



STANDARD TERMS AND CONDITIONS

1. **CONSTRUCTION OF CONTRACT**

- 1.1 A reference to a party to the Contract includes:
- (a) in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
 - (b) in the case of a corporation, the corporation, its successors and assigns (transferees).
- 1.2 Where a party is composed of 2 or more persons, each item of agreement by the party binds:
- (a) all of those persons collectively; and
 - (b) each of them as an individual.
- 1.3 A reference to:
- (a) the singular includes the plural, and vice versa;
 - (b) a gender includes each other gender;
 - (c) a person includes a corporation, a firm, and a voluntary association;
 - (d) an Act includes an Act that amends, consolidates or replaces the Act;
 - (e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
 - (f) money is a reference to Australian dollars and cents;
 - (g) a time of day is a reference to Australian Eastern Standard Time;
 - (h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced.
- 1.4 Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.
- 1.5 All information delivered as part of the Goods and/or Services supplied under the Contract must be written in English. Where any document is a translation into English, the translation must be accurate.
- 1.6 If a provision of the Contract is void, voidable, illegal or unenforceable, the provision will be deemed deleted from the Contract.

2. **DEFINITIONS**

- 2.1 In the Contract, except where the context otherwise requires:
- 'Act'** means an Act passed by the Commonwealth Parliament or the Queensland Parliament and includes subordinate legislation under an Act.
- 'Authorised Officer'** see Clause 26.1.
- 'Clause'** means a clause of the Contract.
- 'Contract':**
- (a) means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between Council and the Supplier; and
 - (b) if the Specification is partially or completely verbal – includes the verbal component of the Specification.
- 'Contract Material'** means New Contract Material and Existing Contract Material.
- 'Contract Price'** means:
- (a) where payment is to be made on a lump sum basis, the sum which is stated in the Contract to be payable to the Supplier for the supply of the Goods and/or Services by the Supplier and the performance of the obligations of the Supplier under the Contract; and
 - (b) where payment is to be made on a schedule of rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the schedule of rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the schedule of rates; and

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- (c) where payment is to be made on a lump sum and a schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b),

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

‘Council’ means Cairns Regional Council ABN 24 310 025 910 of 119-145 Spence Street, Cairns, Queensland 4870.

‘Defective Goods and/or Services’ see Clause 8.1.

‘Dispute Notice’ see Clause 17.2.

‘Existing Contract Material’ means any material that exists at the commencement of the Contract and which is provided in connection with the Contract.

‘Force Majeure’ means anything outside the control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, and acts (including laws, regulations, disapprovals or failures to approve) of any statutory authority.

‘Goods and/or Services’ means the goods, services, tasks, work and requisites the subject of the Contract which are more particularly described in the Specification including all variations to the goods, services, tasks, work and requisites provided for by the Contract or such of them as shall be described in the Purchase Order.

‘GST’ means the goods and services tax under the GST Act.

‘GST Act’ means *A New Tax System (Goods and Services Tax) Act 1999* and includes other GST related legislation.

‘Intellectual Property Rights’ means all copyright, patents and all rights in relation to inventions, trademarks and designs or any rights to registration of such rights, whether created before, on or after the date of the Contract.

‘Moral Rights’ means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968*, and rights of a similar nature anywhere in the world whether existing before commencement of the Contract or which may come into existence on or after the date of the Contract.

‘New Contract Material’ means any material provided in connection with the Contract that is created, written or otherwise brought into existence by or on behalf of the Supplier in the course of performing the Contract.

‘Offer’:

- (a) means the offer submitted to Council by the Supplier to provide the Goods and/or Services and, if applicable, as amended in writing by any post offer negotiations; and
- (b) if the Supplier’s offer is partly or completely verbal – includes the verbal component of the offer.

‘Purchase Order’ means the purchase order for the Goods and/or Services placed by Council with the Supplier under the terms of the Contract.

‘Specification’:

- (a) means the specification for the Goods and/or Services delivered by Council to the Supplier; and
- (b) if the Specification is partly or completely verbal – includes the verbal component of the Specification; and
- (c) if Council delivers a written request for quotation to the Supplier – includes the written component of the request for quotation that specifies or describes the Goods and/or Services.

‘Standard Terms and Conditions’ means these Standard Terms and Conditions.

‘Supplier’ means the party whose Offer to supply the Goods and/or Services is accepted by Council (by Purchase Order).

3. EVIDENCE OF CONTRACT

- 3.1 The Contract between Council and the Supplier is constituted by the following documents:
- (a) Purchase Order;
 - (b) Specification;
 - (c) Standard Terms and Conditions;
 - (d) Offer; and
 - (e) correspondence passing between Council and the Supplier clarifying any aspect of the Offer, the Specification or the Purchase Order.
- 3.2 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (e) in Clause 3.1.

4. SUPPLY OF GOODS AND/OR SERVICES BY PURCHASE ORDER

- 4.1 Where a Purchase Order is placed with the Supplier, the Supplier must supply Goods and/or Services:
- (a) in accordance with the terms and conditions of the Purchase Order; and
 - (b) that comply with the Specification.

5. QUALITY OF GOODS AND/OR SERVICES

- 5.1 Unless the Specification states otherwise, all Goods and/or Services supplied must be in accordance with Australian Standards where such exist. Where an Australian Standard does not exist the relevant ISO Standard shall apply.
- 5.2 If no sample or standard is stated in the Specification, the Goods and/or Services must be of the highest standard and carried out promptly with all due skill, care and diligence.
- 5.3 The Supplier must:
- (a) engage and retain personnel who are able to competently provide the Goods and/or Services; and
 - (b) ensure that all personnel engaged in the supply of the Goods and/or Services have all skills and qualifications necessary to supply the Goods and/or Services.

6. SUPPLY OF GOODS AND/OR SERVICES

- 6.1 The Supplier must supply the Goods and/or Services punctually. However, if a time for supply of the Goods and/or Services is stated in the Purchase Order, the Specification or the Contract, the Goods and/or Services must be supplied within the time stated in the Purchase Order, the Specification or the Contract, as the case may be.
- 6.2 Time shall be of the essence in all cases.
- 6.3 Upon it becoming evident to the Supplier that supply of the Goods and/or Services is likely to be delayed, the Supplier must promptly notify Council in writing. Such notification shall not release the Supplier from its obligation to supply the Goods and/or Services by the due date or from any other obligation under the Contract, unless Council agrees in writing. The Supplier shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with any delay.
- 6.4 The Supplier shall not be entitled to any extension of time for supply of the Goods and/or Services except with the prior written consent of Council. Council may in its sole discretion:
- (a) grant its consent; or
 - (b) refuse its consent.
- 6.5 Unless otherwise provided in the Contract, the Supplier must pay all packaging, freight, insurance, and other charges whatsoever, in connection with the delivery of Goods and/or Services and the return of Goods wrongly supplied and all packaging.
- 6.6 Delivery and receipt of Goods and/or Services shall not of itself constitute acceptance of the Goods and/or Services by Council, with acceptance being subject to the approval of the Authorised Officer.

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- 6.7 Where it is a term of the Contract that Goods and/or Services must be installed or commissioned, Council shall not be deemed to have accepted the Goods and/or Services unless the Goods and/or Services are satisfactorily installed or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.
- 6.8 Council may conduct any examination or testing of the Goods and/or Services. If the testing shows that the Goods and/or Services do not comply with the Specification, the Purchase Order or the Contract or are otherwise defective, the cost of the testing shall be a debt due and payable by the Supplier to Council.
- 6.9 The risk of any damage, deterioration, theft or loss of the Goods and/or Services after delivery but prior to acceptance shall remain with the Supplier except where the damage, deterioration, theft or loss results from a negligent act or omission of Council or any agent or employee of Council.
- 6.10 If the Goods or any part of the Goods is a hazardous substance, the Supplier must:
- (a) prepare a MSDS for the substance; and
 - (b) give a copy of the MSDS to Council when first supplying the substance to Council; and
 - (c) otherwise comply with the obligations of the Supplier as a supplier of a hazardous substance in the *Workplace Health and Safety Act 1995*.
- 6.11 In Clause 6.10, "hazardous substance" and "MSDS" have the meaning given in the *Workplace Health and Safety Regulation 2008*.

7. INSURANCE

- 7.1 The Specification identifies the insurance cover that the Supplier must have and maintain for the purposes of this Contract. In particular, the Supplier must have and maintain:
- (a) insurance under the *Workers Compensation and Rehabilitation Act 2003* to cover workers, eligible persons, self employed contractors, directors, trustees and partners; and
 - (b) if the Specification requires the Supplier to have and maintain public liability insurance — public liability insurance in an amount not less than \$10,000,000.00 in respect of any one occurrence and for an unlimited number of claims; and
 - (c) if the Specification requires the Supplier to have and maintain product liability insurance — product liability insurance in an amount not less than \$10,000,000.00 in respect of any one occurrence and for an unlimited number of claims; and
 - (d) if the Specification requires the Supplier to have and maintain professional indemnity insurance — professional indemnity insurance in an amount not less than \$10,000,000.00 in respect of any one occurrence and for an unlimited number of claims.
- 7.2 The Supplier must, upon receipt of a written request at any time from Council, produce evidence that the insurances required by this Clause 7 have been effected and maintained.
- 7.3 All insurance policies of the Contractor, as noted in clause 7.1, must be endorsed to note the principle for respective rights and interests pursuant to the General Conditions of Contract.
- 7.4 Each insurance policy must:
- (a) limit the insurer's entitlement to avoid the policy to be available only against whichever of the insured has actually breached its obligation of disclosure or an obligation under the policy; and
 - (b) cover the Supplier's liability upon the obligations it has assumed and the indemnities it has given in the Contract; and
 - (c) contain no exclusions, endorsements or alterations not approved in writing by Council (that approval not to be unreasonably withheld); and
 - (d) otherwise contain provisions acceptable to, or required by Council (but Council may not require unreasonably the inclusion, retention, modification or exclusion of a provision); and
 - (e) remain current at all times during the supply of the Goods and/or Services.
- 7.5 If the Supplier is obliged to have and maintain professional indemnity insurance, the policy of insurance must cover the Supplier and its servants and agents for liability under the Contract for the amount specified in Clause 7.1. The Supplier must maintain the professional indemnity insurance on terms and conditions no less favourable to Council than those approved under this Clause 7, for the duration of the

supply of the Goods and/or Services and, after expiry or termination of the Contract upon request in writing.

- 7.6 If an insurance policy obtained by the Supplier provides for a deductible, the Supplier indemnifies Council against any cost attributable to the deductible.
- 7.7 The Supplier must promptly pay all premiums, stamp duty, GST and other money entailed in maintaining any insurance required under this Clause 7.
- 7.8 The Supplier must give Council upon request a copy of the relevant policy document and the insurer's receipt for the last premium paid or a certificate of currency with respect to each of the insurance policies the Supplier is required to maintain under this Clause 7.
- 7.9 The Supplier must inform Council in writing of any claim or of the occurrence of any event that may give rise to a claim under any policy of insurance effected pursuant to this Clause 7 within 7 days thereof and must ensure that Council is kept fully informed of subsequent actions and developments concerning the event or claim.
- 7.10 This Clause 7 shall survive termination or expiration of the Contract.

8. DEFECTIVE GOODS AND/OR SERVICES

- 8.1 Where, at any time during the supply of the Goods and/or Services or any part of the Goods and/or Services pursuant to the Purchase Order, or after the supply of the Goods and/or Services pursuant to the Purchase Order, an Authorised Officer determines, acting reasonably, that the Goods and/or Services or a part of the Goods and/or Services do not comply with the Specification, the Purchase Order or the Contract ("Defective Goods and/or Services"), Council may give written notice to the Supplier of the lack of compliance, and require the Supplier to promptly supply or supply again the Goods and/or Services or such part of the Goods and/or Services as do not comply.
- 8.2 Council may, without derogating from any other right it may have on account of such unsatisfactory or defective supply, defer payment of that part of an invoice as relates to the Defective Goods and/or Services until the Authorised Officer has certified that the resupplied Goods and/or Services comply with the Specification, the Purchase Order or the Contract, as the case may be.
- 8.3 If the Supplier fails to comply with a requirement of a notice given under Clause 8.1, Council reserves the right to arrange for the supply of the Goods and/or Services from another supplier.
- 8.4 All costs and expenses incurred by Council in exercising the rights of Council under Clause 8.3 in excess of the Contract Price, shall be a debt due and payable by the Supplier to Council.

9. OBLIGATIONS OF SUPPLIER

- 9.1 The Supplier must supply all personnel and equipment necessary for the proper supply or performance of the Goods and/or Services.
- 9.2 The Supplier warrants that it has the necessary skills and expertise to be able to competently supply the Goods and/or Services.
- 9.3 If any Contract Material is produced or reproduced in an electronic format, the Supplier must deliver it to Council in a format approved in writing by Council.
- 9.4 If any Contract Material is produced or reproduced in an electronic format or stored electronically, the Supplier must not store it on a foreign computer without keeping the current version of the Contract Material on separate media (approved in writing by Council) and delivering it to Council at intervals approved in writing by Council.
- 9.5 The Supplier must not produce, reproduce or store Contract Material in such a way that it is mixed with, attached to or indistinguishable without the use of a computer from, material that is not the subject of the Contract.
- 9.6 For the purposes of this Clause 9, "foreign computer" means a hard disk or other similar device affixed to a computer that is not the property of Council.

10. VARIATION OF GOODS AND/OR SERVICES

- 10.1 Council may, by written notice given to the Supplier, require the Supplier to vary the Goods and/or Services in nature, scope or timing.

10.2 Without limiting the generality of Clause 10.1, Council may direct the Supplier to:

- (a) increase, decrease or omit any part of the Goods and/or Services; or
- (b) change the character or content of any part of the Goods and/or Services; or
- (c) change the direction or dimensions of any part of the Goods and/or Services; or
- (d) perform additional work.

10.3 Where Council requires a variation to the Goods and/or Services, the parties must negotiate in good faith a variation of the Contract Price and the time for completion of supply of the Goods and/or Services and failing agreement, either party may invoke the dispute resolution procedure in Clause 17.

10.4 The Supplier must not commence work on the variation to the Goods and/or Services unless and until the variation is agreed in writing by Council and the Supplier.

11. INVOICING

11.1 The Supplier must submit an invoice/delivery docket to the Authorised Officer of Cairns Regional Council upon completion/delivery of the supply and delivery of the Goods and/or Services unless otherwise specified in the Specification. Council will not have any obligation to pay the Supplier for Goods and/or Services until the Authorised Officer has been given a correctly rendered documentation.

11.2 A correctly rendered invoice must:

- (a) identify the Goods and/or Services the subject of the invoice; and
- (b) specify the Purchase Order number allocated to the Contract by Council (or any other number as Council may specify in writing to the Supplier for the purposes of the Contract)(if any); and
- (c) where Services are charged on a time basis, be supported by records of time spent by individual persons on the Services, verified by the Authorised Officer; and
- (d) specify details of the Purchase Order; and
- (e) specify details of the Contract Price requested by Council; and
- (f) provide sufficient detail to enable the Authorised Officer to assess progress against targets (if any) set out in the Purchase Order or the Specification; and
- (g) specify the Australian Business Number of the Supplier; and
- (h) specify the address for payment of the Supplier; and
- (i) specify the date of supply of the Goods and/or Services identified in the invoice; and
- (j) specify the Supplier's invoice number and invoice date; and
- (k) specify the Contract Price payable by Council and particulars of any GST payable in respect of the Contract Price; and
- (l) otherwise comply with the requirements of a tax invoice for the purposes of the GST Act.
- (m) A copy of this invoice must be posted to the following address " Attention Accounts Payable Cairns Regional Council PO Box 359,Cairns Qld 4870"

11.3 Upon receipt of an invoice, the Authorised Officer may require the Supplier to provide additional information to assist the Authorised Officer to determine whether or not an amount is payable.

11.4 If a delivery docket is provided with delivery of goods and services, then it must contain all information as required for an invoice, but at the discretion of the supplier it is not required to list pricing details.

12. PAYMENT

12.1 Subject to the Authorised Officer's certification that:

- (a) the Goods and/or Services supplied by the Supplier comply with the relevant Purchase Order, the Specification and the Contract; and
- (b) the Goods and/or Services supplied by the Supplier are complete; and

(c) the Supplier's invoice is in accordance with the Contract,

Council must pay the amount due to the Supplier within 30 days of receipt of an invoice (or such other period as may be mutually agreed in writing between the parties) or, if additional information is required by the Authorised Officer, within 30 days (or such other period as may be mutually agreed in writing between the parties) after receipt of the additional information.

- 12.2 Payment of money to the Supplier does not constitute an admission by Council that Goods and/or Services have been supplied in accordance with the Contract.
- 12.3 Upon payment for the Goods and/or Services, property in that part of the Goods and/or Services comprising the Goods shall pass to Council.
- 12.4 Payment shall include credit by way of set off.
- 12.5 Failure by Council to pay the amount payable by the due time will not be grounds to invalidate or avoid the Contract.
- 12.6 The Supplier shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.

13. TEMPORARY SUSPENSION OF SUPPLY

- 13.1 Council may give written notice to the Supplier requiring the Supplier to suspend the progress of the whole or any part of the supply of the Goods and/or Services for a period specified in the notice within a reasonable time after receipt of the notice, if the suspension is required by Council because of any change in the nature, scope or timing of the Goods and/or Services.
- 13.2 Council may, by giving written notice to the Supplier, require the Supplier to recommence all or any part of the supply of the Goods and/or Services suspended by written notice given under Clause 13.1.
- 13.3 Where the Supplier is required to suspend the supply of the Goods and/or Services pursuant to Clause 13.1:
 - (a) Council and the Supplier must negotiate in good faith as to reasonable compensation payable to the Supplier; and
 - (b) any previously agreed date for completion of the supply of the Goods and/or Services will be postponed by a period equal to the duration of the suspension.
- 13.4 Council must reimburse the Supplier for any additional reasonable costs incurred by the Supplier which are directly attributable to the suspension of the supply of the Goods and/or Services. If Council and the Supplier do not agree on the amount of reasonable compensation within a reasonable period, either party may invoke the dispute resolution procedure in Clause 17.

14. VARIATION OF PRICE

- 14.1 The Contract Price is firm and not subject to rise or fall.

15. GOODS AND SERVICES TAX

- 15.1 Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.
- 15.2 The Contract Price includes Council's liability for GST on the supply of the Goods and/or Services. Council is not obliged to pay any additional amount to the Supplier on account of GST on the supply of the Goods and/or Services.
- 15.3 The Supplier must ensure that all invoices rendered to Council under the Contract are in a format that identifies any GST paid, and which permits Council to claim an input tax credit. However, this Clause 15.3 does not apply if the supply of the Goods and/or Services is not a taxable supply.

16. TERMINATION

- 16.1 If the Supplier:
 - (a) breaches any Clause of the Contract; or
 - (b) suspends payment of its debts or is unable to pay its debts; or

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- (c) has execution levied on any of the assets of the Supplier and the execution is not satisfied within 28 days; or
 - (d) enters into an arrangement, reconstruction or compromise with its creditors or any of them; or
 - (e) has a receiver appointed for all or any part of the assets of the Supplier; or
 - (f) has an application made or order filed for the Supplier's administration, voluntary or compulsory liquidation, winding-up, dissolution or bankruptcy; or
 - (g) ceases to carry on business,

the Supplier will be in breach of the Contract and Council may give to the Supplier a written notice to remedy the breach.

- 16.2 If within 14 days of receiving a notice under Clause 16.1 the Supplier does not remedy the breach, Council may immediately terminate the Contract by giving written notice to the Supplier.
- 16.3 In addition, or as an alternative to termination of the Contract in accordance with Clause 16.2, Council may, in circumstances which would otherwise entitle Council to terminate the Contract in accordance with Clause 16.2:
 - (a) let such contracts as Council decides are necessary to perform that part of the obligations of the Supplier under the Contract as are yet to be performed or any of them; and
 - (b) suspend or cease all payments otherwise due to the Supplier.
- 16.4 This Clause 16 shall survive termination or expiration of the Contract.
- 16.5 Upon termination of the Contract pursuant to Clause 16.2, all money which has been paid and all money to be paid for Goods and/or Services supplied to the date of the termination will be in full and final satisfaction of all claims by the Supplier under the Contract.

17. DISPUTE RESOLUTION

- 17.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.
- 17.2 If a dispute arises between the parties regarding the Contract, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.
- 17.3 A Dispute Notice must be referred to a panel consisting of a representative of the Supplier who is authorised to settle the dispute and the Authorised Officer.
- 17.4 Within 7 days of the giving of the Dispute Notice, the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.
- 17.5 If the dispute has not been resolved within 28 days of the giving of the Dispute Notice, the dispute must be referred to arbitration.
- 17.6 Arbitration shall be effected by an arbitrator who shall be nominated by the Authorised Officer. The arbitration must be conducted in accordance with the provisions of the *Commercial Arbitration Act 1990*.
- 17.7 Nothing in this Clause shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under this Clause 17 or any matter arising under the Contract.

18. CLAUSES TO SURVIVE EXPIRATION OR TERMINATION

- 18.1 The following Clauses survive the expiration or termination of the Contract:
 - (a) Clause 19 – Intellectual Property Rights; and
 - (b) Clause 20 – Release and Indemnity; and
 - (c) Clause 21 – Confidentiality.

19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 The Supplier warrants that the supply of the Goods and/or Services by the Supplier to Council under the Contract will not infringe the Intellectual Property Rights of any third party.

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- 19.2 The Supplier must indemnify Council against any claim by a third party in relation to infringement of the Intellectual Property Rights of the third party of or incidental to the supply of the Goods and/or Services by the Supplier to Council under the Contract.
- 19.3 In respect of the supply of the Goods and/or Services by the Supplier under the Contract, the Supplier must at all times indemnify and keep indemnified Council from and against any loss or liability (including reasonable legal costs and expenses) incurred by Council arising from any claim, demand, suit, action or proceeding (including a claim for a breach of a person's Intellectual Property Rights) by any person against Council where the loss or liability arose out of, or in connection with, or in respect of, the supply of the Goods and/or Services by the Supplier under the Contract.
- 19.4 The indemnities in Clause 19.3 will be granted irrespective of whether legal proceedings are instituted and the means, manner or nature of any settlement, compromise or determination. Council may recover a payment from the Supplier under this indemnity before it makes the payment in respect of which the indemnity is given.
- 19.5 Unless otherwise specified in the Contract, title to and Intellectual Property Rights in all New Contract Material provided to Council, including each and every stage of design and production of it, will upon its creation vest in Council.
- 19.6 The Contract does not affect Intellectual Property Rights in Existing Contract Material, but the Supplier grants, and will ensure that relevant third parties grant, to Council, a paid up non-exclusive, non-transferable licence:
- (a) to use, reproduce, communicate to the public and adapt for its own use; and
 - (b) to perform any other act with respect to copyright; and
 - (c) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do any of those things in respect of,
- the Existing Contract Material but only as part of the Contract Material (and any further development of that material).
- 19.7 Where specified in the Specification, right and title to the Intellectual Property Rights in the Contract Material so specified will vest in the Supplier and the Supplier grants to Council, a non-exclusive, transferable, irrevocable and paid-up licence to use, reproduce, communicate to the public and adapt the Contract Material on the terms and conditions specified in the Specification.
- 19.8 Where the Supplier is an individual, the Supplier consents to any acts or omissions of Council in the exercise of rights or assignments granted under this Clause that might otherwise constitute an infringement of the Moral Rights of the Supplier.
- 19.9 Without limiting Clause 19.8, the Supplier consents, in relation to the Contract Material:
- (a) to being attributed as author of works comprised in the Contract Material in a form and manner acceptable to Council; and
 - (b) to the specific acts or omissions set out in the Contract.
- 19.10 Prior to an individual commencing work in respect of the Contract Material on behalf of the Supplier, the Supplier must obtain from that individual, in writing, and provide to Council, upon request:
- (a) all consents, permissions and assignments to enable Council to exercise in full, without cost to Council and without impediment, the rights granted under this Clause 19; and
 - (b) without limiting paragraph (a), a consent to any act or omission (including the specific acts or omissions set out in the Contract) which would otherwise infringe the Moral Rights of that individual. If requested by Council, such consent must be in a form specified by Council.

20. RELEASE AND INDEMNITY

- 20.1 The Supplier will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by Council or any officer, servant or agent of Council arising from the unlawful or negligent acts or omissions of the Supplier, its employees, subcontractors or agents, in the course of the supply (or attempted or purported supply) of Goods and/or Services under the Contract.
- 20.2 The Supplier releases and indemnifies Council and all officers, servants and agents of Council from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including the Supplier, arising from:

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- (a) any wilful or negligent act or omission of the Supplier or any person for whose conduct the Supplier is liable; and
 - (b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Supplier; and
 - (c) death, injury, loss or damage suffered by the Supplier, its employees, subcontractors or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of Council or any officer, servant or agent of Council.

20.3 In the event of any claim or action being made or brought against Council, Council may retain any money due to the Supplier in respect of Goods and/or Services supplied under the Contract for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the claim or action, the balance outstanding in respect of the claim or action may be recovered from the Supplier as a debt due and payable to Council.

21. CONFIDENTIALITY

21.1 The Supplier must, and must ensure that its employees, agents and approved subcontractors, keep confidential any information obtained in the course of performing the Contract.

21.2 However, the Supplier may disclose any information:

- (a) which it is legally required or entitled to disclose; or
- (b) to its legal and accounting advisers for the purposes of obtaining advice in relation to the Contract or any matter arising from the Contract.

22. ASSIGNMENT

22.1 The Supplier must not assign or subcontract any of the rights or obligations of the Supplier under the Contract (either for the supply of the Goods and/or Services or otherwise) without the prior written consent of Council. Any consent given by Council:

- (a) may be conditional; and
- (b) will not relieve the Supplier from any of its liabilities or obligations under the Contract.

22.2 The Supplier is liable to Council for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were the acts or omissions of the Supplier.

23. NEGATION OF EMPLOYMENT AGENCY ETC

23.1 The Supplier must not represent itself or allow itself to be represented as being an employee or agent of Council.

23.2 The Supplier will not, by virtue of the Contract, be or become an employee or agent of Council.

23.3 Nothing in the Contract is to be taken or construed as creating the relationship of a partnership, joint venture or principal and agent, between any of the parties to the Contract.

24. NOTICES

24.1 Notices under the Contract may be delivered by pre-paid postage or certified mail, by hand or by facsimile transmission. Notices are deemed given 5 days after deposit in the mail with postage pre-paid or certified, when delivered by hand, or if sent by facsimile transmission, upon completion as evidenced by a facsimile transmission record. Where a notice is given by facsimile the original document must be posted on the same day as the transmission is sent. The addresses for service of notices are:

- (a) for Council – PO Box 359, Cairns, Queensland 4870, facsimile number (07) 4044 3022;
- (b) for the Supplier – the address for service and facsimile number (if any) of the Supplier specified in the Purchase Order.

24.2 A party may change its address for service of notices by giving written notice to every other party to the Contract.

25. FORCE MAJEURE

25.1 A party will not be entitled to exercise its rights or remedies upon the default of another party to the Contract (whether at common law or pursuant to the Contract) if that default:

- (a) is caused by Force Majeure; or

(b) continues for less than 3 days.

25.2 Without limitation, where the event of Force Majeure continues for a period of more than 14 days, Council may terminate the Contract by giving written notice to the Supplier.

26. AUTHORISED OFFICER

26.1 Council may, in the Purchase Order, or by giving written notice to the Supplier, appoint a representative (the "Authorised Officer") who shall be responsible for administering the Contract on behalf of Council. Council may change the identity of the Authorised Officer from time to time. The appointment of an Authorised Officer does not prevent Council from exercising any of its rights under the Contract.

27. MISCELLANEOUS

27.1 The Supplier must comply with all relevant laws and the requirements of any relevant statutory authority in supplying the Goods and/or Services.

27.2 The Contract is governed by and construed in accordance with the laws of the State of Queensland, and the parties submit to the jurisdiction of the Courts of that State and all Courts competent to hear appeals therefrom.

27.3 No agreement or understanding that varies or amends the Contract will bind any party unless and until agreed to in writing by all parties.

27.4 None of the conditions of the Contract will be waived or deemed waived, except by notice in writing signed by the party waiving the right.

27.5 The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Contract.

27.6 The parties to the Contract are independent contractors and nothing in the Contract will appoint the Supplier as an agent or employee of Council.

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