

# Terms and conditions

---

## Background

- A The Organisation has requested support from Council to help undertake the Project.
- B Council has agreed to provide a grant of funding to the Organisation for the sole purpose of the Project on the terms of this Agreement.

## Agreed terms

### 1 Term

---

This Agreement commences on the Commencement Date and continues until Council notifies the Organisation in writing that the Project has been completed, unless terminated earlier in accordance with clause 17 or otherwise agreed by the parties in writing.

### 2 Obligations of the Organisation

---

#### 2.1 General Obligations

The Organisation must:

- (a) use the Funds only for the Project;
- (b) contribute or obtain all other monies and resources necessary to carry out and complete the Project, including any Organisation Contributions;
- (c) undertake all activities to carry out and complete the Project in accordance with this Agreement, any relevant Guidelines and all Laws;
- (d) not vary, amend, waive or fail to give effect to any part of the Project without Council's prior written approval;
- (e) ensure that all work in connection with the Project is undertaken:
  - (i) with due care and skill; and
  - (ii) only by suitably qualified and competent persons;
- (f) obtain all approvals, permits and compliance certifications required for the Project;
- (g) have an Australian Business Number and maintain it during the term of the Agreement;
- (h) discharge all work health and safety obligations in relation to the Project including obligations under the WHS Legislation;
- (i) ensure that the Infrastructure when completed is fit for purpose;
- (j) not perform any act or omission which damages or is likely to damage the goodwill or reputation of Council;
- (k) unless stated otherwise in the Project Scope, obtain Council's written approval of concept, detailed and construction design drawings and plans (**Plans**) for each Deliverable before commencing any works and carry out those works in accordance with the approved Plans;
- (l) achieve each Project Milestone by the relevant Project Milestone Due Date;
- (m) comply with any Special Conditions;
- (n) unless stated otherwise in the Project Scope, undertake a procurement process for each Deliverable to ensure value for money;

- (o) unless stated otherwise in the Project Scope, obtain Council's consent prior to entering into a Work Contract;
- (p) immediately notify Council in writing if there is any delay in performing any part of the Project or which results in a default under the Agreement, including
  - (i) any Force Majeure Event; or
  - (ii) delays in obtaining approvals, permits and compliance certifications for the Project;
- (q) provide any information or explanation requested by Council in the event that a delay is notified under clause 2.1(p);
- (r) without limiting clause 7, promptly comply with Council's requests (including for the provision of information, records or access for audit purposes) in connection with the Funds, Project or Infrastructure;
- (s) not do anything which, in the reasonable opinion of Council, offends public opinion or reflects unfavourably on Council or the Project;
- (t) if required under the Agreement, provide the Security to Council;
- (u) not structurally alter or destroy the Infrastructure as planned in the approved Plans without the prior written consent of Council; and
- (v) unless stated otherwise in the Project Scope, maintain the Infrastructure in a good and safe condition at its own cost at all times whilst the Organisation occupies the Project Area.

#### 2.2 Organisation Warranties

- (a) The Organisation represents and warrants and it is a condition of this Agreement, that:
  - (i) the Deliverables and performance of the Project will not infringe the Intellectual Property Rights or other rights of any third party;
  - (ii) the Organisation and its employees, agents and contractors have the necessary facilities, equipment, resources and qualified personnel available to perform its obligations under this Agreement;
  - (iii) performance of the Project will comply with all Laws;
  - (iv) it will not use the Funds for any purpose other than as permitted under this Agreement;
  - (v) the Organisation Contributions and Third Party Contributions stated in the Project Scope are accurate and it will disclose any changes to such details;
  - (vi) all information given by the Organisation or on the Organisation's behalf to Council is complete and accurate and is not, whether by omission of information or otherwise, misleading; and
  - (vii) the Organisation has not withheld from Council any document, information or other fact material to the decision of Council to enter into this Agreement.
- (b) The Organisation acknowledges and agrees that Council, in entering into this Agreement, is relying on the warranties and representations made in or under this Agreement.

### 3 Funds

---

#### 3.1 Payment of Funding

- (a) Subject to the Organisation complying with this Agreement, Council will pay the Funds to the Organisation by way of electronic funds transfer to the Nominated Account in accordance with the Milestone Payments.
- (b) Where Council is not satisfied (acting reasonably) that the Organisation has achieved a Project Milestone by the Project Milestone Due Date, Council may give written notice of this. The notice will contain details of the Project Milestone and the time by which Organisation must complete the Project Milestone, the failure of which will constitute a material breach of this Agreement.

### 3.2 Conditions of Funding

- (a) Notwithstanding anything in this Agreement to the contrary, Council's payment of all or any part of the Funds is conditional upon the Organisation complying with its obligations under this Agreement including completion of the Project Milestones by the applicable Project Milestone Due Date.
- (b) Without limiting clause 3.2(a), Council may, at its discretion, withhold or suspend the payment of the whole or any part of the Funds if the Organisation is not compliant with all of its obligations under this Agreement including where Council reasonably believes that that Organisation is unlikely to complete a Project Milestone by the applicable Project Milestone Due Date.
- (c) Council will not incur any liability for any loss that the Organisation may suffer which arises in any way from Council's exercise of its rights under this clause 3.2.
- (d) The Organisation acknowledges that Council has no obligation to provide the Organisation with any funding or assistance of any kind in excess of the Funds, either during or after the term of the Agreement.

### 3.3 Fund Handling Obligations

The Organisation must ensure that:

- (a) appropriate controls are maintained over expenses and liabilities incurred by the Organisation in connection with the Project;
- (b) there is no misappropriation of, or dishonest dealings with, the Funds; and
- (c) any payments that it makes with the Funds are correctly authorised, made and recorded.

### 3.4 Set-Off

- (a) Council may, by written notice to Organisation, reduce any Funds payable to Organisation under this Agreement by any amount which is payable by the Organisation to Council, including any amount which is due and payable to Council under an indemnity granted in Council's favour.
- (b) The parties acknowledge and agree that if the Organisation receives any additional contribution to the cost of the Project above that which was notified to Council (including any increase in Third Party Contributions), then Council may, in its discretion, reduce the Funds by the equivalent value.
- (c) The Organisation must as soon as reasonably practicable notify Council of any additional contribution referred to in clause 3.4(b) which has been or will be received by the Organisation.

## 4 Repayment of Funds

### 4.1 Unspent Funds

If:

- (a) on the expiry or earlier termination of this Agreement, any

Funds that:

- (i) remain unspent; or
- (ii) cannot, by reconciliation between the accounts and records maintained by the Organisation or reports provided to Council under this Agreement be shown to Council's satisfaction to have been spent in accordance with this Agreement;
- (b) at any time Council determines that it has paid the Organisation an amount that exceeds the Funds; or
- (c) at any time Council considers that any Funds have been used, spent or committed by the Organisation other than in accordance with this Agreement,

Council may by written notice require the Organisation to repay that part of the Funds, and the Organisation must repay to Council the amount stated in the notice within 10 Business Days of receipt of the notice. Any such amount will be a debt due and owing by the Organisation without any requirements for further proof of debt.

### 4.2 Allocation of cost savings

- (a) This clause 4.2 applies if:
  - (i) the Project Scope identifies that there are Organisation Contributions or Third Party Contributions for the Project; and
  - (ii) the Schedule states that this clause is to apply to the Agreement.
- (b) If at completion of the Project:
  - (i) the actual total cost of the Project is less than the Estimated Project Costs; and
  - (ii) the proportion of the Funds spent by the Organisation is greater than the proportion of the Organisation Contributions and Third Party Contributions spent, unless Council agrees otherwise, the Organisation must repay to Council an amount of the Funds calculated in accordance with the following formula:  
*P x Savings*  
Where:
    - (iii) **P** is the percentage by which the proportion of Funds spent by the Organisation exceeds the proportion of the Organisation Contributions and Third Party Contributions spent for the Project; and
    - (iv) **Savings** is the actual cost of the Project incurred by the Organisation less the Estimated Project Costs.

### 4.3 Reduction or Termination

- (a) Without limiting Council's rights under clause 3.2(b), if Council determines, that the Organisation has not met any relevant Project Milestone by the Project Milestone Due Date, and the parties have not otherwise agreed to vary that Project Milestone, Council may:
  - (i) reduce the Milestone Payment by an amount commensurate with the failure to deliver the relevant Project Milestone; and
  - (ii) exercise its rights under clause 17.

## 5 Security

### 5.1 Provision of Security

- (a) This clause 5 applies if the Schedule states that Security is required under the Agreement.
- (b) As a precondition to any entitlement to Funds, the

Organisation must provide the Security to Council.

- (c) Council will hold the Security in escrow until:
- (i) recourse is had to that Security under clause 5.2; or
  - (ii) the Security is released under clause 5.3.

#### 5.2 Recourse

In addition to any other right that it may have, Council may have recourse to the Security to recover any amounts which are due from the Organisation to Council or the subject of a genuine claim made by Council against the Organisation under or in connection with this Agreement. This clause survives the termination of this Agreement.

#### 5.3 Release

Subject to Council's right of recourse and the Organisation not being in default of the Agreement at the time for release, Council will release the Security in accordance with the Release Conditions.

### 6 Review and meeting

- (a) Council may, at any time, review the compliance of the Organisation with this Agreement, WHS Legislation and any Laws which may include accessing the Project Area.
- (b) The Organisation must permit, and must ensure its employees, contractors and agents permit, access to the Project Area for Council and its nominees for the purposes set out in this clause.
- (c) Upon reasonable request by Council, the Organisation must ensure that it meets or teleconferences with Council to discuss any issues associated with this Agreement or the Project at a time nominated by Council.

### 7 Records and Auditing

#### 7.1 Records

The Organisation must:

- (a) keep complete and accurate records in relation to the Project and to verify its compliance with this Agreement;
- (b) keep full and proper books and accounts relating to its receipt, holding and expenditure of monies in relation to the Project, including the Funds;
- (c) ensure that all income and expenditure relating to the Project, including receipt of the Funds, is separately identifiable in the Organisation's accounts; and
- (d) maintain the records referred to in this clause for 7 years after the expiry or termination of the Agreement.

#### 7.2 Reports

The Organisation must:

- (a) provide Council with all Reports and any supporting documentation that Council may request by the relevant dates stated in the Reporting Requirements;
- (b) complete each Report to the satisfaction of Council; and
- (c) if Council requests any additional information in relation to a Report, the Organisation must promptly provide that information to Council.

#### 7.3 Access and audit

- (a) Without limiting clause 7.2, at the times required by Council from time to time, the Organisation must allow Council or its nominated representatives to:
  - (i) access the Organisation's premises, computer systems, equipment and other property; and

- (ii) inspect, audit and copy the Organisation's relevant records, documents and equipment in connection with the Project,

to verify the Organisation's compliance with this Agreement and claims or statements which the Organisation provides regarding the Funds or the Project.

- (b) In undertaking any inspection or audit, Council will ensure that it and its nominated representatives:

- (i) comply with any reasonable security or confidentiality requirements of the Organisation made known to Council; and
- (ii) do not unduly interfere with the Organisation's activities during the conduct of the inspection or audit.

#### 7.4 Failure to comply

If the inspection or audit contemplated by clause 7.3 reveals the Organisation has failed to comply with this Agreement then:

- (a) Council's costs in connection with that inspection or audit must be paid by the Organisation; and
- (b) any Funds which the inspection or audit show have been spent otherwise than in accordance with this Agreement will be a debt due and owing by the Organisation to Council.

#### 7.5 Assistance

The Organisation must promptly give Council any assistance Council reasonably requires in connection with the inspection or audit contemplated by clause 7.3.

### 8 Insurance

- (a) The Organisation must effect and maintain from a reputable insurance company approved by Council:
  - (i) public liability insurance for at least the amount specified in the Project Scope for any one claim;
  - (ii) professional indemnity insurance for at least the amount specified in the Project Scope for any one claim;
  - (iii) motor vehicle indemnity insurance for at least the amount specified in the Project Scope for any one claim;
  - (iv) contract works insurance for at least the Estimated Project Costs;
  - (v) workers' compensation insurance as required by law; and
  - (vi) such other insurance as is required by Council from time to time in respect of any liability of the Organisation that may arise from the performance or exercise of its obligations or rights under this Agreement.
- (b) The Organisation must:
  - (i) maintain the insurance policies referred to in clause 8(a):
    - (A) in a form acceptable to Council; and
    - (B) for the term of the Agreement, other than any claims-made policy or policy under clause 8(a)(ii) which is to be maintained for 6 years after expiry or termination of the Agreement; and
  - (ii) provide Council with a copy of the insurance policies referred to in clause 8(a) and certificates of currency within 7 days after:

- (A) the Commencement Date;
- (B) a renewal or amendment of a policy; or
- (C) a request by Council.

## **9 Project Completion**

---

### 9.1 Completion

- (a) If the Organisation is of the opinion that it has completed the Project, the Organisation must request that Council inspect the Project to confirm that it has been completed in accordance with the requirements of this Agreement.
- (b) If Council is satisfied that the Project has been completed in accordance with this Agreement, Council must provide written notice confirming that it considers completion has been achieved or provide written reasons why it considers that it has not.
- (c) To avoid doubt, if Council fails to respond within any agreed period, Council will not be deemed to have issued a notice confirming that completion of the Project has been achieved.
- (d) The Organisation acknowledges that the issue of a certificate of practical completion under the Work Contract will not be considered evidence that the Project has been completed in accordance with this Agreement.

### 9.2 No Representation

The Organisation acknowledges that:

- (a) the issuing of a notice:
  - (i) confirming that Council considers completion of the Project has been achieved; or
  - (ii) confirming that Council has no objection to the Organisation issuing a certificate of practical completion,

will not constitute a representation by Council that the Project has been completed in accordance with this Agreement and will not relieve the Organisation from the performance of, or compliance with, its obligations under this Agreement; and
- (b) any approval of Plans by Council will not constitute a representation by Council that the Plans are suitable, workable or consistent with the terms of this Agreement and will not relieve the Organisation from the performance of, or compliance with, its obligations under this Agreement.

### 9.3 Defective Work

- (a) If during the Defects Liability Period, Council becomes aware:
  - (i) of any defect with any Infrastructure;
  - (ii) of any defect with any Deliverable; or
  - (iii) that any part of the Project has not been completed in accordance with the terms of this Agreement,

Council may give written notice to the Organisation to that effect and may direct the Organisation to correct the relevant defect or non-compliance which the Organisation must then do as soon as possible (but in any event, within the time period reasonably specified by Council) and at its own cost.
- (b) Without limiting any other rights that Council may have, if the Organisation fails to comply with a direction given under clause 9.3(a) Council may engage an alternative contractor to correct the non-compliance and recover the reasonable costs incurred in doing so from the Organisation as debt due and owing by the Organisation without any requirements for further proof of debt.

## **10 Assets and Infrastructure**

---

### 10.1 Property in Infrastructure

The parties agree that unless otherwise specified in the Project Scope, to the extent that the Infrastructure is on land owned or controlled by Council:

- (a) upon completion of the Project, the Organisation will transfer ownership of the Infrastructure to Council free from any mortgage, charge, lien, pledge or other encumbrance; and
- (b) the Organisation has no claim over or interest in the Infrastructure following the expiry of the Defects Liability Period.

### 10.2 Assets

- (a) Unless:
  - (i) expressly permitted by relevant Guidelines or the Project Scope; or
  - (ii) Council provides prior written consent,

the Organisation must not use Funds to purchase or lease Assets.
- (b) If the use of Funds to purchase Assets is permitted in accordance with clause 10.2(a), the Organisation must be the legal and beneficial owner of such Asset purchased.
- (c) The Organisation must:
  - (i) only use the Assets purchased or leased for the purposes directly related to carrying out the Project;
  - (ii) not sell or otherwise dispose of the Assets purchased without Council's prior written consent;
  - (iii) securely hold the Assets purchased or leased and put in reasonable safeguards against loss, damage or unauthorised use;
  - (iv) be fully responsible for, and bear all risks relating to, the Assets.
- (d) If the Organisation disposes of any Asset purchased using Funds (whether permitted or otherwise), Council may, in its discretion reduce the Funds by the value of the disposed Asset.

## **11 Work Health and Safety**

---

### 11.1 General obligations

The Organisation must ensure:

- (a) that it, its employees, agents, consultants and contractors, comply with their work health and safety duties and obligations including compliance with the WHS Legislation;
- (b) that the persons undertaking the Project are appropriately trained, inducted, licenced, experienced, competent and qualified to undertake the Project;
- (c) the health and safety of Council's personnel, the Organisation's personnel or the public are not put at risk or affected by the Organisation or those undertaking the Project; and
- (d) that it, its employees, agents, consultants and contractors do not do anything or fail to do anything that causes Council to be in breach of the WHS Legislation or obstructs, hinders or interferes with any action Council believes is reasonably required to comply with the WHS Legislation.

### 11.2 Incident reporting

- (a) The Organisation must report to Council:



- (i) any breach of the WHS Legislation, as soon as practicable; and
  - (ii) any notifiable incident as defined by the WHS Legislation, within the timeframe required by the WHS Legislation (as if Council was the regulator for the purposes of the WHS Legislation).
- (b) If any notifiable incident occurs in relation to the Project, the Organisation is responsible for notifying the regulator in accordance with the WHS Legislation.
- (c) Council reserves its rights to:
- (i) require the Organisation to undertake an investigation in relation to any notifiable incident; and
  - (ii) conduct its own investigation in relation to any notifiable incident, in which case the Organisation must cooperate with Council and provide any assistance Council requires.
- (d) On request from Council, the Organisation must provide to Council as soon as practicable, copies of any investigation report or other information relevant to any incident, including any notices or correspondence issued by the regulator.

## **12 Privacy**

- (a) If the Organisation collects or has access to Personal Information in connection with the Project and this Agreement, the Organisation must:
- (i) comply with Parts 1 and 3 of Chapter 2 of the Information Privacy Act in relation to the discharge of its obligations under this Agreement, as if the Organisation was Council;
  - (ii) not use Personal Information other than for the purposes of the Project or this Agreement, unless required or authorised by law;
  - (iii) not disclose Personal Information without the consent of Council, unless required or authorised by law;
  - (iv) not transfer Personal Information outside of Australia without the consent of Council;
  - (v) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties;
  - (vi) ensure that its sub-officers and employees do not access, use or disclose Personal Information other than in the performance of their duties;
  - (vii) ensure that its sub-contractors who have access to Personal Information comply with obligations the same as those imposed on the Organisation under this clause;
  - (viii) fully co-operate with Council to enable Council to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
  - (ix) comply with such other privacy and security measures as Council reasonably advises the Organisation in writing from time to time.
- (b) On request by Council, the Organisation must obtain from its personnel engaged for the purposes of the Project or this Agreement, an executed deed of privacy in a form acceptable to Council.
- (c) The Organisation must immediately notify Council on becoming aware of any breach or potential breach of this clause 12.

## **13 Intellectual Property**

### **13.1 Licence**

- (a) The Organisation grants Council an irrevocable, royalty free, transferable licence (including the right to sublicense) to exercise the Intellectual Property Rights:
- (i) in the Deliverables; and
  - (ii) in the material otherwise created by the Organisation in the performance of the Project,
- including to use and exploit the Deliverables and material for marketing and publicity purposes.
- (b) The Organisation grants Council a non-exclusive, royalty-free licence to use the Organisation's name, trade marks and logo for marketing and publicity purposes in connection with the Project.

### **13.2 Infringement**

If the Organisation suspects or becomes aware that a Deliverable or other material created in the performance of the Project infringes any third party's Intellectual Property Rights then the Organisation must:

- (a) immediately notify Council of the infringement or suspected infringement of that third party's Intellectual Property Rights; and
- (b) take any action reasonably required by Council in connection with the infringement or suspected infringement of that third party's Intellectual Property Rights.

### **13.3 Council Material and Trademarks**

- (a) The Organisation must only use material provided by Council as directed by Council, and only to the extent necessary to perform the Organisation's obligations under this Agreement.
- (b) The Organisation is responsible for the safe keeping and maintenance of any material given by Council to the Organisation.
- (c) Subject to clause 14, the Organisation must:
  - (i) not apply Council's names, trade marks or logos to any materials (in any form) or publish or distribute any materials (in any form) containing Council's names, trade marks or logos without Council's prior written approval; and
  - (ii) comply with any reasonable directions given by Council in relation to access to or use of Council's names, trade marks or logos.

### **13.4 Moral Rights**

- (a) The Organisation must ensure that each author of a Deliverable genuinely and irrevocably consents:
  - (i) to any act or omission of Council in connection with the Deliverable which might otherwise infringe the Moral Rights of the author; and
  - (ii) without limiting clause 13.4(a)(i), to use of the Deliverable without identification of the author as an author or creator of the Deliverable.
- (b) Without limiting the warranties given under clause 2.2, the Organisation warrants that it did not make any false or misleading statements to the author in obtaining the consent under clause 13.4(a).
- (c) Without limiting clause 13.4(a), if requested by Council, the Organisation must ensure that each author of a Deliverable consents to specific acts or omissions nominated by Council that may otherwise infringe the Moral Rights of the author.

### 13.5 Footage and images

The Organisation grants Council the right and permission to take photographs, electronic and digital images and video footage of any part of the Project for marketing and publicity purposes.

## 14 Funding Acknowledgment

### 14.1 Acknowledgment obligations

The Organisation must:

- (a) acknowledge Council's contribution of the Funds (in terms pre-approved by Council) in any public statements or materials relating to the Project, the Deliverables or any other Intellectual Property Rights created in the course of the Project, and in any event if requested by Council;
- (b) before releasing a public statement or publishing promotional material about the Project:
  - (i) provide Council with a copy of the proposed statement or publication at least 10 Business Days before the intended release; and
  - (ii) comply with all requests, amendments or conditions that Council may reasonably require.

### 14.2 Council press releases

Council may make press releases in relation to the Project, and use the name of the Organisation to acknowledge their contribution to the Project.

## 15 Confidential information

### 15.1 Obligations of confidence

Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any Confidential Information of the other party provided to or obtained by that party prior to or after entry into this Agreement.

### 15.2 Exclusions

The obligations of confidence in clause 15.1 do not apply to Confidential Information:

- (a) that is required to be disclosed to accountants and legal advisers of the parties;
- (b) that is required to be disclosed by applicable Law (including the *Local Government Act 2009* (Qld) and *Local Government Regulations 2012* (Qld)), or under compulsion of Law by a court or government agency or by the rules of any relevant stock exchange or regulator, as long as the disclosing party:
  - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
  - (ii) before disclosing any information, gives reasonable notice to the other party and takes reasonable steps (whether required by the other party or not) to maintain such Confidential Information in confidence; or
- (c) that is in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence;
- (d) that is already known, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

## 16 Right to Information

- (a) The Organisation must, within 7 days of receiving a written request by Council, provide Council with access to the following information contained in records held by the Organisation:

- (i) information relating directly to the Project and Funding pursuant to this Agreement;
  - (ii) information collected by the Organisation from members of the public in connection with the Project; and
  - (iii) information received by the Organisation from Council to enable it to complete the Project pursuant to this Agreement.
- (b) For the purposes of clause 16(a), information to be provided to Council does not include:
- (i) information that discloses or would tend to disclose the Organisation's financing arrangements, financial modelling, cost structure or profit margins (other than contributions to the Project or information otherwise required to be provided under the Agreement);
  - (ii) information that the Organisation is prohibited from disclosing to Council by any law; or
  - (iii) information that, if disclosed to Council, could reasonably be expected to place the Organisation at a substantial commercial disadvantage in relation to Council, whether at present or in the future.
- (c) The Organisation will provide copies of any of the information in clause 16(a) as requested by Council at the Organisation's own expense.
- (d) Any failure by the Organisation to comply with any request pursuant to clause 16(a) will be considered a breach of an essential term of this Agreement and will allow Council to issue a notice requiring the Organisation to remedy the breach within 7 days after receipt of the notice. Once the Organisation receives the notice, if it fails to remedy the breach within the 7 day period to the satisfaction of Council, then Council may terminate the Agreement under clause 17.3(a) with immediate effect by written notice.
- (e) Council will take reasonable steps to consult with the Organisation before providing any person with access to information relating to this Agreement in response to an application under *the Right to Information Act 2009* (Qld), if it appears that:
- (i) the information sought to be accessed:
    - (A) includes Personal Information about the Organisation or its personnel;
    - (B) concerns the Organisation's business, commercial, professional or financial interests;
    - (C) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Organisation; or
    - (D) concerns the affairs of a government of the Commonwealth or a State of the Commonwealth and the Organisation is that government;
  - (ii) the Organisation may reasonably be expected to have concerns about the disclosure of the information; and
  - (iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (f) If, following consultation between Council and the Organisation, the Organisation objects to disclosure of some or all of the information, the Organisation must provide details of any such objection (including the information objected to and the reasons for any such objection) in writing within 5 days of the conclusion of the consultation process.

- (g) In determining whether there is an overriding public interest against disclosure of the information, Council will take into account any objection received from the Organisation.
- (h) If the Organisation objects to the disclosure of some or all of the information and Council nonetheless decides to release the information, Council must not provide such access until it has given the Organisation notice of Council's decision and notice of the Organisation's right to have that decision reviewed.
- (i) Where Council has given notice to the Organisation in accordance with clause 16(h), Council must not provide access to the information:
  - (i) before the period for applying for review of the decision has expired; or
  - (ii) where any review of the decision duly applied for is pending.
- (j) The reference in clause 16(i)(i) to the period for applying for review of the decision does not include the period that may be available by way of extension of time to apply for review.
- (k) This clause is included in this Agreement to inform the Organisation of Council's obligations under the *Right to Information Act 2009* (Qld) and the Organisation's rights under that Act. However, the Organisation must familiarise itself with the relevant provisions of the Act. Council accepts no responsibility for the accuracy or adequacy of any information it provides to the Organisation concerning the content or effect of the *Right to Information Act 2009* (Qld).

## 17 Termination

### 17.1 Options to terminate

This Agreement may be terminated by:

- (a) a written agreement between the parties;
- (b) Council in accordance with clause 17.2 (Termination for Convenience);
- (c) Council in accordance with clause 17.3(a) (Termination for Default);
- (d) the Organisation in accordance with clause 17.3(b) (Termination for Default); or
- (e) the parties under clause 22 (Force Majeure).

### 17.2 Termination for Convenience

Council may terminate this Agreement at any time and for any reason by written notice to the Organisation, in which case this document terminates on the date specified in that notice or, if no date is specified, immediately on giving of the notice to terminate.

### 17.3 Termination for Default

- (a) Council may terminate this Agreement at any time with immediate effect on the giving of written notice to the Organisation where:
  - (i) the Organisation materially breaches any term of this Agreement, including a Default Event, that is capable of being remedied and fails to remedy such breach or Default Event within 30 days after receiving written notice from Council requiring it to do so; or
  - (ii) any Default Event of the Organisation under clauses 17.4(a), 17.4(b), 17.4(c), 17.4(e), 17.4(f), 17.4(g) or 17.4(h) occurs.
- (b) The Organisation may terminate this Agreement at any time with immediate effect on the giving of written notice to Council where Council materially breaches any term of this Agreement and fails to remedy such breach within 30 days

after receiving a written notice from the Organisation requiring it to do so.

### 17.4 Default Events

Each of the following are Default Events for the purposes of clause 17.3:

- (a) **(Change of Control)**. If:
  - (i) there is any material change in the direct or indirect beneficial ownership or control of the Organisation;
  - (ii) the Organisation merges or amalgamates with or takes over another entity; or
  - (iii) the Organisation disposes of the whole or a material part of its assets, operations or business other than in the ordinary course of business,

without the prior written approval of Council.

- (b) **(Insolvency)**. Where:

- (i) a controller (as defined in the *Corporations Act 2001* (Cth) (**Corporations Act**)) is appointed to the Organisation, or over any of the property of the Organisation;
- (ii) the Organisation enters into, or any step is taken that could result in the Organisation entering into, provisional liquidation, liquidation or administration (as defined in section 9 of the Corporations Act);
- (iii) the Organisation becomes an insolvent under administration (as defined in section 9 Corporations Act) or takes steps that could result in the party becoming so;
- (iv) the Organisation is unable to pay its debts when they become due and payable; or
- (v) the Organisation ceases to carry on business;

excluding any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by Council beforehand and in compliance with those terms;

- (c) **(Approvals)**. The Organisation ceases to have the approvals, permits and compliance certifications required to carry out the Project;
- (d) **(Failure to achieve Project Milestones)**. The Organisation:
  - (i) reasonably believes it will not be able to achieve a Project Milestone by the Project Milestone Due Date and fails to notify Council immediately; or
  - (ii) fails to achieve a Project Milestone by the Project Milestone Due Date or further date notified by Council under clause 3.1(b);
- (e) **(Review)**. Council conducts a review and is not reasonably satisfied that the Project is being undertaken in compliance with this Agreement;
- (f) **(Breach of warranty or representation)**. The Organisation breaches any of the warranties or representations in clause 2.2;
- (g) **(Reputational damage)**. The Organisation does any act or omits to do any act that Council reasonably considers is likely to bring Council into disrepute, reflect unfavourably on Council or Council's reputation, including engaging in any business dealings, practices or partnerships Council determines are not consistent with Council's values; and
- (h) **(Breach of Confidential Information)**. The Organisation breaches its obligations of confidence in accordance with

clause 15.

#### 17.5 Effect of termination

- (a) If this Agreement is terminated for any reason:
- (i) each party shall negotiate in good faith to complete any post-termination obligations on equitable and reasonable terms;
  - (ii) Council will not be obliged to provide any further Funds to the Organisation under the Agreement;
  - (iii) the Organisation must return any Confidential Information or other property of Council in the Organisation's care, custody or control to Council; and
  - (iv) accrued rights or remedies of a party are not affected.

#### 17.6 Council refunds

- (a) Upon termination of this Agreement under clause 17.3(a), the Organisation must refund to Council within 14 days of request:
- (i) all Funds paid by Council which have not been spent by the Organisation; and
  - (ii) any other part of the Funds which Council requires the Organisation to repay as stated in the termination notice.
- (b) Upon termination of this Agreement under clause 17.2 or for a Force Majeure Event under clause 22, the Organisation agrees to refund any unexpended Funds other than Funds which have been allocated for items or materials already ordered prior to the date of the termination notice and which the Organisation is unable to cancel.

#### 17.7 Survival

Termination of this Agreement will not affect clauses 4.1, 4.2, 5.2, 7, 8(a)(ii), 15, 17.5, 17.6, 17.7, 18, 21, 23 or any provision of this Agreement which is expressly or by implication intended to come into force or continue on or after the termination.

### 18 Liability

#### 18.1 Indemnities

- (a) The Organisation is liable for, and indemnifies Council from and against, all loss or damage (including legal costs) incurred or suffered by Council however caused in connection with:
- (i) any breach of Law or this Agreement by the Organisation;
  - (ii) personal injury or death of any person in connection with the Project;
  - (iii) the Organisation's fraud, wilful misconduct or negligence; and
  - (iv) any claim or allegation that Council's use of any of Deliverables, materials or the Organisation's trade marks and logos (as permitted under clause 13.1) infringes the Intellectual Property Rights or other rights of a third party.
- (b) Each indemnity contained in this Agreement is a continuing obligation notwithstanding:
- (i) any settlement of account; or
  - (ii) the occurrence of any other thing,

and it is not necessary for Council to incur expense or make payment before enforcing or making a claim under an indemnity.

#### 18.2 Release

To the full extent permitted by law, the Organisation releases and discharges Council and its personnel from any liability (whether claimed or incurred by the Organisation) arising from this Agreement or the Project.

### 19 GST

- (a) Any words capitalised in clause 19 have the meaning given to those words in the GST Act.
- (b) Except under clauses 19(c) to 19(g), the consideration for a Supply made under or in connection with this Agreement does not include GST.
- (c) If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
  - (i) 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 this Agreement for that Supply); and
  - (ii) the Supplier must give the Recipient a Tax Invoice for the Supply.
- (d) For clarity, the GST payable under clause 19(c) is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- (e) If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (f) 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.
- (g) Where a Supply made under or in connection with this document is a Progressive or Periodic Supply, clause 19(c) applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

### 20 Notice

#### 20.1 Method of giving notice

A notice, consent or communication under this document 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 as follows:
  - (i) delivered by hand to that person's address; or
  - (ii) sent by email to that person's email address; or
  - (iii) sent by post to that person's address.

#### 20.2 When is notice given

A notice, consent or communication given under clause 20.1 is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.



If a notice is	It is given and received on
Delivered by hand	That day, if delivered by 5.00pm on a Business Day.
Sent by email	The date and time the electronic mail indicates it was sent.
Sent by post	Three Business Days after posting, if sent within Australia.

### 20.3 Address for notices

A person's address and email address are those set out below, or as the person notifies the sender:

<b>Name</b>	Council
<b>Attention</b>	
<b>Address</b>	
<b>Email address</b>	

<b>Name</b>	The Organisation
<b>Attention</b>	
<b>Address</b>	
<b>Email address</b>	

### 20.4 Some notices may not be emailed

Despite clause 20.1, a person may not use email to give a notice, consent or communication under clause 17.

## 21 Dispute resolution

- (a) Clause 21 applies to any dispute which arises between Council and the Organisation in connection with this Agreement (**Dispute**).
- (b) If either Council or the Organisation considers that a Dispute has arisen, it may send a notice to the other party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- (c) Council and the Organisation must hold discussions between the Council Representative and the Organisation Representative within 14 days after the issue of a Dispute Notice to attempt to resolve the Dispute (**First Level Discussion**).
- (d) If the parties fail to resolve the Dispute within 14 days after commencement of First Level Discussions, the parties must endeavour to settle any Dispute by mediation. The mediation is to be conducted in Brisbane, Australia by a person appointed by the Chair of Resolution Institute or the Chair's designated representative. The mediation rules of the Resolution Institute apply to the mediation.
- (e) If a Dispute is referred to mediation, the parties agree to share the costs of the mediation equally.
- (f) Subject to clause 21(g), Council and the Organisation must not commence legal or arbitration proceedings in relation to any Dispute unless the party has complied with the procedures set out in this clause 21, and the parties have been unable to resolve the Dispute within 90 days of the date the applicable Dispute Notice was received.
- (g) Notwithstanding anything in clause 21, a party may at any time commence court proceedings in relation to a dispute or

claim arising in connection with this Agreement where that party seeks urgent interlocutory relief.

## 22 Force Majeure

### 22.1 Force Majeure Event

- (a) If the Organisation reasonably considers a Force Majeure Event may inhibit the Organisation's ability to complete the Project or otherwise comply with the Agreement, the Organisation must immediately notify Council in writing.
- (b) Where the Organisation notifies Council under clause 22.1(a), the parties agree to negotiate in good faith and use all reasonable endeavours to remedy, mitigate or minimise the effect of the Force Majeure Event on the Organisation's obligations under this Agreement, including by varying this Agreement under clause 23(c).
- (c) If, notwithstanding negotiations outlined in clause 22.1(b), Council reasonably considers a Force Majeure Event will continue to inhibit the Organisation's ability to complete the Project or comply with the Agreement, Council may terminate this Agreement immediately on written notice.

## 23 General

- (a) The laws of Queensland, Australia govern this Agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.
- (c) This Agreement may only be varied by written agreement by the parties.
- (d) The Organisation must not assign, in whole or in part, or novate the Organisation's rights and obligations under this Agreement without the prior written consent of Council.
- (e) This Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- (f) A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause of this Agreement continue in force.
- (g) This Agreement represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.
- (h) Other than as permitted under the Agreement, the Organisation must not subcontract the performance of all or any part of its obligations under this Agreement without the prior written consent of Council.
- (i) If the Organisation subcontracts the performance of all or any part of its obligations under this Agreement as specified in clause 23(h), then the Organisation will be liable for the acts and omissions of the subcontractor as though they were acts and omissions of the Organisation.
- (j) A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- (k) This Agreement may be signed in any number of counterparts. All counterparts together make one instrument.

## 24 Definitions and interpretation

In this Agreement terms have the following meaning:

<b>Term</b>	<b>Definition</b>
<b>Agreement</b>	means the Schedule, the terms set out in the main body of this document and the Annexures.
<b>Asset</b>	means any item of property that is: <ul style="list-style-type: none"> <li>(a) leased or purchased using Funds; and</li> <li>(b) is not part of the real property for a Project or a fixture to such real property.</li> </ul>
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday in Council's local government area.
<b>Confidential Information</b>	of a party means the terms of this Agreement and any information: <ul style="list-style-type: none"> <li>(a) in relation to dealings and negotiations associated with this Agreement;</li> <li>(b) about the business and affairs of that party;</li> <li>(c) about the customers, clients, employees, sub-contractors or other persons doing business with that party;</li> <li>(d) relating to a third party which by its nature is confidential;</li> <li>(e) which is by its nature is confidential;</li> <li>(f) which is designated as confidential by that party; or</li> <li>(g) which the other party knows or ought to know, is confidential,</li> </ul> and includes all trade secrets, know how, financial information and other commercially valuable information of that party.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>Council Representative</b>	means the council representative set out in the Schedule.
<b>Default Event</b>	means any of the default events set out in clause 17.4.
<b>Defects Liability Period</b>	means the defects liability period under the Work Contract which must not be less than 12 months after the date of practical completion under the Work Contract.
<b>Deliverable</b>	means the project deliverables described in the Project Scope.
<b>Estimated Project Costs</b>	means the estimated total costs for the Project as set out in the Project Scope which includes contributions and funds other than the Funds.
<b>Force Majeure Event</b>	means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under this Agreement, and includes: <ul style="list-style-type: none"> <li>(a) a physical natural disaster including fire, flood, lightning or earthquake;</li> <li>(b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency or declaration of martial law;</li> <li>(c) breakdown of communication facilities, or generalised lack of availability of raw materials or energy;</li> <li>(d) epidemic, pandemic, quarantine restriction, outbreaks of infectious disease or any other public health crisis;</li> </ul>

<b>Term</b>	<b>Definition</b>
	(e) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
	(f) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
	(g) Law taking effect after the date of this Agreement; and
	(h) strike, lock out, stoppage, labour dispute or shortage.
<b>Funds</b>	means the amount set out in the Schedule (as may be adjusted in accordance with the Project Scope) and which will not exceed the Maximum Amount in any circumstances.
<b>Guidelines</b>	means the instructions and guidelines published by Council from time to time regarding the Funds, including any relevant funding program policies.
<b>Information Privacy Act</b>	means the <i>Information Privacy Act 2009</i> (Qld).
<b>Infrastructure</b>	means the structures, building and other infrastructure resulting from the completion of the Project.
<b>Intellectual Property Rights</b>	means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, patent, trade mark, design, domain name, registered or unregistered plant breeder's right, moral right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.
<b>Law</b>	means any laws, acts, ordinances, rules, regulations, other delegated legislation, codes any requirement or direction of any relevant Commonwealth, State or Local Government Department, bodies and public authorities.
<b>Maximum Amount</b>	means the maximum amount stated in the Project Scope.
<b>Milestone Payments</b>	means the milestone payments set out in the Project Scope.
<b>Organisation Contributions</b>	means, in respect of the Project, the financial contributions from the Organisation including the intended contributions from the Organisation set out in the Project Scope.
<b>Personal Information</b>	has the meaning given to that term in the Information Privacy Act.
<b>Plans</b>	has the meaning given in clause 2.1(k).
<b>Project Milestones</b>	means the project milestones set out in the Project Scope.
<b>Project Milestone Due Dates</b>	means the project milestone due dates set out in the Project Scope.
<b>Project Scope</b>	means the project scope set out in Annexure A.
<b>Release Conditions</b>	where Security is required, means the conditions set out in the Schedule for the release of Security.
<b>Report</b>	means a report (if any) stated and described in the Project Scope.

<b>Term</b>	<b>Definition</b>
<b>Reporting Requirements</b>	means the reporting requirements for a Report (if any) stated and described in the Project Scope.
<b>Schedule</b>	means the schedule set out on the front page of this Agreement.
<b>Security</b>	means the amount and form of Security (if any) set out in the Schedule.
<b>Special Conditions</b>	means the special conditions (if any) stated and described in the Project Scope.
<b>Third Party Contributions</b>	means, in respect of the Project, the financial contributions from third parties including the intended contributions from third parties set out in the Project Scope.
<b>WHS Legislation</b>	means the <i>Work Health and Safety Act 2011</i> (Qld), the <i>Work Health and Safety Regulation 2011</i> (Qld) any relevant codes of practice, guidelines and advisory standards regarding workplace health and safety.
<b>Work Contract</b>	means a contract between the Organisation and a third party for the provision of all, or part of, the works for the Project or a Deliverable.

#### 24.1 Interpretation

In this Agreement:

- (a) no rule of construction applies in the interpretation of this Agreement to the disadvantage of the party preparing the Agreement on the basis that it put forward this Agreement or any part of it;
- (b) a reference to '\$' or 'dollar' is to Australian currency;
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (d) words denoting the singular will include the plural and vice versa;
- (e) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (f) use of the term "includes" in any form is not a word of limitations; and
- (g) a reference to a party is a reference to Council or the Organisation, and a reference to the parties is a reference to both Council and the Organisation.

#### 24.2 Precedence

If there is any inconsistency between the provisions of this Agreement a descending order of precedence will be accorded to:

- (a) the Special Conditions (if any);
- (b) the agreement clauses;
- (c) the schedule; and
- (d) any annexures,

so that the provision in the higher ranked document, to the extent of the inconsistency, will prevail.

## Annexure A

### Project Scope

PROJECT OVERVIEW	
Project Name	
Project Vision	
Estimated Project Costs	

DELIVERABLES	
Deliverable Name	Deliverable Details
A.	•
B.	•
C.	•
D.	•
E.	•
F.	•

PROJECT AREA
[Map and description to be inserted]

OTHER CONTRIBUTIONS	
Organisation Contributions	Funds
Third Party Contributions	Funds
A.	
B.	



<b>FUNDS</b>	
<b>Deliverable Name</b>	<b>Funds</b>
<b>C.</b>	
<b>D.</b>	
<b>E.</b>	
<b>F.</b>	
<b>G.</b>	
<b>H.</b>	
<b>TOTAL</b>	
<b>MAXIMUM AMOUNT</b>	

<b>PROJECT MILESTONES</b>		
<b>Project Milestone</b>	<b>Milestone Description</b>	<b>Project Milestone Due Date</b>

<b>MILESTONE PAYMENTS</b>		
<b>Milestone</b>	<b>Funding Amount</b>	<b>Funding Payment Date</b>

<b>SPECIAL CONDITIONS</b>

<b>REPORTING REQUIREMENT</b>		
------------------------------	--	--

Report Type	Details of Report	Due Date

<b>INSURANCE REQUIREMENT</b>	
------------------------------	--

<b>Public Liability Insurance:</b>	
<b>Professional Indemnity Insurance:</b>	
<b>Motor Vehicle Indemnity Insurance:</b>	
<b>Contract Works Insurance:</b>	
<b>Other Insurance (please specify):</b>	