

Brisbane City Council's Tender Manager -
Internal QA signature: _____

Brisbane City Council

CONTRACT

Consultancy / Professional Services (Panel Arrangement)

Contract title: REGISTER OF PRE-QUALIFIED SUPPLIERS for the
Provision of Expert Advice on Planning and Environment Court
matters

Contract Number: CW21083

Contractor: {Insert name}

Contract RM ref: CA25 761509

Template version: Version 1 – July 2025 (RM: CA25 761509)

SECURITY LABEL: Template – **PUBLIC**.

Once executed or contains pricing/personal info/negotiated terms – **SENSITIVE: COMMERCIAL-IN CONFIDENCE**



Dedicated to a better Brisbane

INSTRUMENT OF AGREEMENT

1. Contract

This Contract is for the provision of Consultancy/Professional Services as part of a Panel Arrangement.

2. Between

This Contract is between the Contractor and the Council.

3. Recitals

3.1 The Council requires the provision of the Services.

3.2 The Contractor has offered to provide the Services on the Terms and Conditions at Schedule A and in return for the Contract Price at Schedule C.

3.3 The Council has accepted the Contractor's offer.

4. It is agreed as follows

4.1 Contract Particulars

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

(a)	Council's Contract Authority: <i>[clause 16.1]</i>	Name: Matthew Olding
		Position: Development Assurance and Outcomes Manager
		Email: ExpertAdvisorRegister@brisbane.qld.gov.au
		Tel: (07) 3403 8888
(b)	The Contractor:	Name: {Insert}
		ABN: {Insert}
		ACN: {Insert}
(c)	The Contractor's Representative:	Name: {Insert}
		Position: {Insert}
		Address: {Insert}
		Email: {Insert}
		Tel: {Insert}
(d)	Term: <i>[clause 2]</i>	Commencement Date: The Commencement Date is the date that the last party signs this Contract.
		Completion Date: 31 October 2035.
		Renewal Date: April 2035.
		Maximum Term: 10 years
(e)	Invoice Submission: <i>[clause 7.2]</i>	Invoices are to be emailed to accountspayable@brisbane.qld.gov.au <i>(must include details listed in Schedule E Summary of Fees on the invoice)</i> 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.
(f)	Quality Assurance System: <i>[clause 4.11]</i>	Not Applicable

(g)	Insurances: <i>[clause 13]</i>	Type of insurance	Amount
		Workers Compensation Insurance to the extent required by the laws of the State of Queensland	Statutory limits
		<i>(alternative to Workers Compensation if dealing with a Sole trader without Workers Compensation Insurance)</i>	75% of normal weekly earnings
		Personal, Loss of Income Insurance Policy at all times during the term of this Contract.	
		Public liability insurance:	\$20 000 000 per occurrence
		Professional Indemnity insurance:	\$5 000 000 per claim and in the aggregate in any one period of insurance.
		<i>By signing this Contract, the Contractor confirms they have the above insurances and will provide a copy of all or any current certificates as requested by Council from time to time.</i>	

4.2 Terms and conditions

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

4.3 Contract Price

The Contract Price is as set out at Schedule C.

4.4 Specifications

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

5. Execution

Executed as a contract for and on behalf of:

5.1 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:	

5.2 The Council

the Council by its duly appointed officer:

(a)	Name:	Matthew Olding	Position:	Development Assurance and Outcomes Manager
(b)	Signature:	.....	Date:	

In the presence of:

(a)	Name:	Jill Kearney	Position:	Technical Appeals Support Officer
(b)	Signature:	.....	Date:	

6. System identifiers

6.1	Council supplier number:	Not applicable at this time
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1. Interpretation of Contract

1.1 Definitions

In this Contract and each Order, except where the context otherwise requires:

- (a) **"Additional Period"** means the period(s) (if any) specified in clause 4.1(d) of the Contract Particulars;
- (b) **"Authorised Persons"** means persons who are authorised by the Council's Contract Authority pursuant to clause 3.3;
- (c) **"Business Day"** means Monday to Friday inclusive but excluding days which are public holidays in Brisbane;
- (d) **"Claim"** means any:
 - (i) costs, losses, damages or any liability of any kind directly or indirectly suffered or incurred by the Council or its employees, agents, contractors or sub-contractors; and/or
 - (ii) any claim, demand, action, suit or proceeding that may be made or brought by any person against the Council, its employees, agents, contractors or sub-contractors;
- (e) **"Commencement Date"** means the date specified in clause 4.1(d) of the Contract Particulars;
- (f) **"Completion Date"** means the date specified in clause 4.1(d) of the Contract Particulars;
- (g) **"Confidential Information"** means any or all Council Material (including the contents of this Contract) irrespective of whether such information has been deemed or designated as confidential (or not) by the Council and, without limiting the generality of the foregoing, includes all of the Deliverables and all Documentation **BUT DOES NOT** include any information which the Contractor can establish was **either** in the possession of the Contractor or was independently developed or acquired by the Contractor:
 - (i) prior to the Contractor's engagement by the Council under an Order or was independently developed by the Contractor; and
 - (ii) which was disclosed by the Contractor to the Council prior to the commencement of work under any such Order;
- (h) **"Contract Particulars"** means the particulars in the Instrument of Agreement which are to be read in conjunction with these Terms and Conditions;
- (i) **"Contract Price"** means in relation to the prices, rates, charges and expenses for the provision of the Services under an Order - such prices, rates, charges and expenses which are calculated in accordance with clause 7;
- (j) **"Contractor"** means the person or entity specified in clause 4.1(b) of the Contract Particulars;
- (k) **"Contractor's GST Liability"** means the GST the Contractor is required by the GST Laws to pay or remit in relation to the supply of the Services (including Disputed Services) to the Council under this Contract or any Order;
- (l) **"Contractor's Material"** means the material, methodology, documents, models or other material or information which is specified in an Order;
- (m) **"Contractor's Representative"** means the person authorised by the Contractor to administer this contract on the Contractor's behalf;
- (n) **"Contractor's Staff"** means each and every employee, agent, contractor or sub-contractor of the Contractor (including all Specified Personnel) who is used by the Contractor to supply, provide or deliver the Services;
- (o) **"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;
- (p) **"Council Material"** means all and any information (whether oral or in any Material Form) which is the property of the Council and which:
 - (i) the Council discloses or makes available to the Contractor in relation to the provision of the Services; and/or
 - (ii) comes into the possession of, or to the attention of, the Contractor as a result of or in connection with the provision or delivery of the Services;

- (q) "**Council Premises**" means any buildings, land, structural assets and any other facility which is owned, occupied or controlled by or on behalf of the Council and includes all locations or sites at which the Services are to be supplied, delivered or provided pursuant to this Contract and any Order;
- (r) "**Council's Contract Authority**" means the person who from time to time occupies or acts in the position specified in clause 4.1(a) of the Contract Particulars and who is authorised to administer this Contract pursuant to clause 16.1;
- (s) "**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/or an Order and which are more particularly described in the Specifications;
- (t) "**Details**" means in relation to an Order, the details in relation to such matters as is determined from time to time pursuant to clause 3.3, and in the absence of such determination, shall be the details to be included in that Order in relation to the following matters:
 - (i) type of Services to be provided under the Order;
 - (ii) the Specifications pursuant to clause 3.6;
 - (iii) time period or times for the supply, provision or delivery of the Services;
 - (iv) the place at which the Services are to be supplied, provided or delivered; and
 - (v) the Contract Price for the provision of the Services under that Order;
- (u) "**Disputed Services**" is as defined in clause 7.3;
- (v) "**Documentation**" means all and any document, record, system, program or other material in any Material Form which the Contractor is required by the Specifications, this Contract and/or any Order to produce or contribute to as a result of the provision of the Services;
- (w) "**GST**" means the tax on the provision or supply of goods and services (or similar tax) imposed under the GST Laws;
- (x) "**GST Laws**" means the GST law (as defined by *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth) together with all associated legislation and any additional or substituted legislation:
 - (i) providing for any value added tax, consumption tax, retail sales tax or other goods or services tax; or
 - (ii) dealing with price exploitation and excessive profit taking prohibited by such laws;
- (y) "**Instrument of Agreement**" means the document titled 'Instrument of Agreement' to which these Terms and Conditions are attached;
- (z) "**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, document, software, recording (including audio and/or visual in any format), improvement in procedure, innovation or confidential information and any right to register or claim any type of intellectual property (irrespective of whether created before, on or after the date of an Order);
- (aa) "**Legislative Requirements**" means all laws, local laws, by-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 or the Contractor's Staff (including, but not limited to, the *Environment Protection Act 1994* (Qld) and the *Work Health and Safety Act 2011* (Qld));
- (bb) "**Material Form**" means any form in which information may be written, embodied, stored and/or reproduced including (without limiting the generality of the foregoing) electronic means (including encryption and encoding) or any handwritten form (including notes and drafts of such material);
- (cc) "**Maximum Term**" means the period specified in clause 4.1(d) of the Contract Particulars;
- (dd) "**Mentoring Program**" means a program for persons with experience performing the Services to mentor those with less court or other experience to them;
- (ee) "**Mentorship Document**" means the document confirming the agreement between the applicant and the mentor.
- (ff) "**Moral Right**" means any right described in Part IX of the *Copyright Act 1968* (Cth) or any other analogous right arising under any applicable law that exists or may come to exist anywhere in the world

- (gg) "**Offer Period**" means the period specified in a Quote as the period during which the Quote is open for acceptance by the Council;
- (hh) "**Order**" means any order placed by the Council in accordance with clause 3 and includes any Variation to that Order;
- (ii) "**Permitted Disclaimer**" is as defined in clause 4.12(c);
- (jj) "**Quality Assurance System**" means the Contractor's system (as specified in clause 4.1(f) of the Contract Particulars) which establishes the qualities and performance of the Services (including without limiting the generality of this term, all quality manuals, plans and all other quality documentation such as inspection and test plans, management structures and responsibility statements, techniques for identification and management of non-conforming Services or Disputed Services, audit and other critical issues relating to quality assurance);
- (kk) "**Quote**" means a quote sought and provided in accordance with clause 3.1;
- (ll) "**Register**" means a register of Contractors experienced and capable of providing the Services as kept and maintained by Council
- (mm) "**Renewal Date**" means the date(s) determined by clause 4.1(d) of the Contract Particulars;
- (nn) "**Services**" means in relation to any Services ordered under an Order, such Services set out in Schedule D:
 - (i) for which a Quote may be sought from time to time by the Council; and/or
 - (ii) which are ordered from time to time pursuant to an Order;
 - (iii) including any Deliverables or Documentation required to be created, provided or produced (either in whole or in part) by the Contractor as part of the provision of the Services and any Variation to such Services;
- (oo) "**Specification**" means the Specifications for the provision of the Services by the Contractor under an Order and which are determined pursuant to clause 3.6;
- (pp) "**Specified Personnel**" or "**Specified Person**" means each and every person who is specified in an Order as the person(s) to provide the Services under that Order;
- (qq) "**Term**" means:
 - (i) in relation to this Contract, the period determined by clause 2 and clause 4.1(d) of the Contract Particulars; and
 - (ii) in relation to an Order, means the time period specified in the Order for the supply, provision or delivery of the Services;
- (rr) "**Terms and Conditions**" means the terms and conditions in this Schedule A;
- (ss) "**Tier**" means the relevant level of experience Council considers reflects the Contractor's experience on a scale of tier 1 to tier 4 with tier 1 being the highest level of experience;
- (tt) "**Variation**" is as defined by clause 5.

1.2 Interpretation

- (a) Unless the context otherwise requires, the singular includes the plural and vice versa. The clause headings of this Contract (or any Order) shall not in any way affect their interpretation. Any one gender includes all genders.
- (b) All references to "dollars" and "\$" are to Australian dollars.
- (c) All references to "Contractor" shall also include the Contractor's successors and assigns and all references to "Council" shall also include the Council's successors and assigns.
- (d) References to a "document" includes but is not limited to, any drawing, specification, material, record or any other means in which information can be stored or reproduced.
- (e) All references to any information or material in an Order includes all information or material that is expressly incorporated in that Order and/or referred to by that Order and/or attached to that Order.

1.3 Language of Contract

All information delivered as part of the Services supplied under this Contract and any Order shall be written in English. Where any such Documentation is a translation into English, such translation shall be accurate and as

is agreed by the Council.

1.4 Measurement

Measurements of physical quantity shall be in Australian legal units of measurement as prescribed under the *National Measurement Act 1960*, or if any of the Services are imported and do not conform to such legal units, such other unit of measurement as is agreed by the Council.

2. Term

2.1 Where the Term has no Additional Period, this Contract shall commence on the Commencement Date and shall expire on the Completion Date unless terminated earlier in accordance with this Contract.

2.2 Where the Term has an Additional Period:

- (a) The Term of this Contract shall commence on the Commencement Date and shall expire on the Completion Date unless the Term is extended pursuant to clause 2.2 or is terminated in accordance with this Contract.
- (b) From and including a Renewal Date, the Term of this Contract can be extended for an Additional Period **PROVIDED THAT:**
 - (i) at least one (1) month before the relevant Renewal Date, both parties have agreed to such extension by written notice or agreement;
 - (ii) any such extension shall be on the same terms and conditions of this Contract (including this clause 2); and
 - (iii) nothing in this clause shall enable this Contract to be extended beyond the Maximum Term.

3. Placing of Orders and effect of the Specifications

3.1 Quotes

- (a) If the Council requires the provision of any Services under an Order, it shall seek a quote for the provision of the Services from the Contractor by forwarding to the Contractor a document in the format contained in Schedule D (or such other format as the Council's Contract Authority may, from time to time, approve) seeking a quote from the Contractor.
- (b) The Council shall complete the information required by Schedule D (or such other format as the Council's Contract Authority may, from time to time, approve) including providing a scope of work for the Services. Such scope of work shall also clearly specify the Deliverables to be provided as part of the provision of the Services.
- (c) In its request for quote, the Council may nominate that its standard conditions of quote or standard conditions of tender apply to the quote process. Where the Council has nominated conditions of quote/tender:
 - (i) The conditions of quote/tender are to be found on the Council's website.
 - (ii) by submitting a Quote, the Contractor agrees to those conditions of quote/tender.
 - (iii) For the purposes of those conditions of quote/tender:
 - A. references to "You" or "Tenderer" and "Tender" are to be read as references to the Contractor and the Contractor's Quote;
 - B. references to "Tender Deliverable Attachments" or "Tender Schedules", means the information requested by the Council in its Schedule D request for quote form (or such other form as the Council's Contract Authority may, from time to time, approve) and any additional information requested via Council's Supplier Portal.
 - C. whether 'Part Offers' will be considered is as nominated by the Council in its Schedule D request for quote;
 - D. 'Joint Offers' are not permitted;
 - E. a 'Statement of Non-Compliance' is **not** to be submitted in relation to the terms and conditions of contract, the terms and conditions are agreed in this Contract. A 'Statement of Non-Compliance' may be submitted in relation to the brief (including the Specifications/Deliverables) issued with the Council's request for quote; and
 - F. the Evaluation criteria referred to in the conditions of tender, include but are not limited

to those criteria (if any) nominated in the Council's request for quote.

- (d) If the Contractor chooses to provide a Quote, it shall then complete the Quote in the format contained in Schedule D (or such other format as the Council's Contract Authority may, from time to time, approve) and otherwise in accordance with this clause and then forward the Quote to the Council's Contract Authority.
- (e) In preparing the Quote, the Contractor shall make such inquiries and examine such information as it considers necessary to fully inform and satisfy itself as to:
 - (i) the nature, scope, extent and degree of difficulty of the tasks to be performed by it in order to deliver the Services and the Deliverables in accordance with the Council's requirements;
 - (ii) its ability to provide the Services and provide the Deliverables to the standards and within the time frames required by the Council; and
 - (iii) the availability of suitably qualified personnel and other facilities, equipment, information, data and material which it requires in order to undertake the Services as required by the Council.
- (f) The Contractor shall provide the Council with sufficient details to enable the Council to assess the Quote and if necessary, prepare an Order. Such a Quote shall, during the Offer Period, constitute a standing offer to the Council. If the Quote does not specify an Offer Period, the Quote shall constitute a standing offer to the Council for a period of 3 months as and from the date of the Quote.
- (g) During the preparation, evaluation and negotiation (if any) of the Quote, the Contractor must not:
 - (i) collude with any other panel participant(s);
 - (ii) engage in any form of bid-rigging; or
 - (iii) engage in any other anti-competitive conduct prohibited under the *Fair Trading (Australian Consumer Law) Amendment Act 2010* (Qld) or other Legislative Requirement.
- (h) Notwithstanding any other provision in this Contract, if the Contractor is requested to provide the Council with a Quote, the Contractor shall use its best endeavours to provide a Quote and if it is not able to do so, shall provide the Council's Contract Authority with a written reasonable explanation as to the circumstances which prevent the Contractor from providing a Quote and do so within fourteen (14) days of the date on which Quotes are to be submitted to Council.

3.2 Placing of Orders

- (a) The Council will record the Details of the Order in the form provided in Schedule D (or such other form as determined pursuant to clause 3.3).
- (b) The Council may request the Contractor to sign the draft Order to formalise its offer to Council. The Contractor signing the draft Order is not to be construed as any acceptance of the offer by Council. If the Council wishes to accept the Quote made by the Contractor pursuant to clause 3.1, the Council shall sign the completed Order.
- (c) No legal or equitable obligation shall arise between the Council and the Contractor unless and until an Order in the form provided in Schedule D (or such other form as agreed pursuant to clause 3.3) is signed by the Contractor **and** by the Council.

3.3 Form and Content of Orders

- (a) The Council's Contract Authority may, from time to time during the Term, determine the:
 - (i) form of an Order, the matters to be addressed by the Details and manner in which such Orders can be placed by the Council with the Contractor under this Contract; and
 - (ii) persons who are authorised to place such Orders with the Contractor ("**Authorised Persons**").
- (b) Any determination in relation to the matters referred to in paragraph (a) shall be made following consultation with the Contractor. Any such determination in relation to the matters referred to in paragraphs (a) and (b) shall have force and effect from the date the Council's Contract Authority provides the Contractor with written notification of the Council's Contract Authority's determination.

3.4 Obligations of the Contractor

- (a) Where an Order is placed with the Contractor, the Contractor shall provide the Services in accordance with the terms and conditions of that Order.
- (b) The Contractor shall not provide any Services where it receives an Order that is placed by a person who

is not an Authorised Person. If the Contractor does so, the Council is not under any obligation (whether legal or equitable) to pay for such Services.

3.5 Terms and conditions of an Order and Order of Precedence

Each Order placed under this Contract will constitute a separate contract between the Council and the Contractor and the terms and conditions of each such Order shall be:

- (a) the same as the conditions of this Contract (except clause 2);
- (b) the Details and other provisions set out in the Order;
- (c) the Specifications; and
- (d) any other document attached to or referenced by the Order;

and in the event of any conflict or inconsistency between any of the above provisions, then the above descending order of precedence applies to the extent of the conflict or inconsistency.

3.6 Specifications applicable to an Order

In respect of any Services ordered under an Order, the Specifications applicable to those Services shall be:

- (a) the description (if any) of the qualities and other requirements as contained in Schedule D in relation to those Services; and
- (b) such other additional or substituted requirements as the parties agree will be the Specifications as agreed in that Order.

3.7 Effect of the Specifications

Where the Specifications:

- (a) require the Contractor to perform its obligations under this Contract and/or any Order in any particular manner - those requirements of the Specifications shall be deemed to be contractual obligations of the Contractor under that Order and this Contract; and
- (b) provide the Council with any obligation, right or entitlement in respect of the provision of the Services by the Contractor under this Contract and/or any Order - those provisions of the Specifications shall be deemed to be contractual obligations, rights or entitlements of the Council under that Order and this Contract;

provided always that in accordance with clause 3.5, where there is any conflict or inconsistency between the requirements of the Specifications and the provisions of this Contract, then the provisions of this Contract shall apply to the extent of the conflict or inconsistency.

3.8 Panel Arrangement - Council not bound to order from the Contractor

- (a) This Contract is part of a panel arrangement established by the Council whereby a number of panel participants (such as the Contractor) have signed contracts similar to this Contract to provide the Council with such Services as the Council may from time to time require and obtain through the placement of an order with a panel participant (including the Contractor).
- (b) It is a condition of this Contract (and each Order) that the Council:
 - (i) is **not** providing any guarantee, promise or undertaking (whether legal or equitable) that it will acquire any Services from the Contractor during the Term of this Contract; and
 - (ii) may at any time place an order for the provision of Services from:
 - A. another panel participant; or
 - B. any third party where either:
 - ♦ the Council is of the opinion that there are extenuating circumstances which justify the use of a third party for the Services in question;
 - ♦ the Council decides to publicly tender the Services in question; or
 - ♦ an Order has been placed with a panel participant and the Council is exercising its rights pursuant to clause 15 of this Contract or that Order.

3.9 Refreshing of the panel arrangement

- (a) At any time during the Term of this panel arrangement (and in the usual course, on a six monthly basis,), Council may add further panel participants to this panel arrangement:

- (i) where Council is of the opinion that it is in the public interest to do so; or
 - (ii) by public tender.
- (b) If Council decides to add further panel participants, existing panel participants may be given the opportunity to provide lower Contract Prices than those which apply at the time of the addition of the further panel participants.

4. Provision of the Services

4.1 General Conditions in relation to the provision of Services

It is a condition of this Contract and each Order for Services that the Contractor shall:

- (a) supply, provide and deliver the Services:
 - (i) in accordance with the Specifications and the terms and conditions of that Order;
 - (ii) in all other respects - promptly and with the skill, care and diligence that could reasonably be expected of a competent professional in the applicable field, engaged to provide the Services; and
 - (iii) in a manner that ensures the Contractor and the Contractor's Staff at all times, conduct themselves with a high level of decorum and present themselves in a manner not to offend reasonable members of the public;
 - (iv) by the completion date specified in the Order, subject to clause 4.10;and do all things necessary to fulfil its obligations under that Order and this Contract;
- (b) consult and meet with the Council's Contract Authority as frequently as specified in the Specifications and/or the Order or, if no such requirement exists in the Specifications or the Order, at such times as determined from time to time by the Council's Contract Authority;
- (c) in providing the Services and delivering/preparing the Deliverables for the Council, make such inquiries and examine such information as a reasonable contractor providing the Services as required by this Contract and any Order would consider necessary to fully inform and satisfy itself as to:
 - (i) the nature, scope, extent and degree of difficulty of the tasks to be performed by it in order to deliver the Services and the Deliverables in accordance with this Contract or any Order;
 - (ii) its ability to provide the Services and the Deliverables to the standards and within the time frames required by this Contract and any Order;
 - (iii) the availability of suitably qualified personnel and other facilities, equipment, information, data and material which it requires in order to undertake the Services in accordance with this Contract and any Order; and
 - (iv) the Council's requirements for the Services and how those Services are to assist the Council in accordance with any purposes specified in that Order. Further, and without limiting the generality of the foregoing, the Contractor acknowledges and agrees that:
 - A. it is being engaged by the Council because it is an expert in the field to which the Services relate and as such, also acknowledges and agrees that the Council will be relying on the advice and/or recommendations and/or the Deliverables provided by the Contractor; and
 - B. in providing the Services and the Deliverables, it will make such active and due enquiries of the Council as is reasonably necessary to obtain sufficient information from the Council to enable the Contractor to provide the Services as required by that Order;
- (d) promptly inform the Council in writing if any information or any document provided or caused to be provided by the Council to the Contractor is found to:
 - (i) be inadequate to enable the Contractor to properly provide the Services; or
 - (ii) contain such material inaccuracies that the Contractor is unable to properly provide the Services;
- (e) ensure that the Services are provided and the Deliverables are delivered in accordance with the timetable or time frames specified in the Order provided that any delays or other departures from such timetable or time frames shall only be permitted with the prior written approval of the Council;
- (f) 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 and allow the Council to take copies of such records

free of charge; and

- (g) not do or permit to be done (whether by deliberate act or omission or by negligence) any act or omission which may jeopardise the rights of the Council in relation to the provision of the Services or conflict with or restrict the Contractor in the provision of the Services as required by this Contract and any Order.

4.2 Compliance with Legislative Requirements

- (a) At all times during the Term of this Contract and each Order, the Contractor shall comply with all Legislative Requirements.
- (b) If any Legislative Requirement changes after the Commencement Date and such changes:
 - (i) could not have been anticipated by a competent contractor; and
 - (ii) necessitates any increases or decreases in the Contract Prices or any change to the Services;the Contractor shall notify the Council's Contract Authority immediately in writing. The difference in the Contract Prices shall be reasonably assessed by the Council and added to or deducted from the Contract Prices. In all other respects, the Contractor shall bear the cost of complying with any such changes to the Legislative Requirements.

4.3 Skill of Contractor's Staff

The Contractor shall only employ, engage or subcontract such persons:

- (a) who have such skills and experience required to provide the Services in accordance with this Contract and any Order;
- (b) who hold all necessary licences, permits, authorisations, certificates and accreditations as required by law in order to provide the Services; and
- (c) whose standards of experience, workmanship and behaviour are entirely suitable for the provision and/or performance of the Services and the requirements of this Contract and any Order.

4.4 Responsibility for Contractor's Staff

- (a) At all times during the Term of this Contract and any Order for Services, the Contractor shall remain fully responsible for the provision of such Services irrespective of whether those Services are provided by the Contractor's Staff and shall ensure that these persons fully comply with the Contractor's obligations under this Contract and that Order.
- (b) Where the Council's Contract Authority is of the opinion that a member of the Contractor's Staff repeatedly or persistently fails to meet the requirements of this Contract or any Order, the Council's Contract Authority may request the removal of that person. Upon receipt of this request, the Contractor shall immediately remove that person at no cost to the Council. The Contractor shall then replace such person with a suitably qualified person and do so at no cost to the Council either in terms of extension of time or any other additional costs or charges.

4.5 Acceptance

The Contractor acknowledges and agrees that any delivery, receipt of, review of or the giving of any direction by the Council in respect of any Services ordered under an Order does not:

- (a) derogate from or lessen the Contractor's liability to the Council for failure to fully comply with the requirements of this Contract or that Order (including, but not limited to, failure of any item of Services to meet the requirements of the Specifications);
- (b) constitute acceptance by the Council that the Services meet the requirements of this Contract or that Order; or
- (c) constitute either a waiver of the Contractor's obligations under this Contract (or that Order) or certification that the Contractor has properly fulfilled its obligations to the Council or operate as any other form of estoppel or restriction of the Council's rights under this Contract (or under that Order) or at law.

4.6 Specified Personnel

The Contractor agrees that in relation to each Order:

- (a) the Services shall be performed personally by the Specified Personnel specified in that Order and the services of other members of the Contractor's Staff shall be solely used to support the Contractor and those Specified Personnel in their provision of the Services (including the creation and delivery of the

Deliverables);

- (b) the Specified Personnel specified in that Order shall complete such tasks as are specified against their name in that Order (if at all) and such other tasks as agreed to between the parties;
- (c) it shall not delegate the delivery or performance of any of the Services and/or the Deliverables to any person other than a Specified Personnel without first obtaining the Council's written approval;
- (d) if either:
 - (i) the Contractor advised the Council that any of the Specified Personnel specified in that Order is unavailable to provide and/or complete the Services as required by that Order for any reason (including illness or resignation); or
 - (ii) the Council, in its sole and absolute discretion, forms the opinion that any of the Specified Personnel specified in that Order either does not have the capacity to undertake any of the tasks which he or she is to perform or does not maintain the standard of work (or is responsible for any disruption in the work being undertaken) specified or required in respect of the provision of the Services under that Order;

then the Contractor or the Council (as the case may be) may notify the other accordingly. The Contractor shall then ensure that:

- (iii) it does not replace the Specified Personnel, unless Council, in its sole and absolute discretion, approves the replacement of the Specified Personnel; and
- (iv) such substitution is:
 - A. with another suitable qualified and experienced person;
 - B. undertaken at the earliest opportunity and without further delay to the delivery of the Services and the Deliverables in question; and
 - C. at no additional cost to the Council;
- (e) any requirement to replace any of the Specified Personnel pursuant to this sub-clause shall not constitute an act or event that is beyond the reasonable control of the Contractor in meeting the requirements of this Contract and that Order;
- (f) if the Contractor is unable to provide a replacement for the Specified Personnel in accordance with this clause 4.6 the Council shall be able to terminate this Contract and/or the Order in question; and
- (g) if, for any reason, a Specified Person elects to take any form of leave during the Term of the Order and such leave will delay the provision of the Services the Contractor shall ensure that the Council's Contract Authority is advised as soon as possible of the absence of the Specified Person and the expected duration of the absence and further, shall provide sufficient evidence certifying the unavailability of the Specified Person.

4.7 Reports

The Contractor shall prepare and submit reports to the Council's Contract Authority, detailing such matters and submitted within such time periods as required from time to time by the Council's Contract Authority and further, shall do so at no additional charge, price or fee to the Council.

4.8 Performance Reviews

During the Term of this Contract, the Council shall undertake reviews to assess the Contractor's performance in relation to the Orders placed and/or completed by the Contractor. These reviews shall be based on such criteria as the Council from time to time deems appropriate including:

- (a) customer satisfaction (derived from periodic surveys of administrative and business units within the Council);
- (b) satisfactory administration of this Contract and each of the Orders placed under this Contract. This will be based on the assessment by the Council as to the timeliness and accuracy of invoices as well as response to administrative requirements;
- (c) the quality and volume of the Services provided under any Order;
- (d) compliance with the terms and conditions of this Contract and any Order; and
- (e) compliance with Legislative Requirements.

4.9 Conflict of Interest

It is a condition of this Contract and each Order that the Contractor:

- (a) shall, prior to the Commencement Date, disclose to the Council all past, current and potential interests of the Contractor (and its Related Corporations) (whether actual or perceived) which may or may be perceived to conflict with or restrict the Contractor performing or delivering the Services to the Council under any Order; and
- (b) shall not engage in any activity or obtain any interest during the Term of an Order which is likely to conflict with or restrict the Contractor in providing the Services ordered to the Council and shall immediately disclose any such activity or interest to the Council's Contract Authority.

4.10 Extensions of Time

- (a) Where the Contractor is of the reasonable opinion that:
 - (i) there is likely to be a significant delay in the Contractor performing or discharging its obligations under an Order in respect of all or some of the Services ordered and such delay is largely due to a cause beyond the reasonable control of the Contractor (save and except a cause arising out of any act or omission on the part of the Specified Personnel or any of the Contractor's Staff or their employees or agents); and
 - (ii) the cause justifies an extension of the time specified in that Order to perform the Service;the Contractor shall:
 - (iii) as soon as possible after the Contractor has formed that opinion, provide the Council's Contract Authority with written notification of that opinion together with a comprehensive description of the facts and circumstances which the Contractor considers will give rise to such a delay; and
 - (iv) immediately after the circumstances causing the delay have ceased, notify the Council's Contract Authority in writing of the period of delay so caused, give details of the likely effect on the Contract and request an extension of time which the Contractor considers reasonable in all the circumstances.
- (b) The Council's Contract Authority shall give reasonable consideration to the Contractor's request and shall, as soon as possible after receiving a notice under paragraph 4.10(a)(iii), notify the Contractor of its decision.
- (c) Notwithstanding that the Contractor has not given notice under subclause 4.10(a), where the Council's Contract Authority considers that a delay has arisen, in whole or in part, because of an act or omission on the part of the Council or its employees or agents then the Council's Contract Authority may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor by nominating in the notice a date for such performance and the date so specified shall, for the purposes of the Order in question, be the date for performance of that obligation.
- (d) Failure by the Council's Contract Authority to grant a reasonable extension of time, or unreasonable delay by the Council's Contract Authority in granting an extension of time shall (notwithstanding any right of the Contractor to damages) not cause the date for the performance of the Service to be set at large.

4.11 Quality Assurance System

If a Quality Assurance System ("QAS") has been specified in clause 4.1(f) of the Contract Particulars:

- (a) The Contractor shall ensure that at all times during the Term of this Contract and any Order, it uses the QAS as an aid to achieve compliance with its obligations under this Contract and any such Order and to document such compliance. The Contractor acknowledges and agrees that its compliance with its QAS shall not release or discharge it from compliance with its obligations under this Contract or any Order.
- (b) To enable the Council to monitor the Contractor's compliance with its obligations under this Contract or any Order, the Contractor shall at all times during the Term, allow the Council reasonable access to the Contractor's QAS as used by the Contractor (including the Contractor's Staff) in the provision of the Services.

4.12 Deliverables and Documentation

In delivering, creating and finalising any Deliverables and/or Documentation under an Order:

- (a) **Statements attached to Deliverables**

If the Contractor includes in the Deliverable and/or Documentation any statement which includes any:

- (i) claim to ownership of intellectual property;
 - (ii) restriction on the Council's use of the Deliverable; or
 - (iii) disclaimer, Permitted Disclaimers or qualification,
- (“**Statements**”), the Contractor acknowledges and agrees that:
 - (iv) the Order shall take precedence to the extent of any conflict or inconsistency between the Order and the Statements; and
 - (v) the Statements are not to be construed as limiting, restricting or diminishing the Contractor's liability to the Council under this Contract and/or any Order.
- (b) **Restrictions on Council's use of Deliverables and/or Documentation**

Notwithstanding any other provision of this Contract or any Order in relation to Intellectual Property Rights, unless expressly agreed:

 - (i) in writing with the either the Council's Chief Legal Counsel or Council's Chief Procurement Officer (or their respective delegates/authorised officers) before the Order in question is agreed between the parties; and
 - (ii) in the Order form (as provided in Schedule D or determined pursuant to clause 3.3),

the Council may provide the Deliverable to any third party/parties without the consent of the Contractor.
- (c) **Disclaimers**
 - (i) The Contractor is not permitted to use disclaimers or other forms of qualification or reservation (other than any Permitted Disclaimer) 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) and included in the Order agreed between the parties.
 - (ii) For the Purposes of clause 4.12(c), “**Permitted Disclaimer**” means any disclaimer(s) which:
 - A. articulates factual limitations or qualifications on the content or preparation of the Deliverable, for example, that a specific conclusion/finding detailed in the Deliverable is subject to a stated assumption or based on stated information which has not been verified by the Contractor;
 - B. purports to limit use of the Deliverable to the use(s) contemplated by the Order agreed between the Council and the Contractor; or
 - C. applies only to any third party that receives a copy of the Deliverable and: disclaims the Contractor's responsibility to that third party for that third party's reliance on the Deliverable (unless the Contractor has consented in writing to that reliance).

4.13 Personal Information

If at any time during the Term of this Contract or any Order, the Contractor collects or has access to Personal Information in order to provide the Services, the Contractor must:

- (a) 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;
- (b) not use any Personal Information other than for the purposes of providing the Services unless otherwise required or authorised by law;
- (c) not disclose Personal Information without the prior written consent of the Council's Contract Authority unless required or authorised by law;
- (d) not transfer Personal Information outside of Australia without the prior written consent of the Council's Contract Authority;
- (e) ensure that access to Personal Information is restricted to those of the Contractor's Staff who require access in order to perform their duties;
- (f) 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;
- (g) fully co-operate with the Council to enable the Council to respond to applications for access to or

- amendment of a document containing an individual's Personal Information and to privacy complaints;
- (h) comply with such other privacy and security measures in relation to Personal Information as the Council reasonably advises the Contractor from time to time
 - (i) 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 the Council; and
 - (j) immediately notify the Council on becoming aware of any breach of this clause 4.13.

For the purposes of this clause, the term "Personal Information" has the meaning given in the *Information Privacy Act 2009* (Qld) and, where the context requires, means Personal Information in connection with this Contract and any Order.

4.14 Privacy

The Contractor must comply with:

- (a) the Australian Privacy Principles set out in the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth); and
- (b) the *Privacy Act 1988* (Cth).

5. Variation to the Specifications or Services

- 5.1** Prior to an Order being properly completed by the Contractor, the Council may seek to vary the Order in any manner (such as, but not limited to, variations to the Specifications, delivery times, the quantity of the Services ordered under that Order) by the provision of written notice to the Contractor ("**the Variation**").
- 5.2** As soon as practicable after receipt of any such Variation referred to in clause 5.1, the Contractor shall notify the Council whether it agrees to the variations proposed by the Council and if so, shall also provide the Council with an estimate of:
 - (a) any additional cost to the agreed Contract Prices that will occur as a result of the Variation. If directed by the Council, the Contractor shall provide a detailed quotation for the Variation together with evidence of such costs; and
 - (b) the effect such Variation will have on the provision and/or delivery of the Services under that Order.
- 5.3** The Variation shall not constitute a legally binding variation to that Order unless the parties have agreed in writing to such Variation (whether by formal instrument or by other written means). In the absence of such written agreement, the Order (as unamended) shall remain binding on the parties.
- 5.4** The prices applicable for any such Variation shall be determined in accordance with clause 7.1 or, if no rates are specified in Schedule C for Variations, at reasonable rates or prices (which shall include a reasonable amount for profit and overheads).

6. Access to Council premises and system

- 6.1** The Contractor shall fully comply with (and ensure the Contractor's Staff fully comply with) all requirements or directions of the Council relating to:
 - (a) access to, behaviour on or access from any Council Premises (including, but not limited to, security and occupational health and safety requirements in relation to such premises); and
 - (b) where arranged and permitted by the Council - access to and use of the Council's computer systems, programs and/or any arrangement Council has in place to access the Internet. Further, the Contractor shall advise the Council's Contract Authority of any such unauthorised access and/or use.
- 6.2** These requirements or directions shall be as provided from time to time in writing by the Council's Contract Authority to the Contractor.

7. Price and payment

7.1 Contract Prices

- (a) The Contractor shall not, in respect of the provision of any Services under any Order (or any Variation), attempt or seek to impose a Contract Price that is calculated at a rate that exceeds the rates specified in Schedule C for that Service nor impose any costs, expenses or charges that are calculated other than in accordance with this clause 7. Where no rates are specified at Schedule C, the Contract Price applicable to an Order is the rate(s)/price specified in the Schedule D for that Order.
- (b) The Contract Prices in respect of any Services (or items which are used in the provision of that Services

and which are charged separately) ordered under an Order or a Variation shall be:

(i) as determined in accordance with:

- A. the prices and charges;
- B. any additional fees and charges; and
- C. any variation formulae or indices;

that are specified in Schedule C. The parties further agree that the Contractor cannot charge the Council and the Council is under no obligation (whether legal or equitable) to pay any prices, charges, additional fees or charges or be subject to any variation formulae/indices that are not specified in Schedule C **unless** the Contractor has obtained the Council's written consent to such fees **and** done so prior to the Contractor providing the Services (or causing such Services to be provided) that would otherwise incur such additional fees or charges; and

(ii) such other prices and charges (including discounts) as agreed to between the Contractor and the Council;

whichever is the lesser **and further**, such prices and charges do not include any allowance for the payment of GST. The payment of GST shall be pursuant to clauses 7.2(c) and 7.4.

(c) Where an Order contains or specifies a payment schedule for the payment of the Contract Prices, the Council shall pay the Contract Prices in accordance with that schedule provided that the Contractor has first complied with all of its obligations under that Order.

(d) Council will consider any written requests for changes to Contract Price:

(i) Once each year of the term of this Contract.

7.2 Invoices

(a) Notwithstanding any other provision of this Contract or any other provision of an Order, the Council shall pay all properly rendered invoices that:

- (i) are submitted by or on behalf of the Contractor for the provision of the Services ordered under that Order; and
- (ii) comply with the requirements of paragraph (b) of this sub-clause;

and shall do so in accordance with paragraph (c) of this sub-clause save and except where the Council's Contract Authority has certified pursuant to clause 7.3 that the provision of the Services (or part thereof) in question are Disputed Services.

(b) An invoice will not be deemed to have been properly rendered unless it:

- (i) is sent to the address as detailed in clause 4.1(e) of the Contract Particulars, specifies the title of this Contract, the contract number of this Contract, the number (if any) of the Order in question (or any other number as the Council's Contract Authority may, from time to time, specify in writing to the Contractor as being required to be inserted on any invoice to which Orders relate), the name of the relevant business unit of Council placing the Order (if so disclosed in the Order) and the name and address of the Council's Contract Authority;
- (ii) provides such details of the Contract Prices sought as the Council's Contract Authority may from time to time 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));
- (iii) sufficient detail to enable the Council to assess progress against targets (if any) as required by that Order; and
- (iv) 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 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. All such invoices must be invoiced in arrears and at such times as specified in the applicable Order.

(c) The Council shall pay the Contract Prices for all or part of the Services that are **not** Disputed Services

(including the Contractor's GST Liability in relation to such Services) and do so within 30 days of receipt of a properly rendered invoice.

7.3 Disputed Services

- (a) If at any time before the delivery of a correctly rendered invoice for Services or within 21 days of receipt by the Council's Contract Authority of a properly rendered invoice, the Council's Contract Authority provides the Contractor with written advice indicating that all or part of the Services in question have not been satisfactorily provided or performed in accordance with this Contract and the Order to which those Services relate ("**the Disputed Services**"), then:
 - (i) the Contractor shall promptly re-deliver or re-perform any Services which are the subject of the Disputed Services until such time as the Council's Contract Authority is satisfied that they have been satisfactorily provided or performed in accordance with this Contract and the Order in question; and
 - (ii) the Council shall only be legally required to pay the Contract Prices for any Disputed Services (including the Contractor's GST Liability in relation to such Disputed Services) if the Council's Contract Authority is satisfied that the Disputed Services have been satisfactorily re-provided or re-performed to meet the requirements of this Contract and the Order in question. In such a case, payment shall be within 30 days of the Council's Contract Authority being satisfied with the re-delivery or re-performance of such Disputed Services.
- (b) If the Contractor fails to perform as required by clause 7.3(a), the Council shall be entitled to terminate this Contract and/or the Order in question pursuant to clause 15 and/or exercise its rights under clause 15.6 and other provisions of this Contract and the Order in question.
- (c) The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price (including the Contractor's GST Liability in relation to such Services) unless otherwise provided in the Contract or the Order in question.

7.4 Goods and Services Tax and other taxes

- (a) Where the Council is legally obliged to pay an invoice in relation to the provision of the Services (including Disputed Services), the Contractor shall be also entitled to claim from the Council the amount of the Contractor's GST Liability for the Services to which the invoice relates **provided that** GST is applicable to those Services **and** the invoice is a properly rendered invoice that complies with the requirements of clause 7.2(b).
- (b) Except as expressly provided by this clause:
 - (i) the Contractor shall have no other Claim arising from or in connection with any GST payable in respect of the Services;
 - (ii) no other provision of this Contract or any Order shall operate to provide for any adjustment of the Contract Prices or give rise to any other claim by the Contractor in connection with any GST payable in respect of the Services; and
 - (iii) where any payment by the Council under this Contract or any Order is determined by reference to costs, expenses, liability or damages incurred by the Contractor, the payment shall exclude any amount for which the Contractor is entitled to claim an input tax credit under the GST Laws.
- (c) Where there are circumstances or events which, under the GST Laws, require the Council to deduct Pay As You Go withholding tax ("**PAYG**") from the Contract Prices otherwise payable to the Contractor, then the Council shall deduct PAYG from any such Contract Prices and shall not be liable to the Contractor, its staff, contractors, sub-contractors or assignees for doing so.
- (d) In the event that:
 - (i) the provision of any Services or the payment of any moneys (or other form of consideration) under this Contract or any Order becomes a Taxable Supply under the GST Laws; and
 - (ii) the recipient of such Services or such moneys or other form of consideration is liable to pay GST in relation to that supply;

each party will do all things (including the provision of properly rendered tax invoices or other documentation) in such form and detail as may be necessary to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in relation to the payment of that amount of GST.
- (e) Unless otherwise required by law, the parties agree that the Council shall not be liable to compensate the Contractor in respect of any other taxes or charges levied in connection with either the provision of

Services under this Contract or any Order or any payment by the Council pursuant to this Contract or any Order.

7.5 Recovery of Amounts due to Council

- (a) The Council may set off against any amount owed by the Council to the Contractor:
 - (i) any sum payable under this Contract and/or any Order by Contractor to the Council;
 - (ii) any costs or expenses incurred by the Council as a result of or arising from any breach of this Contract and/or any Order by the Contractor or the Contractor's Staff; or
 - (iii) any costs or expenses incurred by the Council in obtaining the services of a third party pursuant to clause 15.6.
- (b) Further, such amounts shall be a debt due and payable to the Council and may be recovered in any Court of competent jurisdiction.

8. Negotiation of employment and agency

The Contractor:

- 8.1** shall not represent itself as being an employee or agent of the Council;
- 8.2** acknowledges and agrees that nothing in this Contract or any Order 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 (or the Contractor's assignees); and
- 8.3** agrees that it is solely liable for all remuneration, claims and other entitlements payable to the Contractor's Staff as well as complying with the requirements of the *Taxation Administration Act* (Cth) and the GST Laws.

9. Confidentiality and non-disclosure

9.1 General Obligations

The Contractor must:

- (a) not without the prior written consent of the Council directly or indirectly use, disclose, reproduce or publish any part of the Confidential Information in any Material Form whatsoever save and except for the sole purpose of providing the Services to the Council;
- (b) treat and keep as strictly confidential all Confidential Information and not make, assist or permit any person (including any member of the Contractor's Staff) to make any unauthorised use, disclosure, reproduction or publication of the Confidential Information;
- (c) comply with all instructions provided by the Council regarding the Confidential Information; and
- (d) neither make any comment nor issue to any third person (including any sector of the media) any information or publication, document or article for publication concerning:
 - (i) this Contract;
 - (ii) the provision of the Services in general or by the Contractor; or
 - (iii) the actions or other behaviour of Council;

("Restricted Information") unless the prior written approval of the Council has been obtained (and in doing so, Council shall be entitled to place any conditions it deems appropriate in relation to the format and content of such disclosure). Further, the Contractor shall refer to the Council all inquiries from third parties (and in particular, the media) in relation to any of the above matters.

9.2 Permitted Use and Disclosure

The Contractor may disclose the Confidential Information and/or the Restricted Information to any member of the Contractor's Staff on the condition that:

- (a) any such disclosure is only to the extent necessary to enable the Contractor to perform the Services; and
- (b) if requested by the Council, the Contractor shall ensure that any member of the Contractor's Staff involved in the provision of the Services executes an undertaking in favour of the Council on the terms and conditions contained in Schedule F of this Contract and provide the Council with a copy of such executed undertaking.

9.3 Obligation to Disclose

If the Contractor is required by law to:

- (a) disclose any Confidential Information in its possession; or
- (b) make any disclosure or statement to a third party in relation to any Restricted Information;

the Contractor shall:

- (c) immediately (but prior to making such disclosure) notify the Council in writing of any such disclosure that it is obliged to make; and
- (d) provide the Council with all assistance and co-operation which the Council reasonably requires in order to prevent or limit such disclosure.

9.4 Ownership and Return of the Confidential Information

- (a) The Contractor shall either:
 - (i) upon demand being made by the Council; or
 - (ii) the time when the Services of the Contractor are no longer required;(whichever is the earlier to occur) deliver to the Council (or with the Council's prior written consent, to the extent reasonably practicable, destroy or erase) all Material Forms of the Confidential Information in the possession, power or control of the Contractor or any of the Contractor's Staff and do so irrespective of whether those Material Forms were created by or on behalf of the Council or not.
- (b) The return of the Material Forms of the Confidential Information under this clause does not release the Contractor from its obligations under this Contract or any Order.
- (c) Despite clause 9.4(a), the Contractor:
 - (i) is not required to destroy or erase Material Forms of the Confidential Information made in the normal course of business and held on back-up servers; and
 - (ii) may retain a copy of the Confidential Information for legal/compliance purposes,on the condition that any Confidential Information retained by the Contractor is retained in accordance with subclauses 9.1, 9.2 and 9.3.

9.5 Survival of Confidentiality Obligations

The obligations as to confidentiality and non-disclosure pursuant to this clause shall survive any expiry or termination of this Contract until such time as either:

- (a) the Confidential Information or the Restricted Information is or becomes generally available in the public domain other than by reason (whether wholly or partially, directly or indirectly) of either a breach of this Contract or a breach of any other obligation of confidentiality or non-disclosure owed to the Council or any other person; or
- (b) the Contractor is required by law to disclose such information; or
- (c) such disclosure has been permitted in writing by the Council prior to such disclosure.

10. Intellectual Property Rights

10.1 The parties acknowledge and agree that:

- (a) Without limiting clause 10.2 the Contract does not transfer any title to intellectual Property Rights and each party retains the ownership of its own Intellectual Property Rights.

10.2 The Contractor grants the Council:

- (a) for the period of the Term of the Contract: an exclusive, irrevocable, royalty free (other than the Contract Price), licence (including the right to sub-licence) to use, produce, publish, adapt or exploit any Intellectual Property Rights owned by the Contractor or any third party which are associated with the Services (including in any Deliverable and/or Documentation) for any purpose; and
- (b) following the Term: a permanent, irrevocable, royalty free (other than the Contract Price), licence (including the right to sub-licence) to use, produce, publish, adapt or exploit any Intellectual Property Rights owned by the Contractor or any third party which are associated with the Services (including in any Deliverable and/or Documentation) for the purposes reasonably contemplated by this Contract following the conclusion of the Term (including reasonable record keeping of the Council).

10.3 The Contractor warrants that in providing the Services (including the preparation of any Deliverable and/or

Documentation), 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 third party.

10.4 The Contractor shall notify Council in writing as soon as practicable of any Claim threatened or brought against the Contractor arising from an infringement or alleged infringement by the Contractor of the Intellectual Property Rights of any third party.

10.5 Without limiting clause 10.2, where any Intellectual Property Rights in any Deliverable and/or Documentation vest in the parties jointly, each party may only use produce, adapt or exploit those Intellectual Property Rights with the prior written agreement of the other party.

10A Moral Rights

- (a) To the maximum extent permitted by law the licences referred to in clause 10.2 include, irrevocably and unconditionally, the Contractor's consent (which the Contractor warrants includes the consent of all of the authors of the assigned or licensed Intellectual Property Rights (as the case may be)) to Council doing anything in relation to any such Intellectual Property Rights or other subject matter that (but for this consent) would otherwise infringe any Moral Rights or similar non-assignable, personal rights that the authors of the or licensed Intellectual Property Rights (as the case may be) might otherwise have anywhere in the world.
- (b) The Contractor (and applicable, the authors of the assigned or licensed Intellectual Property Rights (as the case may be)) must, upon request by Council, provide Council with a written and signed consent on basis set out in clause 10A(a).

11. 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.

12. Indemnity

12.1 Upon demand being made by Council, the Contractor shall fully indemnify Council and its officers and employees:

- (a) against any Claim 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 that they are employees (as commonly defined) of Council or "workers" of Council under the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (as amended from time to time); and
- (b) from and against any Claims whatsoever arising out of or in connection with any claim that the performance of any Services breaches the Intellectual Property Rights or Moral Rights of any third party; and
- (c) in relation to any Claim (including loss of or damage to property or any personal injury or death of any person and including any costs and expenses that may be incurred in connection with any such Claim) where such Claim directly or indirectly arises in any manner out of:
 - (i) any negligent, wilful, unlawful or wrongful act or omission by the Contractor or any of the Contractor's officers, employees, agents, Specified Personnel or its authorised sub-contractors in connection with or incidental to the performance of the Services; or
 - (ii) any breach of this Contract by the Contractor or any of the Contractor's officers, employees, agents, Specified Personnel or its authorised sub-contractors.

12.2 Notwithstanding clause 12.1, the Contractor's liability for any Claim arising out of any personal injury to or the death of any person or loss of or damage to property shall be reduced to the extent that such Claim is a direct result of **either** any breach by Council of any provision of this Contract which causes delay to the Contractor performing the Services as required by this Contract **or** any negligent act or omission of Council, its employees, agents, contractors or sub-contractors.

12.3 If the Contractor fails to comply with its obligations under this Contract and fails to rectify such breach as and when requested to do so by Council in accordance with this Contract, Council may engage another Contractor to provide the Services in question and shall be able to recover such costs of engaging the other Contractor from the Contractor. Council shall use its best endeavors to ensure that the Services in question are carried out in the most cost effective manner and shall provide the Contractor with written

documentation of the actual costs incurred by Council. The Contractor shall pay such costs to Council within 14 days of being requested to do so by Council.

12.4 This clause 12 shall survive any termination or completion of this Contract.

13. Insurance

13.1 At all times during the Term of this Contract and each Order, the Contractor shall take out and maintain, with an insurance company approved by Council, insurance specified in clause 4.1(g) of the Contract Particulars.

13.2 Within five (5) Business Days of being requested in writing to do so, the Contractor shall produce the certificates of currency of insurance or such evidence of the currency of the insurance referred to in this clause as Council may require.

14. Disputes

14.1 The parties agree to use their best endeavours to use mediation and negotiation to resolve any dispute or unresolved claim arising out of or relating to this Contract or any Order (including any breach or termination of this Contract or any such Order) ("**the Dispute**").

14.2 If a party believes there is a Dispute, it may give written notice to the other party detailing the nature of the Dispute. If the Dispute is not resolved to the satisfaction of the parties within ten (10) Business Days of receipt of such notice, either party may request that the Dispute be referred to arbitration to be effected:

- (a) by an arbitrator mutually agreed upon between the parties; or
- (b) in default of such mutual agreement, by an arbitrator appointed by the Queensland Chapter Chairman of the Institute of Arbitrators and Mediators Australia.

In such a case, the Dispute shall be conducted in accordance with the Rules for the Conduct of Commercial Arbitration for the time being of the Institute of Arbitrators and Mediators Australia.

14.3 The referral of the Dispute to arbitration (or any other form of dispute resolution), shall not prevent either party commencing court proceedings relating to the Dispute where the party seeks urgent interlocutory relief.

14.4 Notwithstanding the existence of a Dispute, each party shall continue to perform its obligations under this Contract and the Order in dispute.

14.5 The parties acknowledge and agree that nothing in this clause shall be construed as requiring the Council to seek to negotiate all disputes or unresolved claims in relation to any breach by the Contractor of its obligations under this Contract or any Order prior to or in order to any exercise of its rights under clause 15 or any other provision of this Contract or the Order in question.

15. Termination

15.1 Termination by the Council without Notice

- (a) At any time during the Term of this Contract and/or any Order, the Council may terminate all or part of this Contract and/or that Order immediately and without prior notice to the Contractor if:
 - (i) the Contractor enters into any form of insolvency administration;
 - (ii) the Contractor (or any member of the Contractor's Staff) have breached any laws applicable to the provision of the Services or have infringed the intellectual property rights of any third party;
 - (iii) the Contractor has engaged in any conduct or practice that is detrimental or harmful to the good name, reputation or interests of the Council;
 - (iv) the Contractor has failed to perform as required by clause 7.3(a);
 - (v) the Contractor has failed to rectify a default within the time period specified in a Default Notice issued pursuant to clause 15.2;
 - (vi) the Contractor has breached any obligation imposed by clauses 4.13, 9 and/or 17.3; or
 - (vii) the Contractor is found to have offered or given any gratuity, bonus, discount or bribe of any sort to any member of the Brisbane City Council or any officer, employee or agent of the Council.
- (b) Such termination shall be effected by the Council giving the Contractor a written notice terminating this Contract and/or that Order (a "**Termination Notice**") and specifying the date of termination ("**the Termination Date**"). Those parts of the Contract and/or that Order to which the Termination Notice relates shall terminate on the Termination Date.

15.2 Termination for Default

If a party is in default under this Contract and/or any Order on account of its failure to perform or observe any obligation or undertaking under this Contract and/or that Order ("**the Defaulting Party**"), the party not in default may give the Defaulting Party a written notice (a "**Default Notice**"):

- (a) specifying which provision of this Contract and/or Order that has been breached; and
- (b) requiring the Defaulting Party to rectify that default to the reasonable satisfaction of the other party within such period as specified in the written notice (which is to be not less than fourteen (14) days of the receipt of the notice by the Defaulting Party);

PROVIDING THAT a party shall not be entitled to exercise its rights and remedies under this clause if the default in question is wholly due to any event that either is beyond the reasonable control of the Defaulting Party or could not have been prevented by the Defaulting Party taking reasonable precautions.

15.3 Contractor's Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice pursuant to clause 15.1, the Contractor shall:

- (a) stop work as specified in the Termination Notice;
- (b) take all available steps to minimise loss resulting from that termination; and
- (c) continue to provide any other Services not affected by the Termination Notice.

15.4 Effect of Termination

Any termination of this Contract and/or any Order shall not affect any right or entitlement which either party is entitled to claim under the provisions of this Contract and/or that Order.

15.5 Council's liability upon Termination

Upon the termination of this Contract and/or any Order (whether in whole or in part), the Council's liability to the Contractor (if any) shall be limited to:

- (a) payments for the Services (or any part) performed in accordance with this Contract and/or that Order before the Termination Date. To avoid doubt, in the event of partial termination, the Council's liability to pay for any remaining Services shall abate proportionately to the reduction in the Services as a result of the partial termination; and
- (b) subject to the Contractor fully complying with its obligations under clause 15.3, any reasonable costs incurred by the Contractor and directly attributable to the termination or partial termination of this Contract and/or that Order;

and payments for Services not affected by the Termination Notice **provided always** that the maximum amount of the Council's liability to the Contractor pursuant to this clause shall be capped at the amount of the Contract Price (as varied pursuant to clause 5 or abated pursuant to clause 15.5(a)) for that Order. The Contractor shall **not** be entitled to compensation for loss of prospective profits.

15.6 Council's rights upon Breach

If **either** the Council terminates this Contract and/or any Order pursuant to clause 15.1 **or** the Contractor fails to comply with a Default Notice **or** a notice issued pursuant to clause 7.3(a), the Council:

- (a) may engage a third party of the Council's choice to provide the Services in question; and
- (b) shall use its best endeavours to ensure that the Services in question are carried out in the most cost effective manner and provide the Contractor with written documentation of the actual costs incurred by the Council;

and the Contractor shall pay all reasonable costs and expenses incurred by the Council (including GST) in engaging any such third party and shall do so within thirty (30) days of the Council serving a valid tax invoice on the Contractor specifying the amount payable. All costs and expenses incurred by the Council in engaging any such third party may be recovered or set-off by the Council pursuant to clause 7.5.

15.7 Suspension of Services

- (a) If the Council is of the opinion that the suspension of all or part of the provision of the Services by the Contractor is desirable due to any changes in the Council's need for the nature, scope or timing of the Services as specified in any Order, the Council may give the Contractor a written notice suspending all or part of the provision of the Services ordered under an Order (a "**Suspension Notice**"). The Suspension Notice shall specify the Services to be suspended and the date of suspension of such Services ("**the Suspension Date**"). Those parts of the Order to which the Suspension Notice relates shall be suspended as and from the Suspension Date.

- (b) Upon receipt of a Suspension Notice pursuant to clause 15.7(a), the Contractor shall:
 - (i) stop work as specified in the Suspension Notice;
 - (ii) take all available steps to minimise loss resulting from that suspension; and
 - (iii) continue to provide any other Services not affected by the Suspension Notice.
- (c) Upon the suspension of any Order (whether in whole or in part), the Council's liability to the Contractor (if any) shall be limited to:
 - (i) payments for the Services (or any part) performed in accordance with this Contract and/or that Order before the Suspension Date; and
 - (ii) subject to the Contractor fully complying with its obligations under clause 15.7(b), any reasonable costs incurred by the Contractor and directly attributable to the suspension or partial suspension of that Order;

and payments for Services not affected by the Suspension Notice **provided always** that the maximum amount of the Council's liability to the Contractor pursuant to this clause shall be capped at the amount of the Contract Price (as varied pursuant to clause 5) for that Order. The Contractor shall **not** be entitled to compensation for loss of prospective profits.

15.8 Force Majeure

- (a) Subject to paragraph (c) of this clause:
 - (i) neither party will be liable for any delay or failure to perform its obligations under this Contract and/or any Order; and
 - (ii) the performance of a party's obligations under this Contract and/or any Order shall be suspended;
- if and to the extent that delay or failure is caused (directly or indirectly) to Force Majeure provided that the non-performing party is without fault in causing that delay or failure.
- (b) If a delay or failure by a party to perform its obligations due to Force Majeure exceeds sixty (60) days, either party may immediately terminate this Contract and/or any Order by written notice to the other party.
 - (c) This clause does not apply to an obligation to pay money.
 - (d) For the purposes of this clause, "**Force Majeure**" means anything outside the reasonable 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 government or regulatory body.

16. Contract Management and notices

16.1 Council's Contract Authority

- (a) The Council's Contract Authority (or such other person as the Council may from time to time nominate by written notice to the Contractor) may exercise all the powers and functions of the Council under this Contract and any Order (including the power to make an Order or make or authorise a Variation provided that the making of any such Order is in accordance with this Contract and such Variation does not breach this Contract or any other provision of the Order) but does not have the power to vary this Contract for any other purpose unless authorised by the Council to do so.
- (b) The Council's Contract Authority may, by written delegation or authorisation, delegate any of his or her functions or authorise other persons to place Orders and make or agree to Variations under this Contract and to carry out administrative functions on behalf of the Council's Contract Authority. Nothing in this clause shall entitle the Council's Contract Authority to delegate his or her powers to terminate this Contract or any Order or to receive reports from the Contractor in accordance with clause 4.7 or to undertake reviews of the Contractor's performance pursuant to clause 4.8.

16.2 Notices

- (a) Any notice, request or other communication to be given or served pursuant to this Contract and any Order shall be in writing and addressed as the case may be, as follows:
 - (i) if given to the Council, addressed and forwarded to the Council's Contract Authority provided that the Council may alter the persons and/or addresses for the purposes of this clause by the provision of written notice to the Contractor. Any such alteration shall take effect from the date

it was deemed to be given pursuant to clause 16.2(b); and

- (ii) if given by the Council, signed by the Council's Contract Authority and forwarded to the person and address specified in clause 4.1(c) of the Contract Particulars provided that the Contractor may alter the persons and/or addresses for the purposes of this clause by the provision of written notice to the Council. Any such alteration shall take effect from the date it was deemed to be given pursuant to clause 16.2(b).
- (b) Proof of posting by pre-paid mail is proof of receipt of such notice on the second clear Business Day after posting.
- (c) Proof of transmission by facsimile of a notice is proof of receipt on the date of transmission but if a transmission is not made on a Business Day or not made before 4.00pm (Standard Queensland Time), then it will be deemed to have been received at 10.00am on the next Business Day after transmission.
- (d) For any notices given by electronic mail ("**email**"):
 - (i) written acknowledgment from the recipient of the email (or its content) is proof of receipt;
 - (ii) the sender of the email bears the risk of unsuccessful delivery and the onus of proving receipt; and
 - (iii) email that is not received between 9.00am and 5.00pm (Standard Queensland Time) on a Business Day is deemed to have been received at 9.00am (Standard Queensland Time) on the next Business Day.

17. General

17.1 Entire Agreement and Variation

- (a) This Contract and each Order constitutes the entire agreement between the parties in relation to the matters covered by those respective documents and supersedes all prior representations, agreements, statements and understandings, whether oral or in writing, relating to the subject of this Contract or the Order (as the case may be).
- (b) No variation or extension of the provisions of this Contract or any Order shall be legally binding upon either party unless it is in the form of a written amendment to this Contract or the Order (as the case may be) and authorised by both parties.

17.2 Waiver

No forbearance, delay or indulgence by either party in enforcing the provisions of this Contract or any Order shall prejudice, restrict or limit the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

17.3 Assignment and Sub-contracting

The Contractor shall not without the prior written approval of the Council:

- (a) assign all or any part of this Contract or any Order or any payment thereunder. Approval to assign shall be on terms and conditions determined by the Council; or
- (b) sub-contract the whole or any part of its obligations or rights under this Contract or any Order. Any approval by the Council to allow the Contractor to subcontract shall not relieve the Contractor from any liability or obligation under this Contract or any Order.

17.4 Severability

In the event that any of the terms contained in this Contract or any Order are determined to be invalid or unenforceable to any extent, such term shall be severed from the body of this Contract or that Order which shall continue to be valid and enforceable to the fullest extent permitted by the law.

17.5 Rights and Remedies

The rights of a party under this Contract or any Order are in addition to any other rights or remedies which that party shall or may be entitled to against the other party at law or equity.

17.6 Applicable Law

This Contract and each Order shall be governed by and construed in accordance with the laws for the time being in force in the State of Queensland and the parties agree to submit to the jurisdiction of the courts of that State.

18. Mentoring Program/Relationship

- (a) If one of the Contractor's conditions for successful registration was dependent on the participation in a Mentoring Program:
 - (i) the Contractor's participation in the Mentoring Program must come at no cost to Council; and
 - (ii) the Contractor must, in accordance with the Mentorship Document submitted to Council with their application form, engage with and obtain the support of that suitable mentor for providing the Services under an Order.
- (b) Council may in its sole and absolute discretion apply a Tier to a Contractor that reflects the relevant level of experience Council considers the Contractor to have, including consideration of any Mentoring Program by which the Contractor is supported, and may place Orders for Services and Deliverables commensurate with the Tier allocated by Council to the Contractor.
- (c) After five (5) matters have progressed through the Planning and Environment Court, the Contractor can reapply to Council to be placed on the Register at a different Tier. Council offers no guarantee of a change to the Contractor's Tier.

If the mentoring relationship ceases, it is the responsibility of the Contractor to notify Council immediately. Cessation of the relationship automatically suspends the Contractor from the Register until a new mentoring agreement can be confirmed.

SCHEDULE B – SPECIFICATIONS

Services

The following outlines the expert services the Contractor may be requested to provide to Council under the terms of their appointment. These services are to be delivered upon request and in relation to Planning and Environment Court matters, whether potential, contemplated or on foot, and associated development assessments, (together, Planning and Environment Court Matters).

The Contractor will provide the following independent expert services to Council, upon request and as required:

- Provide expert advice relevant to the matter.
- Comply with all directions and orders imposed by the Planning and Environment Court, within the timeframes prescribed
- Participate in *without prejudice* meetings to assist in the potential resolution of matters.
- Attend mediation sessions and provide expert advice to Council officers during these proceedings.
- Participate in *meetings of experts* when ordered by the Court.
- Prepare expert reports and provide oral evidence in Planning and Environment Court proceedings.

Capabilities

The following outlines the expected capabilities, tasks, and professional standards that appointed experts must be able to demonstrate. These requirements form the basis of Council's expectations for expert performance and will guide the assessment of suitability for inclusion on the Register.

- Ability to assess a development proposal against the relevant planning scheme, the Planning Act 2016, and other applicable legislation or standards within your area of expertise. You should provide advice as to whether you can support Council's position in the appeal, including justifications that could support a Court response (e.g., "grounds of refusal" or "further and better particulars").
- Provide a professional opinion on the strength of your position (within your expertise), including:
 - The reasons for your position with respect to the subject development application and the material facts, assumptions and information relied upon to support your position
 - Any conditions required to be imposed ensuring the development meets the parameters needed for approval and compliance
 - Design changes that could shift the outcome from refusal to approval
- Participate in Without Prejudice or Mediation process in a positive way to provide recommendations with respect to a complete resolution of the matter or to seek to narrow the issues in dispute
- Participate in a "Meeting of Experts" and cause to prepare a "Joint Expert Report" in accordance with the rules of the Court in Queensland.
- Produce a clear, timely, and well-structured individual statement for trial, outlining your assessment and the basis for your opinion.
- Provide expert evidence to the Planning and Environment Court.
- Where relevant, conduct adequate research, fieldwork, site analysis, model preparation, or other discipline-specific tasks to support your position in the appeal process.

Criteria

1. Mandatory requirements:

All applicants must meet the following criteria:

- Hold an Australian Business Number (ABN)
- Hold qualifications relevant to their area of expertise
- Respond to all criteria outlined in the Application Form

2. Skills and experience requirements:

Requirements are categorised by the following three types of applicants:

2.1 Experts With Prior Council Engagement

Applicants who have previously held an expert engagement with Council (within last 5 years) are required to provide:

- (a) A report from one referee documenting your skills and experiences
- (b) Confirmation of the period(s) and nature of previous engagement(s) with Council. Provide two examples where you have given oral expert evidence in the Planning and Environment Court. Include the appeal number, year, and a brief description of each case. (These examples may be from engagements outside of Council.)

2.2 New Applicants Without Prior Council Engagement

Applicants new to Council are required to provide:

- (a) A report from two referees documenting your skills and experiences
- (b) Demonstrate your skills and experience by providing five distinct examples. Each example should respond to the listed criteria at least once. Include:
 - The Appeal Number and Year
 - A description of the case
 - The party you represented

2.3 Technically Skilled Applicants Without Court Experience

Applicants who are technically skilled but do not have relevant court related experience, may apply under the following conditions:

- (a) Provide a report from two referees documenting your skills and experiences
- (b) Obtain a mentor, at your own expense, who:
 - Has minimum five instances of experience in Queensland's Planning and Environment Court; and
 - Is able to commit to supporting you through at least five (5) Planning and Environment Court cases.
- (c) Demonstrate the mentor's suitability by providing in the Mentoring Document:
 - Evidence of relevant experience; and
 - A list of cases in which they have served as an expert witness in Queensland's Planning and Environment Court.
- (d) Complete and submit the Mentorship Document with your Application Form.

NOTE: If Applicants for the Register are experienced in their discipline and have no experience in the P&E Court and do not provide evidence of a Mentoring relationship, they will not be recommended for inclusion on the Register.

SCHEDULE C – Contract Price

The Goods/Services are to be provided in return for the following fees and charges (the “**Contract Price**”):

[cross/tick the applicable box]

- ☐ a lump sum amount of (plus GST).
- ☒ being a schedule of rates (plus GST) outlined in the table below.
- ☐ being a mixture of lump sum payment(s) & schedule of rates (plus GST) attached to this document.
- ☐ being the fees (plus GST) detailed below:

Description of Service		Fees (excl. GST)
Provision of expert witness services as per Schedule C Specifications – Section 1 (refer below)		

SCHEDULE D – REQUEST FOR QUOTE AND CONTRACTOR’S QUOTE FORM

Request for Quote and Contractor’s Quote, pursuant to clause 3.1 of the Panel Arrangement Contract between the Brisbane City Council (“**Council**”) and the Contractor for the provisions of Services (“**Panel Contract**”):

1. Panel Arrangement

1.1	Panel Contract number:	{Council officer to insert}
1.2	Panel Contract name:	{Council officer to insert}

2. Council’s request for Quote *[Council officer to complete]*

2.1	Order title:	{Council officer to insert}
2.2	Services:	{Council officer to insert a few lines to summarise}
2.3	Specifications & Deliverables:	{Council officer to insert or refer to to attached brief/specification (include the document title and attach the document)}
2.4	Location of Services:	{Council officer to insert}
2.5	Date for commencement and completion of Services:	Commencement date: {insert start date}. Completion date: {insert specific date or 'within {insert number} of weeks of the Commencement Date'}.
2.6	Proposed invoice periods: <i>["x" indicates the option that applies]</i>	<input type="checkbox"/> {insert eg weekly, fortnightly, monthly} in arrears. <input type="checkbox"/> Upon completion of the Services. <input type="checkbox"/> Upon completion of milestones as follows: {insert each milestone and amount to be invoiced for completion of each milestone}
2.7	Additional information for evaluation:	{Council officer to insert a list of the information to be provided by the Contractor for evaluation. Alternatively, refer to and attach a separate document}
2.8	Council Contact Officer for the Quote process:	Name: {Insert} Position: {Insert} Address: {Insert} Email: {Insert} Tel: {Insert}
2.9	Submission Deadline for Quote	Time: {insert time e.g. 12noon} (Queensland Standard Time) Date: {insert date e.g. 12 November 2015}
2.10	Lodgement of Quotes and Conditions of Quote/Tender: <i>["x" indicates the option that applies]</i> Download Council’s standard conditions of quote/tender from: http://www.brisbane.qld.gov.au/about-council/governance-strategy/economic-development/brisbane-business/business-opportunities/selling-to-	<input type="checkbox"/> Lodgement via email Quotes are to be lodged via email to the Council Contact Officer (see 2.8 above) and Council’s standard ‘conditions of quote’ apply. <input type="checkbox"/> Lodgement via Council’s Supplier Portal Quotes are to be lodged via Council’s Supplier Portal (https://supplierportal.brisbane.qld.gov.au/). <u>RFx number and title</u> {Insert} <u>Conditions of tender</u> Council’s standard ‘conditions of tender’ apply. Generally used where Council consider the process to be complex/high risk or anticipates that fees may exceed \$250,000.

council/how-council-buys/terms-and-conditions/index.htm	<p><u>Part Offers</u></p> <p>Part offers {Insert will OR will not} be considered.</p> <p><u>Evaluation criteria</u></p> <p>{Council officer to insert list of high level criteria (include 'price' at the end of the list)}</p>
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3. Contractor's Quote *[Contractor to complete]*

3.1	Contractor:	Company/entity name: {Contractor to insert} ABN/ACN: {Contractor to insert} Panel Contract number: {Contractor to insert}																								
3.2	Contractor's information for evaluation and other Quote document(s):	{Contractor to insert the title of each attached document comprising the Contractor's Quote}																								
3.3	Specified Personnel: <i>[Insert details or refer to document(s) attached to 3.2 above and include details in those documents]</i>	<table border="1"> <thead> <tr> <th data-bbox="639 712 1098 817">Name and position</th><th data-bbox="1098 712 1230 817">Hours</th><th data-bbox="1230 712 1362 817">Rate</th><th data-bbox="1362 712 1506 817">Cost</th></tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	Name and position	Hours	Rate	Cost																				
Name and position	Hours	Rate	Cost																							
3.4	Non-compliances:	{Contractor to insert details of any element(s) of Council Specification or request for quote that it does not comply with}																								
3.5	Contractor's price and price basis: <i>[Using the rates no greater than those agreed under the Panel Arrangement]</i>	{Contractor to insert price (ex GST) and price basis eg. \$30,000 (ex GST) being a fixed lump sum price / being an estimate based on rates / being a mixture of lump sum and rates components / as detailed in the Contractor's Quote documents} {Alternatively, refer to documents attached at section 3.2}																								
3.6	Proposed restrictions or disclaimers (other than those permitted under clause 4.12 of the panel arrangement):	{Contractor to insert 'Nil' or insert/attach details}																								
3.7	Contractor's Material:	{Contractor to insert 'Nil' or insert/attach details}																								
3.8	Contractor's Contact officer for the Quote process:	Name: {Contractor to insert}																								
		Position: {Contractor to insert}																								
		Address: {Contractor to insert}																								
		Email: {Contractor to insert}																								
		Tel: {Contractor to insert}																								

SCHEDULE E – SUMMARY OF FEES
SUMMARY OF FEES SCHEDULE TO BE INCLUDED WITH EACH INVOICE

P&EA No.	{insert}	Council supplier number:	{insert}
Address of Appeal:	{insert}	Council purchase order number:	{insert}

Summary of Fees for the month of: {insert}

Date Work Performed	Details of Task	Personnel	Total Hours quoted	Previously claimed Hours	Time claimed in this Invoice	Hourly Rate (ex. GST) \$	Total (ex. GST) \$
	Review of Brief						
	Preliminary advice						
	Consultation with BCC Officers and Counsel						
	Attendance at Conclave Meeting/s and Preparation of Joint Statement						
	Participation in WP Meeting/s and Mediation						
	Preparation of Hearing Report						
	Field work, site analysis, review and/or prepare models Specify: _____						
	Review of Appellant/s Reports						
	Other Court related matters Specify: _____						
	Attendance at, and providing evidence to the Court						
	Other						

SCHEDULE F – DEED OF CONFIDENTIALITY AND NON-DISCLOSURE**DEED PARTICULARS:**

- (a) Made on: {insert date}
- (b) Made by: {insert name of person giving the declaration} (“**the Confidant**”)
- (c) Confidant’s address: {insert insert address of Confidant}
- (d) Made in favour of: BRISBANE CITY COUNCIL whose principal offices are situated at 266 George Street, Brisbane 4000 (“**the Council**”)
- (e) Contract: {insert title of the Contract with the Contractor} (“**the Contract**”)
- (f) Contractor: {insert title of the Contract with the Contractor} (“**the Contractor**”)

RECITALS:

- (a) The Council has entered into a Contract with the Contractor on for the provision of certain Services (“**the Services**”).
- (b) In order to enable the Contractor to provide the Council with the Services, the Confidant requires or needs access to the Confidential Information and/or the Restricted Information (as defined by the Contract).
- (c) As the failure by the Confidant to both treat and keep strictly confidential all such Confidential Information and not disclose any Restricted Information may expose the Council to loss or damage, the Confidant has agreed to be bound by the terms of this Deed in relation to the Confidential Information.

THE PARTIES AGREE AS FOLLOWS:**1. Definitions and interpretation**

1.1 Definitions

In this Deed, unless the context otherwise requires:

- (a) “**Deed**” means this Deed as it may be later amended or supplemented.
- (b) “**Confidential Information**” means any or all information (whether oral or in any Material Form) that is the property of the Council and which either:
 - (i) the Council discloses or makes available to the Contractor in relation to the provision of the Services; and/or
 - (ii) comes into the possession of, or to the attention of, the Contractor as a result of or in connection with the provision or delivery of the Services;irrespective of whether such information has been deemed or designated as confidential (or not) by the Council and, without limiting the generality of the foregoing, includes any Material Form of any document, record, system, program or any other information that may be developed or acquired by the Confidant in the performance of all or part of the Services **BUT DOES NOT** include any information which the Contractor can establish was either:
 - (iii) in the possession of the Confidant; or
 - (iv) independently developed or acquired by the Confidant;prior to the disclosure of the information by the Council to the Confidant and which was disclosed by the Confidant at the time of disclosure by the Council.
- (c) “**Material Form**” means any form in which information may be written, embodied, stored and/or reproduced including (without limiting the generality of the foregoing) electronic means (including encryption and encoding) or any handwritten form (including notes and drafts).
- (d) “**Representative**” means any person to whom the Confidant is authorised to provide Confidential Information and/or the Restricted Information under this Deed.
- (e) “**Restricted Information**” means information concerning:
 - (i) the Contract,
 - (ii) the provision of the Services in general by the Contractor; or
 - (iii) the actions or other behaviour of Council or its officers.

1.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa and words importing any gender include the other genders;
- (b) references to any of the parties to this Deed include references to their respective successors and permitted assigns;
- (c) headings have been inserted for guidance only and shall be deemed not to form any party of nor to affect the construction of this Deed; and
- (d) any reference to a person shall be construed as a reference to any person, firm, company, corporation, government, governmental authority or any association or partnership (whether or not having corporate legal personality) or any two or more of the above.

2. Confidentiality

2.1 General obligations

The Confidant must:

- (a) only use the Confidential Information and any Restricted Information to provide, or assist in the provision of, the Services.
- (b) comply with all instructions provided by the Council regarding the use and treatment of the Confidential Information and/or the Restricted Information and in all other respects, treat and keep the Confidential Information and/or the Restricted Information as strictly confidential.
- (c) not directly or indirectly use, reproduce, disclose, reproduce or publish any Confidential Information and/or the Restricted Information (including any material containing any extracts of such Confidential Information and/or the Restricted Information) in any Material Form whatsoever except:
 - (i) in relation to the performance of the Services; and
 - (ii) to such persons as:
 - A. the Council may from time to time direct in order for the Confidant to properly perform the Services; or
 - B. in all other cases – to any Representative of the Confidant as the Council may consent to **provided that** such consent is in writing and is obtained by the Confidant prior to the disclosure of the Confidential Information and/or the Restricted Information by the Confidant to the Representative;
 - (iii) ensure that each and every Representative complies with this Deed and any other undertaking provided in favour of the Council in relation to the Confidential Information and/or the Restricted Information. If requested by the Council, the Confidant shall ensure that the Representative executes an undertaking in favour of the Council on the same terms and conditions as this Deed.
 - (iv) not make, assist or permit any person (including its Representatives) to make any unauthorised use, disclosure, reproduction or publication of the Confidential Information and/or the Restricted Information.

2.2 Survival of obligations

Subject to clause 5 of this Deed, the obligations of the Confidant as contained in this clause 2 shall survive the termination or expiration of this Deed until such time as either:

- (a) the Confidential Information and/or the Restricted Information is or becomes generally available in the public domain other than by reason (whether wholly or partially, directly or indirectly) of **either** a breach of this Deed or a breach of any other obligation of confidentiality owed to or in favour of the Council or any other person; or
- (b) the Confidant is required by law to disclose such information; or
- (c) such disclosure has been permitted in writing by the Council prior to such disclosure.

3. Obligation to disclose

If the Confidant is required by law to disclose any Confidential Information and/or the Restricted Information in its possession it shall:

- (a) forthwith (but prior to making such disclosure) notify the Council in writing of any such disclosure that it is obliged to make; and
- (b) provide the Council with all assistance and co-operation, which the Council reasonably requires in order to investigate, prevent or limit the disclosure of such information.

4. Ownership and return of Confidential Information

4.1 The Confidant acknowledges and agrees that all right and title in the Confidential Information is and shall remain the property of the Council.

4.2 The Confidant shall either:

- (a) upon demand being made by Council; or
 - (b) at the time when the Confidant has completed (or is no longer required to complete) the Services;
- (whichever is the earlier to occur) (“**the Termination Date**”) **either** deliver to the Council or with the Council’s prior written consent, to the extent practicable destroy or erase, all Material Forms of the Confidential Information in the possession, power or control of the Confidant or any of its Representatives as of the Termination Date and do so irrespective of whether or not those Material Forms were created by or on behalf of the Council or in the possession of the Confidant (or its Representative) contrary to the provisions of this Deed or any other agreement or undertaking with or in favour of the Council.

4.3 The return of the Material Forms of the Confidential Information under clause 4.2 does not release the Confidant or any of the Representatives from their respective obligations under this Deed or any other agreement with or in favour of the Council.

5. Termination

This Deed shall survive until such time as the Confidant is released by law or by Council (whichever is the sooner to occur). The Council may, upon notice to the Confidant, release the Confidant from its obligations under this Deed and thereby terminate the Deed. Any information communicated to the Confidant after receipt of the said notice shall not be subject to the provisions of this Deed unless otherwise agreed by the Council and the Confidant.

6. Costs

Each party shall bear its own costs (including legal costs) of and incidental to the preparation, negotiation and signing of this Deed.

7. Governing law

This Deed will be governed by the laws of the State of Queensland and the parties agree to submit to the jurisdiction of the courts of that State.

EXECUTED as a Deed:

(a)	Name:	{Insert name of Confidant}		
(b)	Signature:	.....	Date:	

In the presence of:

(a)	Name:	{Insert name of witness}		
(b)	Signature:	.....	Date:	