

Conditions of Order

DEFINITIONS

In the Purchase Order:

'Business Day' means a day which is not:

- (a) a Saturday or Sunday;
- (b) a public holiday, bank holiday or special holiday in the place in which the Site is located; or
- (c) a day occurring on or within the period of 25 December to 1 January.

'Claim' means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Contract, the Supply or either party's conduct under the Contract before it came into force, whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence).

'Commencement Date' means:

- (a) the date or dates specified in the Purchase Order; or
- (b) the date agreed in writing between the parties.

'Completion' means:

- (a) all applicable Goods, if any, have been Delivered and installed in accordance with the Contract and have been accepted by the Council in accordance with Clause (I)A.5.3;
- (b) all applicable Services have been completed in accordance with the Contract;
- (c) any documents or other information relating to the Completion of the Supply have been provided to the Council; and
- (d) all applicable conditions have been satisfied.

'Completion Date' means the date or dates specified in the Purchase Order, if any, by which:

- (a) the Supply must achieve Completion; or
- (b) a nominated part of the Supply must achieve Completion, as may be adjusted by Clause A.1 and A.10.

'Conditions of Order' means these Conditions of Order, copies of which can be located on the Council's website at tsirc.qld.gov.au.

'Contract' has the meaning given in Clause (I)A.1.2.

'Council' means the Torres Strait Island Regional Council ABN 15 292 645 165.

'Council's Representative' means the person specified in the Purchase Order.

'Defect' means any part of the Goods and/or Services which does not comply strictly with the requirements of the Contract or is otherwise unsatisfactory to the Council and includes any omissions.

'Defects Liability Period' means the later of the period stated in the Purchase Order or 12 months commencing on Completion;

'Delivery' means the transfer of possession of the Goods to the Council, at the Site or other delivery address notified by the Council to the Vendor in writing.

'Good Industry Practice' means the standards (including any relevant Australian Standard), practices, policies, methods, acts and procedures generally followed or approved by relevant industries and contractors in Australia with respect to the Supply, and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a prudent, experienced, competent and skilled contractor for a project of a similar nature to the Supply.

'Goods' means the goods specified in the Purchase Order.

'Intellectual Property Rights' means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trademarks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

'Legislative Requirements' includes

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, the State or Territory or local government relevant to the matters the subject of the Contract, the Supply or where any part thereof is being carried out;
- (b) certificates, licences, consents, permits, codes, standards, approvals and requirements of organisations having jurisdiction in connection with the Contract;
- (c) Australian Standards, National Construction Code and any other relevant standards; and
- (d) fees and charges payable in connection with the foregoing.

'Notice' means a notice, consent or communication given in accordance with Clause (I)A.23.

'Personnel' means any officer, employee, agent, subcontractor, supplier or consultant of a party.

'Policies and Plans' means all requirements, policies, procedures, guidelines, rules and plans of the Council as may be from time to time, including any Policies and Plans set out or referenced in the Purchase Order.

'Price' means the sum stated in the Purchase Order.

'Purchase Order' means the purchase order for the Goods and/or Services issued by the Council to the Vendor.

'Security Interest' has the meaning given in the *Personal Property Securities Act 2009* (Cth).

'Services' means the services specified in the Purchase Order and any additional services necessary to be carried out in order for the Council to receive the full benefit of the services specified.

'Site' means the site stated in the Purchase Order.

'Supply' means the supply of the Services, if any, and the Goods, if any.

'Vendor' means the party stated in the Purchase Order who is responsible for carrying out and completing the Supply in accordance with the Contract.

'WHS' means workplace health and safety.

INTERPRETATION

In the Contract, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) headings are, in the interpretation of the any Contract document, to be disregarded;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of the Contract and references to this Contract;
- (d) a reference to a party to the Contract includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to a Contract document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (h) if any day on or by which a person must do something under the Contract is not a Business Day, then the person must do it on or by the next Business Day;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (j) wherever the words 'include', 'included' or 'including' (or similar expressions) are used in the Contract, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative;
- (k) no provision of the Contract is to be construed against the interests of the Council because the Council prepared or relies on the Contract; and
- (l) the review, perusal, comment by the Council of any document or information submitted by the Vendor does not relieve the Vendor of any of its obligations or liabilities, including responsibility for the correctness of information submitted by the Vendor.

CONDITIONS OF ORDER

A.1 GENERAL

A.1.1 The conditions apply to all arrangements for the supply of Goods, Services or rental items, unless a contract or agreement applies to those Goods, Services or rental items. If a contract or agreement applies, then the terms of that contract or agreement will apply where there are any inconsistencies with the terms below.

A.1.2 The following documents form the entire agreement between the parties (**Contract**):

- (a) the Purchase Order (including any special conditions);
- (b) these Conditions; and
- (c) other documents expressly referred to by the Council in the Purchase Order including terms and conditions as shown in Council website.

A.1.3 By commencing the Supply of any Purchase Order, the Vendor irrevocably accepts that no terms or conditions proposed by the Vendor will apply to the Supply.

A.1.4 If there is any inconsistency, discrepancy or ambiguity between the documents listed in Clause A.1.2, the Council will direct the Vendor as to the interpretation to be followed.

A.1.5 If upon receipt of a Purchase Order, the Vendor is unable to supply any or all of the Goods or Services by the Completion Date, it must advise the Council immediately. If advice is not received within 2 Business Days of receipt of the Purchase Order it will be deemed to be accepted and the Vendor will be required to carry out the Supply.

A.2 TIMEFRAMES

A.2.1 The Vendor must commence the Supply on the Commencement Date and achieve Completion by the applicable Completion Date. The Council may extend the Commencement Date.

A.3 VENDOR'S GENERAL WARRANTIES

- A.3.1 Without limiting any other obligation under the Contract, the Vendor represents and warrants to the Council that it has:
 - (a) made its own investigation and assessment of the work, risks, contingencies and other circumstances involved in performing the Supply and reviewed all information that the Council has made available has made reasonable enquiries, in relation to the Supply, and it assumes complete responsibility for carrying out the Supply in accordance with the Contract;
 - (b) satisfied itself that the Price covers the cost of complying with all the obligations under the Contract; and
 - (c) the necessary authority and power to enter into the Contract

Conditions of Order

- and to perform the obligations under it.
- A.3.2 The Vendor acknowledges that the Council relied on the representations and warranties made in Clause A.3.1 when it entered into the Contract.
- A.4 VENDOR'S GENERAL OBLIGATIONS**
- A.4.1 The Vendor must carry out the Supply in accordance with, and ensure its Personnel comply with, the Contract.
- A.4.2 The Vendor must:
- (a) carry out the Supply and perform all of its other obligations:
 - (i) due care, skill and diligence;
 - (ii) in a thorough, competent and professional manner in accordance with Good Industry Standards; and
 - (iii) in accordance with Legislative Requirements and applicable Policies and Plans;
 - (b) must maintain, and ensure its Personnel maintains, at its cost, any licences, accreditations, certificates or registrations the Vendor or its Personnel are required to possess;
 - (c) supply all labour, plant, tools, equipment, appliances, consumables, spare parts and other property required to fulfil the Contract;
 - (d) if it learns of anything that may affect, or has affected, the scope or suitability of the Supply, including Defects, then it must promptly Notify the Council as soon as possible;
 - (e) co-ordinate the performance of the Supply with the Council and its Personnel and otherwise consult regularly with the Council;
 - (f) carry out the Supply with due expedition and without delay and in accordance with any directions of the Council; and
 - (g) without limiting its other obligations under the Contract, use reasonable endeavours to avoid, mitigate and overcome the effects of any delays to the carrying out of the Supply.
- A.5 RIGHTS AND OBLIGATIONS SPECIFIC TO GOODS**
- A.5.1 The Vendor warrants that all Goods (if any) will:
- (a) be new, except as agreed in writing;
 - (b) be of merchantable quality and free from Defects;
 - (c) correspond with any samples or product descriptions which the Vendor provided; and
 - (d) be free from all liens, charges and encumbrances and other Security Interests.
- A.5.2 The Vendor must:
- (a) Deliver and unload the Goods at the location directed by the Council's Representative;
 - (b) not Deliver the Goods earlier or later than the Completion Date, except:
 - (i) with the consent of the Council; or
 - (ii) if the Vendor is required to install or commission the Goods;
 - (c) if the carrier of the Goods is not the Vendor, engage the carrier on terms that comply with Good Industry Practice;
 - (d) at the time of dispatch of the Goods to the Site, provide the Purchase Order number and the description and quantity of Goods;
 - (e) package the Goods safely and securely to prevent damage during transit, and comply with any carrier's requirements;
 - (f) clearly label Goods as Council property and include a delivery docket that details the description and quantity of Goods and the relevant Purchase Order number.
- A.5.3 The Council will be deemed to have accepted the Goods only on the earlier of:
- (a) the date the Council gives written notice to the Vendor that the Goods have been accepted; or
 - (b) 20 Business Days after the date the Goods are Delivered, provided that Council did not Notify the Vendor that any of the Goods were Defective.
- A.5.4 Risk in the Goods passes to the Council upon acceptance by the Council in accordance with Clause A.5.3. The Vendor indemnifies the Council against any loss of or damage to the Goods from Delivery until the Goods are accepted by the Council.
- A.5.5 Title in the Goods passes to the Council on the earlier of Delivery or payment for the Goods. If, prior to Delivery, title to the Goods passes to the Council, the Vendor must set the relevant Goods aside and clearly mark them as being the property of the Council.
- A.5.6 If the Vendor is not the manufacturer, the Vendor must, at its own cost, obtain and provide, prior to Completion, the Council with any warranties available for the Goods from the manufacturer.
- A.5.7 The Council may at any time, whether at the Vendor's premises, the Site or any other place where the Goods are being manufactured or stored, test the Goods, or Services being performed, to ensure they comply with the Contract.
- A.5.8 The Vendor must promptly rectify any Defects in the Supply identified in the inspection or tests.
- A.6 PRICE**
- A.6.1 In consideration of the proper performance of the Supply by the Vendor, the Council will pay the Vendor the Price.
- A.6.2 The Price is firm and not subject to rise and fall.
- A.7 SUPPLIED INFORMATION**
- A.7.1 The Vendor agrees:
- (a) unless the Council expressly agrees in writing, any information supplied or made available by Council:
 - (i) has been or will be provided only for the Vendor's convenience; and
 - (ii) has not been and will not be relied upon by the Vendor for any purpose;
 - (b) the Council does not warrant, guarantee, make any representation as to, assume any responsibility or duty of care in respect of such information; and
 - (c) the Council will not be liable to the Vendor in contract, tort, equity, under statute or otherwise arising from or in connection with the supplied information (including its inaccuracy or adequacy), the provision of the information or the non-provision of any other information by the Council.
- A.8 COUNCIL'S REPRESENTATIVE**
- A.8.1 The Council's Representative is:
- (a) the primary liaison and point of contact for the Vendor;
 - (b) responsible for monitoring and evaluating the Vendor's performance under the Contract;
 - (c) not authorised to amend or vary the Contract or enter into any contract on behalf of the Council; and
 - (d) authorised to act on behalf of the Council, as an agent of the Council, in discharging the Council's functions under the Contract, except to the extent expressly provided otherwise in the Contract or in any Notice issued by the Council.
- A.9 WORK HEALTH AND SAFETY**
- A.9.1 In this Clause A.9, the terms 'Workplace' and 'Inspector' have the same meaning as in the Act.
- A.9.2 The Vendor must:
- (a) carry out the Supply in a safe manner;
 - (b) take all reasonable care to provide and maintain a Workplace free of accidents and injuries, including ensuring that there are processes in place to identify, assess and proactively control risks and carrying out the Supply in a way that is without risk to the health, safety and welfare of any person;
 - (c) comply with, and do all things necessary to enable the Council to comply with, all Legislative Requirements and Policies and Plans relating to WHS;
 - (d) comply with all lawful directions issued by any person with control of the applicable part of the Site pursuant to any Legislative Requirements relating to WHS;
 - (e) at all times have documented safe work practices and procedures for the Supply;
 - (f) provide its Personnel with personal protective equipment, information, instruction, training and supervision to ensure their own health and safety, and to ensure that their acts or omissions do not adversely affect the health and safety of others;
 - (g) provide, when requested by the Council, evidence of its compliance with any Legislative Requirements relating to WHS;
 - (h) immediately Notify the Council of any accidents involving its Personnel and, within 1 Business Day, give the Council a detailed report of the circumstances and consequences of the accident; and
 - (i) cooperate in any investigations relating to Workplace incidents.
- A.9.3 Without limiting any other obligation under the Contract, if material that might contain asbestos or other hazardous substance is discovered, the Vendor must:
- (a) immediately Notify the Council; and
 - (b) comply with all applicable obligations and restrictions imposed by any applicable Legislative Requirements.
- A.9.4 Upon request by the Council, the Vendor must provide all assistance and access to its offices, Personnel and records to enable the Council (which may be the Council's staff or external contractors) and any government agency to conduct audits on the Vendor's compliance with this Clause A.9. If any non-conformance is detected, the Vendor must immediately rectify the non-conformance at its own cost.
- A.9.5 If urgent action is necessary to protect the Supply, other property or people, and the Vendor fails to take the action, in addition to any other remedies of the Council, the Council may take the necessary action. If the action was action which the Vendor should have taken at its cost, the costs incurred by the Council in performing those obligations will become a debt due and payable to the Council from the Vendor.
- A.10 VARIATIONS**
- A.10.1 The Vendor must not vary the Supply.
- A.10.2 The Council may, at any time, direct the Vendor by written Notice to amend, increase, decrease or omit any part of the Supply.

Conditions of Order

- A.10.3 If the Council and the Vendor fail to agree upon the value of a variation, the value of the variation will be a reasonable amount as determined by the Council's Representative.
- A.10.4 Except as provided in this Clause A.10, the Vendor has no Claim against the Council arising out of or in connection with any variation directed by the Council.
- A.11 DEFECTS**
- A.11.1 During the defects liability period, the Vendor is responsible for any defects that may develop due to faulty materials, design or quality of work. The Vendor must remedy such defects to the satisfaction of the Council, at the Vendor's own expense.
- A.12 DEFAULT AND TERMINATION**
- A.12.1 The Council may, at any time, terminate the Contract for any reason in its absolute discretion by giving 5 Business Days' Notice to the Vendor.
- A.12.2 If the Council exercises its rights under Clause A.12.1, the Council will pay the Vendor for the work completed up to the date of termination and any direct, necessary and reasonably incurred actual costs and expenses caused by the termination as determined by Council.
- A.12.3 The Vendor will have no other Claim as a consequence of the termination, including for loss of profit, revenue, goodwill or business opportunities, damage to reputation or for any indirect or consequential loss or for any other reason in relation to termination.
- A.12.4 The Council may, without limiting its rights at law, immediately terminate the Contract by Notice to the Vendor:
- breaches any part of Clause A.1 **Error! Reference source not found.** or Clause A.14;
 - becomes insolvent, commits an act of bankruptcy, enters into administration, appoints a liquidator, receiver, manager or controller or anything analogous to these events;
 - breaches a term of the Contract and that breach cannot be remedied; or
 - breaches any term of the Contract and fails to remedy that breach within 5 Business Days of being directed by Notice to do so by the Council or the Council's Representative.
- A.12.5 If the Council exercises its rights under Clause A.12.4, it will not be liable to make any further payment to the Vendor for the Supply.
- A.12.6 Termination of the Contract will not affect or prejudice any rights or liabilities of the parties that accrued prior to termination.
- A.13 RISK AND INDEMNITY**
- A.13.1 The Vendor releases, discharges and indemnifies the Council and its Personnel (**Indemnified Persons**) from and against all Claims, expenses, losses and damages incurred in connection with:
- any negligent or unlawful act or omission by the Vendor or its Personnel;
 - any breach of the Contract by the Vendor;
 - any loss of or damage to real or personal property caused by the Vendor or its Personnel;
 - personal injury or death caused by the Vendor or its Personnel;
 - a breach of any Legislative Requirement; or
 - the infringement of Intellectual Property Rights by a third party, except to the extent caused by the negligent or unlawful act or omission of the Indemnified Persons.
- A.14 INSURANCE**
- A.14.1 Before commencing any of the Supply, unless agreed or specified otherwise, the Vendor must, at its cost, take out and maintain:
- a public and product liability insurance policy for an amount of not less than \$20 million for any one occurrence from the Commencement Date until the expiry of the Defects Liability Period, or if no Defects Liability Period applies, until the Completion Date; and
 - a professional indemnity insurance policy for an amount not less than \$5 million if the Vendor is providing any professional advice or professional services as part of the Supply, which must be maintained from the Commencement Date until 7 years following the earlier of the termination of the Contract or the completion of the Supply on a claims occurring policy basis.
- A.14.2 The insurances required under Clause A.14.1 must be effected and maintained with an insurer that is authorised and licensed to operate in Australia and otherwise on terms and conditions that a prudent and competent contractor would insure with and obtain, as the case may be.
- A.14.3 The Vendor must provide a certificate of currency for each insurance policy required under Clause A.14.1 prior to commencing any part of the Supply and at any time upon request by the Council.
- A.14.4 The Vendor must pay any excesses for claims made under any policy of insurance effected by the Council or the Vendor, which relate to the Vendor or the Supply.
- A.15 CONFIDENTIALITY**
- A.15.1 The Vendor must not disclose to any person, or use for any purpose other than carrying out the Supply, the contents of the Contract and any other document or information obtained by the Vendor in the course of or in connection with carrying out the Supply (**Confidential Information**):
- without the prior written consent of the Council; or
 - unless required by law.
- A.15.2 The Vendor must immediately Notify the Council if the Vendor becomes aware of any unauthorised disclosure or use of the Confidential Information and return any Confidential Information (including copies) on the written request of the Council.
- A.16 PRIVACY**
- A.16.1 If the Vendor collects or has access to Personal Information (as defined in the *Information Privacy Act 2009 (Qld) (IPA)*) in order to carry out the Supply, the Vendor must:
- comply with all applicable Policies and Plans and Legislative Requirements relating to privacy and the processing of Personal Information, including without limitation the IPA (including to enable the Council to discharge its obligations) and the *Privacy Act 1988 (Cth)*;
 - comply with any directions given by the Council regarding the handling of Personal Information;
 - immediately Notify the Council on becoming aware of any breach of this Clause A.16.
- A.17 INTELLECTUAL PROPERTY RIGHTS**
- A.17.1 The Vendor grants the Council an irrevocable, royalty free, fully assignable licence, including a right to sublicense, to use the Intellectual Property Rights in any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material provided to the Council in connection with the Contract for any purpose associated with the Supply.
- A.17.2 The Vendor warrants that it will not infringe any third party Intellectual Property Rights in carrying out the Supply or otherwise in connection with this Contract.
- A.18 PERSONAL PROPERTY SECURITIES ACT**
- A.18.1 If the Council determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the Vendor agrees to do anything the Council may reasonably require for the purposes of:
- ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
 - enabling the Council to apply for, and obtain, any registration or providing any notification in accordance with the *Personal Property Securities Act 2009 (Cth) (PPSA)*; or
 - enabling the Council to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- A.18.2 The Vendor waives each right to receive any Notice from the Council under the PPSA that can be waived.
- A.18.3 Except as expressly agreed in writing to the contrary, the Vendor:
- acknowledges that neither the Contract nor a transaction in connection with it is intended to provide a Security Interest in favour of the Vendor; and
 - agrees that it will not register or otherwise perfect (or seek to perfect) any Security Interest, and will remove any registration in connection with the Contract.
- A.18.4 The Vendor must:
- promptly Notify the Council if it knows or becomes aware that a third party has or claims a Security Interest on a product of the Supply:
 - supplied or to be supplied by the Vendor to the Council
 - owned by the Council; or
 - in which the Council has an interest;
 - give the Council any information reasonably required by the Council in relation to any such Security Interest or claim; and
 - on request by the Council, use best endeavours to ensure that the third party:
 - discharges any such Security Interest, and does not register or otherwise perfect (or seek to perfect), and removes any registration, in respect of any such Security Interest; or
 - subordinates any such Security Interest to the interest of the Council, by an agreement in form and substance satisfactory to the Council.
- A.18.5 Without limiting Clauses A.18.3 and A.18.4, at any time when title to or ownership of any product of the Supply, is passed to the Council, the Vendor must ensure that title or ownership is passed free of any Security Interest of the Vendor or any other person.
- A.18.6 Without limiting Clause A.15, neither the Council nor the Vendor will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Vendor will not authorise, and will ensure that no other party authorises, the disclosure of such information. However, this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

Conditions of Order

A.19 DISPUTES

- A.19.1 If any dispute arises between the parties arising from or in connection with the Contract (**Dispute**), it must be referred to Council for decision.
- A.19.2 If the Vendor is not satisfied with the decision then the matter may be referred to a mediator.
- A.19.3 If the Dispute is not resolved under Clause A.19.2 within 30 days, either party may commence litigation.
- A.19.4 Each party must continue to perform its obligations under the Contract despite the existence of a Dispute.

A.20 PAYMENT

- A.20.1 Council pays on 30 days from invoice date and payment will be effected on the production of an invoice setting out the details of delivered supplies and official Council Purchase Order numbers, subject to evidence of delivery in full. Failure to quote the Council Order number on delivery and invoice documents will result in delays in payment for such deliveries and may result in failure to pay.
- A.20.2 An exception shall apply for payments relating to the Building and Construction Industry Payments Act, small business where payments represent a wage, and negotiated early payment discounts.

A.21 GST

- A.21.1 In this Clause A.21, the terms 'GST', 'Recipient', 'Supplier', 'Supply' and 'Taxable Supply' have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- A.21.2 The consideration for a Supply made under or in connection with the Contract includes GST (including the Price).
- A.21.3 If a Supply made under or in connection with the Contract is a Taxable Supply, then at or before the time the consideration for the Supply is payable, the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under the Contract for that Supply and the Supplier must give the Recipient a Tax Invoice for the Supply.
- A.21.4 Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- A.21.5 Each party warrants that it was registered for GST when it entered into the Contract and agrees to Notify the other party immediately if it becomes aware of it ceasing to be registered for GST.

A.22 GENERAL

- A.22.1 The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- A.22.2 The Contract will be governed by the law of Queensland. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- A.22.3 The Vendor may not subcontract or assign any of its rights or obligations under the Contract without the Council's written consent. No approval given by the Council under this Clause (or failure to do so) will relieve the Vendor of its obligations under the Contract and the Vendor will be vicariously liable to the Council for the acts, defaults and omissions of subcontractors, and employees and agents of subcontractors, as if they were those of the Vendor.
- A.22.4 The Council may novate the Contract by Notice to the Vendor. The Vendor must execute any document reasonably required by the Council to affect its rights under this Clause.
- A.22.5 The Contract may only be amended by written agreement between all parties.
- A.22.6 The Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in the Contract.
- A.22.7 Each party must do all things reasonably necessary to give effect to the Contract and the transactions contemplated by it.
- A.22.8 A right under the Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- A.22.9 A clause or part of a clause of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining clauses or parts of the clause of the Contract continue in force.
- A.22.10 If the Vendor comprises two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons), the obligations and liabilities of those persons is joint and several, and any rights of those persons can only be exercised jointly.
- A.22.11 Clauses A.13, A.15, A.17, A.19 (and any other clauses which are capable of surviving) survive the expiration or termination of the Contract.

A.23 NOTICE

- A.23.1 A Notice under the Contract is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given by hand to that person's address, sent by registered mail to that person's address or sent by email to that person's email address.
- A.23.2 A Notice delivered under Clause A.23.1 is given and received:
- (a) if it is hand delivered or sent by email by 5.00pm (local time in the place of receipt) on a Business Day, on that day;
- (b) if it is hand delivered or sent by email after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day, on the next Business Day; and
- (c) if it is sent by post, 5 Business Days after posting.