



# Request for Tender

<b>Request for Tender (RFT)</b>	Organisational Structure Review
<b>RFT Number</b>	T23/001
<b>Tender Closing Time</b>	<b>5pm, Monday, 6 March 2023</b>

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## SECTION A - INTRODUCTION

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### 1. BACKGROUND

Council is inviting suppliers to tender to carry out a review of its organisational structure to determine a fit-for-purpose model for the effective and efficient delivery of Council services and programs.

Council's local government area is in the Central West Queensland Region and has a population of 962 people of which 94% represent Aboriginal and/or Torres Strait Islanders.

Council is responsible for creating and making decisions on local laws and the provision of essential services that ensures the liveability of the town of Woorabinda. In addition to essential services, Council also operates other entities such as the Post Office and Undoonoo Child Care Centre.

Council employs 75 people representing 12% of the working age 15-64 years residing in Woorabinda. Most of the workforce are employed in accordance with the Local Government Industry Award 2017 (Stream A, B & C).

In May 2022, Council approved an organisational structure requiring further assessment to determine fit-for-purpose for the delivery Council programs and services effectively and efficiently. The structure was not implemented given the uncertainty surrounding the rationale to its basis.

Council requires a review of the structure and the provision of recommendations as to its fitness for purpose for the effective and efficient delivery of Council services and programs which is compliant with relevant legislation and addresses the challenges faced by Council as per Qld Local Government Sustainability Framework to operate and meet the needs of the community, taking into account essential services, how Council as Trustee (in some cases fits into the framework) and Council's social responsibility to housing and standards of living.

Tenders will be assessed by reference to the Conditions of Tendering in Section C of this Request for Tender.

Tenderers must complete and submit the Response Schedules contained in Section D of this Request for Tender.

If a Tenderer is successful, they acknowledge that any engagement of the Tenderer by Council is pursuant to the Conditions of Contract contained in Section E of this Request for Tender.

**To be considered, Tenders must be submitted by 5pm, Monday 6 March 2023. Tenders submitted after this time may not be considered.**



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Tenders are to be lodged in accordance with Section B and Section C of this Request for Tender.

Canvassing of any Council staff or Councillors will disqualify Tenderers from the Procurement Process.

## SECTION B – TENDER INFORMATION

This Tender Information must be read in conjunction with and will form part of the Conditions of Tendering.

**Purpose for Request:** Organisational Structure Review

**Tender Closing Time:** Date: **Monday, 6 March 2023**

Time: **5:00pm**

**Tender Validity Period:** 120 days

**Lodgement Requirements:** Tenders must be lodged by the Tender Closing Time either:

- By post or by hand to Council’s office located at 112 Munns Drive, Woorabinda QLD 4723;
- By email to [ceo@woorabinda.qld.gov.au](mailto:ceo@woorabinda.qld.gov.au).

Tenders must be clearly endorsed with the RFT Number on the cover of this Request.

**Evaluation Criteria:**

Criterion	Weighting (%)
1. Price	50
2. Experience	25
3. Methodology	25

**Mandatory Criteria:**

Criterion
1. Evidence of Relevant Insurances



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## SECTION C – CONDITIONS OF TENDERING

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

- (a) In these Conditions of Tendering:
- (i) **Agreement** is the document contained in Section E of this Request for Tender, as modified by any subsequent negotiations between Council and a Tenderer which are evidenced in writing and executed by the parties, and which have been prepared in accordance with this Request for Tender.
  - (ii) **Business Day** means a day that is not a Saturday, Sunday or a public holiday in Woorabinda.
  - (iii) **Conditions of Tendering** means the conditions of tendering contained in this Section C – Conditions of Tendering of the Request for Tender;
  - (iv) **Conflict of Interest** includes any activity or interest of the Tenderer which may be in conflict with the Tenderer's ability to lodge a Tender in good faith and objectively. A Conflict of Interest will include a real, perceived or apprehended conflict.
  - (v) **Conforming Tender** means a Tender which:
    - A. is in the form required by the Response Schedules;
    - B. complies with the Lodgement Requirements;
    - C. contains substantially all of the information and documentation required by the Tender Documents;
  - (vi) **Consequential Loss** means indirect loss, loss of profits, loss of revenue, loss of savings, loss of opportunity, loss of bargain, loss of use, damage to credit rating, loss of or damage to reputation, future reputation or publicity, loss in connection with claims made by third parties, remote, abnormal or unforeseeable loss and any consequential loss or damage that is similar to the other categories of loss in this definition, whether or not such loss or damage was foreseeable or within the contemplation of Council and/or the Tenderer at any time;
  - (vii) **Council** means Woorabinda Aboriginal Shire Council, and may, if the context requires, include a duly authorised delegate of Council;
  - (viii) **Council's Representative** means Kristine Smith, Chief Executive Officer, Email: [ceo@woorabinda.qld.gov.au](mailto:ceo@woorabinda.qld.gov.au) or Phone: (07) 4925 9800.
  - (ix) **Evaluation Criteria** means the evaluation criteria set out in the Tender Information;



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- (x) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- (xi) **Introduction** means Section A – Introduction of this Request for Tender;
- (xii) **Law** includes all:
- A. legislation and subordinate legislation, including local laws, rules statutory instruments, by-laws, orders, ordinances, awards and proclamations of a local government authority, the State of Queensland, the Commonwealth which are applicable to the Agreement, the Tender Documents, the Procurement Process or which are otherwise in force and includes all related fees and charges;
  - B. certificates, licenses, accreditations, clearances, authorisations, approvals, consents, permits and other requirements of authorities and other organisations having jurisdiction applicable to the Agreement, the Tender Documents or the Procurement Process and includes all related fees and charges;
- (xiii) **Lodgement Requirements** means the lodgement requirements noted in the Tender Information;
- (xiv) **Mandatory Criteria** means the mandatory criteria, if any, set out in the Tender Information;
- (xv) **Non-Conforming Tender** means a Tender which is not a Conforming Tender;
- (xvi) **Personnel** includes the officers, employees, agents, representatives, agents, contractors and consultants of a party and any other person or entity for whom that party is vicariously liable, and, in the case of Council, includes councillors;
- (xvii) **Procurement Process** means the process associated with calling tenders in accordance with these Conditions of Tendering;
- (xviii) **Purpose for Request** means the purpose for which this Request for Tender has been made, as identified in the Tender Information, and elsewhere in this Request for Tender (as the context requires);
- (xix) **Request for Tender** means this request for tender (including Sections A to E) and all documents included in or incorporated by reference into it;
- (xx) **Response Schedules** means the fields in Section D – Response Schedules which are to be lodged in accordance with the Tender Documents;

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- (xxi) **Tender** means the Tender submitted by a Tenderer in response to this Request for Tender and includes all documents and information submitted with or as part of the Tender;
- (xxii) **Tender Closing Time** means the closing time detailed in the Tender Information;
- (xxiii) **Tender Documents** means this Request for Tender, any communications to tenderers issued pursuant to these Conditions of Tendering, and all documents included in or incorporated by reference into these documents;
- (xxiv) **Tender Information** means the information contained in Section B – Tender Information of this Request for Tender;
- (xxv) **Tender Validity Period** means the earlier of:
- A. the period of time identified as such in the Tender Information, or, where a date is stated, the period ending on that date;
  - B. the date that the Tenderer is notified that their Tender has not been accepted.
- If no time is stated in the Tender Information, the Tender Validity Period shall be one (1) year.
- (xxvi) **Tenderer** means:
- A. any person who submits a Tender; and
  - B. to the extent to which the Tender Documents can apply to any other person who obtains a copy of any of the Tender Documents during the Procurement Process, also includes such other persons;

## 1.2 Interpretation

- (a) These Conditions of Tendering must be read in conjunction with the Introduction and the Tender Information. The Introduction and the Tender Information are not comprehensive or complete in themselves, but shall form part of these Conditions of Tendering.
- (b) Without limiting the above, in the Tender Documents:
- (i) an obligation of two or more parties binds them jointly and each of them severally and an obligation incurred in favour of two or more parties is enforceable by them severally;
  - (ii) words importing the singular number include the plural number and words importing the plural number include the singular number;

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- (iii) clause headings are for reference purposes only and must not be used in interpretation;
  - (iv) the words 'include', 'includes' or 'including' shall be read as if followed by 'without limitation';
  - (v) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
  - (vi) where time is to be reckoned from a day or event, the day or the day of the event must be excluded and if any time period specified in the Tender Documents expires on a day which is not a business day, the period will expire at the end of the next business day;
  - (vii) a reference to:
    - A. a person includes any other legal entity and a reference to a legal entity includes a person;
    - B. a party includes the party's heirs, executors, successors and permitted assigns;
    - C. any gender shall be read as including every gender;
    - D. a monetary amount is a reference to an Australian currency amount;
    - E. any Law, standard, code, guideline or policy includes a reference to that Law, standard, code, guideline or policy as amended or replaced from time to time, and all related Law, standards, codes, guidelines or policies;
    - F. writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and facsimile transmissions;
    - G. a time is to local time in Woorabinda;
    - H. a business day is to a day that is not a public holiday in Woorabinda
  - (viii) the Request for Tender and Procurement Process are governed by the Law of Queensland and the Commonwealth of Australia which are in force in Queensland. Council and Tenderers submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them;

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- (ix) the *contra proferentem* rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it;
  - (x) the rights and remedies of a party under this Request for Tender are in addition to the rights or remedies conferred on the party at law or in equity;
  - (xi) if a provision of this Request for Tender is void or unenforceable it must be severed from this Request for Tender and the provisions that are not void or unenforceable are unaffected by the severance; and
  - (xii) no waiver by a party of a provision of this Request for Tender is binding unless made in writing.

## **2. REQUEST FOR TENDER**

### **2.1 Conditions of Tendering**

- (a) This Request for Tender is not an offer but is a request for Tenderers to submit a Tender for the goods, services or other deliverables specified as the Purpose for Request.
- (b) The Tenderer acknowledges that upon submitting a Tender (irrespective of whether that Tender is a Conforming Tender or a Non-Conforming Tender), the Tenderer shall be bound by the terms of these Conditions of Tendering as though the Conditions of Tendering were a deed between Council and the Tenderer.
- (c) If the Tenderer breaches any of these Conditions of Tendering, Council may, at its discretion and without limiting its other rights, exclude the Tenderer's Tender(s) from assessment.

### **2.2 The Tender Documents**

- (a) The Tender Documents must be read and construed together and are intended to be mutually explanatory.
- (b) If the Tenderer:
  - (i) finds any defect, deficiency, error, inconsistency, ambiguity, discrepancy or conflict in or between, or omission from any of the documents comprising the Tender Documents or any other information provided by Council; or
  - (ii) finds any inconsistency or conflict between the Tender Documents and any Law; or
  - (iii) has any doubt as to the meaning of any portion of the Tender Documents,

the Tenderer must notify Council in accordance with clause 3.1 and (if applicable) must include in its Tender a statement of the interpretation upon which it relies and on which its Tender has been prepared.

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- (c) When certain work is specified or described in the Tender Documents other work that is obviously or indispensably necessary will be deemed to be included even if it is not specifically mentioned.
  - (d) Council gives no warranty and makes no representation as to, and accepts no responsibility for, the accuracy, adequacy or completeness of the Tender Documents or any other information provided by or on behalf of Council.
  - (e) The Tender Documents must be used solely for the purpose of tendering for the Agreement, and for no other purpose.
  - (f) The Tender Documents shall at all times remain the property of Council.

### **3. THE PROCUREMENT PROCESS**

#### **3.1 Communications with Council**

- (a) Unless otherwise agreed with Council, or expressly contemplated in these Conditions of Tender, all communications between the Tenderer and Council in relation to the Procurement Process shall be conducted via email with Council's Representative.
- (b) Without limiting the preceding subclause, where these Conditions of Tender require the Tenderer to notify Council of something, then that notification shall be effected via email by the Tenderer.

#### **3.2 Nature of communications**

- (a) The Tenderer must not discuss the Procurement Process or obtain any information relating to the Procurement Process from any Personnel of Council other than in accordance with the preceding clause, unless expressly contemplated in these Conditions of Tender.
- (b) Without limiting any other provision of these Conditions of Tender, Council will not be bound by, and the Tenderer may not rely upon, any oral advice or information nor any written advice or information provided other than in accordance with clause 3.1.
- (c) Council:
  - (i) may in its absolute discretion limit the time for Tenderers to make queries or requests for further information or clarifications;
  - (ii) is not bound to respond to any query or request for further information or clarification, whether received prior to or after the required time; and
  - (iii) may in its absolute discretion notify any or all Tenderers of a query or request for further information or clarification made (without identifying the submitting party) and Council's response to the query or request.

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### 3.3 Council's Rights before Tender Closing Time

- (a) Without limiting any other provision of these Conditions of Tender, Council may, at any time before the Tender Closing Time, in its absolute discretion:
  - (i) modify or depart from the procedures set out in the Tender Documents;
  - (ii) extend or reduce any timeframes or dates provided for in the Tender Documents;
  - (iii) amend, add to or delete any part of the Tender Documents;
  - (iv) suspend, terminate or alter the Procurement Process at any time;
  - (v) request any one or more Tenderers to attend meetings.

### 3.4 Conduct of Tenderers

- (a) The Tenderer must not, and must ensure that its Personnel do not:
  - (i) engage in misleading or deceptive conduct in relation to the Procurement Process;
  - (ii) engage in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other Tenderer, or any other person in connection with the Procurement Process;
  - (iii) approach or communicate, or attempt to approach or communicate, in any way with any Personnel of Council, other than in accordance with the specific provisions of these Conditions of Tender;
  - (iv) attempt to improperly influence any of Council's Personnel, or violate any applicable Law regarding the offering of inducements in connection with the Procurement Process;
  - (v) accept or seek improper assistance of any of Council's Personnel, or any former Personnel of Council in preparing its Tender; or
  - (vi) use any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the Tender.
- (b) The Tenderer must:
  - (i) disclose in its Tender any Conflict of Interest arising or which is likely to arise as a result of this Procurement Process or the performance of the Tenderer's obligations under the Agreement if it is the successful Tenderer; and

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- (ii) not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which is likely to result in a conflict between Council and the Tenderer's interests; and
  - (iii) immediately notify Council of any Conflict of Interest that arises or is likely to arise and which is not disclosed in the Tender.
- (c) The Tenderer must at all times during the Procurement Process comply and ensure that its Personnel comply, with any Law applicable to the Procurement Process.
- (d) Without limiting any other right of Council, Council may exclude from assessment any Tender lodged by a Tenderer who, in Council's reasonable opinion, has engaged in any behaviour contrary to this clause in relation to the Procurement Process.
- (e) The Tenderer indemnifies Council against all costs (including legal costs), expenses, losses or damages incurred or suffered by Council in connection with a breach of this clause. This indemnity extends to:
- (i) costs and expenses incurred by Council relating to any legal challenge to the Procurement Process including the acceptance of a Tender or anything related to the Procurement Process; and
  - (ii) costs and expenses incurred by Council in terminating and/or recommencing the Procurement Process.

### **3.5 Complaints in Relation to the Procurement Process**

- (a) Any complaint in relation to the Procurement Process or the Request for Tender must:
- (i) be made in writing to Council:
    - A. in accordance with clause 3.1, if the complaint is made prior to the Tender Closing Time;
    - B. otherwise in accordance with Council's Complaints Policy or equivalent policy published on Council's website, and any applicable legislation;
  - (ii) be made immediately upon the cause of the complaint arising or upon a Tenderer becoming aware of the complaint or its cause;
  - (iii) contain adequate details of:
    - A. the complaint (including the cause of the complaint, the basis upon which the complaint is made and any other relevant issues);
    - B. the effect on the complainant;
    - C. the complainant's desired outcome; and

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- D. any other relevant information,
- to allow Council to properly investigate the cause of the complaint.
- (b) Council will investigate and otherwise deal with the complaint in the manner Council considers reasonably appropriate, having regard to:
- (i) the nature of the complaint, including whether Council considers the complaint to be frivolous or vexatious;
  - (ii) Council's Complaints Policy or equivalent Policy Council considers to be relevant in the circumstances;
  - (iii) any other matter that Council considers reasonably appropriate.
- (c) The complainant has no recourse against Council for any reason and in any circumstances as a result of the performance of Council's obligations or the exercise of its discretion under this clause.

#### **4. LODGEMENT OF TENDERS**

##### **4.1 Lodgement**

- (a) The Tender must comply with the Lodgement Requirements.
- (b) A Tender will be received by the Tender Closing Time if it is received at Council's office or sent by email by the Tenderer, and the Tenderer does not receive a notification that their email has not been delivered, by the Tender Closing Time.
- (c) The Tenderer is wholly responsible for:
  - (i) ensuring that its information technology system is capable of transmitting its Tender successfully by email by the Tender Closing Time;
  - (ii) any failure to transmit its Tender before the Tender Closing Time, irrespective of how that failure arises.
- (d) The Tenderer may at any time prior to the Tender Closing Time submit an amendment to its Tender in the same manner as its original Tender. Any amendment must clearly identify the Tender which is being amended and the amendments to be made. To the extent of any inconsistency between the Tender and the amendment, the amendments will prevail.
- (e) Any Tender or an amendment to a Tender that is not received by the Tender Closing Time may be rejected or admitted to evaluation at the discretion of Council. In exercising its discretion to reject or admit a late Tender to evaluation, Council may, without limitation, take into account the time at which the Tender is received, the reason the Tender is late and whether any other Tender has been received by the Tender Closing Time.



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- (f) Council may, in its absolute discretion, elect to consider a Tender received after the Tender Closing Time if:
- (i) Council is satisfied that the Tenderer has taken all reasonable steps to lodge its Tender on time and has notified Council of the technical failure prior to, on, or as soon as practicable after the Tender Closing Time;
  - (ii) the Tenderer was prevented from lodging its Tender on or before the Tender Closing Time due to technical failure beyond the control of the Tenderer, and the Tenderer is able to produce evidence of that technical failure that is acceptable to Council; and
  - (iii) the Tenderer lodged its Tender successfully as soon as possible after the technical failure was resolved.

#### **4.2 Tenderer's Warranties**

- (a) By lodging a Tender, the Tenderer warrants that:
- (i) all information contained in the Tender is accurate;
  - (ii) it has complied with its obligations under the Tender Documents;
  - (iii) it has not relied on the accuracy, adequacy or completeness of the Tender Documents, or any other information provided by or on behalf of Council in preparing its Tender;
  - (iv) it has not relied on the accuracy, adequacy or completeness of any other information provided by or on behalf of Council in preparing its Tender;
  - (v) it has satisfied itself of the local conditions, environment and facilities that may impact upon the Tenderer's ability to perform its obligations under the Agreement;
  - (vi) it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and the performance of its obligations under the Agreement;
  - (vii) it has informed itself fully as to the accuracy, adequacy and completeness of its Tender for the performance of the obligations under the Agreement and that the rates and prices included in the Tender include compliance with all obligations under the Agreement and all matters necessary for the complete performance of the Tenderer's obligations under the Agreement;
  - (viii) it has carried out its own investigations as to the feasibility of its Tender and has relied on those investigations.

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- (b) Failure by a Tenderer to do any of the things that it has warranted will not relieve the Tenderer of its obligation to perform under the Agreement that may be entered into between the Tenderer and Council.
  - (c) Council does not represent or warrant that the information provided in this Request for Tender, including any information provided by Council's Personnel or as part of the Procurement Process generally, is accurate, adequate or complete.

#### **4.3 Submission of Tender constitutes acceptance of Agreement**

- (a) If the Tenderer lodges a Tender (including a Non-Conforming Tender), the Tenderer will be taken to unconditionally agree to enter into the Agreement with Council.
- (b) However, nothing in this clause limits Council's rights pursuant to clause 5.2(b).

#### **4.4 Non-Conforming Tenders**

- (a) Council may, in its absolute discretion, accept or exclude a Non-Conforming Tender from assessment.
- (b) In exercising its discretion to exclude a Non-Conforming Tender, Council may, without limitation, take into account the nature and extent of the non-conformances, whether the Tenderer has also submitted a Conforming Tender and whether any Conforming Tender has been lodged by another Tenderer.
- (c) Acknowledgement by Council that it has received a Tender does not imply that the Tender has been admitted as a Conforming Tender.

#### **4.5 Intellectual Property**

- (a) All Intellectual Property Rights in the Tender Documents and other documents supplied to the Tenderer by or on behalf of Council are as between Council and the Tenderer the property of Council.
- (b) The Intellectual Property Rights in any material included in the Tender and created by the Tenderer and relating specifically to the Agreement vests in Council upon acceptance by Council of a Tender (or any part thereof).
- (c) To the extent that any material submitted by a Tenderer in its Tender is the subject of pre-existing Intellectual Property Rights of third parties, the Tenderer warrants that it is able to procure for Council an irrevocable, royalty free licence to use, adapt, reproduce, publish and sublicense on the same terms all such Intellectual Property Rights and agrees to obtain such licence upon acceptance of its Tender (or any part thereof).
- (d) By submitting a Tender, the Tenderer is deemed to have granted Council a licence to reproduce the Tender in whole or in part and to do or authorise any other act or omission in relation to the Tender for the purposes of exercising its rights, or carrying out its functions or obligations under these Conditions of Tendering or the Agreement.

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The Tenderer shall procure all necessary consents or waivers from creators in respect of moral rights under the *Copyright Act 1968* (Cth) to allow Council to do or authorise any such acts or omissions.

- (e) The Tenderer indemnifies Council against all costs (including legal costs), expenses, losses or damages incurred or suffered by Council in connection with a claim by a third party alleging that any material submitted as, with or in relation to the Tender or any act or omission done or authorised by Council or done in accordance with these Conditions of Tendering or the Agreement in respect of such material infringes the Intellectual Property Rights of that third party.

## **5. ASSESSMENT OF TENDERS**

### **5.1 Tender Opening**

Tenders will not be opened publicly and Tenderers will not be permitted to attend the opening of Tenders.

### **5.2 Council's Rights After Tenders Received**

- (a) Without limiting any other specific clause in these Conditions of Tender, Council may, at any time after Tenders have been received, in its absolute discretion:
- (i) request any one or more Tenderers to change their Tender to take account of a change in the Tender Documents or any error in the Tender Documents. However, Council has no obligation to do so and need not extend the same opportunity to each Tenderer;
  - (ii) request a meeting with any one or more Tenderers to obtain additional information from that Tenderer;
  - (iii) seek to clarify and alter any aspect of a Tenderer's Tender and may, at its discretion, advise any or all of the preferred Tenderers of such clarification or alteration;
  - (iv) request any one or more Tenderers to provide a presentation of their Tender in person at Council's office at no cost to Council; and
  - (v) request additional information from one or more Tenderers.
- (b) **Negotiations**
- (i) Council reserves the right to negotiate amendments to any aspect of the Tender or the Tender Documents with any one or more Tenderers. Council is under no obligation to enter into negotiations with any Tenderer, nor is Council required to extend the opportunity to each Tenderer.

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- (ii) Council entering into negotiations pursuant to the preceding subclause does not constitute a rejection of the Tenderer's Tender or a counter offer to the Tenderer, unless specified otherwise.
  - (iii) Council may suspend or terminate negotiations at any time and for whatever reason.

### 5.3 Assessment of Tenders

- (a) In determining which Tender is most advantageous to Council, each Tender admitted to assessment in accordance with these Conditions of Tendering will be assessed against the Evaluation Criteria.
- (b) In assessing Tenders, Council may
  - (i) consider:
    - A. information contained in the Tender;
    - B. outcomes from discussions with Tenderer's referees (if any);
    - C. any other information available to Council;
    - D. any relevant Law, including the *Local Government Act 2009* (Qld) and any regulation enacted under it;
    - E. Council's policies and procedures, including but not limited to its Procurement Policy; and
    - F. other information which Council reasonably considers to be relevant to its assessment, including but not limited to any procurement policies or procedures implemented by Council;
  - (ii) make such other further enquiries about the Tender or the Tenderer which Council in its absolute discretion considers is or may be appropriate or relevant;
  - (iii) ignore any part of the Tender which, in Council's opinion, is ambiguous, uncertain, unclear or illegible without seeking clarification from the Tenderer and may assess the balance of the Tender.
- (c) Council may seek any further information or assistance from any person (including third parties) where Council considers in its absolute discretion it is necessary to do so in order to properly evaluate any aspect of the Tender. Council may (but is not required to) notify the Tenderer of a third party appointed by Council to provide such assistance to Council, and, if advised, the Tenderer must cooperate with and provide all information and assistance reasonably requested by such third party. Council may exclude from assessment or reject a Tender if the Tenderer does not provide such cooperation, information and other assistance.

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- (d) Council:
- (i) is not bound to accept the highest price, or any Tender, or any clarification, alteration or amendment of a Tender; and
  - (ii) may, subject to these Conditions of Tendering, at its discretion, reject or accept:
    - A. a late Tender;
    - B. a Non-Conforming Tender;
    - C. a Tender which fails to achieve a satisfactory score against any of the Evaluation Criteria;
    - D. a Tender which fails to demonstrate compliance with any of the Mandatory Criteria;
    - E. a Tender which has been clarified, altered or amended in accordance with these Conditions of Tendering; or
    - F. a Tender submitted by a Tenderer that has breached these Conditions of Tendering.

#### **5.4 Tender Validity Period**

- (a) Each Tender must remain valid and open for acceptance by Council until the end of the Tender Validity Period.
- (b) Notwithstanding clause 5.4(a), if a Tenderer wishes to withdraw its Tender before the end of the Tender Validity Period, Council may, in its absolute discretion, and without any obligation to do so for the benefit of the Tenderer, allow the Tenderer to withdraw its Tender. Council's consent to the withdrawal of the Tender may be subject to conditions.
- (c) Council may request an extension of the Tender Validity Period at any time by giving written notice to the Tenderer. If a Tenderer does not agree to extend the Tender Validity Period as requested by Council then Council may exclude the Tenderer's Tender from assessment or further assessment as the case may be.

#### **5.5 Form of Acceptance**

- (a) A Tender shall be deemed to be accepted when Council expressly advises the successful Tenderer in writing that the Tenderer's Tender (as amended by any negotiations pursuant to clause 5.2(b)) is accepted.
- (b) The Tenderer acknowledges and agrees that if their Tender is accepted pursuant to subclause (a) of this clause, then the Tenderer must take all steps reasonably required by Council to complete and sign any documents that Council requires to form part of the

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Agreement, including but not limited to, and where applicable, any formal Instrument of Agreement that incorporates all documents and relevant negotiation.

- (c) The parties acknowledge and agree that:
- (i) unless expressly authorised by Council in writing, the successful Tenderer (or any Tenderer) is not authorised to begin delivery of goods, services or other deliverables that form part of the scope of the Purpose for Request until Council has issued a Purchase Order;
  - (ii) if the Purpose for Request involves the appointment of the successful Tenderer to a register of pre-qualified suppliers or an approved supplier panel, or such other panel from which the successful Tenderer shall be appointed to a panel of one or more other suppliers for the delivery of goods and services, the successful Tenderer shall not be entitled to work in any particular volumes or to any particular value.

## 5.6 Notification of Unsuccessful Tenderers

- (a) Council shall, subject to its rights under these Tender Documents, notify all unsuccessful Tenderers as soon as practicable after a Tender is accepted under clause 5.5.
- (b) Unsuccessful Tenderers may request that Council provides feedback on the Tenderer's Tender and Council's response will be at its discretion.
- (c) A Tender shall not be deemed to be rejected until Council notifies the unsuccessful Tenderer in writing that the Tender was not successful.
- (d) If the successful Tenderer fails to enter into the Agreement, nothing in these Conditions of Tender prevent Council from seeking to negotiate with a Tenderer that it had notified was unsuccessful, and notwithstanding that the Tender Validity Period has expired.

## 6. TENDERER'S ACKNOWLEDGMENTS

### 6.1 Tendering Costs

- (a) The Tenderer expends money, makes commitments and incurs liabilities in considering and responding to this Request for Tender ("**Tendering Costs**") at its own risk and expense.
- (b) Council shall not be liable to the Tenderer, for any reason whatsoever, to reimburse or otherwise compensate the Tenderer for any part of the Tendering Costs or for any loss associated with responding to this Request for Tender, including Consequential Loss.

### 6.2 Tenderer to Inform Itself

- (a) The Tenderer must undertake all necessary enquiries and investigations to satisfy itself as to:

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- (i) the accuracy, adequacy and completeness of the Tender Documents and any other information provided by or on behalf of Council;
  - (ii) all considerations, including logistical considerations, associated with discharging obligations under the Agreement; and
  - (iii) any other risks, contingencies and other circumstances which could have an effect on the cost of discharging obligations under the Agreement or the compliance with the Tenderer's other obligations under the Agreement in the event that the Tenderer's Tender is accepted.
- (b) If the Tenderer requires any further information or documentation from Council to enable it to comply with this clause then the Tenderer must notify Council of this in accordance with these Conditions of Tendering at least 7 days prior to the Tender Closing Time.
- (c) The Tenderer must allow, and warrants that it has allowed, in its Tender for:
- (i) all risks, contingencies and other circumstances referred to in clause 6.2(a);
  - (ii) carrying out all obligations required under the Agreement;
  - (iii) all other risks which will be borne by the Tenderer under the Agreement if its Tender is accepted.

### **6.3 No Liability**

- (a) Without limiting any other clause in these Conditions of Tendering, Council and its Personnel are not liable upon any claim for, and the Tenderer indemnifies Council against and releases Council from all liability for, any costs, expenses, losses, damages suffered or incurred by the Tenderer or any of the Tenderer's Personnel (including Consequential Loss) relating to, or arising out of or in connection with:
- (i) the preparation and submission of the Tenderer's Tender;
  - (ii) the exercise by Council of any of its rights under the Tender Documents; or
  - (iii) any defect, deficiency, error, inconsistency, ambiguity, discrepancy or conflict in or between, or omission from any of the documents comprising the Tender Documents, or any other information provided by Council, or Council's Personnel in connection with the Procurement Process.
- (b) If a court finds that Council is liable to any Tenderer with respect to the Procurement Process, the Tenderer agrees that the total aggregate liability of Council to the Tenderer for any negligence of Council or its Personnel, breach of statute by Council a breach of contract shall be limited to \$1,000.00.

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## 7. CONFIDENTIALITY AND USE OF INFORMATION

### 7.1 Confidentiality

#### (a) Council's confidentiality

- (i) Subject to this clause, any information contained in the Tender Documents which is not in the public domain is to be treated by the Tenderer as confidential ('**Confidential Information**'). Confidential Information contained in the Tender Documents is only to be used for the purpose of preparing a Tender in response to the Tender Documents.
- (ii) Each Tenderer:
  - A. must ensure that only appropriate Personnel have access to the Confidential Information. In all such cases, the party is to inform such Personnel of the confidential nature of the information and that it must not be disclosed;
  - B. must not and must ensure that its Personnel do not at any time disclose such Confidential Information directly or indirectly to any person whatsoever for any reason, or use or permit it to be used directly or indirectly for any reason except to the extent required by a Law; and
  - C. indemnifies Council against any costs (including legal costs), expenses, losses, damages or liability arising out of disclosure or unauthorised use of Confidential Information by the party, or its Personnel.

#### (b) Tenderer's confidentiality

- (i) Subject to clause 7.2, information relating to the Tenderer's assets, operations, business dealings or financial affairs will be treated by Council as being confidential.
- (ii) No other information contained in the Tender will be treated as confidential, unless:
  - A. the information is clearly identified as confidential; and
  - B. Council considers in its discretion, (acting reasonably) that the information should be treated as confidential.
- (iii) Council may use material submitted as, with or in relation to a Tender (including information relating to the design, products or methodology proposed to be used by the Tenderer but not including any material which is to be treated as confidential pursuant to clauses 7.1(b)(i) or 7.1(b)(ii)) for its own purposes, including for the purpose of seeking prices from other Tenderers and for use in a contract with a party other than the Tenderer.



## **7.2 Disclosure by Council**

- (a) Notwithstanding the preceding clause, Council may disclose any information contained in a Tender:
- (i) to comply with any Law including, without limitation under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld);
  - (ii) to comply with any of its own policies, procedures and governance requirements; and
  - (iii) to such of its Personnel as is necessary to properly conduct the Procurement Process, including to evaluate and obtain approval of Tenders received.

## **7.3 Media Release**

Tenderers must not, either on their own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether verbal or written, concerning the Purpose for Request, the Agreement or the Procurement Process in any media without the prior approval of Council.

## SECTION D – RESPONSE SCHEDULES

**All parts of Section D – Response Schedules must be completed and returned. If a Tender contains incomplete parts of this Section D, the Tender will be a Non-Conforming Tender.**

### Part A1: Tenderer Details

<b>Name of Tenderer</b>	
The Tenderer acknowledges and agrees that the named tenderer shall be the legal entity with whom Council will enter into a contract if the Tenderer is successful.	
<b>ABN/ACN</b>	
<b>Is the Tenderer registered for GST?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Contact Person</b>	
<b>Position of Contact Person</b>	
<b>Street Address of Tenderer</b>	
<b>Postal Address of Tenderer</b>	
<b>Email Address of Tenderer</b>	
<b>Contact Telephone of Tenderer</b>	
<b>Alternative Contact Telephone of Tenderer</b>	
<b>Does the Tenderer have any Conflicts of Interest?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes, include details on additional pages and provide details about how these conflicts will be managed.

<p><b>Work Health and Safety Legislation Compliance</b></p> <p>Has the Tenderer or any key personnel of the Tenderer ever received a work improvement, prohibition notice or other fine or offence under any work health and safety legislation?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, include details on additional pages.</p>
<p><b>Solvency of the Tenderer</b></p> <p>(a) Is the Tenderer unable to pay their debts as and when they fall due?</p> <p>(b) Has the Tenderer been the subject of any form of insolvency or administration?</p> <p>(c) Have any of the directors of the Tenderer been the subject of any bankruptcy proceeding?</p> <p>(d) Have any of the directors of the Tenderer been directors of a company that has been the subject of any insolvency or administration?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes to any question, include details on additional pages.</p> <p>The Tenderer acknowledges and agrees that by submitting a Tender, Council is entitled to ask for further information about the Tenderer's financial position, including but not limited the Tenderer's financial statements.</p>
<p><b>Legal Information</b></p> <p>(a) Is the Tenderer or any of its directors or officers a party to any legal proceeding (in Australia or overseas) that may reasonably be expected to affect the Tenderer's ability to perform under the Agreement?</p> <p>(b) Has the Tenderer or any of its directors or officers been a party to any legal proceeding (in Australia or overseas) settled or otherwise finalised in the last 5 years that may reasonably be expected to affect the Tenderer's ability to perform under the Agreement?</p> <p>(c) Is the Tenderer aware of any other legal matter that may reasonably be expected to affect the Tenderer's ability to perform under the Agreement?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes to any question, include details on additional pages.</p>

## Part A2: Evidence of Insurances

This part is relevant to Mandatory Criterion 1.

Note: A copy of the certificate of currency must be enclosed.

Insurance	Details
<b>Public Liability Insurance</b>  Council's interest to be noted on the policy.  Minimum value \$20 million	Insurer and Policy No:
	Amount:
	Expiry Date:
<b>Workers' compensation insurance</b>	Insurer and Policy No:
	Amount:
	Expiry Date:
<b>Professional indemnity insurance</b>  Minimum value \$10 million	Insurer and Policy No:
	Amount:
	Expiry Date:
	Expiry Date:

## Part B: Price

This part is relevant to Evaluation Criterion 1.

Tenderer to insert their price for delivering services by completing the following table.

Tenderers may include further attachments to the table if the tenderer wishes to include pricing in an alternative format to that which is set out in the table.

Tenderers may submit separate pricing schedules or catalogues that accurately describe their pricing and which enable Council to assess Tenders by reference to Evaluation Criterion 1, where the template table provided below is not suitable.

Tenderers must ensure that where any travel cost is intended to be passed on to Council, that cost must be quoted separately.

<b>PRICING SCHEDULE</b>		
<b>Description of Service</b>	<b>Cost per (hr/km/unit) ex GST</b>	<b>Purchase discount offered to Council</b>

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## Part C: Experience

This part is relevant to Evaluation Criterion 2.

### Tenderer's Experience

Tenderer to describe their experience in supplying the types of services required by Council. In an attachment, Tenderers must provide, at a minimum, the following information:

- (a) Details of similar work performed;
- (b) Details of the scope of the Tenderer's involvement in that work, including details of the services performed;
- (c) Details about issues that arose and how those issues were managed;
- (d) How the Tenderer has demonstrated sound judgment and discretion in previous work;
- (e) How the Tenderer has demonstrated competency in previous work, and their proven "track record" in delivering services. A demonstration of the Tenderer's "track record" may be constituted by testimonials and references. The testimonials and references must be no older than five (5) years.

The Tenderer should provide details of at least three recent references who are familiar with the Tenderer's performance of similar work.

### Experience of key personnel of Tenderer

Tenderer to provide information about the key personnel proposed to be engaged to deliver services, including:

- (a) Their role in the performance of Services;
- (b) Their resume;
- (c) Details of memberships of any professional or business association;
- (d) Qualifications, with particular emphasis on experience of workers in positions with similar requirements;
- (e) Any additional relevant information.

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### Licences and Accreditations

Without limiting the above, in assessing this Evaluation Criterion, Council may also consider the licences, accreditations and certifications held by the Tenderer. The Tenderer should provide the information about relevant licences and accreditations held.

### Details of Proposed Subcontractors

Without limiting the above, in assessing this Evaluation Criterion, Council may also consider the proposed retention of subcontractors and the nature of the subcontracting arrangements:

<b>Do you propose to use Subcontractors to complete all or part of the work under the Agreement?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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If "Yes" is ticked above, please provide copies of any quality management systems in place between the Tenderer and its nominated subcontractors.

## **Part D: Methodology**

This part is relevant to Evaluation Criterion 3.

### Demonstrated Understanding

Tenderer to describe how they intend to achieve compliance with the Conditions of Contract and deliver the Purpose for the Request, including:

- (a) The processes in place for delivery of the Services in accordance with the Purpose for the Request;
- (a) Any training processes;
- (b) Their understanding of the Purpose for the Request.

The Tenderer should include the above in a Project Proposal which should also outline the milestones and applicable timelines.



## Part E: Tenderer Execution

By signing this Part E, the Tenderer acknowledges that:

- the Tenderer has read and understand, and agrees to be bound by, the Request for Tender, including the Conditions of Tendering;
- the Tenderer has completed all parts of the Response Schedules;
- the Tenderer named in Part A1 of these Response Schedules and which has signed this Part E is the legal entity with whom Council will contract, if the Tenderer's Tender is successful;
- if the Tenderer is successful, their engagement is subject to the Conditions of Contract contained in Section E.

<b>SIGNED, SEALED AND DELIVERED by THE TENDERER</b>	
Signature	
Name of Signatory	
Signature of Second Signatory (if applicable)	
Name of Second Signatory (if applicable)	
Witness Signature	
Date	



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## SECTION E – CONDITIONS OF CONTRACT

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## WOORABINDA ABORIGINAL SHIRE COUNCIL CONDITIONS OF CONTRACT FOR SERVICES

### PARTIES

**WOORABINDA ABORIGINAL SHIRE COUNCIL**

("Council")

**THE PERSON OR ENTITY NAMED IN ITEM 1 OF CLAUSE 1**

("the Contractor")

### REFERENCE SCHEDULE

#### 1. REFERENCE SCHEDULE

Term	Detail
<b>Request for Tender</b>	Organisational Structure Review
<b>Contractor</b>	The person named as the Tenderer in the Response Schedule submitted by the Contractor in response to the Request for Tender
<b>Commencement Date</b>	The date Council nominates as the Commencement Date in its letter to the Contractor accepting the Contractor's response to the Request for Tender. If no date is nominated in that letter, the Commencement Date shall be the date of the letter.
<b>Expiry Date</b>	[TBC]

<b>Services</b>	Those Services particularised in the Request for Tender and which, by the Contractor's response to the Request for Tender, the Contractor has agreed to deliver to Council.
<b>Contract Sum</b>	[TBC]
<b>Invoicing Instalments</b>	[TBC]
<b>Value of Insurances required to be obtained by the Contractor</b>	As specified in the Request for Tender
<b>Council's Address for Notices</b>	<p><u>Street Address:</u> 113 Munns Drive, Woorabinda Qld 4713</p> <p><u>Postal Address:</u> 113 Munns Drive, Woorabinda Qld 4713</p> <p><u>Email Address:</u> ceo@woorabinda.qld.gov.au</p>
<b>Contractor's Address for Notices</b>	<p><u>Street Address:</u> As specified in the Contractor's response to the Request for Tender</p> <p><u>Postal Address:</u> As specified in the Contractor's response to the Request for Tender</p> <p><u>Email Address:</u> As specified in the Contractor's response to the Request for Tender</p>

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## GENERAL CONDITIONS

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### INTRODUCTORY PROVISIONS

## 2. DEFINITIONS AND INTERPRETATION

2.1. In this Contract, unless the contrary intention appears:

- (a) **Annexure** means an annexure to these General Conditions.
- (b) **Contract** means this document, which contains these General Conditions of Contract, and includes the annexures.
- (c) **Commencement Date** means the date specified in the Reference Schedule.
- (d) **Contractor** means the person or entity specified as the Contractor in this Reference Schedule who is a party to this Contract and including their successors and assigns.
- (e) **Contract Sum** means the amount specified in the Reference Schedule.
- (f) **Council** means Woorabinda Aboriginal Shire Council, a party to this Contract.
- (g) **General Conditions** means the general conditions contained in this document.
- (h) **Expiry Date** means the date specified in the Reference Schedule.
- (i) **Invoicing Instalments** means the practice by which the Contractor shall be entitled to invoice the Contract Sum, as specified in the Reference Schedule and in the terms and conditions of this Contract.
- (j) **Purchase Order** means a purchase order for Services issued by the Council with the Contractor under the terms of the Contract.
- (k) **Purpose for Request** has its meaning as set out in the Request for Tender.
- (l) **Request for Tender** means the Request for Tender specified in the Reference Schedule, being the Request for Tender issued by Council for the Services, in response to which the Contractor was a successful respondent. The Request for Tender includes any addendums and variations issued by Council in the course of the procurement process associated with the Request for Tender.
- (m) **Schedule of Rates** means the rates specified in the Contractor's response to the Request for Tender.

- (n) **Services** means the Services and/or other deliverables which the Contractor is engaged to supply under this Contract, as specified in the Reference Schedule, and in any Specification and other Annexures. For avoidance of doubt, where the Services require the Contractor to supply goods, then a reference to Services includes those goods that the Contractor has agreed to supply to Council.
- (o) **Specification** means the Purpose for Request contained in the Request for Tender.
- (p) **Statutory Requirement** includes:
- (i) any Acts, ordinances, regulations, by-laws, local laws, orders, awards and proclamations of Council, Queensland or the Commonwealth;
  - (ii) certificates, licences, consents, permits, approvals and requirements of any entities having jurisdiction in connection of the performance of obligations under this Contract;
  - (iii) fees and charges payable in connection with the foregoing.
- (q) **Term** means the period commencing on the Commencement Date and expiring on the Expiry Date.

2.2. In this Contract, unless the contrary contention appears:

- (a) Reference to:
- (i) a business day means a day that banks are trading in Woorabinda;
  - (ii) one gender includes the other genders;
  - (iii) the singular includes the plural and the plural includes the singular;
  - (iv) a person includes a partnership and a body corporate;
  - (v) a party includes the party's successors and permitted assigns;
  - (vi) a clause, sub-clause, paragraph or schedule is to a clause, sub-clause, paragraph or schedule of this Deed;
  - (vii) a statute, regulation or provision of a statute or regulation ("**statutory provision**") includes a reference to:
    - (A) that statutory provision as amended or re-enacted from time to time; and
    - (B) a statutory provision enacted in replacement of that statutory provision; and

- (viii) writing includes a reference to printing, typing and each other method of producing words in a visible form.
- (b) If a party consists of more than one person, this Contract binds them jointly and each of them severally.
- (c) Headings are for convenience only and do not affect the interpretation of this Contract.
- (d) Any party which is a trustee is bound in its capacity as a trustee and personally.

### **3. CONTRACT**

- 3.1. This Contract commences on the Commencement Date and expires on the Expiry Date.
- 3.2. This Contract comprises:
  - (a) the detail contained in the Request for Tender, including the Specification;
  - (b) the detail contained in the Contractor's response to the Request for Tender;
  - (c) the detail contained in the Reference Schedule;
  - (d) the clauses of these General Conditions;
  - (e) the Annexures.
- 3.3. Where there is any inconsistency or ambiguity between the terms set out in this Contract, the documents will be read in the following order of preference:
  - (a) firstly, the Reference Schedule;
  - (b) then, the Request for Tender, including the Specification;
  - (c) then, the General Conditions of Contract;
  - (d) then, the Annexures, in sequential order;
  - (e) then, the Contractor's response to the Request for Tender.

## **SERVICES**

### **4. SUPPLY OF SERVICES BY PURCHASE ORDER**

- 4.1. **Purchase Order required always**

- (a) The parties acknowledge and agree that the Contractor may only proceed with supplying Services once they have received a Purchase Order from Council.
- (b) No Services will be accepted, and Council will not be liable to accept any Services, unless a Purchase Order has been provided.
- (c) Where a Purchase Order is issued by Council and given to the Contractor, the Contractor must supply Services:
  - (i) after a Purchase Order has been provided;
  - (ii) in accordance with the terms and conditions of the Purchase Order; and
  - (iii) that comply with the Specification.
- (d) Council may issue a Purchase Order for:
  - (i) any one type or item of the Services; and
  - (ii) Services in one lot or instalments or in such quantities as may be required from time to time.

## **5. GENERAL PROVISIONS ABOUT SUPPLY OF SERVICES**

### **5.1. Timing**

- (a) The Contractor must supply the Services punctually. However, if a time for supply of the Services is stated in a Purchase Order, Specification or anywhere else in the Contract, the Services must be supplied within the time stated in the Purchase Order, Specification or anywhere else in the Contract, as the case may be.
- (b) Time shall be of the essence in all cases.
- (c) Upon it becoming evident to the Contractor that supply of the Services is likely to be delayed, the Contractor must promptly notify Council in writing. Such notification shall not release the Contractor from its obligation to supply the Services by the due date or from any other obligation under the Contract, unless Council agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with any delay.
- (d) The Contractor shall not be entitled to any extension of time for supply of the Services except with the prior written consent of Council. Council may in its sole discretion grant or refuse its consent.



## 5.2. Acceptance

Delivery and receipt of, or performance of, Services shall not of itself constitute acceptance of any Services by Council, with acceptance being subject to the approval of Council.

## 6. QUALITY OF SERVICES

6.1. Unless the Specification states otherwise, all Services supplied must be in accordance with Australian Standards where such exist. Where an Australian Standard does not exist the relevant ISO Standard shall apply.

6.2. If no sample or standard is stated in the Specification and no Australian Standard or ISO Standard applies, the Services must be:

- (a) of the highest standard and quality;
- (b) fit for their stated purpose;
- (c) carried out promptly with all due skill, care and diligence.

6.3. The Contractor must:

- (a) engage and retain personnel who are able to competently provide the Services; and
- (b) ensure that all personnel engaged in the supply of the Services have all skills and qualifications necessary to supply the Services; and
- (c) consult regularly during the Term with Council.

## 7. DEFECTIVE SERVICES

7.1. Where, at any time during the supply of the Services or any part of the Services pursuant to a Purchase Order, Specification, or otherwise in accordance with this Contract, or after the supply of the Services pursuant to a Purchase Order, Council determines, acting reasonably, that the Services or a part of the Services do not comply with the Specification, the Purchase Order or the Contract ("**Defective Services**"), Council may give written notice to the Contractor of the lack of compliance, and require the Contractor to promptly supply or supply again the Services or such part of the Services as do not comply.

7.2. Council may, without derogating from any other right it may have on account of such unsatisfactory or defective supply, defer payment of the invoice or such part of the invoice as relates to the Defective Services until the Council has certified that the resupplied Services comply with the Specification, the Purchase Order or the Contract, as the case may be.

7.3. If the Contractor fails to comply with a requirement of a notice given under Clause 7.1, Council reserves the right to arrange for the supply of the Defective Services from

another supplier. If under this subclause Council elects to arrange for the supply of the Defective Services from another supplier, the Contractor shall not be entitled to payment of the invoice or such part of the invoice as relates to the Defective Services.

- 7.4. All costs and expenses incurred by Council in exercising the rights of Council under Clause 7.3 shall be a debt due and payable by the Contractor to Council.

## **8. VARIATION OF SERVICES**

- 8.1. Council may, by written notice given to the Contractor, require the Contractor to vary the Services in nature, scope or timing.
- 8.2. Without limiting the generality of the preceding subclause, Council may direct the Contractor to:
- (a) increase, decrease or omit any part of the Services; or
  - (b) change the character or content of any part of the Services; or
  - (c) change the direction or dimensions of any part of the Services; or
  - (d) perform additional work.
- 8.3. Where Council requires a variation to the Services, the parties must negotiate in good faith a variation of the Contract Price and the time for completion of supply of the Services.
- 8.4. The Contractor must not commence work on the variation to the Services unless and until the variation is agreed in writing by Council and the Contractor.

<b>CONTRACT SUM</b>
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## **9. CONTRACT SUM**

- 9.1. The Contractor agrees to supply and Council agrees to purchase the Services for the Contract Sum in accordance with the terms and conditions of the Purchase Order.
- 9.2. For avoidance of doubt, if the Contract Sum is comprised of a Schedule of Rates, then the rates set out in the Schedule of Rates shall not be subject to change during the Term, other than with the express prior written agreement of Council.
- 9.3. Unless provided otherwise in the Purchase Order, as the case may be, the parties agree that payment of the Contract Sum shall be made in the Invoicing Instalments, and only if:
- (a) the Contractor has provided Council with a tax invoice which clearly states the milestone or deliverable to which the Invoiced Instalment of the Contract Sum applies; and

- (b) Council is reasonably satisfied that the milestone or deliverable in respect of which an instalment of the Contract Sum has been invoiced has been completed by the Contractor.

9.4. The Contractor acknowledges that the payment to which it is entitled under this clause is the Contractor's full and sole compensation for discharging the Contractor's obligations under the Contract, described in or to be reasonably inferred from the Contract, in accordance with the Contract, including, without limitation:

- (a) delivering the Services;
- (b) collecting the Services where the Services have been supplied to Council on hire;
- (c) providing all materials, plant, personnel and other items of work necessary for the proper delivery of the Services or the compliance of the Contractor with its other obligations under the Contract, (including items which are not expressly mentioned in the Contract but which are obviously and indispensably necessary for the proper delivery of the Services or the compliance of the Contractor with its other obligations under the Contract);
- (d) all disbursements, incidentals, sundries and outlays in connection with the delivery of the Services including travel, accommodation, meals, living expenses, provision of site office facilities, photocopying, printing and telephone fees, costs and charges;
- (e) costs associated with establishment and disestablishment under this Contract;
- (f) paying all fees, charges, costs, expenses, taxes or duties incurred by the Contractor in carrying out its obligations under the Contract;
- (g) effecting and maintaining the insurances required under the Contract;
- (h) attendance by the Contractor at all inductions, training, workshops and other meetings required by Council;
- (i) all payments required to be made by the Contractor in accordance with any legislative requirement, including but not limited to fees, charges, costs, expenses, taxes, duties, levies, wages, superannuation allowances, bonuses and other payments, and payments in respect of any employees or personnel engaged by the Contractor;
- (j) paying all royalties and other fees in connection with any patents, copyright and other intellectual property rights provided by the Contractor;
- (k) complying with all directions authorised by the Contract;
- (l) complying with all of the Contractor's other obligations under the Contract;

- (m) all warranties given by the Contractor under the Contract;
  - (n) complying with any legislative requirements applicable to the Contract; and
  - (o) all other risks borne by the Contractor under the Contract.
- 9.5. Council shall be entitled to apply any amount otherwise required to be paid to the Contractor to set off any loss or damage suffered by Council and for which Council can sue the Contractor or recover monies from the Contractor, either under this Contract or at law generally.

## **WARRANTIES, INSURANCES, INDEMNITIES AND GUARANTEE**

### **10. CONTRACTOR'S WARRANTIES**

- 10.1. The Contractor warrants that as at the date of this Contract, the Contractor and/or its personnel (as the case may be) hold all necessary competencies, accreditations, qualifications, permits, clearances or other authorisations which are required for the Contractor to comply with its obligations under this Contract, and will maintain such competencies, accreditation, qualifications, permits, clearances or other authorisations at all times during the Term.
- 10.2. The Contractor must, and must ensure that its personnel and authorised sub-contractors, in performing work associated with the Services, comply with:
- (a) this Contract;
  - (b) all applicable law;
  - (c) all relevant industry standards, codes and guidelines;
  - (d) all policies, requirements and procedures of Council which are applicable to the Services and which are publicly available or otherwise made known to the Contractor, including but not limited to Council's work health and safety policies and procedures. The Contractor warrants that it has reviewed copies of Council's policies and procedures, understands them and agrees to comply with them.
- 10.3. The Contractor must supply all personnel and equipment necessary for the proper supply or performance of the Services.
- 10.4. The Contractor warrants that it has the necessary skills and expertise to be able to competently supply Services, in accordance with this Contract and any applicable industry standard.
- 10.5. Without limiting the generality of the preceding subclauses, the Contractor warrants to Council that:

- (a) the Contractor at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in delivery of the Services and otherwise discharging its obligations under this Contract;
- (b) the Contractor shall deliver the Services and otherwise discharge its obligations under this Contract so that the Services, when delivered, are:
  - (i) fit for their stated purpose; an
  - (ii) compliant with all the requirements of the Contract; and
- (c) any personnel or authorised sub-contractor engaged by the Contractor to deliver or assist in the delivery of the Services hold all competencies, licenses, accreditations and qualifications which are required;
- (d) the Contractor has undertaken all necessary enquiries and investigations to satisfy itself as to:
  - (i) the nature and extent of its obligations under the Contract;
  - (ii) the completeness and accuracy of the Contract;
- (e) **Warranties Unaffected by Variation**

The warranties remain unaffected notwithstanding any variation.

## 11. INSURANCE

11.1. The Contractor shall, at its cost, from the date of this Contract provide and maintain:

- (a) public liability insurance having a minimum limit of the amount specified in the Reference Schedule, for each and every occurrence against all claims which may be brought anywhere in the world (including extra-territorial actions), and arising out of the Contractor's delivery of the Services or generally in relation to its performance of its obligations under this Contract, for bodily injury death or damage to property of third parties which shall include coverage against liability arising out of the ownership or operation of motor vehicles and coverage in the same amount against all claims brought anywhere in the world arising out of alleged assault and battery, false arrest, detention, libel, slander, defamation or other violation or wrongful entry or eviction;
- (b) professional indemnity insurance with levels of cover not less than the amount specified in the Reference Schedule which shall be maintained until at least 6 years after the Expiry Date;
- (c) workers' compensation insurance effected in accordance with laws for the time being requiring such insurances, arising out of the Contractor's delivery of the Services or generally in relation to its performance of its obligations under this Contract;

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- (d) insurance for the replacement cost of any third party property, motor vehicles or plant and equipment used in the performance of the Services.
- 11.2. All insurances shall be in such form and for such amounts and with such companies as approved by Council, which approval shall not be unreasonably withheld.
- 11.3. The Contractor assumes all risks in connection with the adequacy of any insurance and waives any claim against Council (in the absence of negligence of Council) for any liability, cost or expense arising out of any uninsured claims, in part or in full, of any nature whatsoever.
- 11.4. Prior to the Commencement Date, and on further occasions upon request of Council, the Contractor must provide evidence satisfactory to the Council of the terms and currency of each of the insurance policies referred to in this clause.

## **12. RISK AND INDEMNITY**

- 12.1. Council (including its employees, representatives, contractors or any associated entity who performs services on behalf of Council hereunder) is not liable to the Contractor in contract, tort or otherwise whatsoever for any loss or damage (including consequential loss) to any person or property arising from performance of rights or obligations under this Contract by the Contractor or others, save to the extent the loss or damage is a consequence of the negligent acts or omissions of Council (or Council's employees, representatives, contractors or associated entities).
- 12.2. The Contractor:
- (a) carries out its obligations under this Contract at its own risk;
  - (b) shall be liable for claims of third parties for personal injury and property damage not covered by the insurance required under Clause 11 which result from the negligence of the Contractor having due regard to the standards set out in this Contract provided that the Contractor shall not assert any claims against Council and Council shall not be liable to the Contractor for any losses, damages, liabilities or expenses (including legal costs) incurred or sustained by the Contractor.
  - (c) indemnifies Council from and against any claim, damage, loss or expense suffered by Council or others as a result of the performance of its rights and obligations under this Contract by the Contractor or the Contractor's employees and agents or as a result of or arising out of the grant of, or the exercise of, this Contract, save to the extent the loss or damage is a consequence of the negligent acts or omissions of Council.
- 12.3. **Indemnity by Contractor regarding Statutory Requirements**
- (a) The Contractor shall indemnify Council against any claim which may be brought against Council and for any loss (including Specified Loss) which may be suffered or incurred by Council relating to or arising out of or in connection with:

- (i) the Contractor's failure to comply with a Statutory Requirement; and/or
- (ii) any enforcement of obligations imposed on the Contractor under a Statutory Requirement,

but the indemnity will be reduced to the extent that a negligent act or omission of Council caused or contributed to the claim or loss.

- (b) In this clause, **Specified Loss** includes any of the following, whether direct, indirect, special or consequential:
  - (i) loss of use, production, profit, income, revenue, business, contract, opportunity or anticipated saving;
  - (ii) liability for loss or damage suffered by third parties;
  - (iii) any financing costs, increase in operating costs or legal costs (on a solicitor and client basis);
  - (iv) any fines levied;
  - (v) loss of reputation or embarrassment;
  - (vi) any other financial or economic loss not expressly referred to in the preceding paragraphs;
  - (vii) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraphs, howsoever arising.

## NON-PERFORMANCE AND SUSPENSION

### 13. NON-PERFORMANCE

13.1. Without limiting any other obligation of the Contractor or right of Council under this Contract or at law where Council, acting reasonably, considers that any of the Services are not in accordance with this Contract or the Contractor fails to comply with any other obligation of the Contractor:

- (a) Council may direct the Contractor to re-perform the part of the Services which was not performed in accordance with this Contract, or to otherwise comply with the obligation, at the Contractor's expense and within the timeframes required by Council; and
- (b) if the Contractor fails to comply with such a direction then Council may, after giving reasonable notice to the Contractor:

- (i) re-perform the whole or part of the Services which was not performed in accordance with this Contract or have it performed by others; or
  - (ii) carry out that other obligation itself or have it carried out by others;
- and the cost incurred by Council in doing so shall be a debt due and owing by the Contractor to Council.

#### 14. SUSPENSION

- (a) Council may, acting reasonably, direct the Contractor to suspend delivery of the Services or suspend any other obligation under this Contract by giving written notice to the Contractor.
- (b) The Contractor must comply with all reasonable directions of Council in relation to a suspension, including any directions in relation to recommencement.
- (c) If Council suspends this Contract for a period exceeding one (1) month, then either party may terminate this Contract upon giving no less than one (1) week's written notice to the other. If Council recommences the Contract during the period of notice specified in the termination notice, then the termination notice shall have no effect.

### END OF CONTRACT

#### 15. END OF CONTRACT

15.1. This Contract will end on the earlier of:

- (a) the Expiry Date;
- (b) the date this Contract is terminated under this Clause 15.

#### 15.2. Termination by Council for breach

- (a) This clause applies without derogating from or limiting any rights of Council under this Contract which may apply in the event of the Contractor's breach.
- (b) If Council, acting reasonably, considers that the Contractor has breached this Contract, Council may give the Contractor a notice requiring the Contractor to remedy the breach within a reasonable time (which must be no less than five business days) ("**Breach Notice**").
- (c) If Council, acting reasonably, considers that the breach has not been remedied within the time period allowed in the Breach Notice, Council may



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terminate this Contract effective immediately by notice in writing to the Contractor.

- (d) If Council terminates this Contract in accordance with this clause, Council may recover any costs paid by Council to the Contractor for Services that were not yet supplied by the Contractor under this Contract, or for Services that were partially supplied, incompletely supplied or defectively supplied, as a liquidated debt.

### 15.3. Termination on default

- (a) Council may immediately terminate this Contract by written notice to the Contractor, if at any time:
- (i) the Contractor or a member of its staff commits a serious or persistent breach of any provision of this Contract which is incapable of being remedied to Council's reasonable satisfaction;
  - (ii) the Contractor fails to remedy, to Council's reasonable satisfaction, a breach of any provision of this Contract within five days of receiving a notice from Council identifying the breach and requiring the breach to be remedied (or such other period as Council allows in its discretion);
  - (iii) subject to Chapter 5 of the *Corporations Act 2001 (Cth)*, the Contractor becomes, or in the reasonable opinion of Council is in jeopardy of becoming, subject to any form of insolvency administration or bankruptcy (as the case may be);
  - (iv) the Contractor, if a natural person, dies or becomes incapacitated by illness or injury from performing obligations under this Contract.
- (b) Council will not be liable in any way whatsoever to the Contractor for any loss or damage arising as a result of the termination of this Contract under this clause.

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## GENERAL PROVISIONS

### 16. NATURE OF RELATIONSHIP

- 16.1. The Contractor is engaged by Council as an independent contractor.
- 16.2. The Contractor and its personnel are not employees, servants, agents or partners of Council, are not authorised to bind Council in any way and must not represent, imply or hold out to any third party to the contrary.
- 16.3. Subject to the terms of this Contract, the parties acknowledge that the Contractor is solely responsible for controlling the manner in which the Contractor and its personnel deliver the Services.
- 16.4. The Contractor is solely responsible for and must solely bear:
  - (a) the cost of payment to the Contractor's personnel, of remuneration benefits;
  - (b) the payment of taxes and duties in respect of such remuneration and benefit; and
  - (c) compliance with, and costs of compliance with requirements of law with respect to the Contractor's employees or age.

### 17. ASSIGNMENT

- 17.1. The Contractor may not assign, sell, subcontract or otherwise transfer its rights, interests and obligations under this Contract without the prior written consent of Council, which may be given, withheld or given subject to conditions, in Council's absolute discretion.
- 17.2. Where the Contractor is a corporation, an assignment, sale, subcontract or other transfer of rights will include any arrangement whereby the controlling shareholders of the Contractor as at the Commencement Date are changed.

### 18. NON-EXCLUSIVITY

- 18.1. The Contract does not confer on the Contractor an exclusive right to supply the Services to Council.
- 18.2. Council may obtain the Services or any part of the Services from other suppliers at any time during the Term.

## 19. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

- 19.1. The Contractor warrants to Council that it has not infringed any Intellectual Property Rights of a third party in connection with this Contract or generally in the delivery of the Services.
- 19.2. The Contractor agrees to maintain the confidence of any Confidential Information and to prevent its unauthorised disclosure to or use by any other person.
- 19.3. The Contractor warrants that it will not do anything to infringe Council's Intellectual Property Rights in any material, whether that material is provided by Council in accordance with this Contract, or whether the material is identified by the Contractor during the course of the performance of its obligations.
- 19.4. In this clause:
- (a) **Confidential Information** means documents and information provided or made available by Council or obtained by the Contractor in connection with the delivery of the Services which are of their nature confidential or which Council has identified to the Contractor as being confidential but does not include documents and information which are in the public domain other than through a breach of this clause.
  - (b) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, management of the Services, industrial, scientific, literary or artistic fields.

## 20. PROVISION OF DOCUMENTS

- 20.1. The Contractor agrees to provide Council with any documents that Council reasonably requires in order to:
- (a) satisfy itself about the Contractor's performance of its obligations under this Contract;
  - (b) consider any other matter related or incidental to this Contract.

- 20.2. Without limiting the generality of the preceding clause, Council may request financial records, employment records, material delivered to any regulatory body or other documents produced internally by the Contractor
- 20.3. Council may use any document given by the Contractor under this clause in the way it sees fit, but subject to Council's legislative obligations, and any specific direction given by the Contractor that a document is confidential.
- 20.4. The Contractor must comply with any reasonable direction given by Council about providing the document in a different format, including in an electronic format capable of amendment.
- 20.5. In this clause, the term "document" has the meaning given to it by the *Acts Interpretation Act 1954*.

## **21. ACTS ON BEHALF OF COUNCIL**

- 21.1. Where this Contract provides for an act to be performed by or on behalf of Council, then that act may be only be performed:
- (a) with a resolution of Council;
  - (b) by a delegate of Council;
  - (c) by a person who holds a delegation given by a person in subclause (b).

## **22. GENERAL PROVISIONS**

### **22.1. Notices**

- (a) Any notice to or by a party under this Contract must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by email to the address of the recipient specified in the Reference Schedule.
- (c) If a party's addresses for notices change from what is specified in the Reference Schedule, that party must advise the other party of the address change as soon as practicable, and the newly notified address shall be the party's address for notices.
- (d) Notice is effective for the purposes of this Contract:
  - (i) if delivered by hand to the recipient's street address:
    - (A) if delivered before 5.00pm on a business day: immediately upon delivery;
    - (B) if delivered after 5.00pm on a business day, or if delivered on a day that is not a business day: 8.30am the following business day;

- (ii) if delivered by post to the recipient's postal address:
  - (A) if the notice was posted before 5.00pm on a business day: three business days after the date the notice was posted;
  - (B) if the notice was posted after 5.00pm on a business day, or if posted on a day that is not a business day: three business days after the next business day;
- (iii) if transmitted by email to the recipient's email address:
  - (A) if transmitted before 5.00pm on a business day: immediately upon transmission, unless the sender receives a notification of failed transmission immediately following transmission;
  - (B) if transmitted after 5.00pm on a business day, or if transmitted on a day that is not a business day: at 8.30am on the next business day.

#### 22.2. **Costs**

Each party will bear their own costs associated with the negotiation, preparation and execution of this Contract.

#### 22.3. **Binding on successors**

This Contract shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

#### 22.4. **Time of the essence**

Time is in all cases and in every respect of the essence of this Contract.

#### 22.5. **Further assurances**

The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under this Contract.

#### 22.6. **Contra proferentem**

The *contra proferentem* rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.

#### 22.7. **Entire understanding**

- (a) This document contains the entire understanding and agreement between the parties as to the subject matter of this document.

- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this document are merged in this document and are of no further effect.
- (c) No oral explanation or information provided by a party to another affects the meaning or interpretation of this document or constitutes any collateral agreement, warranty or understanding.

**22.8. Severance**

If a provision of this Contract is void or unenforceable it must be severed from this Contract and the provisions that are not void or unenforceable are unaffected by the severance.