

Comprehensive Contract Conditions

For general goods and services

These Comprehensive Contract Conditions are designed to be used in connection with the Contract Details.

1 The Contract

1.1 When Contract is formed

A Contract will be formed between the Council and the Supplier on the earlier of the date when:

- (a) the Council accepts the Supplier's offer in writing; or
- (b) the authorised representatives of both parties have signed the appropriate section of the Details; or
- (c) if the Contract is formed under an SOA, the Contract is formed in accordance with the SOA Conditions.

This Contract may consist of a number of counterparts and if so, the counterparts taken together constitute one document.

1.2 Interpretation

The definitions and rules of interpretation available on the Dept. of Housing and Public Works website apply to this Contract.

1.3 Hierarchy

If there is any inconsistency between the documents which make up the Contract, then the following will prevail in descending order of precedence:

- (a) the contract departures section of the Details;
- (b) the Schedules to the Details (excluding any document incorporated by reference);
- (c) the Comprehensive Contract Conditions;
- (d) the Details (excluding the contract departures section of the Details);
- (e) any other document incorporated by reference.

2 Non exclusivity

Unless expressly stated otherwise in the Details, the Council may engage other suppliers to (or itself) provide goods, services and other deliverables the same as or similar to the Deliverables.

3 Term

The Contract starts on the start date in the Details and continues for the period set out in the Details, including any extension options which are exercised.

The Council must give notice of its intention to exercise any extension option.

4 Supplier to provide Deliverables

The Council appoints the Supplier to provide the Deliverables. The Supplier accepts the appointment.

5 Supplier general obligations

The Supplier:

- (a) **(time)** must meet all due dates specified in the Details or otherwise agreed, and perform all other obligations promptly;
- (b) **(delay)** will promptly notify the Council if it believes it will not be able to meet any due date;
- (c) **(Deliverables)** must provide the Deliverables in accordance with the Contract and all Laws;
- (d) **(Requirements)** must meet, and ensure that the Deliverables meet, the Requirements, and meet or exceed the performance measures specified in the Details (if any);
- (e) **(standards)** must ensure that all Deliverables are of a high quality, professional standard and fit for their usual purpose and any other purpose disclosed by the Council;
- (f) **(protection)** must protect people and property, avoid unnecessary interference with passage of people and vehicles, and prevent nuisance and unreasonable noise and disturbance;
- (g) **(policies)** must comply with all Council policies, codes of conduct, rules, standards and procedures which apply to the Site or the Council's Personnel or use of the Council Inputs, all Site policies and workplace health and safety policies applicable to the Site, and all other Council policies listed in the Requirements. If the Council introduces new policies relevant to the Supplier's obligations under this Contract, or amends a relevant

- policy, the Supplier will comply with the new or amended policies. Copies of the relevant policies are available on request;
- (h) (**directions**) must comply with all reasonable directions of the Council in relation to the Supplier's performance of the Contract;
- (i) (**Council Inputs**) must take care of Council Inputs, and only use Council Inputs for the purpose of performing the Contract, to the extent necessary to perform the Contract, and in accordance with the Details. If the Supplier loses or damages any Council Inputs, the Supplier will, at the election of the Council, promptly replace such Council Inputs or pay the Council the reasonable replacement cost of such Council Inputs. As between the Supplier and the Council, the Council retains all right, title and interest (including all Intellectual Property Rights) in Council Inputs;
- (j) (**act reasonably**) must act reasonably in exercising all of its rights under the Contract;
- (k) (**cooperation**) must cooperate with the Council's Personnel and other suppliers to the Council who provide goods and services relating to the Deliverables;
- (l) (**Laws**) must comply with all Laws and ensure that use of the Deliverables by the Council as contemplated in the Contract will comply with all Laws;
- (m) (**records**) must create and maintain records of its performance of this Contract in accordance with usual industry practice for provision of goods and services similar to the Deliverables. The Supplier will give the Council reasonable access to records on reasonable request;
- (n) (**insurance**) must at its cost, by the start date of this Contract, take out and maintain the insurances described in the Details with an insurer authorised and licensed to operate in Australia, on reasonable commercial terms. The Supplier must promptly notify the Council if any policy is cancelled or there is any significant change in any of those policies. The Supplier must maintain run-off insurance for a minimum period of 6 years after the Contract ends, for all insurance policies which are maintained on a "claims made" basis. The Supplier must provide a certificate of currency for each policy. If the Supplier does not take out or maintain these policies, the Council may take out those policies and the Supplier will be responsible for the Council's cost of doing so;
- (o) (**authorisations**) must obtain and maintain the authorisations described in the Details and any other licences, permits, permissions and authorities necessary for the Supplier to perform the Contract. The Supplier must provide evidence that it has complied with this clause, if the Council asks;
- (p) (**further assurances**) do anything and execute any document that the Council reasonably asks, to give effect to this Contract;
- (q) (**reports**) must provide reports as and when reasonably requested by the Council;
- (r) (**competitive neutrality**) if the Supplier is a government owned business, local government, or Commonwealth, State or Territory or authority, price its offer to comply with the competitive neutrality principles of the Supplier's jurisdiction;
- (s) (**expertise**) warrants that it has the necessary skills and expertise to properly perform the Contract, and all its Personnel performing duties in relation to this Contract are competent and have the necessary skills and expertise to properly perform the duties allocated to them concerning this Contract; and
- (t) (**access and inspection**) on reasonable prior written notice from the Council, must give the Council reasonable access to the Supplier's premises where the Deliverables are being performed or produced, and to Supplier documentation, records and Personnel, to enable the Council to verify that the Supplier is complying with its obligations under the Contract, and will promptly address any non-compliances identified by the Council and notified to the Supplier.

6 Security

6.1 Provision of security

The Supplier must, if specified in the Details, provide a bank guarantee, performance guarantee or other specified security ("**security**") to guarantee the proper performance of the Supplier's obligations under the Contract.

The security must:

- (a) comply with the requirements of Part 2 Division 6 of the Financial and Performance Management Standard 2009 (Qld) ("**Standard**");

- (b) be in a format acceptable to the Council acting reasonably; and.
- (c) meet all additional conditions specified in the Details.

Where the provider of a security stops being an approved security provider under the Standard, the Supplier must comply with a notice from the Council under section 40(2) of the Standard.

6.2 Enforcement

If the Supplier fails to properly perform its obligations under the Contract and the Council suffers loss or damage as a result, the Council may claim upon and will be entitled to receive payment for such loss or damage under the security, subject to clause 12(b).

If the Council makes any claim upon a financial security, the Supplier must, within 30 days of the claim being made, reinstate the financial security to the level required in the Details.

The Supplier agrees not to take, and will ensure that no guarantor takes, any action to obtain an injunction or otherwise prevent the Council from making a claim upon or receiving a payment in connection with any security.

The Council will not have any liability to the Supplier (whether in negligence or otherwise) in connection with the Council's enforcement of the security in accordance with this clause.

6.3 Release of security

The Council will release any security:

- (a) where the Queensland Building and Construction Commission Act 1991 (Qld) applies, in accordance with section 67N of that Act (as amended or replaced from time to time);
- (b) otherwise, when the Supplier has fully performed or discharged its obligations under the Contract (excluding any obligations which survive termination in accordance with clause 24(i)), if in the reasonable opinion of the Council the Council is not entitled to make a claim under the security and there is no reasonable prospect that the Council will become entitled to make a claim under the security.

6.4 Adverse changes

Whether or not the Supplier is required to provide security, the Supplier must notify the Council of any actual or reasonably anticipated significant

adverse change in the financial position of the Supplier (and any guarantor) ("**adverse change**") and will provide all documentation and information the Council reasonably requests in relation to the change.

If requested by the Council, the parties will meet to discuss in good faith any changes to the Contract and/or any existing security, or any new security which the Council may reasonably require to address any adverse change. If the parties agree any changes, the parties will promptly vary the Contract to document the agreed change.

If the parties are unable to address any adverse change to the Council's reasonable satisfaction within 30 days of the Supplier's notice of the adverse change, or another period agreed by the parties, the Council may terminate the Contract. If the Council terminates under this clause, the Council will pay for any Deliverables properly performed or provided and any work in progress not yet delivered to the Council, but the Council will not be required to make any other payment in connection with the termination.

6.5 Costs

All charges incurred by the Supplier and any guarantor in obtaining, maintaining and releasing any security must be met by the Supplier or the guarantor (as applicable).

7 Terms and conditions specific to Goods and Deliverables

The following terms and conditions apply to the supply of Goods and to Deliverables which the Supplier develops or creates in performing the Services:

- (a) (**condition**) all Goods must be new, unused and of recent origin;
- (b) (**test**) the Supplier must inspect and test all Goods and other Deliverables that will be delivered in a material form to ensure that they comply with the Requirements, before delivery;
- (c) (**manufacturer warranties**) the Supplier must assign any manufacturer's warranty to the Council, where possible to do so, and must inform the Council where it is not possible to do so;
- (d) (**delivery**) the Supplier must deliver the Goods or other relevant Deliverables to the Site, in accordance with the Council's instructions. If the Supplier asks, the Council will confirm in

writing that the Deliverables have been received;

- (e) (**acceptance**) acceptance of the Goods by the Council does not relieve the Supplier of any of its obligations under the Contract;
- (f) (**packaging**) the Supplier must adequately pack and protect Goods to withstand transit and storage, and provide a packing note with the Goods;
- (g) (**rejected Goods**) if the Council rejects Goods for non-conformity with Requirements, and the Supplier does not repossess the rejected Goods within 30 days of notice of rejection, the Council may sell or dispose of the Goods, at the Council's cost. The Council is under no obligation to pay for rejected Goods and the Supplier will promptly refund any amounts pre-paid for rejected Goods within 10 Business Days of the Council's rejection;
- (h) (**risk**) risk in Goods and any other Deliverables which are provided in a material form will transfer to the Council when delivered to the delivery address set out in the Details in accordance with the Council's delivery instructions;
- (i) (**title**) title in Goods and any other Deliverables which are provided in a material form will transfer on the earlier of the delivery or payment of the applicable Price;
- (j) (**no encumbrance**) the Supplier warrants that the Goods and any other Deliverables will not be subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a Law that cannot be excluded by contract; and
- (k) (**associated information**) the Supplier will provide with the Goods any information, data or manuals required for the Council to use, maintain, repair, install or operate the Goods.

8 Subcontracting and Personnel

8.1 Subcontracting

The Supplier may only subcontract any part of its obligations under this Contract to subcontractors identified in the Details or with the Council's prior written consent. The Council will not unreasonably withhold consent, but may give consent subject to reasonable conditions.

8.2 Personnel

- (a) (**responsibility**) The Supplier must ensure that its Personnel comply with all the obligations of the Supplier under this Contract,

and the Supplier is fully responsible for all acts and omissions of its Personnel, as though they were acts or omissions of the Supplier.

- (b) (**not Council employees**) The Supplier is not, and Supplier Personnel are not, employees of the Council.
- (c) (**removal**) If the Council reasonably requests, the Supplier will promptly remove from Council premises and/or the performance of this Contract, any Personnel used in performance of the Contract, and replace them with other Personnel acceptable to the Council, at no additional cost to the Council.

8.3 Key Personnel

In providing the Services the Supplier must:

- (a) ensure that the Key Personnel perform the roles allocated to them in the Details;
- (b) not remove or replace any Key Personnel without the Council's prior written consent, except for serious illness, incapacity or death;
- (c) promptly notify the Council if any Key Personnel is unavailable to perform his or her allocated role, for any reason; and
- (d) ensure that any replacement Key Personnel have equivalent or superior skills, qualifications and experience, and promptly provide information reasonably requested about any Key Personnel or proposed replacement Key Personnel, including by providing the curriculum vitae for each relevant individual.

The Council may reject any proposed replacement Key Personnel, in which case the Supplier must promptly propose an alternative.

9 Price

9.1 Pricing all inclusive

Unless otherwise stated in the Details, the Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST. If this Contract requires the Supplier to do or provide anything, and there is no separate Price for performing that obligation, the Supplier will comply with the obligation at no additional cost. The Supplier must not invoice the Council, and the Council is not required to pay, any amount except for the Price.

9.2 Expenses

The Council will not reimburse any travel or accommodation expenses except where:

- (a) the Council requests that the Supplier travel away from the agreed service location;
- (b) the Supplier complies with the Council's travel policy (a copy of which will be provided on request);
- (c) the Council has approved the expenses in writing before they are incurred; and
- (d) the Supplier provides satisfactory evidence of payment.

9.3 Price review

The Supplier may review the Prices in accordance with any Price review mechanism in the Details. No other Price change or new Price will be effective unless the Council agrees in writing.

10 Invoicing and payment

The Supplier may invoice the Council at the times and, where applicable, in the amounts set out in the Details. The Supplier will ensure that each invoice includes adequate information for the Council to verify that the invoice is accurate, and will provide supporting documentation reasonably requested by the Council.

The Council is not required to pay any invoice that does not comply with this clause.

Unless expressly stated otherwise in the Details, the Supplier may not:

- (a) invoice the Council (and the Council is not required to pay) for Deliverables until the relevant Deliverables have been provided, and the Deliverables meet the Requirements; or
- (b) charge or pass through any fees, costs or charges associated with a payment method.

The Council will pay each correctly rendered tax invoice within 30 days of receipt.

The Council may set off any amounts payable by the Supplier to the Council against amounts payable to the Supplier by the Council. If the moneys payable to the Supplier are insufficient to discharge the amounts payable by the Supplier to the Council, the Council may have recourse to any security provided in accordance with clause 6. Nothing in this clause will affect the Council's right to recover from the Supplier the whole amount owing by the Supplier to the Council, or any balance that remains owing after set off.

The Council may withhold payment of any amount which it disputes in good faith, until the

dispute is resolved and it is determined that the amount is payable.

11 GST

- (a) **(construction)** In this clause 11, words and expressions which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) **(GST exclusive)** Unless expressly stated, all moneys or other sums payable or consideration to be provided under this Contract are exclusive of GST.
- (c) **(payment of GST)** If GST is payable on any supply made under this Contract, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be provided under this Contract.
- (d) **(tax invoice)** The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 11(c). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.
- (e) **(adjustment event)** If an adjustment event arises in respect of a taxable supply made by a supplier under this Contract, the amount payable by the recipient under clause 11(c) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (f) **(reimbursements)** Where a party is required under this Contract to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

12 Liability

- (a) **(contribution)** Neither party will be liable to the other, (whether in contract, tort including negligence or otherwise) in connection with the Contract, for loss or damage to the extent

that the other party contributed to the loss or damage.

- (b) (**cap on liability**) The maximum aggregate liability of a party to the other party, whether in contract, tort (including negligence) or otherwise in connection with the Contract, is limited to the amount of the cap on liability in the Details.
- (c) (**exclusions from cap**) The cap on liability does not apply to liability in relation to:
- (i) personal injury, including sickness, injury or death;
 - (ii) loss of, or damage to, tangible property;
 - (iii) Intellectual Property Rights or Moral Rights infringement; or
 - (iv) an indemnity,
- and any payments in relation to those forms of liability will not deplete the cap on liability.
- (d) (**mitigation**) A party who suffers loss or damage must mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.
- (e) (**binding scheme**) Despite any other condition of the Contract, the Supplier's liability under the Contract is limited to the extent necessary to comply with a scheme that is in force and applies to the Supplier under the Professional Standards Act 2004 (Qld) as specified in the Details.

13 Indemnity

The Supplier releases, discharges and indemnifies the Council and its Personnel from and against any Claim that may be brought against or made upon or incurred by any of them (whether in contract, tort including negligence, or otherwise) in connection with any:

- (a) failure to comply with applicable Law by, the Supplier or its Personnel;
- (b) Wilful Default or Wilful Misconduct;
- (c) claim of Intellectual Property Rights or Moral Rights infringement relating to this Contract or the Deliverables;
- (d) breach of any warranty given in this document; or
- (e) any Claim by a third party relating to this Contract,

except to the extent that the Council or its Personnel caused or contributed to the Claim.

14 Information

- (a) The Supplier is responsible for making its own investigation and assessment about all matters relevant to the Contract, including the Requirements, the accuracy of all information and documents provided by or on behalf of the Council, and all other matters relevant to the Supplier's decision to enter the Contract, and will not have any Claim against the Council if any information or documents provided by the Council is incomplete, inaccurate out of date or misleading in any way.
- (b) The Supplier may only rely on Reliable Information, and only for the nominated purpose and nominated validity period.
- (c) The Council must inform the Supplier if it becomes aware of any material inaccuracies or omissions in any information provided to the Supplier, including Reliable Information.
- (d) The Supplier must ensure that all representations, warranties, declarations, statements, information and documents ("information") made or provided by the Supplier (including its representatives) in connection with the Contract are complete, accurate, up to date and not misleading in any way. The Supplier must immediately tell the Council if any information is or becomes incomplete, inaccurate, out of date or misleading in any way.

15 Intellectual Property Rights

15.1 Existing Intellectual Property Rights

Each party retains all its Intellectual Property Rights which existed at the Contract start date, or which are developed independently of the Contract.

The Supplier grants (and must procure that relevant third parties grant) the Council an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, transferable and sub licensable licence to exercise all such Intellectual Property Rights which are incorporated into any Goods, Services and Deliverables provided to a Council under the Contract, for any purpose of the Council, as part of those Goods, Services and Deliverables and future development of those Goods, Services and Deliverables.

15.2 New Intellectual Property Rights

Subject to clause 16 ("Council Data") new Intellectual Property Rights created or developed in performing the Contract will be owned by the Council. The Council grants the Supplier an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, transferable and sub licensable licence to exercise all such newly developed Intellectual Property Rights, for any purpose, including commercial purposes, subject to the Supplier complying with its obligations in relation to Confidential Information, Personal Information and Council Data.

15.3 Warranty of authorisation

The Supplier warrants that it is authorised to grant the rights in this clause.

The Supplier warrants that the Deliverables and the use of the Deliverables as permitted by this Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

16 Council Data

The ownership of Council Data, including any Intellectual Property Rights in Council Data, shall vest in the Council on creation. The Supplier has no right, title or interest in Council Data except as specified in this clause. The Supplier must not use, access, modify or disclose Council Data to any person except to its Personnel on a need to know basis to perform the SOA or Contracts and in accordance with all Laws.

The Supplier must comply with clause 18 and all applicable Laws in relation to Council Data which is Personal Information. The Supplier must provide reasonable assistance to the Council on request to enable the Council to comply with laws, policies and standards applicable to the Council in relation to Council Data including (without limitation) identification, labelling, searching, reporting, copying, retrieval and modification of Council Data in relation to Personal Information, public records, right to information and information standards.

17 Confidentiality

- (a) Each party will keep confidential all Confidential Information which it obtains from the Discloser, or creates in relation to the Contract, not use it except for the purposes of the Contract, and not disclose it except to its Personnel on a need to know basis for the purpose of performing its obligations under the

Contract, or with the Discloser's consent, or to the extent required by Law, or to its professional advisors, or in the case of the Council:

- (i) to a Minister, their advisors or Parliament; or
 - (ii) as required under the Right to Information Act.
- (b) The Council may publish information about the Contract on the Local Government's contract directory, where required or recommended by Government Act, Regulation or procurement policy.
- (c) Where the Recipient discloses the Confidential Information to a third party as permitted under this Contract, the Recipient must inform the third party of the confidential nature of the Confidential Information, and will be responsible for all use and disclosure of the Confidential Information by the Recipient's Personnel and professional advisors.
- (d) If the Council requests, the Supplier must obtain from its Personnel a signed confidentiality deed in a form acceptable to the Council.
- (e) The Supplier must not make any public announcements or advertisement relating to the Contract except where the Council has approved the proposed announcement or advertisement in writing.
- (f) If requested by the Council, on termination or expiry of the Contract, the Supplier must promptly return or destroy (at the Council's option) all Council Data, Confidential Information and Personal Information of the Council, and a copy of all documents and records created by the Supplier in the performance of the Contract, and will confirm to the Council when this has been done.
- (g) The Supplier may retain a copy of any Confidential Information of the Council to the extent required by law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.

18 Privacy

- (a) If the Supplier collects or has access to Personal Information in order to perform the Contract, when performing this Contract the Supplier must
- (i) if the Council is an 'agency' for the Information Privacy Act, other than for

chapter 3 of the Information Privacy Act – comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to the Council, as if the Supplier were the Council; or

- (ii) otherwise – comply with the Australian Privacy Principles in the Privacy Act.

(b) The Supplier must:

- (i) not transfer any Personal Information collected or accessed in connection with the Contract, outside of Australia, except with the prior written consent of the Council; and
- (ii) take any steps to prevent unauthorised use or disclosure of Personal Information collected or accessed in connection with the Contract that are reasonably notified by the Council.

19 Anti-competitive conduct, conflict of interest and criminal organisations

19.1 Anti-competitive conduct

The Supplier warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated Invitation Process or any actual or potential contract with any entity for goods and services similar to the Goods and Services. In addition to any other remedies available to it under Law or contract, the Council may, in its absolute discretion, immediately terminate the Contract if it believes the Supplier has engaged in collusive or anti-competitive conduct.

19.2 Conflict of interest

The Supplier warrants that it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under this Contract, except as disclosed in the Details.

If the Council requests, the Supplier must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Council.

19.3 Criminal organisation

The Supplier warrants that neither it nor its Personnel:

- (a) have been convicted of an offence under the Criminal Code where one of the elements of

the offence is that the person is a participant in a criminal organisation within the meaning of section 60A(3) of the Criminal Code; or

- (b) are subject to an order under, or have been convicted of an offence under the Criminal Organisation Act 2009 (Qld).

19.4 Warranties are ongoing

The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify the Council if it becomes aware that any warranty made in this clause 19 was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way.

In addition to any other remedies available to it under Law or contract, the Council may, in its absolute discretion, immediately terminate the Contract if it believes the Supplier has breached any warranty in this clause.

20 Where Requirements not met

If any Requirements for Goods or Services are not met, the Supplier must promptly (at the Council's option):

- (a) refund to the Council any monies paid for the relevant Goods or Services; or
- (b) resupply the relevant Goods, or re-perform the relevant Services, so that the Goods and or Services comply with the Requirements.

This does not limit the Council's other rights or the Supplier's responsibility if there is any non-compliance with the Contract, and the Council may exercise any other right or remedy that it has under this Contract or otherwise.

If the Supplier fails to comply with its obligations under this clause, the Council may have the Goods supplied or the Services performed by others, and the Supplier shall pay to the Council on demand any costs incurred by the Council in doing so.

21 Termination

21.1 For cause – by Council

The Council may terminate the Contract immediately on written notice if:

- (a) the Council is satisfied that any of the declarations and warranties provided by the Supplier were inaccurate, incomplete, out of date or misleading in any way when made, or

become inaccurate, incomplete, out of date or misleading in any way;

- (b) a Conflict of Interest arises and has not been, or in the Council's view cannot be appropriately managed, to the Council's satisfaction;
- (c) the Supplier ceases business or indicates that it is unable or unwilling to complete the Contract;
- (d) the Supplier breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within a reasonable period nominated by the Council; or
- (e) the Supplier is or becomes Insolvent.

If the Council terminates under this clause 21.1, the Supplier will pay or reimburse the Council's reasonable costs of obtaining replacement Deliverables or arranging for another supplier to complete the Contract.

21.2 For cause – by Supplier

The Supplier may terminate the Contract immediately on written notice only if the Council has not paid any amount which is undisputed and properly payable, the Supplier has notified the Council of the outstanding amount stating that it will terminate the Contract if the Council does not pay such amount within a reasonable time set out in the notice, and the reasonable time expires without the Council disputing the amount or making payment.

21.3 For convenience

The Council may terminate the Contract in its absolute discretion by giving at least 30 days' written notice. If the Council does so, the Council will pay the Supplier for the work performed and Goods supplied but not yet invoiced on a pro rata basis, and the Supplier's reasonable and documented expenses directly relating to the termination. The Council will have no other liability to the Supplier relating to the termination. The Supplier must take reasonable steps to minimise its expenses relating to the termination.

21.4 If Contract under SOA

- (a) If this Contract is entered pursuant to an SOA the Council may terminate the Contract for cause immediately on written notice to the Supplier if the Principal is entitled to terminate the SOA or any Council (including the Council) is entitled to terminate for cause any other contract entered under the SOA.

- (b) Unless otherwise specified in the Details, all the terms and conditions of this Contract (including this clause) will survive termination or expiry of the SOA, for any reason.

21.5 Suspension

In addition to the Council's termination rights, the Council may suspend the Contract immediately on written notice in its absolute discretion, or in any circumstances when it is entitled to terminate under this clause 21. The Council may end the suspension on written notice. The Supplier will promptly re-commence performance after receiving the Council's notice ending the suspension.

If the Council suspends the Contract for any reason which is not due to the act, default or omission of the Supplier, the Council will pay the Supplier's reasonable and documented expenses directly resulting from the suspension. The Council will have no other liability to the Supplier relating to the suspension. The Supplier must take reasonable steps to minimise its expenses relating to the suspension.

The Council may suspend payments under the Contract during any period that the Supplier is in breach of the Contract.

21.6 Consequences

Termination or suspension of the Contract will not affect the accrued rights and remedies of the parties prior to termination or suspension.

In no case will the compensation payable as a consequence of termination (for any reason) exceed the Price that would have been payable if the Contract had not been terminated.

21.7 Transition Out

The Council may request the Supplier to assist with transition out at any time before the expiry of the Contract or after receiving or issuing a notice of termination under this clause 21. Upon receiving such a request, the Supplier must provide all services reasonably necessary to effect transition out, as requested by the Council ("**transition out services**"). Transition out services may include:

- (a) transferring data and documentation to the Council or a third party as the Council directs;
- (b) continued provision of the Deliverables after the Contract ends; and
- (c) any other services agreed in writing between the Supplier and the Council.

If this Contract is terminated under clause 21.1, the Supplier will bear its own costs of providing the transition out services. Otherwise, the costs of providing the transition out services are to be agreed between the parties.

Unless otherwise agreed in writing, the Supplier must provide the transition out services to the Council for a period of 3 months before, and 6 months after the effective date of termination or expiry.

22 Assignment

The Supplier may not assign, transfer or novate any of its rights or obligations under the Contract without the Council's prior written consent.

The Council may assign, transfer or novate any of its rights or obligations under the Contract:

- (a) with the Supplier's prior written consent; or
- (b) on written notice to the Supplier, in connection with a Machinery of Government Change.

Both parties will act reasonably in considering a request by the other party to assign, transfer or novate the Contract.

For clarity, transfer of the Council's rights and obligations within the same legal entity is not an assignment.

The Contract is for the benefit of, and will bind the parties and their successors and permitted assigns.

23 Disputes

- (a) If any dispute arises concerning this Contract it must be resolved according to this clause 23.
- (b) Either party may give the other a notice in writing ("**dispute notice**") setting out the details of the dispute. Within 5 Business Days after the date on which a party gives the other party a dispute notice ("**dispute notice date**"), representatives of the parties must meet and use reasonable endeavours to resolve the dispute.
- (c) If the dispute is not resolved under clause 23(b), senior management representatives of the parties must, within 10 Business Days after the dispute notice date, meet and use reasonable endeavours to resolve the dispute.
- (d) If the dispute is not resolved under clause 23(c), the dispute must be referred to each

party's Director-General/Chief Executive Officer (or their nominee) for resolution.

- (e) If the dispute is not resolved under clause 23(d) within 30 Business Days after the dispute notice date (or such other time as agreed between the parties), the dispute must be referred to mediation according to clause 23(f).
- (f) Where the dispute is referred to mediation, the parties:
 - (i) will conduct the mediation in the **nearest regional centre to the shire**;
 - (ii) will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia will determine the mediator;
 - (iii) may be legally represented at the mediation;
 - (iv) will each bear their own costs concerning the mediation, the mediation venue and the mediator; and
 - (v) will continue to perform their obligations under the Contract notwithstanding the existence of a dispute.

24 General

The parties agree that:

- (a) (**communications**) they will direct all inquiries relating to the Contract to the other party's nominated contact person in the Details, or to another person if the other party directs.
- (b) (**notices**) they will send all notices relating to the Contract to the other party at the address listed in the Details, with a copy to the nominated contact person in the Details (or as updated under the above clause).
- (c) (**variation**) the Contract may only be varied by written agreement of authorised representatives of the parties.
- (d) (**entire agreement**) this Contract sets out all the parties rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms apply.
- (e) (**severability**) if any part of this Contract is invalid, unlawful or unenforceable, the invalid,

unlawful or unenforceable part of the Contract (and any parts of the Contract which are dependent on those parts) will not apply but the other parts of the Contract will not be affected.

- (f) (**waiver**) clauses and rights in this Contract can only be waived in writing signed by the waiving party. Failure or delay of a party in exercising a right under the Contract does not waive the party's rights. A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances.
- (g) (**relationship**) their relationship is of principal and contractor. This Contract does not create any partnership, joint venture or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Council.
- (h) (**exclude implied terms**) that the Sale of Goods (Vienna Convention) Act 1986 (Qld) does not apply, to the extent that the parties are permitted by Law to exclude it.
- (i) (**survival**) clauses 1.2, 1.3, 11, 12, 13, 15, 16, 17, 18, 24(c), (e), (f), (g), (h) and (i) will survive termination or expiry of the Contract for any reason.
- (j) (**costs**) each party will bear its own costs in relation to the preparation, negotiation and execution of the Contract and any variations.