# Brisbane City Council

# Contract

# Consultancy Professional Services

# (Low risk)

*Brisbane City Council’s Tender Manager - Internal QA signature: \_\_\_\_\_\_\_\_*

|  |  |
| --- | --- |
| **Contract title:** | {insert} |
| **Contract number:** | {insert} |
| **Contractor:** | {insert} |
| **Contract RM ref:** | {insert} |
| Template version: | Version 2 – January 2020 (RM: CA17/111288) |
| Security label: | Template – **PUBLIC** If executed or contains pricing/personal info/negotiated terms – **SENSITIVE: COMMERCIAL-IN CONFIDENCE**  |

# USING THIS TEMPLATE:

**AMENDING OR EDITING THIS CONTRACT MAY LEAD TO CROSS-REFERENCE ERRORS IN THE DOCUMENT.**

This document contains cross-referenced links. Use the below process to identify and fix cross-reference errors before the document is submitted for approval or printing. If you have any queries or need guidance or advice, please contact the Governance Team in SPO.

1. **Displaying automated clause cross-references:**

All clause cross-references within the document are set as automatically updated fields. These cross-references should remain unchanged if there are no changes to the formatting, styles or numbering. Sections in the document can be deleted without impacting remaining cross-references.

Displaying cross-reference fields will highlight where there are cross-referenced links are in the document and help avoid unintentional amendments that could result in a broken link.

To highlight the cross-references:

* click **File**
* select **Options**
* select **Advanced**
* scroll down to the section labelled **Show Document Content**
* and use the drop-down list against **Field Shading** to select **Always**
* Click **OK** at the bottom of the dialogue box to return to the document
1. **Updating Contents table and clause cross-references:**

After editing the document, update all cross-references including the Contents table and check for broken cross-reference links. This process can be used at any stage to ensure cross-references remain updated.

To refresh cross-references:

* click **CTRL+A** (select all),
* click on **F9**
* in the resulting dialogue box select **Update entire table**.
1. **Identifying and fixing broken cross-reference links**

A broken cross-reference link will not update and will return an error message will appear in the text as ‘***Error! Reference source not found*’.**

To find the broken cross-reference links:

* click **CTRL+F**
* type **error**
* press **enter**

To fix the broken cross-reference link:

* highlight the ***Error! Reference source not found***
* select **References** in the ribbon menu
* select **Cross-reference** and a dialogue box will open
* at the top of the Cross-reference box, check the following:
	+ **Reference Type**:  Numbered item
	+ **Insert Reference to**: Paragraph number (full context)
	+ **Insert as a hyperlink**: checked
* Find the relevant clause number, select it and then click **Insert** and **Close** the dialogue box.

**INSTRUMENT OF AGREEMENT**

1. **Contract**

This Contract is for the provision of consultancy/professional Service – Low risk (once-off).

1. **Between**

This Contract is between the Contractor and the Council.

1. **Recitals**
	1. The Council requires the provision of the Services.
	2. The Contractor has offered to provide the Services in accordance with the Terms and Conditions, for the Contract Price.
	3. The Council has accepted the Contractor’s offer.
2. **It is agreed as follows**
	1. **Contract Particulars**

These particulars set are to be read in conjunction with the Terms and Conditions at Schedule A:

|  |  |  |
| --- | --- | --- |
| (a) | Council’s Representative:* + 1. *[Clause 3.1, 19.1]*
 | Name: {Insert} |
| Position: {Insert} |
| Email: {Insert} |
| Tel: {Insert} |
| (b) | * + 1. The Contractor:
 | Company/entity name: {Insert} |
| Address: {Insert} |
| ACN (if a company): {Insert} |
| ABN: {Insert} |
| (c) | * + 1. Contractor’s Representative:
		2. *[Clause 19.1]*
 | Name: {Insert} |
| Position: {Insert} |
| Email: {Insert} |
| Tel: {Insert} |
| (d) | Commencement Date and Completion Date:*[Clause 2.3]* | Commencement Date: {insert} |
| Completion Date: {insert} |
| (e) | * + 1. Specified Personnel
		2. *[Clause 2.2]*
 | {insert Nil, attach document or list names and role titles of people who must complete the Services. If the Specified Personnel are to complete specific tasks, describe the task next to the individual or refer to the relevant section in the Specification} |
| (f) | * + 1. Invoices - Time for submitting:

*[cross/tick applicable box]** + 1. *[Clause 9]*
 | [ ]   | {insert eg weekly, fortnightly, monthly} in arrears. |
| [ ]  | Upon completion of the Services. |
| [ ]  | Other basis as specified in Schedule B. |
| (g) | Invoices – Method of submission and other requirements: * + 1. *[Clause 9]*
 | Invoices are to be emailed to: accountspayable@brisbane.qld.gov.au. If the Contractor does not have the capability to email invoices, hard copy invoices are to be sent to: *Brisbane City Council, GPO Box 2567, Brisbane Qld 4001*. Invoices must state the Council purchase order number. |
| (h) | * + 1. Insurance:
		2. *[Clause 16]*
 | *Type of insurance:* | *Amount:* |
| Workers Compensation Insurance | Statutory limits |
| Public liability insurance: | ${insert amount} per occurrence |
| Professional Indemnity insurance: | ${insert amount} per claim and in the aggregate in any one period of insurance. |
|   |  |

* 1. **Terms and conditions**

The Terms and Conditions of this Contract are as set out at Schedule A.

* 1. **Contract Price**

The Contract Price is as set out at Schedule B.

* 1. **Specifications**

Specifications for the Services are as set out at Schedule C.

1. **Execution**

Executed as a contract for and on behalf of:

* 1. **The Contractor**

the Contractor by its duly authorised representative:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (a) | Name: | {Insert} | Position: | {Insert} |
| (b) | Signature: | …………………………………………. | Date: |  |

In the presence of:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (a) | Name: | {Insert} | Position: | {Insert} |
| (b) | Signature: | …………………………………………. | Date: |  |

* 1. **The Council**

the Council by its duly appointed officer:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (a) | Name: | {Insert} | Position: | {Insert} |
| (b) | Signature: | …………………………………………. | Date: |  |

In the presence of:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (a) | Name: | {Insert} | Position: | {Insert} |
| (b) | Signature: | …………………………………………. | Date: |  |

1. **System identifiers**

|  |  |  |
| --- | --- | --- |
| 5.1 | Council Purchase Order number: |   |
| 5.2 | Council supplier number: |   |

**SCHEDULE A – TERMS AND CONDITIONS**

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	1. **Definitions**

In this Contract:

* + 1. “**Business Da**y" means Monday to Friday inclusive but excluding days which are public holidays in Brisbane;
		2. **“Commencement Date”** means the date or time period specified at clause 4.1(d) in the Contract Particulars;
		3. **“Completion Date”** means the date or time period specified at clause 4.1(d) in the Contract Particulars;
		4. “**Contract**” means the Instrument of Agreement together with the Schedules and any documents referred to in those Schedules;
		5. **“Contract Material”** means the originals and copies of materials, papers, reports, books, memoranda, accounting records, files, texts, data, computer printouts, computer data (including, but without limiting the generality thereof, financial models of all types) however recorded, stored or embodied in any document or other form of media (electronic or otherwise) and being material etc that is either provided by the Council to the Contractor (or any of its staff, contractors or Specified Personnel (if any)) for the provision or the performance of the Services (including each and every outcome or deliverable) or created or prepared by the Contractor or any of its staff or contractors as part of the Services;
		6. **“Contract Particulars”** means the information stated in clause 4.1 of the Instrument of Agreement;
		7. **“Contract Price”** means the fees and charges nominated in Schedule B to this Contract;
		8. **“Contractor”** means the entity specified at 4.1(b) in the Contract Particulars;
		9. **“Contractor’s Material”** means the material, methodology, documents, models or other material or information which is identified as the Contractor’s Material in the Specifications. However, to be Contractor’s Material, it must be developed prior to the Commencement Date of the Contract, or developed independently of the Contract, by the Contractor and used in the provision of the Services;
		10. “**Council**” means the Brisbane City Council, a body corporate pursuant to the *City of Brisbane Act 2010* and whose principal offices are situated at 266 George Street, Brisbane 4000;
		11. **“Council’s Representative”** means the person specified at clause 4.1(a) in the Contract Particulars and any replacement notified by the Council to the Contractor;
		12. **“Deliverable”** means each and every outcome or deliverable of the Services (including all Documentation) which the Contractor is required to produce or contribute to as part of the provision of the Services under this Contract and which are more particularly described in the Specifications;
		13. **“Documentation”** means the written information required to be supplied by the Contractor to Council in accordance with the Specifications;
		14. **“GST”** means the goods and services tax payable pursuant to the GST Laws;
		15. **“GST Laws”** means the GST law (as defined by *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) together with all other laws and regulations which impose or regulate the implementation and operation of GST and all laws and regulations dealing with price exploitation and excessive profit taking as a result of the transition to the new tax system;
		16. **“Instrument of Agreement”** means the document titled ‘Instrument of Agreement’ signed by or on behalf of the parties and which expressly applies these Terms and Conditions;
		17. **“Intellectual Property Rights”** means all forms of patent, copyright, trade mark (whether registered or not), trade name, trade secret, knowhow, discovery, invention, secret process, design, improvement in procedure, innovation or confidential information and any right to register or claim any type of intellectual property;
		18. “**Permitted Disclaimer**” is as defined in clause 6.3;
		19. “**Properly Rendered Tax Invoice**” is as defined in clause 9.2;
		20. “**Schedule**” means a schedule referred to in and attach to the Instrument of Agreement;
		21. **“Services”** means the services to be performed by the Contractor (including the provision of each Deliverable) pursuant to this Contract as detailed in the Specifications; and
		22. **“Specified Personnel”** means those members of the Contractor’s staff (and any substitute(s) agreed pursuant to clause 2.2) who are required to provide the Services, or particular elements of the Services, as nominated at clause 4.1(e) in the Contract Particulars;
		23. **“Specifications”** means the specifications for the provision of the Services as specified in Schedule C;
		24. “**Term**” means the period between the Commencement Date and the Completion Date; and
		25. “**Terms and Conditions**” means the terms and conditions in this Schedule A.
	1. **Interpretation**
		1. words denoting the singular number include the plural and vice versa;
		2. words denoting individuals shall include corporations and vice versa; and
		3. all references to "dollars" and "$" are to Australian dollars.
	2. **Order of precedence**
		1. To the extent of any conflict of inconsistency, the documents forming the Contract shall be given the following order of precedence with the document listed first taking priority:
			1. Instrument of Agreement;
			2. Schedule A;
			3. Schedule B; then
			4. Schedule C.
		2. Where a Schedule lists/attaches more than one other document(s), those additional documents shall be given precedence in the order they are listed in that Schedule with the document listed first taking priority.
1. **Provision of the Services**
	1. **General**

In providing the Services, the Contractor:

* + 1. shall take all reasonable steps to inform itself of the Council’s stated requirements in respect of the Services prior to the provision of the Services and take all reasonable steps during the Term of this Contract to ensure that the Council’s requirements continue to be understood and met by the Contractor;
		2. shall provide the Services with reasonable care and skill and act professionally at all times in the performance of the Services;
		3. shall provide and complete the Services (including the Deliverables) in accordance with the requirements of the Specifications and the Terms and Conditions of this Contract;
		4. shall consult regularly with the Council’s Representative throughout the performance of the Services and keep the Council’s Representative informed as to the progress and delivery of the Services;
		5. shall comply with all laws, licences, industrial awards, permits and all other lawful requirements that from time to time are applicable to the proper provision of the Services by the Contractor, its staff, contractors, sub-contractors, Specified Personnel and assignees (including, but not limited to, the *Environment Protection Act 1994* (Qld) and the *Work Health and Safety Act 2011*; and
		6. shall at all times keep and maintain accurate records of the time spent in the provision of the Services. Where required by the Council to verify the fees and expenses invoiced by the Contractor, the Contractor shall provide the Council with free access to such records.
	1. **Specified Personnel**
		1. The Contractor shall ensure that the Specified Personnel perform the Services, or those particular elements of the Services, as specified at clause 4.1(e) in the Contract Particulars.
		2. If at any time during this Contract:
			1. any of the Specified Personnel are not available for any reason (whether within the control of the Contractor or not) to provide the Services; or
			2. the Council is of the reasonable opinion that any Specified Personnel either does not have the capacity to undertake the Services to the level required or is responsible for any disruption in the delivery of the Services;

the Contractor shall replace the Specified Personnel in question with another suitably qualified and experienced person who is acceptable to Council.

* + 1. Any substitution pursuant to clause 2.2(b), shall be undertaken:
			1. at the earliest possible opportunity but not later than seven days from the date on notification from the Council (or such later date as the Council may agree); and
			2. at no additional cost to the Council.
	1. **Commencement and completion**

The Contractor must commence the Services on the Commencement Date and complete the Services on or before the Completion Date.

* 1. **Access to Council premises and systems**

The Contractor must fully comply with (and ensure its officers, employees, agents and subcontractors fully comply with) all requirements and directions from the Council relating to access to any Council premises (which may vary from site to site) and information technology systems (including, but not limited to security requirements, safety requirements and site inductions).

1. **Council’s Representative and Council assistance**
	1. **Council’s Representative**

The Council’s Representative shall:

* + 1. have responsibility for the management of the Contract on Council’s behalf and may exercise all the powers and functions of the Council under this Contract and receive any written notification under the Contract;
		2. act reasonably in the exercise of its authority.
	1. **Assistance from the Council**

Upon request by the Contractor, the Council shall provide the following facilities without charge to the Contractor for the proper performance of the Services:

* + 1. such normal office services and facilities as are reasonably required by the Contractor’s personnel (such as access to the Council’s word processing services and duplicating services) provided that all directions from the Council’s Representative as to such access and use are duly complied with by the Contractor and its personnel; and
		2. such magnetic media (materials), storage facilities and messenger services as is reasonably required by the Contractor and agreed to from time to time by the Council’s Representative.
	1. **Access to Council personnel**

The Council shall provide the Contractor access to the Council's personnel as is reasonably required by the Contractor's personnel for the proper performance of the Services.

1. **Variation of Services**
	1. No variation to the nature or scope of the Services (including the manner of providing the Services) (“**the Variation**”) shall be binding on either party unless and until agreed in writing by both parties.
	2. The Council is under no obligation (whether legal, equitable or otherwise) to pay for any Variation to the Services (either through the provision of additional services or alternative services) **unless** the Contractor has obtained the written consent of the Council prior to the Contractor undertaking such Variation. All such requests **must** be in writing and directed to the Council’s Representative.
2. **Intellectual Property Rights and Confidentiality**
	1. **Intellectual Property Rights**
		1. The Contractor acknowledges and agrees that:
			1. title to and all Intellectual Property Rights (including copyright) to all Contract Material (including each and every stage of design and production of such Material) created by the Contractor, its staff, contractors, Specified Personnel, sub-contractors or assignees shall immediately upon creation vest in or be transferred and assigned to the Council without need for further assurance;
			2. neither the Contractor, its staff, contractors, Specified Personnel, sub-contractors, or assignees have any Intellectual Property Rights in relation to the Contract Material nor does the provision of the Services and/or the creation, preparation or delivery of any Deliverable vest any such right in the Contractor, its staff, contractors, Specified Personnel, sub-contractors or assignees;
			3. the Contractor shall take and do all necessary things to ensure that all such Intellectual Property Rights in the Contract Material are vested in or assigned to the Council in accordance with this clause 5; and
			4. on the expiration or earlier termination of the Contract, the Contractor shall deliver all copies of the Contract Material (irrespective of the form in which such material is stored) to the Council’s Representative.
		2. Despite clause 5.1(a)(iv), the Contractor:
			1. is not required to return copies of the Contract Material made in the normal course of business and held on back-up servers; and
			2. may retain a copy of the Contract Material for legal/compliance purposes on the condition that the Contract Material is retained in accordance with clause 5.2.
		3. The Council acknowledges that ownership of all Intellectual Property Rights in the Contractor’s Material will remain with the Contractor at all times. The Contractor shall continue to own the Intellectual Property Rights in the Contractor’s Material however, in respect of such material, the Contractor grants to the Council a permanent, irrevocable, royalty free, licence to use the Contractor’s Material for the purposes contemplated by this Contract, provided that the Council does not on-sell or on-licence (whether for monetary consideration or not) the Contractor’s Material. Notwithstanding Part VII of the *Copyright Act 1968* (Cth), publication of any Deliverable in accordance with this licence shall not affect such ownership.
		4. The Contractor warrants that in providing the Services (including the preparation of the Deliverables), neither the Contractor, its staff, contractors, sub-contractors, Specified Personnel or assignees will actually or be likely to infringe the Intellectual Property Rights of any person.
	2. **Confidentiality**
		1. Except as required by law, the Contractor shall:
			1. treat and keep as strictly confidential all Contract Material in the possession of the Contractor and shall not disclose any of the Contract Material to any person including, but not limited to, the media (other than the Specified Personnel and/or such other staff, contractors and sub-contractors the Contractor is utilising in order to provide the Services); and/or
			2. not make any statement or comment to the media nor issue any media release in relation to any matter concerning this Contract;

without first obtaining the Council’s written consent. Any such application for disclosure must be sought from the Council’s Representative. Further, the Council may (in its sole and absolute discretion) impose such terms and conditions as it deems appropriate in relation to the format and content of such disclosure and/or statement.

* 1. **Use of Council logo and trademarks**

The Contractor must not, without the prior written approval of the Council, display or use in any manner Council's logo, branding, trademarks, coat of arms, Lord Mayor's crest or other Council Intellectual Property Rights.

* 1. **Survival of obligations**

The obligations in this clause 5 shall survive the expiration or termination of this Contract until:

* + 1. in relation to the provisions of clause 5.1 - a period of 10 years has passed since the Completion Date; and
		2. in relation to the obligation of confidentiality under clause 5.2 - until such time as the Council either releases the Contractor from its obligation of confidentiality or makes the Contract Material in question publicly available.
1. **Contract Material**

In delivering, creating and finalising any Contract Material under this Contract:

* 1. **Claims as to ownership of Intellectual Property Rights**

When preparing any draft or final version of any Contract Material, the Contractor must **not**:

* + 1. make any statement; or
		2. insert any symbol (such as the use of the copyright symbol);

in any such Contract Material which can reasonably be interpreted as the Contractor claiming that the Contractor owns the Intellectual Property Rights over all of the Contract Material. The Contractor can only claim ownership over the Contractor’s Material and in doing so, the Contractor must clearly identify which parts of the Contract Material are comprised of the Contractor’s Material.

* 1. **Restrictions on Council’s use of Contract Material**

Notwithstanding any other provision of this Contract in relation to Intellectual Property Rights, the Contractor must **not** seek to impose any limitation or restriction on Council’s use of the Contract Material (including, but not limited to a requirement for Council to seek any consents or approvals from the Contractor or any third party before Council seeks to use such material) **unless** the exact nature and wording of such limitation or restriction is expressly agreed in writing with the either the Council’s Chief Legal Counsel or Council’s Chief Procurement Officer (or their respective delegates/authorised officers) ***before*** this Contract is agreed between the parties.

* 1. **Disclaimers**
		1. The Contractor is **not** permitted to use disclaimers or other forms of qualification or reservation (other than Permitted Disclaimers) **unless** the exact nature and wording of such limitation or restriction is expressly agreed in writing with the either the Council’s Chief Legal Counsel or Council’s Chief Procurement Officer (or their respective delegates/authorised officers) ***before*** this Contract is agreed between the parties.
		2. The parties acknowledge and agree that any disclaimer or Permitted Disclaimer is not to be construed as limiting, restricting or diminishing the Contractor’s liability to the Council under this Contract.
		3. For the Purposes of clause 6.3, “**Permitted Disclaimer**” means any disclaimer which:
			1. articulates factual limitations on the content or preparation of the Deliverable(s);
			2. is expressed to apply to any third party that receives a copy of the Deliverable(s) and:
				1. disclaims responsibility for any third party reliance on the Deliverable(s) without the written consent of the Contractor; or
				2. provides that conclusions/findings detailed in the Deliverable(s) are subject to stated assumptions and may be based on information which has not been validated by the Contractor.
1. **Personal information and privacy**
	1. If at any time during the Term of this Contract, the Contractor collects or has access to Personal Information in order to provide the Services, the Contractor must:
		1. comply with the Australian Privacy Principles set out in the *Privacy Act 1988 (Cth);*
		2. fully comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) (“the Act”) as if references to “agency” in those Parts of the Act were references to the Contractor;
		3. not use any Personal Information other than for the purposes of providing the Services unless otherwise required or authorised by law;
		4. not disclose Personal Information without the prior written consent of the Council’s Contract Authority unless required or authorised by law;
		5. not transfer Personal Information outside of Australia without the prior written consent of the Council’s Contract Authority;
		6. ensure that access to Personal Information is restricted to those of the Contractor’s Staff who require access in order to perform their duties;
		7. ensure that the members of the Contractor’s Staff who have access to Personal Information comply with the obligations imposed on the Contractor under this clause;
		8. fully co-operate with Council to enable Council to respond to applications for access to or amendment of a document containing an individual’s Personal Information and to privacy complaints;
		9. comply with such other privacy and security measures in relation to Personal Information as the Council reasonably advises the Contractor from time to time
		10. if requested by the Council’s Contract Authority, obtain from those members of the Contractor’s Staff, an executed deed of privacy in a form acceptable to Council; and
		11. immediately notify the Council on becoming aware of any breach of this clause 7.
	2. For the purposes of this clause, the term “**Personal Information**” has the meaning given to it in the *Information Privacy Act 2009* (Qld) and, where the context requires, means Personal Information in connection with this Contract.
	3. The Contractor must comply with:
		1. the Australian Privacy Principles set out in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth); and
		2. the *Privacy Act 1988* (Cth).
2. **Contract Price**
	1. The Contractor shall provide the Services for the Contract Price plus GST. The parties acknowledge and agree that:
		1. Contractor shall not seek to impose any additional fees for the provision or completion of the Services unless the Council seeks a variation to those Services pursuant to clause 3;
		2. the Council shall be under no obligation (whether legal or equitable) to pay for such additional fees **unless** the Contractor has obtained the Council’s written consent to such fees and done so prior to the Contractor providing services (or causing such services to be provided) that would otherwise incur such additional fees; and
		3. the amount of GST applicable to the Services will be determined in accordance with the GST Laws as amended from time to time.
	2. Notwithstanding any other provision of this Contract, the Council shall not be under any obligation (whether legal or equitable) to pay any invoice submitted by or on behalf of the Contractor for the provision of the Services (including Deliverables) unless the provisions of clause 9 (invoices and payment) have been met.
3. **Invoices and payment**
	1. The Council shall:
		1. only be required to pay those invoice(s) from the Contractor which are a Properly Rendered Tax Invoice; and
		2. shall pay each Properly Rendered Tax Invoice within 30 days of receipt.
	2. An invoice will not be deemed to have been properly rendered (“**Properly Rendered Tax Invoice**”) unless:
		1. it is submitted in accordance with the requirements of clauses 4.1(f) and 4.1(g) in the Contract Particulars;
		2. it specifies:
			1. the title and number/reference of this Contract;
			2. the number of the purchase order issued by the Council to the contractor in relation to this Contract;
			3. any other number as the Council’s Representative may, from time to time, specify in writing to the Contractor as being required to be inserted on any invoice; and
			4. the name and address of the Council’s Representative;
		3. it provides such details of the Contract Price as the Council’s Representative may from time to time reasonably require (which may include the attachment of receipts, the number of hours involved and the amounts of GST (if any) that are applicable to the invoiced Services (or part thereof));
		4. where Services are charged on a time basis - records the number of hours and days spent by individual persons on the Services. Such records must be verified by a competent officer of the Contractor; and
		5. it is a tax invoice as may be required under the GST Laws to allow the Council to obtain an input tax credit in respect of any amount of GST payable by the Council for those Services and the invoice clearly specifies (in dollars) the amount of GST payable by Council under that invoice.
4. **Disputed Services**
	1. If at any time before the delivery of a Properly Rendered Tax Invoice for Services, or within 21 days of receipt by the Council of a Properly Rendered Tax Invoice, the Council’s Representative provides the Contractor with written advice indicating that all or part of the Services in question have not been performed or provided in accordance with this Contract (“**the Disputed Services**”), then:
		1. the Contractor shall promptly re-perform or re-deliver such Disputed Services until such time as the Council’s Representative is satisfied that they have been performed or provided in accordance with this Contract; and
		2. within 30 days of receipt of a Properly Rendered Tax Invoice, the Council shall pay the Contract Prices for all or part of the Services that are not Disputed Services.
	2. The Council shall only be legally required to pay the Fees for any Disputed Services if the Council’s Representative is satisfied that the Disputed Services have been satisfactorily re-performed or re-provided to meet the requirements of this Contract. In such a case, payment shall be within 30 days of the Council’s Representative being satisfied with the re-performance and re-delivery of such Disputed Services.
5. **Responsibility of the Contractor for its staff and contractors**

The Contractor shall ensure that at all times during the Term of this Contract each member of its staff, contractors or sub-contractors (including Specified Personnel) does not take any step which will lead to the Contractor being in breach of its obligations under this Contract.

1. **Conflicts of Interest**

The Contractor warrants that, as of the date of entering into this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract. If during the Term of this Contract, a conflict or risk of conflict of interest arises, the Contractor undertakes to notify the Council immediately in writing of that conflict or risk.

1. **Assignment**
	1. The Contractor shall not assign, sub-contract or otherwise transfer any of its rights and obligations under this Contract without the prior written consent of the Council. Such consent will be subject to such terms and conditions as the Council deems appropriate to protect its interests and are deemed to include may include provisions similar to this clause 13.
	2. Notwithstanding any consent given by the Council pursuant to clause 31.1, the Contractor shall remain liable and responsible for:
		1. the work undertaken by any assignee, contractor, sub-contractor, Specified Personnel or any person engaged by (or on behalf of) the Contractor to undertake all or part of the Services; and
		2. the successful and timely completion of the Services;

unless the Council expressly agrees to the contrary in its written consent.

1. **Negation of employment, agency and partnership**
	1. The Contractor shall not represent itself as being an employee, agent or partner of the Council and acknowledges that there is no relationship of employment, agency or partnership between the Contractor and the Council. The Contractor acknowledges and that nothing in this Contract constitutes any relationship of employer and employee, principal or agent or partnership between the two parties or between the Council and any member of the Contractor’s staff, contractors, sub-contractors, Specified Personnel or assignees.
	2. The Contractor also acknowledges and agrees that it shall be fully liable and responsible for:
		1. all remuneration, claims and other entitlements that may, from time to time, be claimed by any of the Contractor’s officers, employees, agents, Specified Personnel or its authorised sub-contractors in relation to the performance of the Services; and
		2. all taxation deductions required to be made in relation to payments received by any of the Contractor’s officers, employees, agents, Specified Personnel or its authorised sub-contractors in relation to the performance of the Services;
		3. the payment of the Superannuation Guarantee Levy in relation to payments received by any of the Contractor’s officers, employees, agents, Specified Personnel or its authorised sub-contractors in relation to the performance of the Services; and
		4. all workcover payments in relation to any claims made by any of the Contractor’s officers, employees, agents, Specified Personnel or its authorised sub-contractors in relation to the performance of the Services;

irrespective of whether such claims or payments are directly or indirectly, wholly or partially related to the provision of the Services.

* 1. The parties agree that the Contractor shall, without making any further claim on the Council or seeking additional fees and expenses from the Council, ensure that the provision of the Services by the Contractor is covered by the Contractor’s insurance arrangements (or other adequate third party insurance arrangements) in relation to all aspects of the provision of the Services.
1. **Liability**

The liability of each party for any breach of this Contract is as determined by the laws applying in the State of Queensland.

1. **Insurance**
	1. At all times during the Term of the Contract, the Contractor must maintain the insurances specified at clause 4.1(h) in the Contract Particulars.
	2. Where clause 4.1(h) in the Contract Particulars requires:
		1. Public Liability Insurance and/or Professional Indemnity Insurance, the Contractor is to obtain those insurances from an insurer authorised by the Australian Prudential Regulation Authority (APRA).
		2. Workers Compensation Insurance:
			1. the Contractor is to obtain that insurance to the extent required by the laws of the State of Queensland; and
			2. in the event that the Contractor is a sole trader without Workers Compensation Insurance, the Contractor is to procure and maintain Personal, Loss of Income Insurance for the amount of 75% of normal weekly earnings.
2. **Termination of Contract and Suspension of Services**
	1. The Council may:
		1. where it is of the opinion that the suspension of all or part of the provision of the Services is desirable due to any changes in the Council’s need for the nature, scope or timing of the Services, suspend the scope of the Services at any time during the Term of this Contract by the provision of a written notice to the Contractor specifying the extent to which the scope of the Services are to be suspended and the date from which such suspension is to take effect (a “**Suspension Notice**”); or
		2. at any time terminate this Contract due to the Contractor:
			1. failing to comply with a Default Notice as required by clause 17.2;
			2. having engaged in conduct or practice that is detrimental or harmful to the good name, reputation or interests of the Council;
			3. entering into any form of insolvency administration
			4. having offered or given any gratuity, bribe, bonus or discount of any sort to any member of the Brisbane City Council or any officer, employee or agent of the Council; or
			5. breaching any of its obligations under clauses 2.1(c), 2.1(e), 2.2, 2.3, 5 or 16;

Such termination shall be effected by the Council giving the Contractor a written notice terminating this Contract and specifying the date of termination (a "**Termination Notice**”).

* 1. Where the Contractor has failed to comply with any clauses in this Contract, the Council may give the Contractor a written notice specifying the breach and requiring the Contractor to rectify the breach within the Specified Time (“**Default Notice**”). For the purposes of this clause, the “**Specified Time**” in relation to any breach shall be:
		1. in relation to a breach of clause 2.2, 7 days from the date of the Default Notice (or such longer time period as specified by the Council in the Default Notice; and
		2. in relation to a breach of any other clause, 14 days from the date of the Default Notice (or such longer time period as specified by the Council in the Default Notice).
	2. Upon receipt of a Termination Notice or a Suspension Notice pursuant to clause 17.1, the Contractor shall immediately:
		1. where the Contract has been terminated – cease work in accordance with the Termination Notice; or
		2. where the scope of work has been suspended – suspend work in accordance with the Suspension Notice;

and take all steps necessary to minimise the loss suffered by it as a result of either notice and continue to provide Services that are not affected by any such notice. Any termination or suspension of all or part of the Services shall not affect any right or entitlement which either party is entitled to claim under this Contract.

* 1. Upon the termination or suspension of Services, the Council’s liability (if any) to the Contractor shall be limited to:
		1. in relation to termination – payments for any Services (or any part) performed in accordance with the Contract before the date of termination as specified in the Termination Notice. To avoid doubt, in the event of partial termination, the Council’s liability to pay for any remaining Services shall abate proportionally to the reduction in the Services as a result of the partial termination;
		2. in relation to suspension of the Services – payments for any Services (or any part) performed in accordance with the Contract before the date of suspension as specified in the Suspension Notice; and
		3. any reasonable costs properly incurred by the Contractor which are directly attributable to the termination of the Contract or the suspension of Services (whichever is applicable) but which shall not include loss of prospective profits;

and payments for any Services not affected by either a Termination Notice or a Suspension Notice **provided always** that the maximum amount of the Council’s liability to the Contractor under this clause shall be capped at the amount of the Contract Price (as varied pursuant to clause 4 or abated pursuant to clause 17.4(a)). The Contractor shall **not** be entitled to loss of profits.

* 1. This Contract can be terminated by mutual written agreement of the parties.
1. **Disputes**
	1. If a party believes there is a dispute, it may give written notice to the other party detailing the nature of the dispute. The parties agree use their best endeavours to resolve the dispute. If the dispute is not resolved to the satisfaction of the parties within ten business days from receipt of the notice, either party may refer the dispute to expert determination.
	2. The expert determination will be:
		1. by an expert mutually agreed upon between the parties; or
		2. in default of mutual agreement, by an expert appointed by the Queensland Chapter Chairman of the Institute of Arbitrators and Mediators Australia.
	3. The expert determination of the dispute will be conducted in accordance with the Expert Determination Rules published by the Institute of Arbitrators and Mediators Australia. The associated costs of the expert determination will be borne according to the Expert Determination Rules.
	4. The referral of the dispute to expert determination (or any other form of dispute resolution), will not prevent either party commencing court proceedings relating to the dispute where the party seeks urgent interlocutory relief.
2. **Notices**
	1. Notices under the Contract may be delivered by hand, by mail or email to the respective offices. In the case of Council, any notices must be addressed to Council’s Representative. In the case of the Contractor, any notices must be addressed to the Contractor’s Representative.
	2. If there are any changes to a party’s contact details, these changes will only be effective as and from the date the other party receives written notice of the change.
	3. Notices between Council and the Contractor will be deemed to be given:
		1. in the case of hand delivery – upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;
		2. in the case of posting – 3 days after dispatch; and
		3. in the case of email - on the date of the email provided the recipient server delivers the email to the intended recipient’s inbox.
	4. If a notice is received after 5:00pm, it will be deemed to be given on the next business day.
3. **Entire Contract**

This Contract constitutes the entire agreement between the parties in relation to the Services and supersedes all prior representations, agreements, statements and understandings, whether oral or in writing, relating to the subject of this Contract.

1. **Applicable Law**

This Contract is governed by the laws of the state of Queensland and the parties submit to the exclusive jurisdiction of the Courts of that state.

**SCHEDULE B – CONTRACT PRICE**

The Contract Price is a: *[cross/tick the applicable box/option]*

|  |  |  |
| --- | --- | --- |
|  | Fee type | Details |
| [ ]  | Fixed price/lump sum | The Contract Price is a lump sum amount of $ (plus GST). |
| [ ]  | Schedule of rates with a cap | The Contract Price is a schedule of rates (plus GST) attached to this document (titled ) **provided** that the maximum amount payable by Council for the provision of the Services does not exceed $ (plus GST). |
| [ ]  | Mixture of lump sum(s) and schedule of rates with a cap | The Contract Price is a mixture of lump sum amount(s) & schedule of rates (plus GST) as attached to this document (titled ) **provided** that the maximum amount payable by Council for the provision of the Services does not exceed $ (plus GST). |
| [ ]  | Schedule of rates without a cap | The Contract Price is a schedule of rates (plus GST) attached to this document and titled . |
| [ ]  | Mixture of lump sum(s) and schedule of rates without a cap | The Contract Price is a mixture of lump sum amount(s) & schedule of rates (plus GST) as attached to this document and titled ). |

**SCHEDULE C – SPECIFICATIONS**

{Insert}