# Contract

**Consultancy/Professional Services Contract**

**(Short Form Once – Off)**

Brisbane City Council

**Contract title:** Register of Pre-Qualified Suppliers
for the Provision of Expert Advice on Planning and Environment
Court matters

**Contract Number:** 530590

**Contractor:** {Insert name}

**Template version:** Version 3 – August 2020

SECURITY LABEL: Template – **PUBLIC**.

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

## Instrument of Agreement

1. **Contract**

This Contract is for the provision of Consultancy/Professional Services.

1. **Between**

This Contract is between the Contractor and Council.

1. **Recitals**
	1. Council requires the provision of the Consultancy/Professional Services.
	2. The Contractor has offered to provide the Consultancy/Professional Services for the Contract Price in accordance with the Contract.
	3. Council has accepted that offer.
2. **It is agreed as follows**
	1. **Contract Particulars**

These Contract Particulars set out details of the Contract for the purposes of the Terms and Conditions. References in these Contract Particulars to clauses are references to some of the key clauses in the Terms and Conditions.

|  |  |  |
| --- | --- | --- |
| (a) | Council’s Representative:* + 1. *[Clause 1.1(i)]*
 | Name and position: David Cunningham – Manager Development Assurance and Outcomes |
|  |  | Email: expertwitnessregister@brisbane.qld.gov.au |
|  |  | Tel: (07) 3403 8888 |
| (b) | * + 1. the Contractor:
		2. *[Clause 1.1(g)]*
 | Company/entity name: {Insert} |
|  |  | ABN/ ACN if a company: {Insert} |
|  |  | Address: {Insert} |
| (c) | * + 1. Contractor’s Representative:
		2. *[Clause 16]*
 | Name and position: {Insert name} {Insert role title} |
|  |  | Email: {Insert} |
|  |  | Tel: {Insert} |
| (d) | Commencement Date and Completion Date:*[cross/tick applicable box]**[Clause 2.4]* | [ ]   |  |
|  |  | [ ]   | The Commencement Date is the date that the last party signs this Contract. . The Completion Date is 31 October 2025. |
| (e) | * + 1. Key Personnel
		2. *[Clause 2.2]*
 | Not applicable |
| (f) | * + 1. Time for submitting invoices:

*[cross/tick applicable box]** + 1. *[Clause 6]*
 | [x]   | Monthly  |
|  |  | [ ]  | Upon completion of the Consultancy/Professional Services. |
|  |  | [ ]  | Other basis as specified in the Schedule B- Contract Price. |
| (g) | Submission of Invoices: * + 1. *[Clause 6]*
 | Invoices are to be emailed to: accountspayable@brisbane.qld.gov.au*(must state the purchase order on the invoice)* |
| (h) | * + 1. Insurance:
		2. *[Clause 12]*
 | Type of insurance | Amount |
|  |  | Workers Compensation Insurance to the extent required by the laws of the State of Queensland | Statutory limits |
|  |  | *(alternative to Workers Compensation if dealing with a Sole trader without Workers Compensation Insurance)*Personal, Loss of Income Insurance Policy at all times during the term of this Contract.  | 75% of normal weekly earnings |
|  |  | 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. |
|  |  | *By signing this Contract, the Contractor confirms they have the above insurances and will provide a copy of all or any current certficates as requested by Council from time to time.*  |

* 1. **Terms and conditions**

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

* 1. **Contract Price**

The Contract Price is as set out at Schedule B.

* 1. **Specifications**

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

**Execution**

Executed as a contract for and on behalf of:

* 1. **Execution by the Contractor**

the Contractor by its duly Authorised Representative:

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

In the presence of:

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

* 1. **Execution by Council**

Council by its duly appointed officer:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (a) | Name: | David Cunningham | Position: | Manager Development Assurance and Outcomes |
| (b) | Signature: | …………………………………………. | Date: |  |

In the presence of:

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

1. **System identifiers**

|  |  |  |
| --- | --- | --- |
| 5.1 | Council Purchase Order number: | Not applicable at this time |
| 5.2 | Council supplier number: | Not applicable at this time |

## Schedule A – Terms And Conditions

1. **Definitions**
	1. In this Contract:
		1. **“Claim”** means any costs, losses, damages or any liability of any kind directly or indirectly suffered or incurred by Council or its employees, agents, contractors or sub-contractors together with any claim, demand, action, suit or proceeding that may be made or brought by any person against Council, its employees, agents, contractors or sub-contractors;
		2. **“Commencement Date”** means the date that the last party signs this Contract;
		3. **“Completion Date”** means the date or time period specified at clause 4.1(d) in the Contract Particulars;
		4. **“Contract Material”** means the originals and copies of materials, papers, reports, books, memoranda, accounting records, files, texts, data, computer printouts, computer data (including, but without limiting the generality thereof, financial models of all types) however recorded, stored or embodied in any document or other form of media (electronic or otherwise) and being material etc that is either provided by Council to the Contractor (or any of its staff, contractors or Specified Personnel (if any)) for the provision or the performance of the Services (including each and every outcome or deliverable) or created or prepared by the Contractor or any of its staff or contractors as part of the Services;
		5. **“Contract Particulars”** means the information stated in clause 4.1 of the Instrument of Agreement;
		6. **“Contract Price”** means the fees and charges nominated in Schedule B to this Contract;
		7. **“the Contractor”** means the entity specified at 4.1(b) in the Contract Particulars;
		8. **“Contractor’s Material”** means the material, methodology, documents, models or other material or information which is identified as the Contractor’s Material in the Specifications. However, to be Contractor’s Material, it must be developed prior to the Commencement Date of the Contract, or developed independently of the Contract, by the Contractor and used in the provision of the Services;
		9. **“Council’s Representative”** means the person specified at clause 4.1(a) in the Contract Particulars and any replacement notified by Council to the Contractor;
		10. **“Deliverable”** means each and every outcome or deliverable of the Services (including all Documentation) which the Contractor is required to produce or contribute to as part of the provision of the Services under this Contract and which are more particularly described in the Specifications;
		11. **“Documentation”** means the written information required to be supplied by the Contractor to Council in accordance with the Specifications;
		12. **“GST”** means the goods and services tax payable pursuant to the GST Laws;
		13. **“GST Laws”** means the GST law (as defined by *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* together with all other laws and regulations which impose or regulate the implementation and operation of GST and all laws and regulations dealing with price exploitation and excessive profit taking as a result of the transition to the new tax system;
		14. **“Instrument of Agreement”** means the instrument executed by the Contractor and Council to which this Schedule A is attached;
		15. **“Intellectual Property Rights”** means all forms of patent, copyright, trade mark (whether registered or not), trade name, trade secret, knowhow, discovery, invention, secret process, design, improvement in procedure, innovation or confidential information and any right to register or claim any type of intellectual property;
		16. **“Services”** means the services applicable to this Contract are as detailed in Schedule C; and
		17. **“Specifications”** means the specifications for the provision of the Services by the Contractor as detailed in Schedule C.
	2. **Interpretation**
		1. headings are for convenience only and will not affect interpretation;
		2. words denoting the singular number include the plural and vice versa;
		3. words denoting any gender shall include all genders and words denoting individuals shall include corporations and vice versa;
		4. all references to "dollars" and "$" are to Australian dollars;
		5. reference to any legislation or any provision of any legislation includes any modification or re-enactment of the legislation or any legislative provision substituted for, and all legislation and statutory instruments and regulations issued under the legislation;
		6. “includes” in any form is not a word of limitation;
		7. reference to a person includes an individual, body corporate, association, trust or partnership;
		8. reference to a clause, paragraph, schedule or attachment is a reference to a clause, paragraph, schedule or attachment of this Contract as amended from time to time; and
		9. reference to this Contract includes all amendments or supplements to, or replacements or novations of, this Contract.
2. **Provision of the Services**
	1. In providing the Services, the Contractor:
		1. shall take all reasonable steps to inform itself of Council’s stated requirements in respect of the Services prior to the provision of the Services and take all reasonable steps during the term of this Contract to ensure that Council’s requirements are continuing to be understood and met by the Contractor;
		2. shall provide the Services with reasonable care and skill and act professionally at all times in the performance of the Services;
		3. shall provide and complete the Services (including the Deliverables) in accordance with the requirements of the Specifications and the terms and conditions of this Contract;
		4. shall consult regularly with Council’s Representative throughout the performance of the Services and keep Council’s Representative informed as to the progress and delivery of the Services;
		5. shall comply with all laws, licences, industrial awards, permits and all other lawful requirements that from time to time are applicable to the proper provision of the Services by the Contractor, its staff, contractors, sub-contractors, Specified Personnel and assignees (including, but not limited to, the *Environmental Protection Act 1994* (Qld) and the *Work Health and Safety Act 2011 (Qld)*; and
		6. shall at all times keep and maintain accurate records of the time spent in the provision of the Services. Where required by Council to verify the fees and expenses invoiced by the Contractor, the Contractor shall provide Council with free access to such records.
	2. Council is under no obligation (whether legal, equitable or otherwise) to pay for any Variation to the Services (either through the provision of additional services or alternative services) **unless** the Contractor has obtained the written consent of Council prior to the Contractor undertaking such Variation. All such requests **must** be in writing and directed to Council’s Representative.
	3. The Contractor must commence the Services on the Commencement Date and complete the Services on or before the Completion Date.
	4. For clarity, Council is under no obligation to request Services from a Contractor under this Agreement. Council may choose, in its sole and absolute discretion, to request Services from the Contractor and/or any other person/s.
3. **Variation of Services**

No variation to the nature or scope of the Services (including the manner of providing the Services) (“**the Variation**”) shall be binding on either party unless and until agreed in writing by both parties.

1. **Title to Contract Material and Confidentiality**
	1. The Contractor acknowledges and agrees that:
		1. title to and all Intellectual Property Rights (including copyright) to all Contract Material (including each and every stage of design and production of such Material) created by the Contractor, its staff, contractors, Specified Personnel, sub-contractors or assignees shall immediately upon creation vest in or be transferred and assigned to Council without need for further assurance;
		2. neither the Contractor, its staff, contractors, Specified Personnel, sub-contractors, or assignees have any Intellectual Property Rights in relation to the Contract Material nor does the provision of the Services and/or the creation, preparation or delivery of any Deliverable vest any such right in the Contractor, its staff, contractors, Specified Personnel, sub-contractors or assignees;
		3. the Contractor shall take and do all necessary things to ensure that all such Intellectual Property Rights in the Contract Material are vested in or assigned to Council in accordance with this clause 4; and
		4. on the expiration or earlier termination of the Contract, the Contractor shall deliver all copies of the Contract Material (irrespective of the form in which such material is stored) to Council’s.
	2. Council acknowledges that ownership of all Intellectual Property Rights in the Contractor’s Material will remain with the Contractor at all times. The Contractor shall continue to own the Intellectual Property Rights in the Contractor’s Material however, in respect of such material, the Contractor grants to Council a permanent, irrevocable, royalty free, licence to use, produce, adapt or exploit the Contractor’s Material for Council’s business and policy purposes. Notwithstanding Part VII of the *Copyright Act 1968* (Cth), publication of any Deliverable in accordance with this licence shall not affect such ownership.
	3. The Contractor warrants that in providing the Services (including the preparation of the Deliverables), neither the Contractor, its staff, contractors, sub-contractors, Specified Personnel or assignees will actually or be likely to infringe the Intellectual Property Rights of any person.
	4. The Contractor shall indemnify and keep indemnified Council, its officers, employees and agents from and against any loss or liability whatsoever (including, but not limited to, legal costs and expenses on a solicitor/own client basis) arising out of or in connection with any claim that the performance of the Services (including the creation, preparation or delivery of any Deliverable) has or is infringing (either wholly or partially, directly or indirectly) the Intellectual Property Rights of any person.
	5. Except as required by law, the Contractor shall:
		1. treat and keep as strictly confidential all Contract Material in the possession of the Contractor and shall not disclose any of the Contract Material to any person including, but not limited to, the media (other than the Specified Personnel and/or such other staff, contractors and sub-contractors the Contractor is utilising in order to provide the Services); and/or
		2. not make any statement or comment to the media nor issue any media release in relation to any matter concerning this Contract;

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

* 1. The obligations of this clause shall survive the expiration or termination of this Contract until:
		1. in relation to the provisions of clauses 4.1 to 4.4 - a period of 10 years has passed since the final provision of the Services; and
		2. in relation to the obligation of confidentiality under clause 4.5 - until such time as Council either releases the Contractor from its obligation of confidentiality or makes the Contract Material in question publicly available.

**4A Additional Provisions**

4A.1 (***Contract Material***) in delivering, creating and finalising any Contract Material under this Contract:

* + 1. (***claims as to ownership of Intellectual Property Rights***) when preparing any draft or final version of any Contract Material, the Contractor must **not**:
			1. make any statement; or
			2. insert any symbol (such as the use of the copyright symbol);

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

* + 1. (***restrictions on Council’s use of Contract Material***) notwithstanding any other provision of this Contract in relation to Intellectual Property Rights, the Contractor must **not** seek to impose any limitation or restriction on Council’s use of the Contract Material (including, but not limited to a requirement for Council to seek any consents or approvals from the Contractor or any third party before Council seeks to use such material) **unless** the exact nature and wording of such limitation or restriction is expressly agreed in writing with the either Council’s Chief Legal Counsel (or respective delegates/authorised officers) ***before*** this Contract is agreed between the parties; and
		2. (***disclaimers***) the Contractor is **not** permitted to use disclaimers or other forms of qualification or reservation **unless** the exact nature and wording of such limitation or restriction is expressly agreed in writing with the either Council’s Chief Legal Counsel or Council’s Chief Procurement Officer (or their respective delegates/authorised officers) ***before*** this Contract is agreed between the parties.

4A.2 (***Personal Information***) if at any time during the Term of this Contract, the Contractor collects or has access to Personal Information in order to provide the Services, the Contractor must:

* + 1. comply with the Australian Privacy Principles set out in the *Privacy Act 1988 (Cth);*
		2. fully comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* *(Qld)* (“the Act”) as if references to “agency” in those Parts of the Act were references to the Contractor;
		3. not use any Personal Information other than for the purposes of providing the Services unless otherwise required or authorised by law;
		4. not disclose Personal Information without the prior written consent of Council’s Contract Authority unless required or authorised by law;
		5. not transfer Personal Information outside of Australia without the prior written consent of Council’s Contract Authority;
		6. ensure that access to Personal Information is restricted to those of the Contractor’s Staff who require access in order to perform their duties;
		7. ensure that the members of the Contractor’s Staff who have access to Personal Information comply with the obligations imposed on the Contractor under this clause;
		8. fully co-operate with Council to enable Council to respond to applications for access to or amendment of a document containing an individual’s Personal Information and to privacy complaints;
		9. comply with such other privacy and security measures in relation to Personal Information as Council reasonably advises the Contractor from time to time
		10. if requested by Council’s Contract Authority, obtain from those members of the Contractor’s Staff, an executed deed of privacy in a form acceptable to Council; and
		11. immediately notify Council on becoming aware of any breach of this clause 4A.2.

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.

1. **Contract Price**
	1. The Contractor shall provide the Services for the Contract Price as set out in Schedule B. The parties acknowledge and agree that:
		1. Contractor shall not seek to impose any additional fees for the provision or completion of the Services unless Council seeks a variation to those Services pursuant to clause 3; and
		2. Council shall be under no obligation (whether legal or equitable) to pay for such additional fees **unless** the Contractor has obtained Council’s written consent to such fees and done so prior to the Contractor providing services (or causing such services to be provided) that would otherwise incur such additional fees.
	2. Notwithstanding any other provision of this Contract, Council shall not be under any obligation (whether legal or equitable) to pay any invoice submitted by or on behalf of the Contractor for the provision of the Services (including Deliverables) unless the provisions of clause 6 have been met.
	3. Council will consider any written requests for changes to the Contractor’s hourly rates (as specified in Schedule B):
		* 1. in October each year of the term of this Agreement only; and
			2. any decision will be at Council’s sole and absolute discretion.
2. **Invoice Procedure and Payment**
	1. The Contractor shall submit invoices in accordance with clause 4.1(f) in the Contract Particulars.
	2. The invoices are to be sent in accordance with clause 4.1(g) in the Contract Particulars.
	3. The Contract Price shall be paid by Council:
		1. within 30 days of receipt of a valid tax invoice; and
		2. only if:
			1. the Contractor has properly performed the Services in accordance with this Contract;
			2. the invoice has been properly rendered; and
			3. the Contractor’s invoice is presented to Council within ninety (90) days of the proper performance of the Services in question.
	4. An invoice will not be deemed to have been properly rendered unless it:
		1. is sent to the address as detailed in clause 4.1(g) in the Contract Particulars, specifies the title of this Contract, the purchase order number, the contract number of this Contract, (or any other number as Council’s Representative may, from time to time, specify in writing to the Contractor as being required to be inserted on any invoice), the name of the relevant business unit of Council and the name and address of Council’s Representative;
		2. provides such details of the Contract Price sought as Council’s Representative 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)); and
		3. 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 Council to obtain an input tax credit in respect of any amount of GST payable by Council for those Goods/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 clause 4.1(f) in the Contract Particulars (unless otherwise agreed in writing with Council’s Representative).

* 1. If at any time before the delivery of a correctly rendered invoice for Services or within 21 days of receipt by Council of a properly rendered invoice, Council’s Representative provides the Contractor with written advice indicating that all or part of the Services in question have not been satisfactorily performed or provided in accordance with this Contract (“**the Disputed Services**”), then:
		1. the Contractor shall promptly re-perform or re-deliver such Disputed Services until such time as Council’s Representative is satisfied that they have been satisfactorily performed or provided in accordance with this Contract; and
		2. within 30 days of receipt of a correctly rendered invoice, Council shall pay the Contract Prices for all or part of the Services that are not Disputed Services.

Council shall only be legally required to pay the Fees for any Disputed Services if Council’s Representative is satisfied that the Disputed Services have been satisfactorily re-performed or re-provided to meet the requirements of this Contract. In such a case, payment shall be within 30 days of Council’s Representative being satisfied with the re-performance and re-delivery of such Disputed Services.

1. **Responsibility of the Contractor for its staff and contractors**

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

1. **Conflict of Interest**

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

1. **Assignment**
	1. The Contractor shall not assign, sub-contract or otherwise transfer any of its rights and obligations under this Contract without the prior written consent of Council. Such consent will be subject to such terms and conditions as Council deems appropriate to protect its interests and may include a provision similar to this clause 9.
	2. Notwithstanding any consent given by Council pursuant to clause 9.1, the Contractor shall remain liable and responsible for:
		1. the work undertaken by any assignee, contractor, sub-contractor, Specified Personnel or any person engaged by (or on behalf of) the Contractor to undertake all or part of the Services; and
		2. the successful and timely completion of the Services;

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

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

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

* 1. The parties agree that the Contractor shall, without making any further claim on Council or seeking additional fees and expenses from Council, ensure that the provision of the Services by the Contractor is covered by the Contractor’s insurance arrangements (or other adequate third party insurance arrangements) in relation to all aspects of the provision of the Services.
1. **Indemnity**
	1. Upon demand being made by Council, the Contractor shall fully indemnify Council and its officers and employees:
		1. 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
		2. 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:
			1. 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
			2. any breach of this Contract by the Contractor or any of the Contractor’s officers, employees, agents, Specified Personnel or its authorised sub-contractors.
	2. Notwithstanding clause 11.1, 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.
	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 endeavours 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.
2. **Insurances and Council premises**
	1. At all times during the term of the Contract, the Contractor must maintain the insurances specified at clause 4.1(h) in the Contract Particulars and provide a copy of all current certificates, as may be requested by Council, from time to time.
	2. The Contractor must fully comply with (and ensure its officers, employees, agents and subcontractors fully comply with) all requirements or directions from Council relating to access to any Council premises (including, but not limited to, security and safety requirements in relation to the premises) and site inductions, which may vary from site to site.
3. **Council Assistance**

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

1. **Termination of Contract and Suspension of Services**
	1. Council may:
		1. where it is of the opinion that the suspension of all or part of the provision of the Services is desirable due to any changes in Council’s need for the nature, scope or timing of the Services, suspend the scope of the Services at any time during the term of this Contract by the provision of a written notice to the Contractor specifying the extent to which the scope of the Services are to be suspended and the date from which such suspension is to take effect (a “**Suspension Notice**”); or
		2. at any time terminate this Contract due to the Contractor:
			1. failing to comply with a Default Notice as required by clause 14.2;
			2. having engaged in conduct or practice that is detrimental or harmful to the good name, reputation or interests of Council;
			3. entering into any form of insolvency administration or breaching any of its obligations under clauses 2.1(c), 2.1(e), 2.2, 2.4, 4 or 11; or
			4. having engaged in any lobbying, or offered or given any gratuity, bribe, bonus or discount of any sort to any member of the Brisbane City Council or any officer, employee or agent of Council.

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

* 1. Where the Contractor has failed to comply with any of the following clauses 2, 4, 8, to 11, Council may give the Contractor a written notice specifying the breach and requiring the Contractor to rectify the breach within the Specified Time (“**Default Notice**”).

For the purposes of this clause, the “**Specified Time**” in relation to any breach of any of the following clauses 2, 4, 8, to 11 shall be 14 days from the date of the Default Notice (or such longer time period as specified by Council in the Default Notice) and in relation to a breach of clause 2.2, shall be 7 days from the date of the Default Notice (or such longer time period as specified by Council in the Default Notice).

* 1. Upon receipt of a Termination Notice or a Suspension Notice pursuant to clause 14.1, the Contractor shall immediately:
		1. where the Contract has been terminated – cease work in accordance with the Termination Notice; or
		2. where the scope of work has been suspended – suspend work in accordance with the Suspension Notice;

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

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

and payments for any Services not affected by either a Termination Notice or a Suspension Notice **provided always** that the maximum amount of Council’s liability to the Contractor under this clause shall be capped at the amount of the Fees (as varied pursuant to clause 3 or abated pursuant to clause 14.4(a)). The Contractor shall **not** be entitled to loss of profits.

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

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

1. **Mentoring Program/Relationship**
	1. If one of the Contractor’s conditions for successful registration was dependent on the participation in a Mentoring Program, the mentor program must come at no cost to Council.
	2. After five (5) matters have progressed through the Planning and Environment Court, the Contractor can reapply to be placed on the Register at a different Tier. Council offers no guarantee of a change to the Contractor’s Tier level.
	3. If the mentoring relationship ceases, it is the responsibility of the Contractor to notify Council immediately. Cessation of the relationship automatically removes the Contractor from the Register. The Contractor can then re-apply.

## Schedule B – 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).

[x]  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 (plus GST)** |
| **Provision of expert witness services as per Schedule C Specifications – Section 1 (refer below)** |  |  |
|  |  |  |
|  |  |  |
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## Schedule C – Specifications

1. **Services**

The Contractor will provide to Council, , upon request from time to time the following independent expert Services in the Planning and Environment Court :

* provide advice;
* participate in "without prejudice" meetings to seek resolution of a matter;
* participate in mediation and provide advice to council officers in those meetings;
* participate in "meetings of experts" when ordered by the Court; and
* prepare expert reports and give evidence in these actions.