



Gladstone Ports Corporation

*Growth, Prosperity, Community.*

## CQPA General Services Agreement

### 1. Services to be performed

1.1 You must provide the Services to us in accordance with, and as specified in this Agreement during the term.

### 2. Conditions as to quality of Services

2.1 The Services must match the description in this Agreement.

2.2 If you provided us with a demonstration of the Services before we entered into this Agreement, the Services must correspond in nature and quality with the Services demonstrated.

2.3 If you showed us a result achieved by the Services before we entered into this Agreement, the Services must correspond in quality with the Services that achieved that result.

2.4 The Services must be performed by appropriately qualified and trained personnel.

2.5 The Services must be rendered with due care and skill.

2.6 The Services must be fit for the purposes for which these types of Services are commonly bought and for any other purposes which we tell you about.

2.7 Any items which you supply in conjunction with the Services must be of merchantable quality, comply with any applicable standards of the Standards Association of Australia and any other standards specified in this Agreement and be fit for their usual purpose and any purpose which we tell you about.

### 3. Inspection and acceptance

3.1 You must provide to us at our request progress reports on the performance of the Services. A progress report must be detailed enough to allow us to ascertain whether the Services are in conformity with this Agreement.

3.2 At any time during the performance of the Services we may inspect or witness tests on the Services or their results.

3.3 If upon inspection we find any Services or their results to be Defective Services, we may:

- (a) reject the Defective Services by notifying you that we are rejecting them; or
- (b) make good the Defective Services.

3.4 We have the right to reject any Services which are not in conformity with this Agreement even if we have paid for those Services.

3.5 You agree to reimburse us for any expenses we incur in making good Defective Services.

3.6 You agree to refund to us when requested any payments made by us in respect of Services which we reject.

### 4 Performance of the Services

4.1 You must, in performing the Services:

- (a) use your best efforts not to interfere with any of our activities, or the activities of any other person, on our premises;
- (b) be aware of, comply with, and ensure that your employees, agents, contractors and sub-contractors comply with:
  - (i) all applicable laws, regulations and industrial awards and Agreements, including all applicable safety, health and environment laws and regulations;
  - (ii) all safety, health and environment guidelines, rules and procedures provided to you by us or specified in this Agreement; and
  - (iii) all directions and orders given by our representatives; and
- (c) ensure that our premises are left secure, clean, orderly and fit for immediate use;
- (d) where a date is specified for completion of the Services, provide the Services by the specified date, unless agreed otherwise by us.

### 5. Price

5.1 We agree to pay you the Price for the Services.

5.2 Unless the Agreement Specifics provide otherwise, the Price is inclusive of:

- (a) all costs incurred by you in performing the Services;
- (b) the cost of any items used or supplied in conjunction with the Services;
- (c) GST (unless the Agreement expressly states the Price excludes GST); and
- (d) all other Taxes.

5.3 Subject to **clause 7.7**, the Price may not be increased without our prior written consent.

**6 Invoicing and payment**

- 6.1 Unless this Agreement states that progress payments are to be made, you must invoice us at the completion of the Services.
- 6.2 Where progress payments are to be made, you must invoice us at the end of each calendar month (or other period specified in this Agreement) for Services performed by you in that month or that period (as the case may be).
- 6.3 When submitting your invoice under **clause 6.1** you must provide us with all relevant records to enable us to calculate and/or verify the amount of the invoice together with the number of this Agreement.
- 6.4 We will pay all invoices rendered to us by you under **clause 6.1**. CQPA Terms are 30 days from the end of month following receipt of a valid complete Tax Invoice:
- (a) exercise our right to retain part of the Price pursuant to **clauses 6.6 or 10.7(b)**; or
  - (b) dispute the invoice, in which case:
    - (i) we will pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
    - (ii) if the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount upon resolution of that dispute.
- 6.5 You may charge interest at the 30 day Bank Bill Rate on the undisputed portion of any invoice rendered to us by you under **clause 6.1** which remains due and unpaid for at least 90 days after receipt of the invoice by us. Interest will commence to accrue from the ninetieth day after receipt of the invoice.
- 6.6 Unless agreed otherwise, we may reduce any payment due to you under these terms by any amount for which you are liable to us, including costs, charges, damages and expenses. This does not limit our right to recover those amounts in other ways.
- 6.7 Unless otherwise specified, any money payable under this Agreement is to be paid in Australian currency.
- 6.8 If this Agreement involves the supply of Services on a cost plus or per hour basis we have the right to conduct an audit of the basis of your charges using your records. This right continues for 12 months after we pay the relevant invoice.

**7. Termination, variation and suspension of the order**

- 7.1 We may immediately terminate this Agreement by notice in writing to you if:
- (a) you do not carry out your material obligations under this Agreement; or
  - (b) you become insolvent.
- 7.2 We may vary or terminate this Agreement or part of this Agreement at any time upon 7 days' written notice to you.
- 7.3 When you receive a notice of variation from us, you must:
- (a) vary this Agreement in accordance with our notice; and
  - (b) send us a Written Claim with an adjusted Price for this Agreement within 30 days of the effective date of variation.
- 7.4 When you receive a notice of termination from us, you must:
- (a) stop work to the extent required by the notice;
  - (b) take such action as necessary or as we direct, for the transfer, protection and preservation of our property;
  - (c) do your best to minimise the cost of termination to us; and

- (d) where the notice is given under **clause 7.2**, send us a Written Claim with an adjusted Price for this Agreement within 30 days of the effective date of termination.

## 7.5 Your Written Claim must:

- (a) set out all costs incurred to date in relation to the Agreement;
- (b) set out all costs and cost savings that result from the variation or termination of this Agreement;
- (c) where the Agreement has been terminated, not specify an adjusted Price that is greater than the Price specified in this Agreement; and
- (d) not specify an adjusted Price that includes any amount for anticipated profit, unperformed work or consequential loss or damage.

## 7.6 We have the right to audit the adjusted Price specified in your Written Claim.

## 7.7 If:

- (a) we are satisfied that the adjusted Price specified in your Written Claim is equitable; and
- (b) the termination or variation of the Agreement is not a result of any default or action on your part, or on the part of your employees, agents, contractors and/or sub-contractors (including, without limitation, any of the events specified in **clause 7.1**),

the adjusted Price will apply to this Agreement.

## 7.8 Any expiration or termination of this Agreement does not affect:

- (a) any rights of the Parties which may have accrued before the date of termination; and
- (b) the rights and obligations of the Parties under **clauses 11 and 12** and which survive termination of this Agreement.

## 7.9 We have the right, at any time and for any reason, to suspend this Agreement or any part of this Agreement by giving you notice.

## 7.10 When you receive a notice of suspension from us, you must suspend this Agreement until such time as we direct that the Agreement is no longer suspended. At such time, you must promptly recommence the performance of your obligations under this Agreement.

## 7.11 Where the suspension of this Agreement is not a result of any default or action on your part, or on the part of your employees, agents, contractors and/or sub-contractors, we will reimburse you for the verified additional costs you incurred as a direct consequence of the suspension.

**8. Independent contractor**

- 8.1 Both Parties acknowledge that you are our contractor and not our agent or employee.
- 8.2 You must ensure that each of your sub-contractors acknowledges in each sub-contract that the sub-contractor is your contractor and not your employee or agent.

**9. Warranties**

- 9.1 You warrant that the Services and the results of the Services will be in conformity with this Agreement (including, without limitation, **clause 2**), of high quality and workmanship and otherwise satisfactory, for the Warranty Period.
- 9.2 If, during the Warranty Period, we find any of the Services or their results to be Defective Services, we may, at our option:

- (a) reject the Defective Services by notifying you that we are rejecting them; or
- (b) re-perform or make good the Defective Services.
- 9.3 At our option and request, you agree to:
- (a) re-perform or make good any Defective Services that we reject free of charge; or
- (b) reimburse us for any expenses we incur in making good any Defective Services,
- during the Warranty Period.
- 9.4 Any Defective Services that are re-performed or made good by you under this clause will be subject to the same warranty as the original Services, from the date of re-performance or the date on which the Defective Services were made good.
- 9.5 You will not be liable for any defect or fault in any service that is caused by our negligence or the negligence of our employees.
- 9.6 The remedies provided in this clause do not exclude any other remedies provided by law.
- 10. Insurance**
- 10.1 You must take out and maintain during the period of this Agreement:
- (a) a comprehensive public and products liability policy to cover all sums which you may become legally liable to pay as compensation consequent upon:
- (i) death of, or bodily injury (including disease or illness) to, any person; and
- (ii) loss of, or damage to, property,
- happening anywhere in Australia arising out of or in connection with this Agreement. The limit of liability provided by this policy for each and every event must be not less than the amount specified in the Agreement Specifics, and such policy must include a cross liability clause. This cross liability clause must provide that each insured is insured in its own right, and provide a waiver of subrogation by the insurer of any rights of subrogation it might have against other insureds;
- (b) insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer's liability, from any accident or injury to any person employed by you in connection with the Agreement and you must ensure that all sub-contractors are similarly insured in respect of their employees. This insurance must be in compliance with the laws of the relevant jurisdiction in which the Services are to be carried out;
- (c) a policy of insurance against any and all liability, loss and damage of any kind whatsoever (including consequential loss) arising directly or indirectly from the use, non-use, failure, breakage or any other act, omission or matter arising in respect of the plant, equipment, tools, appliances or other property owned, rented or hired by you and used in relation to this Agreement; and
- (d) other insurances, including motor vehicle third party liability insurance, required by law or reasonably required by us.
- 10.2 You will ensure that all policies of insurance required to be taken out by you under this Agreement (other than the insurance noted in **clause 10.1(b)**) include us a named co-insured.
- 10.3 Unless agreed otherwise by us, any sub-contract must require the sub-contractor to effect and maintain adequate insurance including workers compensation, public liability and motor vehicle third party liability insurance. You must not permit any sub-contractor to enter upon our premises or continue to provide any goods or services, unless it remains insured.
- 10.4 You must notify us immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects our interests.
- 10.5 If any event occurs which may give rise to a claim involving us under any policy of insurance to be taken out by you under this clause then you must:
- (a) notify us within 14 days of that event; and
- (b) ensure that we are kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 10.6 At our request, you must produce evidence that you are maintaining the insurances required by this clause.
- 10.7 We have the right to:
- (a) take out and maintain any policy of insurance required by this clause if you fail to do so;
- (b) refuse or set off payment on any invoice until you comply with your obligations under this clause
- 10.8 You agree to reimburse us for any expenses we incur in taking out and maintaining any policy of insurance under this clause.
- 11. Liability and indemnities**
- 11.1 You acknowledge that if you enter our premises, you do so at your own risk. You must ensure that your employees, agents, contractors and sub-contractors are also aware that they enter our premises at their own risk.
- 11.2 You will be liable for and will indemnify us and keep us indemnified from and against any liability and/or any loss or damage of any kind whatsoever, arising directly or indirectly from:
- (a) any breach of any warranty or any of the terms or conditions of this Agreement by you;
- (b) the illness, injury or death of any of your employees, agents, contractors and/or sub-contractors arising out of or in connection with this Agreement;
- (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
- (i) the performance of the Services by you; and/or
- (ii) the entry onto, and the activities undertaken on and in, our premises by you and/or your employees, agents, contractors and/or sub-contractors;
- (d) any negligence or wilful act or omission by you and/or any of your employees, agents, contractors and/or sub-contractors in connection with this Agreement;
- (e) any claim made against us by any of your employees, agents, contractors and/or sub-contractors in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award,

determination or Agreement of a competent industrial tribunal;

- (f) any penalty imposed for breach of an applicable law in connection with the performance of the Services by you;
- (g) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by you and used in relation to this Agreement; and
- (h) any claim that the Services or the results of the Services, anything you do in providing us with the Services, or our use of the results of the Services infringes or allegedly infringes the Intellectual Property Rights of any person;

except to the extent that any liability, loss or damage is solely and directly caused by our wilful misconduct or Gross Negligence or that of our employees, agents, contractors and sub-contractors (other than you).

- 11.3 Every exemption, limitation, defence, immunity or other benefit contained in this Agreement to which we are entitled will also be held by us to the benefit of, and will extend to protect, each of our employees, agents, contractors and sub-contractors (excluding you, your employees, agents, contractors and sub-contractors).
- 11.4 Each indemnity in this Agreement is a continuing obligation separate and independent from your other obligations and survives termination of this Agreement.
- 11.5 It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.
- 11.6 Neither Party will be liable to the other Party. We will not be liable to you in any circumstances for any indirect, economic, special or consequential loss or damage, including but not limited to loss of revenue, loss of production or loss of profit.
- 11.7 If we enter this Agreement as agent for and on behalf of joint venture partners, the liability of each of those joint venture partners under this Agreement is several and not joint, nor joint and several.

## 12. Confidential information

- 12.1 Each Party undertakes that it will not, during the later of the expiration of the term of this Agreement and 3 years from the date of this Agreement (except in the proper course of its duties under this Agreement or as required by law or by the other Party) disclose to any person any confidential information of or relating to the other Party of which it has become possessed as a result of this Agreement or the negotiations preceding this Agreement including, but not limited to, the terms of this Agreement.
- 12.2 Nothing in this Agreement prohibits disclosure of information which:
  - (a) is in the public domain;
  - (b) after disclosure to a Party becomes part of the public domain otherwise than as a result of the wrongful act of that Party;
  - (c) is received from a third party provided that it was not acquired directly or indirectly by that third party from a Party to this Agreement; or
  - (d) is required to be disclosed by law or any government or governmental body, authority or agency having authority over a Party.
- 12.3 The obligations under this **clause 12** survive termination of this Agreement.
- 12.4 The terms of this Agreement may be disclosed to:
  - (a) any legal, financial and other adviser of a Party;

(b) the auditor of a Party; or

- (c) a bona fide prospective purchaser of a Party or the business of that Party provided that such bona fide prospective purchaser agrees to keep the terms of this Agreement confidential in accordance with **clause 12**.

## 13. Taxes

- 13.1 Should any Taxes (other than GST if this Agreement expressly states that the Price excludes GST) be levied on, in respect of, or in relation to, the Services these will be to your account. You will be responsible for the payment of those Taxes and will provide documentary evidence of the payment of those Taxes if made on our behalf.
- 13.2 Without limiting **clause 13.1**, you will be solely liable for income tax imposed on you in respect of income derived by you in the performance of the Services.
- 13.3 If GST has application to any supply made by you under or in connection with this Agreement, and the consideration payable or to be provided under or in connection with this Agreement is expressly stated to be exclusive of GST, you may, in addition to the consideration payable or to be provided for the supply, subject to issuing a Tax Invoice, recover from us an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable or to be provided by us for the supply by the prevailing GST rate.
- 13.4 If any change in the GST law is accompanied by or undertaken in connection with a reduction in or abolition of any then existing Taxes (including, without limitation, the allowance to any person of a rebate, credit, grant or any other amount referable to a Tax), the consideration (excluding any GST) payable by us will be reduced by the same amount as your actual total costs are reduced as a consequence of a reduction in or abolition of Taxes, whether directly by way of a reduction in or abolition of Taxes paid or payable by you to your third party suppliers or to any government, or indirectly by way of reduction in the prices (excluding any GST) charged by third party suppliers to you or the allowance to you or any other person of a rebate, credit, grant or any other amount referable to a Tax (whether such Tax has been paid or is payable by you or any other person).
- 13.5 Without limitation to **clause 13.4**, you undertake to us to comply with section 75AU of the Trade Practices Act 1974 (Cth) and the guidelines in respect of price exploitation and the new tax system issued by the Australian Competition and Consumer Commission under section 75AV(1) of the Trade Practices Act 1974 (Cth).
- 13.6 If it is determined on reasonable grounds that the amount of GST paid or payable by you on any supply made under or in connection with this agreement differs for any reason from the amount of GST recovered or recoverable from us then the amount of GST recovered or recoverable from us shall be adjusted accordingly.
- 13.7 Where the amount of GST recovered or recoverable from us is adjusted pursuant to **clause 13.6** and this gives rise to an Adjustment from an Adjustment Event you must provide an Adjustment Note to us.
- 13.8 All amounts payable by us to you by way of reimbursement of an amount paid or payable by you to any other person, or calculated on the basis of amounts incurred or to be incurred by you, shall be calculated on the basis of such amounts paid or payable by you, or costs incurred or to be incurred by you, excluding any applicable amount in respect of GST incurred by you to the extent to which you are entitled to an input tax credit in respect of such GST or amount.

**14. Assignment and sub-contracting**

- 14.1 You may not assign the rights and/or obligations under this Agreement without our prior written consent, which consent will not be unreasonably withheld if the proposed assignee is financially and technically capable of meeting your obligations under this Agreement.
- 14.2 We have the right to assign any or all of our obligations or rights under this Agreement at any time to any Related Entity or to any party that is financially capable of meeting our obligations under this Agreement.
- 14.3 You may not sub-contract your obligations under this Agreement unless we consent to such arrangement.
- 14.4 Any consent given by us under this clause must include a condition that the sub-contractor or assignee agrees to be bound by this Agreement.
- 14.5 Sub-contracting does not relieve you from any liability or obligation under this Agreement. You remain liable to us for the acts and omissions of any sub-contractors, and employees and agents of sub-contractors, as if they were your acts or omissions.

**15. These terms are exclusive**

- 15.1 By executing this Agreement you agree to be bound by the terms in this Agreement.
- 15.2 This Agreement, when bearing an agreement number and duly signed on our behalf, is the only Agreement which we will recognise as authority for charging Services to our account and supersedes all previous communications and negotiations in relation to the Services.
- 15.3 Except as may be specifically provided in this Agreement, any terms and conditions contained in, or relating to, any other documents, including any of your documents, in respect of the Services are excluded.

**16. Other matters**

- 16.1 Any of our rights under these terms can only be waived by us in writing.
- 16.2 These terms may not be varied except in writing signed by both Parties.
- 16.3 We may exercise a right remedy or power in any way we consider appropriate.
- 16.4 If we do not exercise a right, remedy or power at any time this does not mean that we cannot exercise it later.
- 16.5 To the extent of any inconsistency between the Agreement Specifics, any Special Conditions of Contract, the Standard Terms and Conditions and any other terms and conditions as may be set out in an attachment, annexure or schedule, then the terms and conditions as set out in the Agreement Specifics prevail to the extent of any such inconsistency, then the Special Conditions of Contract, then the Standard Terms and Conditions, then any other terms and conditions in any attachment, annexures or schedule.
- 16.6 You must obtain at your own expense any necessary Licences or permits and comply with applicable laws in performing the Services to us.
- 16.7 The rights, powers and remedies provided in these terms are in addition to any rights, powers and remedies provided by law.

**17. Governing law**

- 17.1 This Agreement is governed by the laws of Queensland, Australia.
- 17.2 Both Parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland and the courts of appeal from them.

**18. Interpretation**

- 18.1 In this Agreement unless the contrary intention appears:
- (a) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
  - (b) the singular includes the plural and vice versa;
  - (c) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
  - (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
  - (e) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
  - (f) a reference to an annexure, attachment or schedule is a reference to an annexure, attachment or schedule to this Agreement, and a reference to this Agreement includes an annexure, attachment or schedule;
  - (g) a reference to a clause is a reference to a clause in this Agreement;
  - (h) a reference to a third person or a third party is a reference to a person who is not a party to this Agreement; and
  - (i) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency.
- 18.2 Headings are inserted for convenience and do not affect interpretation of this Agreement.

**19. Definitions**

In this Agreement unless the contrary intention appears:

**Adjustment** has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Adjustment Event** has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Adjustment Note** has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Agreement** means this Agreement as constituted by the Agreement Specifics, Standard Terms and Conditions and any other annexures, attachments and schedules.

**Agreement Specifics** means the specific details of this Agreement as set out above the signature section of this Agreement or which are referred to in that section and included in a schedule.

**Bank Bill Rate** means the rate, expressed as a yield per cent per annum (rounded up (if necessary) to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10:30 am (Melbourne time) on the first day of that period, for Bank Bills that have a tenor equal to (or no more than 2 Business Days shorter or longer than) that period.

**Defective Services** means Services or the results of any Services which are not in conformity with this Agreement, are of inferior quality or workmanship or are otherwise unsatisfactory.

**Gross Negligence** means the failure to perform a duty in reckless disregard of the consequences.

**GST** has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (C'th).

**Intellectual Property Rights** includes without limitation the protected rights attaching to inventions, patents, registered designs, trade marks, copyright, circuit layouts and confidential information.

---

**Licences** means all licences, qualifications, registrations and other statutory requirements necessary for performance of Services under this Agreement.

**Party** means you or us.

**Parties** means you and us.

**Price** means the price specified in this Agreement or the rates for the provision of the Services (as the case may be).

**Related Entity** means any related body corporate as defined in the Corporations Law.

**Services** means the services specified in this Agreement (including any part of the specified Services and the results of the specified Services).

**Standard Terms and Conditions** means the terms and conditions of this Agreement.

**Tax Invoice** has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (C'th).

**Taxes** means any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than Taxes on our net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

**you** means the person named in this Agreement as the supplier of the goods.

**Warranty Period** means the period of 12 months from the date on which the service is performed.

**we** and **us** means the CQPA or any associated entity identified in the Agreement Specifics.

**Written Claim** means a written claim given by you in accordance with **clause 7.3(b)** or **clause 7.4(d)**.