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## Terms and Conditions of Engagement

### 1. Contract and Variations

- 1.1 This contract and the entire agreement between the Council and the Consultant in respect of this consultancy are comprised by:
- (a) These terms and conditions;
  - (b) The Schedules
  - (c) The letter of offer
  - (d) The consultant's acceptance
  - (e) And any other document that is incorporated by reference.
- 1.2 This Contract is accepted by the Consultant signing the letter of offer.
- 1.3 Any variation to the Contract must be in writing and signed by the Council and the Consultant.

### 2. Project Manager

The Project Manager for the Council is the person named in Item 11 of Schedule 1. The Consultant must report to and take instructions from the Project Manager.

### 3. Services

- 3.1 The Consultant must perform the services specified in Item 2 of Schedule 1 ("**Services**") in accordance with the performance milestones as set out in that Item.
- 3.2 The Consultant is to meet as specified in Item 8 of Schedule 1 at such times and in such format as is set out in that Item.
- 3.3 The Consultant shall attend such meetings and give such presentations as the Project Manager may from time to time reasonably request.
- 3.4 The Consultant must perform the Services in accordance with this Contract:
- (a) professionally, ethically, carefully, skilfully and competently;
  - (b) in a timely and efficient manner;
  - (c) in accordance with the best practices current in the Consultant's industry; and
  - (d) strictly in accordance with the standards referred to in Item 2 of Schedule 1 (if any).
- 3.5 The Consultant shall keep proper records of the Consultant's work pursuant to this Contract and shall as and when reasonably required by The Council supply to the Council evidence of the Consultant's progress in undertaking the tasks to be performed pursuant to this consultancy.
- 3.6 The Consultant must not subcontract any part of the performance of the Services without the prior written approval of the Council. The Council may require further details and information regarding the proposed subcontractor in making its decision. The Consultant remains responsible for obligations performed by subcontractors to the same extent as if such obligations were performed by the Consultant.
- 3.7 The Services must be performed personally by the persons specified in Item 4 of Schedule 1 ("**Consultant's Staff**").
- 3.8 In the performance of the services, the Consultant must deal fairly with the Council and the Council's staff.

### 4. Variations to the Services

- 4.1 If the Council proposes a variation to the scope of the Services by issuing to the Consultant a written notice to that effect, the Consultant must respond with a proposal for implementation of the variation including a price quotation, and must negotiate in good faith to agree on the price and other terms applicable to the variation
- 4.2 If the parties reach a written agreement on the price and other terms for performance of the variation, the scope of Services, price and terms under this agreement will be varied accordingly and the Consultant must perform the Services as varied.

### 5. Fee and Payment

- 5.1 The Council shall pay the Consultant the Fee for the Services at the rate and in the manner specified in Item 9 of Schedule 1.
- 5.2 The Consultant shall invoice The Council at the times, and providing such billing information, as required in Item 9 of Schedule 1. Provided that the Consultant has performed the Services in accordance with this Agreement to the Council's reasonable satisfaction undisputed invoices will be paid within the Council's payment terms of 30 days from end of month. All invoices must be tax invoices with the purchase order number and Contract number quoted.
- 5.3 The Consultant shall invoice the Council at the times, and providing such the Fee is exclusive of GST.
- 5.4 The Consultant represents that:
- (a) it is registered under the *A New Tax System (Australian Business Number) Act 1999* (Cath); and
  - (b) the ABN shown in Item 1 of Schedule 1 is its ABN.

### 6. Confidentiality and Security

- 6.1 All information which the Consultant obtains in the course of providing the Services is confidential (except for information that is trivial and in the public domain for reasons other than disclosure by the Consultant) and the Consultant must not disclose such information to any person without the prior written consent of the Project Manager, except when such disclosure is necessary for the purpose of carrying out the Services. The Consultant must do everything reasonably possible to preserve the confidentiality of the information.
- 6.2 The Consultant may only use the Council's computer systems with the specific authorisation of the Council and only in a manner as directed by the Council from time to time. The Consultant shall ensure that Consultant's Staff comply with this clause.

### 7. Intellectual Property and Documents

- 7.1 The Council owns all intellectual property rights in all things produced by the Consultant as part of the Services. The Consultant must ensure that in performing the Services it does not infringe the intellectual property rights of any person. The Consultant shall indemnify the Council against all costs, expenses and liability arising out of any claim that the performance of the Services by the Consultant infringes the intellectual property rights of any person.
- 7.2 The Council does not own the Consultant's intellectual property rights in existence before the date of this Contract or copyright in existing publications or other work produced by or on behalf of the Consultant prior to, or otherwise than in the course of providing the Services.

7.3 If this Contract is terminated before the Consultant has completed the Services, the Consultant must licence to the Council, free of charge, the intellectual property rights in any matter referred to in clause 7.2 if the Council needs such a licence to enable it to complete the Services.

7.4 The Council owns all documents prepared by the Consultant in connection with this Contract. Upon termination and at any time on demand by the Council, the Consultant must deliver to the Council all documents provided by or originating from the Council and all documents produced by the Consultant in the course of performing the Services.

## **8. Insurance**

8.1 The Consultant must effect and maintain at its expense during the term:

- (a) Public and Products Liability Insurance in the name of the Consultant.
- (b) Professional Indemnity Insurance in the name of the Consultant.

8.2 The Consultant will maintain the insurances pursuant to this clause with insurers satisfactory to the Council. The Council in specifying levels of insurance in this Contract accepts no liability for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss damage or liability.

## **9. Non Performance**

Without limiting the Council's rights to terminate under clause 10, if the Services, or any performance milestone required by the Project Manager is not undertaken to the Council's required standard or is not undertaken on time having regard to the time set for completion, then the Council may withhold payment of the Fee until the Services are undertaken to the required standard.

## **10. Termination**

10.1 If the Consultant:

- (a) fails to commence or complete work pursuant to this Contract in accordance with the time requirements and performance milestones specified in this Contract;
- (b) fails to perform, observe and carry out all the agreements and obligations imposed upon the Consultant by this Contract;
- (c) fails to comply with any default notice given by the Council to the Consultant requiring a breach to be remedied within forty eight (48) hours after the service of the default notice;
- (d) abandons or refuses to proceed with Services; or
- (e) enters into any form of insolvency administration if a Company or becomes bankrupt if an individual,

then the Council may at any time thereafter without prejudice to any other legal remedies it may have, terminate this Contract forthwith by written notice to the Consultant.

10.2 The Council may terminate this Contract without cause by giving at least 1 week's written notice. The Council may give reasonable directions to the Consultant in relation to the performance of the Services up to the date of termination.

10.3 If this Contract is terminated the Consultant must return to the Council all equipment, data, material provided by the Council and deliver to the Council results of work undertaken by the Consultant in respect of the Services.

10.4 If the Council terminates the Contract, the Council must pay only the proportion of the Fee commensurate with that part (if any) of the Services undertaken to the Council's satisfaction (acting reasonably).

## **11. Special Conditions**

11.1 The Consultant must comply with the special conditions (if any) outlined in Item 10. If any of the documents comprising this Contract are inconsistent, they shall take priority in the following order:

- (a) the special conditions (if any) in Item 10;
- (b) these standard terms and conditions (excluding Schedule 1); and
- (c) Schedule 1.

## **12. Extension of Term**

This Contract may be extended for a further period by mutual written agreement of the Consultant and the Council.

## **13. General**

### **13.1 Consultant Status**

The Consultant is being engaged for the provision of services and nothing in this Contract constitutes any relationship of employer and employee or partnership between the parties. The Council has no obligations to the Consultant's Staff. The Consultant is responsible for complying with the *Income Tax Assessment Act 1997* (Cth) in respect of the Consultant's employees and the Council is not required to make PAYE deductions from the Fee.

### **13.2 Conflicts of interest**

The Consultant must not have any conflicts of interest in relation to the performance of the Services under this Contract and if an actual or potential conflict of interest exists, arises or may arise in the course of performing the Services (either for the Consultant or the Consultant's Staff) the Consultant must disclose that information to the Project Manager as soon as practicable after it becomes aware of the conflict or potential conflict.

### **13.3 No Assignment**

The Consultant must not assign novate or encumber any of its rights or obligations under this Contract without first obtaining the written consent of the Council.

### **13.4 Survival**

The clauses of this Contract relating to documents, intellectual property rights, insurance and conflicts of interest survive the expiry or termination of this Contract, and in relation to confidentiality, the obligations continue to apply unless the Council notifies the Consultant of its release from those obligations.

### **13.5 Proper Law and Jurisdiction of the Courts**

- (a) The laws in force in Queensland apply to this Contract.
- (b) The courts of Queensland have exclusive jurisdiction to determine any legal proceedings in relation to this Contract.

### **13.6 Publicity**

The Consultant must not make any public announcement or media release in respect of any aspect of this Contract or the Services without prior written approval by the Council.

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## **SCHEDULE 1**

### **Item 1: Consultant/Company Name**

<b>Name:</b>	TBC
<b>Email:</b>	TBC
<b>Phone:</b>	TBC
<b>ABN:</b>	TBC

### **Item 2: Services**

List Services

### **Item 3: Contract Duration**

<b>Start Date</b>	TBC
<b>End Date</b>	TBC

### **Item 4: Consultants Staff**

<b>Name</b>	<b>Company role</b>	<b>Responsibilities for this project</b>	<b>Contact details</b>

### **Item 5: Facilities**

The Consultant shall provide the facilities, equipment, data and/or material for the purpose of providing the Services:

### **Item 6: Location**

Fraser Coast Regional Council is located in the Fraser Coast Region, Queensland.

### **Item 7: Insurances**

Public Liability Insurance	\$20,000,000
Professional Indemnity Insurance	\$5,000,000

### **Item 8: Reports/ Meeting**

At least one face to face meeting in the Fraser Coast Region.

### **Item 9: Fee**

Council will pay to the Consultant the following fees for the Services at the times and in the following manner:

### **Item 10: Special Conditions**

<Insert Special Conditions as required>

### **Item 11: Council's Project Manager**

<Insert Project Manager>