without the prior written consent of the Principal. Any consent given by the Principal to subcontract:

- may not be unreasonably withheld
- may be conditional
- will not operate as an authority to transfer responsibility to the subcontractor
- will not relieve the Contractor from any of its liabilities or obligations under the Contract.

**36.7** With a request for approval, the Contractor shall give the Principal written particulars of the Goods and/or Services to be subcontracted and the name and address of the proposed Subcontractor. The Contractor shall give the Principal other information which the Principal reasonably requests, including the proposed subcontract documents without prices.

### 36.8 Governing Law

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.

**36.9** Notwithstanding Clause 36.8, 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.

### 36.10 Compliance with all Laws

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

### 36.11 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.

### 36.12 Further Assistance

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

### 36.13 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 must contact the Chief Procurement Officer, and ask for the matter to be dealt with in accordance with the Principal's procurement complaint process. The request will need to be in writing and include the following details:

- dates and facts relevant to the complaint
- parties involved
- issues that require resolution
- outcomes the Contractor considers appropriate for resolving any issues
- Contractor's contact details.

Information regarding the City of Gold Coast and procurement complaint process can be found on [cityofgoldcoast.com.au/procurement complaints process](http://cityofgoldcoast.com.au/procurement_complaints_process)

### 36.14 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.

### 36.15 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.

### 36.16 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.

### 36.17 No Guarantee of Goods and/or Services

The Principal is not providing any guarantee, promise or undertaking that:

- the Principal will seek Quotes from the Contractor at any time during the term of the Contract
- any Contract will be entered into with the Contractor
- a minimum quantity of work will be directed to the Contractor
- that the Contract will not be terminated prior to the expiration of its maximum term.

**36.18 Clauses to Survive Termination**

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

Clause 1 Definitions

Clause 2 Interpretations

Clause 5 Assignment/Transferability of the Contract

Clause 16 Performance Guarantee

Clause 17 Security Deposit

Clause 20 Intellectual Property Rights and Moral Rights

Clause 21 Confidentiality

Clause 22 Privacy and Personal Information

Clause 24 Liability

Clause 25 Indemnity

Clause 26 Insurance

Clause 35 Right to Information and Disclosure

Clause 36.2 No Advertising

Clause 36.3 Waiver

Clause 36.8 Governing Law.

