

GENERAL TERMS AND CONDITIONS

1. INTERPRETATION AND DEFINITIONS

1.1. Interpretation

- (a) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (b) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (c) If the Contractor is two or more persons, they are bound jointly and severally under this Agreement.
- (d) A statute, regulation or provision of a statute or regulation includes:
 - (i) that statute, regulation or provision as amended or re-enacted from time to time;
 - (ii) a statute, regulation or provision enacted in replacement; and
 - (iii) another regulation or other statutory instrument made or issued under that statute, regulation or provision.

1.2. Definitions

In this Agreement, unless the context requires otherwise:

Actual Acceptance Date means the date on which Council notifies the Contractor in writing that the Deliverables are accepted or complete (as the case may be), or if no notification is given the date of payment.

Agreement means the following:

- 1. These terms and conditions.
- 2. The documents prepared by Council for the purpose of describing and defining the Deliverables and/or the required manner of performance of the Deliverables and provided to the Contractor.

- 3. The Offer to provide or perform and complete the Deliverables submitted by the Contractor, as accepted by Council.
- 4. Any amendments to the above agreed between Council and the Contractor or made under the Agreement; and
 - (a) the Contractor's standard or usual terms and conditions of supply are expressly excluded; and
 - (b) in the event of any conflict between the various documents comprising the Agreement, Council will direct the Contractor as to the interpretation to be adopted. If any such direction causes the Contractor to incur more or less cost than otherwise would have been the case if not for the direction, Council (acting reasonably) will assess the value and the difference will be added to or deducted from the amount or amounts payable to the Contractor under the Agreement.

Approval means any licence, permit, authorisation, consent, determination, accreditation, certificate or other requirement of any Authority.

Authority means any government body (including a statutory corporation), administrative or judicial authority, body or tribunal.

Business Day:

- (a) means any week day on which Council offices are open for business; or

- (b) where the *Building and Construction Industry Security of Payment Act 2009* (Tas) applies to a claim for payment made under the Agreement, has the meaning given to 'business day' in that Act.

Completion means when the Deliverables are capable of use for the purposes required by the Agreement, have passed all required tests and are free from any known Defects, and the Contractor has provided all the required documents and made good the Site and surroundings.

Confidential Information means any information disclosed before, or after the date of this Agreement, by a disclosing party to the other party including information that:

- (a) is marked as being proprietary or confidential to the disclosing party; or
- (b) in the circumstances surrounding disclosure, or because of the nature of the information, ought in good faith be treated as confidential,

but, where the disclosing party is Council, excluding anything which Council is required to publish or otherwise disclose or make public in order to meet or comply with any:

- (a) Laws; or
- (b) governmental, reporting or transparency duties, obligations and requirements.

Contractor's Personnel means the officers, employees, secondees, agents, consultants, contractors and Subcontractors of the Contractor.

Consequential Loss means loss or damage arising from a breach of contract, tort (including negligence), under statute or any other basis in law or equity including, but without limitation, the following: loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business

reputation, future reputation or publicity and indirect, remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the date of the Notification of Acceptance.

Contract Sum means:

- (a) where Council accepted a lump sum, the lump sum as accepted by Council;
- (b) where Council accepted rates, the sum of the products ascertained by multiplying the accepted rate or rates applicable to an item or section of the Deliverables by the actual or measured quantity of the Deliverables which are carried out and completed in accordance with the Agreement up until the date on which the payment claim is submitted to Council; or
- (c) where Council accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b).

adjusted by any additions and deductions made pursuant to the Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Deliverables means the totality of the goods and/or services or Works to be provided and/or carried out and completed under the Agreement and includes variations and additional Deliverables.

Defects means any Deliverables that do not comply with the Agreement and includes incomplete Deliverables and omissions.

Fit for Purpose means, as applicable to the context:

- (a) complete and functioning correctly as required and/or intended;
- (b) tested and commissioned;

- (c) debugged and optimised;
- (d) securely fixed in place and soundly constructed and otherwise stable, robust and correctly engineered to meet regulatory building and construction standards and codes;
- (e) compliant with Australian Design Rules and the requirements of Authorities;
- (f) safe and otherwise suitable for the use or uses stated in the Agreement or, if no purpose is stated, for use in the applications which can be reasonably inferred from the documents comprising the Agreement; and
- (g) of suitable construction and materials and otherwise suited to the installation or operating situation and location including the prevailing environmental conditions.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the related imposition Acts of the Commonwealth. Expressions defined in the GST Act have the same meaning when used in the Agreement.

GST means Goods and Services Tax.

Insolvency Event means where:

- (a) a party is unable to pay all of its debts as and when they become due and payable or has failed to comply with a statutory demand or would be deemed to be unable to pay the party's debts if it were a corporation under *the Corporations Act 2001 (Cth)*;
- (b) notice is given of a meeting of creditors with a view to the party entering a deed of company arrangement, or the party enters into a deed of company arrangement with creditors;
- (c) an application is made to a court for the party to be wound up or a winding up order is made against it;

- (d) a controller, administrator or liquidator is appointed, as defined in the Corporations Act; or
- (e) anything having substantially similar effect to any of the events listed above happens.

Intellectual Property Rights includes all present and future intellectual and industrial property rights conferred by statute, at civil, common law or in equity including rights such as moral rights, copyright, design, patent, trademark, semiconductor, circuit layout, database rights, trade, business, company or domain name, know how or inventions and processes (whether written or unwritten, registered, unregistered or applied for)

Intervening Event means an event or cause listed below to the extent that the event or cause is beyond the reasonable control of the relevant party and makes the performance of an obligation under this Agreement impossible and not merely more onerous or uneconomical:

- (a) act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, or landslide;
- (b) strike, lockout, or other labour difficulty but not a strike or lockout directly involving or caused by an act or omission of the party claiming an Intervening Event;
- (c) act of war, terrorism, sabotage, revolution, riot, insurrection, civil commotion;
- (d) act of war, terrorism, sabotage, revolution, riot, insurrection, civil commotion; or
- (e) a national or worldwide pandemic or epidemic.

Laws means laws, ordinances, regulations, by-laws, orders, awards, workplace health and safety codes of practice, and

proclamations whether Commonwealth, State or local.

Loss includes damage, loss (including Consequential Loss), cost, claim, liability or expense.

Notification of Acceptance means Council's order or other written notice to the Contractor that its Offer is accepted on the terms and conditions of the Agreement.

Offer means the tender, quotation, price written or otherwise, or other offer made by the Contractor and accepted by Council in relation to the Deliverables and their supply, performance and completion.

Payment Method means, unless agreed otherwise, monthly invoicing and payment of the amount claimed by the Contractor no later than 20 Business Days after a Valid tax invoice is received.

Personal Information means "personal information", "sensitive information", "health information" or "employee information" as defined by the *Personal Information Protection Act 2004* (Tas).

Site means the premises or other location or locations where Deliverables and Works under the Agreement must be carried out and completed and the immediate surrounds.

Subcontractor means any person or entity to whom the Contractor subcontracts or assigns any of the Contractor's obligations under the Agreement or is otherwise engaged by the Contractor to provide any Deliverables in connection to the Agreement.

Valid Tax Invoice means a tax invoice that:

- (a) is valid for the purposes of the GST Act;
- (b) contains details of the Deliverables supplied and performed by the Contractor up to the date of the invoice; and

- (c) contains details of the basis for calculation of the amount set out in the invoice with reference to the terms of the Agreement.

WHS Law means:

- (a) the *Work Health and Safety Act 2012* (Tas);
- (b) the *Work Health and Safety Regulations 2022* (Tas); and
- (c) in so far as reasonably practicable, the application of any applicable SafeWork Australia Codes of Practice which are approved in Tasmania.

Works means the whole of the building, construction, civic, civil or maintenance work and services to be carried out and materials to be provided by the Contractor under the Agreement and includes materials and labour.

2. CONTRACTOR'S WARRANTIES

- (a) The Contractor warrants that it will provide Deliverables:
 - (i) as and when required by Council and/or at, within or by any date or dates for Completion specified by Council;
 - (ii) with due care and skill, and to a standard to be expected of a competent person experienced in supplying similar Deliverables;
 - (iii) in a manner that will not cause any harm, damage or nuisance to the environment;
 - (iv) in accordance with Council's reasonable directions and Council's policies notified to the Contractor (which may be reasonably amended from time to time at Council's discretion);

- (v) so as to ensure that the Deliverables are Fit for Purpose; and
 - (vi) otherwise in accordance with the Agreement.
- (b) The Contractor must, and must ensure that its employees and Subcontractors do, at all times meet and comply with:
- (i) all Laws, including WHS Law; and
 - (ii) the requirements of any and all Authorities having jurisdiction over the Deliverables or the manner in which the Deliverables are performed.
- (c) Unless the Agreement specifies any particular quantity or quantities which must be supplied, the Contractor acknowledges and agrees that:
- (i) quantities or other indications as to the quantum of Council's need for the Deliverables, given in an invitation to submit an Offer or otherwise, are estimates only;
 - (ii) Council does not agree and is not under any obliged to purchase, accept or pay for any minimum quantity, volume or level of Deliverables; and
 - (iii) Council gives no warranty or guarantee that the Contractor will be the exclusive provider of the Deliverables to Council.
- (d) The Contractor further warrants to Council that:
- (i) it has entered into the Agreement in its own capacity and not as trustee of a trust;
 - (ii) it will provide any reports, documents and information Council reasonably requires;
 - (iii) that execution, creation and provision to Council of the

Deliverables will not infringe the rights (including Intellectual Property Rights) of any person; and

- (iv) it will obtain and maintain, at its cost, all Approvals and consents from Authorities necessary for the Contractor to perform and complete the Deliverables.

3. CONTRACTOR'S PERSONNEL

The Contractor must ensure that all of the Contractor's Personnel who provide the Deliverables:

- (a) comply with the obligations set out in the Agreement;
- (b) have undertaken all necessary training;
- (c) have obtained (and will maintain) all relevant qualifications, admissions memberships, and accreditations necessary to provide the Deliverables;
- (d) at all times will hold all occupational licences and accreditations required by Law to practice in the State of Tasmania;
- (e) are replaced at no additional cost to Council if Council forms the view that any Personnel in providing the Deliverables is incompetent, negligent or guilty of misconduct; and
- (f) unless replacement is approved by Council (which approval will not be unreasonably withheld), are the person or Subcontractor specified for a particular task in the Offer.

4. CHILD SAFETY REQUIREMENTS

- (a) Except as otherwise stated, in this clause words have the meaning specified in the *Child and Youth Safe Organisations Act 2023 (Tas)*.
- (b) Where applicable to performance of the Deliverables, the Contractor must:
 - (i) comply with child safety Laws including reporting incidents and keeping current all necessary Working With Children Checks;

- (ii) implement the National Principles for Child Safe Organisations; and
 - (iii) assess the child safety risks and make a plan that will prevent harm or abuse to Children and share this with the Contractor's Personnel.
- (c) Where the Deliverables involve direct contact with persons under the age of 18, in addition to complying with the requirements of paragraph 4(b) the Contractor must:
- (i) complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children and then put into place an appropriate risk management strategy to manage the identified child safety risks;
 - (ii) provide training and establish a compliance regime to ensure that all employees, agents, volunteers and contractors are aware of, and comply with:
 - (A) the National Principles for Child Safe Organisations;
 - (B) the Contractor's and Subcontractors' risk management strategies;
 - (C) all Laws relating to requirements for working with Children, including mandatory reporting of suspected child abuse or neglect.
- (d) Upon request, the Contractor must provide Council with the Contractor's or a Subcontractor's annual statement of compliance with requirements of this clause. Council may, at any time after providing reasonable notice, conduct a review of the Contractor's compliance and assurance with respect to child safety.
- (e) The Contractor must ensure that all Subcontractors are aware of and comply with the child safety requirements.

- (f) The Contractor must:
- (i) immediately notify the Council of any failure to comply with this clause;
 - (ii) cooperate with Council in any review or investigation; and
 - (iii) promptly, and at the Contractor's cost, take such action as is necessary to rectify, to the Council's satisfaction, any non-compliance with this clause.

5. DEFECTS

If Council considers that the Deliverables are or include Defects, or are not Fit for Purpose, Council:

- (a) will notify the Contractor of the Defects or other issues rendering the Deliverables not Fit for Purpose within 20 Business Days of becoming aware of the Defects or other issues;
- (b) will not be liable to accept or pay the defective or unfit Deliverables; and
- (c) at its option may:
 - (i) reject the defective or unfit Deliverables and require the Contractor to remove the defective or unfit Deliverables from the Site at the Contractor's cost, in which case the Contractor must reimburse Council the amount or amounts of any payments made in respect of the defective Deliverables within 20 Business Days of a demand by Council;
 - (ii) require the Contractor to replace the defective or unfit Deliverables with compliant and Fit for Purpose Deliverables, within a specified time and without additional cost to Council;
 - (iii) reperform or correct the Deliverables itself to the extent that Council sees fit and necessary for the Deliverables to be compliant and Fit for Purpose, in which case the reasonable costs

incurred by Council in doing so will be a debt due and payable by the Contractor to Council which must be paid within 20 Business Days of a demand by Council; or

- (iv) have the defective or unfit Deliverables performed, replaced or corrected by another party or parties, in which case the additional costs incurred by Council in doing so will be a debt due and payable by the Contractor to Council which must be paid within 20 Business Days of a demand by Council.

6. PAYMENT

- (a) Provided that the Contractor complies with its obligations and discharges its liabilities under the Agreement, Council will pay the Contractor the Contract Sum.
- (b) Unless otherwise stated, all amounts payable by one party to another party under the Agreement are GST exclusive.
- (c) If GST is imposed or payable on any supply made by a party under the Agreement, the recipient of the supply must also pay any GST liability for that supply at the same time.
- (d) The Contractor must claim payment in writing at the times or upon Completion of the stages of the Deliverables specified by Council or, if no times or stages are specified by Council, the Contractor must claim payment by the last Business Day of each month in which the Deliverables are carried out and completed. Where no time or stages are specified, only one payment claim may be made each month.
- (e) Where the Contractor is the party making the payment claim, prior to payment, the Contractor must issue the required tax invoice for GST purposes. Council is not required to issue recipient created tax invoices.
- (f) The Contractor is only entitled to payment or reimbursement for out of pocket costs and other costs, disbursements or any other type

of payment in addition to the Contract Sum if the additional payment or reimbursement is agreed to by Council in writing prior to the Notification of Acceptance.

- (g) Payment by Council is on account and is not evidence of the value of Deliverables completed, an admission of liability nor evidence that the Deliverables have been executed satisfactorily or meet and comply with the Agreement.
- (h) The time for payment is 30 calendar days from the date of receipt of a valid claim for payment which complies with the Agreement.

7. INTELLECTUAL PROPERTY AND USE OF DELIVERABLES

- (a) To the extent permissible by law, Council owns any Intellectual Property Rights in any existing material provided by Council, or created in the course of providing the Deliverables.
- (b) For pre-existing materials incorporated in the Deliverables:
 - (i) the Contractor grants Council a non-exclusive, irrevocable, royalty-free licence to use the Deliverables for any project or purpose described in the Agreement; and
 - (ii) warrants that Council's use of the Deliverables will not breach the Intellectual Property Rights of any third parties.
- (c) Where reasonably required for the performance of the Agreement, each party grants the other party a non-exclusive, irrevocable, royalty-free licence to use any Intellectual Property Rights.

8. GENERAL INSURANCE REQUIREMENTS

- (a) For the entire duration of the Agreement, the Contractor must keep current contracts of insurance indemnifying:
 - (i) the Contractor's liability for personal injury to, or death of, a

third party and either or both loss of, or damage to, the property of a third party for at least \$20,000,000 for each individual claim or series of claims arising out of a single occurrence; and

- (ii) the Contractor's liability for workers compensation as required by Law.
- (b) The insurance contract required by clause 8(a)(i) must name the Glenorchy City Council as a principal for the purpose of indemnifying Council for any vicarious or other legal liability (if any) it may have in respect of any injury, death, damage or loss caused by a negligent act or omission of the Contractor.
- (c) In addition to the insurances required by clause 8(a), the Contractor must:
 - (i) effect any insurances required elsewhere in the Agreement; and
 - (ii) if the Deliverables relate to the provision of any design, consulting or other professional services, for the entire duration of the Agreement and for a further period of six years thereafter, hold and keep current a professional indemnity policy of insurance indemnifying the Contractor's liability for professional negligence, for at least the sum of \$2,000,000 for any one claim or series of claims arising out of a single occurrence.
- (d) With respect to public liability and professional indemnity coverage and workers compensation, the Contractor must ensure that all Subcontractors are equally insured.
- (e) All insurances must be with a reputable insurer lawfully carrying on insurance business in Australia.

9. INDEMNITIES

- (a) To the maximum extent permissible by law, the Contractor is liable for and agrees to

indemnify and keep indemnified Council, its officers, employees, agents, contractors and consultants against all losses (including legal costs and expenses on a solicitor/own client basis) arising directly or indirectly from or in connection with any one or more of the following:

- (i) the breach of any provision of the Agreement by the Contractor, or the Contractor's Personnel;
 - (ii) any negligence of the Contractor, or the Contractor's Personnel in respect of the Agreement; or
 - (iii) any liability of the Contractor or the Contractor's Personnel to pay any tax, duty, levy, impost or other charge arising in relation to the supply or provision of the Deliverables, except to the extent that any loss, liability or claim is caused by Council.
- (b) Neither party is liable to the other party for Consequential Loss.
 - (c) In so far as permitted by Law, the Contractor waives all present and future rights to claim against Council for:
 - (i) personal injury to, or death of, the Contractor;
 - (ii) either or both loss of, or damage to, any of the Contractor's property; and
 - (iii) financial loss to the Contractor,arising from, or attributable to, the Contractor carrying out the Deliverables. This waiver does not operate to release Council from liability arising from, or attributable to, a wrongful (including negligent) act or omission of Council.

10. INTERVENING EVENT

- (a) Neither party is liable to the other for any failure to perform an obligation under this Agreement caused by an Intervening Event.

- (b) Where an Intervening Event occurs, the party claiming it must:
 - (i) notify the other party immediately and provide details of the Intervening Event; and
 - (ii) within a reasonable time after the giving of notification referred to above, notify the other party of any methods or procedures known to it to circumvent the Intervening Event.
- (c) Where an Intervening Event ceases, the parties must immediately recommence performing the duties that were previously affected by the Intervening Event.
- (d) Where an Intervening Event continues for a period of 20 Business Days, either party may terminate this Agreement by giving at least 10 Business Days' written notice to the other party.
- (iv) be delivered to the place for delivery specified by Council; and
- (v) unless otherwise agreed in writing in advance of delivery, unloaded by the Contractor on delivery.
- (d) The Contractor must give reasonable notice of delivery if requested and must complete delivery by the time specified by Council.
- (e) Contractor must obtain the benefit of any manufacturer's warranty for Council.
- (f) The Contractor, at its own cost, must act as Council's agent for the purpose of enforcing any manufacturer's warranty and must carry out its agency responsibilities in an effective and timely manner.
- (g) In addition to the insurances required elsewhere in the Agreement, the Contractor must insure against:
 - (i) the Contractor's liability for loss or damage to the Goods which covers the Goods for their full value from time to time against loss or damage, including loss or damage in transit and, if the Agreement requires the Contractor to unload the Goods, also unloading (the policy must be maintained to cover the Goods until Delivery is complete); and
 - (ii) Council's liability for personal injury to, or death of, a third party and either or both loss of, or damage to, the property of a third party for a sum not less than \$20,000,000, and arising from the defective nature of the Goods and including loss or damage suffered by third parties as a result of using the Goods (the liability to be insured against under this paragraph is liability arising from, or attributable to, the Contractor supplying the Goods to the extent that the injury, death, damage or loss is caused by a wrongful (including negligent) act or omission of the Contractor or the Contractor's employees or agents and the insurance must be maintained until Council's Acceptance of the Goods).

11. SUPPLY AND DELIVERY OF GOODS

Where the Deliverables are or include Goods:

- (b) The Contractor must supply Goods that comply in all respects with:
 - (i) all Laws;
 - (ii) all international and Australian standards, design rules and the like which are applicable to the Goods;
 - (iii) the requirements of the documents and other information supplied by Council to the Contractor for the purposes of describing the Goods and the required attributes and other characteristics the Goods must possess; and
 - (iv) approved samples (if any).
- (c) The Goods must:
 - (i) unless otherwise stated in or allowed by the Agreement, be new
 - (ii) be Fit for Purpose;
 - (iii) comply with the Agreement;

- (h) The insurance contract required by clause (11)(g)(ii) must name the Glenorchy City Council as a principal for the purpose of indemnifying Council for any vicarious or other legal liability (if any) it may have in respect of any injury, death, damage or loss caused by a negligent act or omission of the Contractor and must be maintained for the duration of the Agreement and for a further period of six years thereafter.
- (i) Ownership and property in the Goods, free of all legal and equitable adverse interests, passes to Council upon the Actual Acceptance Date and risk in the Goods passes to Council when Delivery is complete.
- (j) Council may test the Goods to determine whether they comply with the Agreement and are Fit for Purpose.
- (k) Testing of the Goods may be by the means previously notified to the Contractor or by other appropriate means determined necessary by Council, including selection of samples for testing and analysis. Council will pay for the tests. However, the Contractor must pay the cost of the tests as incurred by Council where the Goods are found to not conform to the requirements of the Agreement.
- (l) Without limiting any other warranty implied by statute or generally at law, if a Defect appears in the Goods within the Warranty Period, the Contractor is, at its own cost, responsible for repairing or remediating the Goods to ensure the Goods fully comply with the Agreement and are Fit for Purpose.

12. GENERAL HEALTH AND SAFETY REQUIREMENTS

- (a) The Contractor must at all times, identify, comply with and exercise all necessary duties and precautions for the health and safety of all persons including Key Personnel and Subcontractors, employees of Council, members of the public and other persons who may be affected by performance of the Deliverables. In this regard, the Contractor must at all times be aware of and discharge its obligations under WHS Law and all other Laws

in respect of workplace and occupational health and safety.

- (b) Where the Deliverables are performed in any workplace which is under Council's management and control, the Contractor, Key Personnel and Subcontractors must:
 - (i) consult the person in charge of the area in which they will be working and not commence work until authorised to do so and limit their activities to the approved areas;
 - (ii) comply with security measures, all traffic control, access and egress and security procedures and measures in place at the workplace; and
 - (iii) comply with any notified policies, processes and procedures regarding access to and use of the Site.
- (c) The Contractor warrants to Council that:
 - (i) before entering the Agreement, the Contractor informed itself of all workplace and occupational health and safety duties, relevant SafeWork Australia codes of practice, policies, procedures or measures required under WHS Laws and other Laws and otherwise required by Council and the occupiers of any workplace/s at or within which the Deliverables are to be performed;
 - (ii) it will comply with all such duties, relevant SafeWork Australia codes of practice, policies, procedures or measures; and
 - (iii) in the event of any inconsistency, it will comply with such duties, relevant SafeWork Australia codes of practice, policies, procedures or measures that produce the highest level of safety.
- (d) The Contractor must:
 - (i) comply with any and all safe and lawful directions by or on behalf of Council relating to workplace and occupational health and safety;

- (ii) communicate and consult with all other persons having a health and safety duty in relation to the workplace or the same matter; and
- (iii) provide all necessary communication, consultation and supervision to Key Personnel and Subcontractors.

13. ASSIGNMENT AND SUBCONTRACTING

- (a) Neither party may assign any of their obligations under the Agreement without the prior written consent of the other party.
- (b) The Contractor must not:
 - (i) Subcontract any Deliverables without Council's prior approval including terms (which approval will not be unreasonably withheld); or
 - (ii) permit a Subcontractor to further subcontract any Deliverables.
- (c) The Contractor remains responsible for the supply of the Deliverables and the performance of the Deliverables despite the fact that the Contractor may have subcontracted or assigned any part of its obligations under the Agreement.

14. CONTRACTOR MUST MAINTAIN CONFIDENTIALITY

- (a) The Contractor must keep all Confidential Information confidential and must not disclose any Confidential Information of Council given or received in connection with the Agreement to any other party, excluding information that is or which becomes:
 - (i) available in the public domain otherwise than by a breach of this clause;
 - (ii) required to be disclosed pursuant to any Law; or
 - (iii) on a confidential basis, disclosed to the Contractor's Personnel or professional advisors to enable the Contractor to fulfil its obligations under the Agreement.

- (b) The Contractor must ensure that the Contractor's Personnel undertake to be bound by the confidentiality obligations. Council may require the Contractor's Personnel to sign a confidentiality undertaking to confirm this.

15. DISCLOSURE BY COUNCIL

- (a) Despite any confidentiality or Intellectual Property Rights subsisting in the Agreement or an Offer giving rise to the Agreement, Council may, without reference to the Contractor, publish or otherwise disclose or make public all or any part of the Agreement as required in order to comply with Law and meet any of its reporting or governmental requirements or transparency duties and obligations.
- (b) On a confidential basis, Council may disclose any documents and materials and information, including Confidential Information to the Council's professional advisors as required to obtain advice about the Agreement or performance of the Agreement.

16. GENERAL PRIVACY AND PERSONAL INFORMATION PROTECTION REQUIREMENTS

- (a) The Contractor must at all times comply with all privacy related Laws and warrants to Council that it will:
 - (i) before commencing any work on the Deliverables, provide Council with a written data privacy and breach plan in a form which is acceptable to Council, and comply with that plan;
 - (ii) voluntarily and immediately on becoming aware of any breach of any privacy Law notify Council and the Office of the Australian Information Commissioner (or its successor) of the breach;
 - (iii) actively cooperate with Council in notifying those affected by a privacy breach, including answering technical enquiries

- about protective actions affected people might take;
- (iv) not rely on exemptions, such as the minimum turnover requirements in privacy laws, to avoid notifying, or responding to privacy breaches; and
- (v) if the Contractor is a Personal Information Custodian:
 - (A) use Personal Information only for the purposes of the Agreement;
 - (B) not disclose Personal Information without the written authority of Council; and
 - (C) notify Council immediately if the Contractor becomes aware of a breach, or possible breach, of the *Personal Information Protection Act 2004* (Tas).
- (b) The Contractor must ensure that the Contractor's Personnel are aware of and comply with the obligations under this clause.

17. ICT DELIVERABLES

Where the Deliverables include the supply of software products, software or infrastructure as a service and other information technology based services:

- (a) The Contractor must promptly take steps to protect and secure websites and computer systems, including but not limited to:
 - (i) installing software patches that are designated "critical" by the software vendor within 5 days of release;
 - (ii) installing software patches that are designated "non-critical" by the software vendor within 21 days of release;
- (iii) conducting yearly penetration testing and vulnerabilities report provide the results to Council;
- (iv) participating in Council monthly scans of relevant systems;
- (v) storing sensitive information encrypted at rest;
- (vi) if providing for remote access to systems, have multifactor authentication safeguards;
- (vii) running up-to-date firewall and anti-virus software; and
- (viii) taking other systems security measures reasonably specified by Council from time to time.
- (b) The Contractor must be certified to ISO 27001 standard or an equivalent standard acceptable to Council.
- (c) The Contractor must provide Council with a systems security plan in a form acceptable to Council, and must comply with that plan.
- (d) The Contractor must develop, install and test the Deliverables with minimum disruption to Council's personnel and normal operations.
- (e) Council may specify additional tests to be carried out following rectification action in respect of any Defects or system underperformance.
- (f) The Deliverables are not accepted by Council, and any ongoing licencing and/or maintenance and the like and any associated payments will not commence, until the Actual Acceptance Date.
- (g) For the entire duration of Council's use of the Deliverables, the Contractor must provide at no additional charge any licenses, authorisations, updates, new releases, or other support services required by the Agreement or usually provided to customers of that product.

- (h) Where the Council acquires other systems to vary, replace or add to the Council's existing systems that are serviced or managed by the Contractor, then the Contractor must provide reasonable assistance to the Council to effect the systems interface/cutover.
- (i) Unless Council agrees that a Project Implementation and Payment Plan is not required, within 10 Business Days of the date of the Notice of Acceptance the Contractor must provide a Project Implementation and Payment Plan acceptable to Council. The Project Implementation and Payment Plan must detail the:
 - (i) products, services and other Deliverables to be provided by the Contractor to Council;
 - (ii) method of approach to project implementation;
 - (iii) timeframes for performance and Completion of the activities and tasks required to supply, perform and complete the Deliverables within the time or times required by the Agreement; and
 - (iv) schedule of anticipated payment claims (the times and/or stages of the Deliverables at or upon Completion of which the Contractor must claim payment in accordance with the Agreement).
- (j) The Contractor must provide Council with an outage and fault handling procedure, including outage and fault response and rectification times, for approval. If an acceptable procedure is not provided within a reasonable time, Council may prescribe the procedure including outage and fault response and rectification times. The Contractor must comply with the approved procedure.
- (a) The Contractor must provide everything necessary for and incidental to the performance and Completion of the Works.
- (b) The Contractor must comply with any reasonable instruction in relation to the Agreement given by Council and must comply with the requirements of Authorities having jurisdiction over the Works.
- (c) The Contractor is responsible for determining the location and type of all existing services and public utilities, both above and below ground. Where an existing service is damaged by the Contractor for any reason whatsoever, the Contractor must bear all costs and any delays for repairing the service (where it is to be continued) or disconnecting it (where it is to be abandoned).
- (d) Within 10 Business Days after Notification of Acceptance, Council will give the Contractor sufficient access to the Site to allow the Contractor to start work on the Works. Council is not required to give the Contractor sole or uninterrupted possession of or access to the Site.
- (e) Council may delay giving the Contractor access to the Site until such time that the Contractor satisfies Council that it is able to safely and diligently commence and progress the Works to Completion, including by the submission of documentary evidence in the form of satisfactory:
 - (i) safe work method statements or the like; and
 - (ii) proposals for the measures which the Contractor will implement for:
 - (A) the protection of people and property;

18. WORKS DELIVERABLES

Where the Deliverables are or include Works:

- (B) protection and safeguarding of the Site, equipment and materials; and
 - (C) traffic management planning and control in compliance with Laws.
- (f) Unless otherwise agreed in writing prior to Notification of Acceptance, from the time access to any part of the Site is given to the Contractor until Completion, the Contractor is responsible for the care of, and is to make good at the Contractor's expense, any loss or damage which occurs to:
 - (i) the Works or the Site;
 - (ii) construction plant; or
 - (iii) any of the things entrusted to the Contractor by the Principal for the purpose of carrying out the Works.
- (g) The Contractor is liable for any loss or damage caused by the Contractor whilst making good Defects.
- (h) If urgent action is required to protect persons or property, Council may take the action without relieving the Contractor of its obligations or liabilities and the cost of the action is payable by the Contractor to Council.
- (i) In addition to the insurances required elsewhere in the Agreement, the Contractor must, prior to commencing work, take out policies of insurance covering the Contractor, Council and Subcontractors as insured entities for loss of, or damage to, the Works, any temporary works and all materials, equipment, plant and other things that are brought onto the Site by or on behalf of the Contractor or are entrusted to the Contractor by Council. The amount insured for any single occurrence is to be not less than the value of the Works at the date of the Notification of Acceptance.
- (j) In respect of standards of work and materials:
 - (i) the Contractor must supply materials which are new (unless otherwise specified in writing by Council), free from Defects and Fit for Purpose; and
 - (ii) the Contractor must use standards of workmanship:
 - (A) expected of a competent person who is trained, qualified and experienced in performing and completion work of the same type and character as the Works under the Agreement; and
 - (B) that comply with the National Construction Code (where applicable), any relevant Australian standards and codes of practice and the lawful requirements of any Authority having jurisdiction over the Works.
- (k) The Contractor is responsible for any minor design, shop drawings and such as required to complete the Works.
- (l) Until Completion and for a defects liability period of 12 calendar months thereafter, the Contractor must, within 5 Business Days of an instruction by Council, make good any Defect in the Works at no cost to Council.
- (m) The Works must reach Completion by the time specified in the Agreement, or if no time is specified, within a reasonable time as determined by Council.

19. HIRE SERVICES

Where the Deliverables relate to the hire of plant and equipment of any type:

- (a) The Contractor acknowledges and agrees that the waiver in clause 9(c) will apply.
- (b) The Contractor:
 - (i) must provide the plant and equipment for the duration of the Agreement;
 - (ii) warrants to Council that the plant and equipment is, and will remain for the duration of the Agreement:
 - (A) safe;
 - (B) Fit for Purpose;
 - (C) suitable for use in the required applications; and
 - (D) operationally free from faults and Defects, including faults and Defects not able to be identified by inspection at the time of delivery; and
 - (iii) warrants to Council that Council is legally entitled to keep and use the Equipment for the duration of the Agreement.
- (c) The performance of the Agreement does not create any Council ownership or interest in the plant and equipment.
- (d) Council warrants to the Contractor that it will:
 - (i) operate the plant and equipment in accordance with the Contractor's reasonable instructions and only for the purposes disclosed to the Contractor;

- (ii) take reasonable steps to secure the plant and equipment from theft or malicious damage when not in use; and

- (iii) return the plant and equipment to the Contractor in a similar condition to when the Council received it, fair wear and tear excluded.

- (e) If, at any time during the Hire Period, Council determines that that the plant and equipment is or has become affected by any Defects or is non-compliant with clause 19(b)(ii):

- (i) Council will:
 - (A) notify the Contractor;
 - (B) not be liable to pay for the Equipment from the date that Council first became aware of the Defect or non-compliance; and
 - (C) not be required in any way shape of form to take responsibility for the correction of any Defects or non-compliances,

and the Contractor must forthwith and at Council's election:

- (i) remove the defective or non-compliant plant and equipment from the Site and replace it with suitable plant and equipment which is free from Defects and compliant within the time specified by Council;
- (ii) remove the defective or non-compliant plant and equipment from the Site and not replace it, in which case Council may, at its option, exercise a right of termination under clause 23 or clause 24; or

- (iii) to Council's satisfaction (acting reasonably) and at no additional cost to Council, correct the Defects or non-compliances and restore the plant and equipment to a fully and correctly operational state within the time specified by Council.
- (f) In addition to the insurances required elsewhere in the Agreement, for the entire duration of the Agreement the Contractor must insure the plant and equipment for its full replacement value.

20. CONFLICTS OF INTEREST

The Contractor must immediately notify Council of the existence or likelihood of a Conflict of Interest as soon as it becomes apparent to the Contractor and must cooperate with Council to resolve the Conflict of Interest.

21. COLLUSIVE BEHAVIOUR

The Contractor warrants and represents to Council that:

- (a) it had no knowledge of the price of any other prospective contractor or bidder for the Agreement at the time of submission of its Offer; and
- (b) except as disclosed in its Offer, it has not entered into any contract, arrangement or understanding to pay or allow to be paid any money directly or indirectly to a trade or industry association (above the published standard membership fee) or to, or on behalf of, any other prospective contractor or bidder in relation to its Offer or the Agreement, nor paid nor allowed to be paid any money on that account.

22. DISPUTES

- (a) The aggrieved party must notify the other party in writing of the specific details of any formal dispute. The notice is to specify the details of the dispute and request a meeting of the other party's representatives.

- (b) Within 5 Business Days of such a notice, representatives of the parties, being persons who have the authority to settle the dispute, must meet and use their best endeavours to resolve the dispute within a further 10 Business Days.
- (c) Neither party is to commence litigation against the other party while such a dispute meeting is being progressed within the time limits specified in this clause.
- (d) The Contractor agrees to follow the dispute resolution procedure in this clause and not directly or indirectly approach Council's councillors in relation to the dispute.
- (e) Unless agreed otherwise, each party is to continue to perform their obligations under the Agreement, notwithstanding the existence of a dispute.
- (f) Nothing in this clause prevents either party from seeking urgent interlocutory relief, or terminating the Agreement in accordance with any rights held under the Agreement.

23. COUNCIL MAY TERMINATE FOR CONVENIENCE

- (a) Council may terminate the Agreement, without the need to show cause, by giving at least 20 Business Days' written notice to the Contractor. The termination will be effective from the date stated in the notice.
- (b) The Contractor's only remedy for this termination is payment for the provision of Deliverables in accordance with the Agreement, up to and including the date of termination.

24. TERMINATION FOR DEFAULT BY CONTRACTOR

- (a) Council may terminate the Agreement by giving the Contractor notice, immediately if:
 - (i) the Contractor refuses to perform its obligations or discharge its liabilities under the Agreement;
 - (ii) the Contractor breaches the Agreement and does not remedy it within 10 Business Days after

- Council gives the Contractor notice to remedy the breach; or
 - (iii) an Insolvency Event occurs in respect of the Contractor.
- (b) Upon termination of the Agreement for any reason the Contractor must surrender all material subject to Council's Intellectual Property Rights to Council.

25. REDUCTION AND SUSPENSION

- (a) By written notice to the Contractor, Council may reduce or suspend the Deliverables.
 - (i) as an alternative to exercising the right of termination of the Agreement; or
 - (ii) at its absolute discretion where no written duration, term or end date (or similar) has been provided for in the Agreement or in respect of a particular instance of supply or occurrence of the Deliverables under the Agreement.
- (b) Where the Deliverables are reduced, Council's liability to pay any amounts under the Agreement will be limited to the Deliverables actually supplied. Council will have no other liability to the Contractor relating to any reduction of the Deliverables.
- (c) Where the Deliverables are suspended:
 - (i) to the extent that the suspension is caused by the Contractor, any Key Personnel or Subcontractors, Council will not be liable to make any payments under the Agreement of the duration of the suspension; and
 - (ii) Council may end the suspension on written notice, in which case the Contractor must recommence performance of the Deliverables as soon as reasonably practicable thereafter.
- (d) Council ending of a period of suspension may be conditional on the Contractor:

- (i) removing or replacing any Key Personnel or a Subcontractor or Subcontractors; or
- (ii) rectification of any breaches of the Agreement.

26. CONSEQUENCES OF TERMINATION OR SUSPENSION

Termination of the Agreement or suspension of the Deliverables will not affect the accrued rights and remedies of the parties up to the date of the termination or suspension.

27. MISCELLANEOUS

- (a) An amendment or variation to the Agreement is not effective unless it is in writing and signed by the parties.
- (b) A notice or other communication to be given or made under the Agreement must be in writing and addressed to the representative of each of the parties at the address or email address notified from time to time.
- (c) Each party must do all things reasonably necessary to give effect to the Agreement.
- (d) The failure of a party at any time to require full or partial performance of any provision of the Agreement does not affect in any way the full right of that party to require that performance subsequently.
- (e) If any provision or part of any provision of the Agreement is void, invalid or unenforceable for any reason, that provision or part of that provision may be severed from the Agreement and this does not affect the validity, operation or enforceability of any other provision of the Agreement, unless the severance would change the underlying principal commercial purpose or effect of the Agreement.
- (f) The parties acknowledge and agree that the Agreement and the performance of the Agreement does not represent or imply a partnership, agency, fiduciary relationship, employment relationship,

joint venture, distribution or any other category of commercial or personal relationship.

- (g) The Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements, negotiations and understandings between the parties in relation to its subject matter.
- (h) The Agreement is governed by the laws of Tasmania, and the parties submit to the exclusive jurisdiction of the courts of Tasmania. Any proceedings issued against Council under, or about, the Agreement, must be instituted either in a Tasmanian court or in the Federal Court, from the Tasmanian Registry of that court.

28. TOTALITY OF CONTRACTOR'S OBLIGATIONS AND INCONSISTENCY OF OFFER

The Contractor acknowledges and agrees that:

- (a) all of its obligations to Council are comprised in the documents comprising the Agreement listed in clause 1.2, all of which are taken to form part of the Agreement despite the absence of a consolidated agreement; and
- (b) in the absence of written agreement to the contrary, if any ambiguity arises as to the intent of the Contractor's obligations due to an inconsistency between the Offer and any other parts of the Agreement, then the other parts of the Agreement will prevail.

29. ACCEPTANCE OF OFFER AND CONTRACT FORMATION

- (a) An Offer is not accepted, and no express or implied contractual obligation arises between Council and a Contractor for the supply of the Deliverables, until such time that a Notification of Acceptance is issued to the Contractor.
- (b) The Notification of Acceptance may be by electronic means and may, but does not necessarily need to, be in the form

of a Glenorchy City Council purchase or other order.

30. TIME AND PROGRESS

- (a) Unless otherwise agreed or approved by Council, the Deliverables must be:
 - (i) for Deliverables other than Works, commenced within 10 Business Days of the date of the Notification of Acceptance;
 - (ii) for Deliverables that are Works, commenced on Site within 10 Business Days of the date on which the Contractor is given access to the Site; and
 - (iii) Completion must be achieved at, by or within the time or times stated in the Agreement or, if no time or times are stated, within 30 Business Days of the date of the Notification of Acceptance or the giving of Site access (as the case may be).
- (b) If it becomes evident to a party that anything, including an act or omission of Council, may delay the Deliverables, then that party must promptly notify the other party in writing, with details of the possible delay and the cause.
- (c) If the cause of the delay is an act or omission of Council, then Council will pay the Contractor the extra costs necessarily incurred by the Contractor because of the delay provided that Council will not be obliged to pay extra costs for delay or disruption which have already been included in the value of a payment under the Agreement.

31. VARIATIONS THAT CHANGE THE SCOPE AND EXTENT OF THE DELIVERABLES

- (a) Council may direct a variation to the Deliverables or direct the Contractor to perform additional Deliverables by giving a written notice to the Contractor ('Variation Notice').
- (b) The Contractor must not make any variations to the Deliverables or perform additional Deliverables unless directed by a Variation Notice.
- (c) The Contractor is not obliged to comply with a Variation Notice if the Contractor gives a written notice to Council, under paragraph 31(d) no later than 5 Business Days after receiving the Variation Notice.
- (d) If Council issues a Variation Notice that will cause the Contractor to incur more cost than otherwise would have been the case, then the Contractor must notify Council in writing within 5 Business Days, stating:
 - (i) whether or not the Contractor agrees to comply with the Variation Notice; and
 - (ii) if the Contractor agrees to comply with the Variation Notice, the Contractor's estimate ('Variation Quotation') for carrying out the direction.
- (e) Each time Council accepts a Variation Quotation, the Contractor must act upon the variation under the Variation Quotation.
- (f) Council is not bound to accept a Variation Quotation.
- (g) If Council does not accept a Variation Quotation within 10 Business Days of receipt, then the parties will be taken to be in dispute and, if Council still directs the Contractor to proceed with

the variation or additional services, clause 22 applies.

- (h) If a new Law or a change in a Law coming into effect after the date of acceptance of Offer necessitates a change in the scope or extent of the Deliverables, then the extent to which the Deliverables are changed by that Law or amendment is taken to be a variation under this clause.

32. CLAIMS FOR PAYMENT UNDER SECURITY OF PAYMENT LEGISLATION

- (a) This clause applies only when the *Building and Construction Industry Security of Payment Act 2009* (Tas) ('SOP Act') is applicable to a claim for payment made under the Agreement.
- (b) A reference date (as defined in the SOP Act) is the date, or the stage of the Works, for the submission of payment claims under clause 6(d).
- (c) Unless prohibited by the SOP Act, a payment claim is deemed to have been made on the due date for making that payment claim, even if it is submitted prior to that date.
- (d) Where a claim made under the Agreement is a claim for payment under the SOP Act, Council will either:
 - (i) pay the whole amount claimed in the payment claim; or
 - (ii) within 10 Business Days of service of a payment claim issue a written payment schedule to the Contractor stating the lesser amount Council proposes to pay together with the reasons.
- (e) Council will pay either the whole amount claimed or the lesser amount stated in a payment schedule (as the case may be) within the time for payment in clause 6(h).