



REQUEST FOR TENDER

Air Conditioner Servicing, RCD, and Cold-room Maintenance

CONTRACT NO.: T22/23.35

PART 1 – PREAMBLE				
Banana Shire Council invites tenders from suitably qualified contractors to tender on the air conditioner servicing, RCD, and cold room maintenance for all the council's own offices and its service area or property and more detailed information described in its scope of work (Part-5). Works are expected to be commence immediately after signing the contract.				
PART 2 – GENERAL INFORMATION				
Contract details:	T22/23.35 Air Conditioner Servicing, RCD, and Cold-room Maintenance			
Communications by Tenderers:	Communications regarding the Procurement Process must be submitted to enquiries@banana.qld.gov.au no later than 5 calendar days prior to the time stated in Item 4			
Briefing or site inspection:	Details	Maximum attendees	Mandatory	RSVP
	<ol style="list-style-type: none"> 1. Tender Briefing, to be held on 10 August 2023, 9.00 am. 2. 62 Valentines Plains Road, Biloela Qld 4715 3. Teams link will be made available for those who cannot attend. 	n/a	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	RSVP to enquiries@banana.qld.gov.au by the 07 August 2023, 11.00am
Submission of Tender:	Tenders must be submitted electronically only at tenders@banana.qld.gov.au by no later than 16 August 2023 11.00am Note// Adequate time must be allowed for the Tender and all supporting documents to be uploaded or received by this time.			
Evaluation Criteria:	Evaluation Criteria			Weighting (%) (Optional)
	Price			50
	Experience (past performance) & Capability			15
	Safety, Quality, and Environmental Management			5
	WHS Management			10
	Local Content			20
Tenders should not be longer than:	n/a			

Tenders to be valid for:	90 calendar days after the time stated in Item 4 (as extended if at all, pursuant to the Procurement Process Conditions)
Complaints:	Complaints regarding Procurement Process to be directed to: enquires@banana.qld.gov.au
PART 3 – PROCUREMENT PROCESS CONDITIONS	
<p>The Procurement Process is governed by, and this Request for Tender is to be read in conjunction with, the Procurement Process Conditions</p> <p><input checked="" type="checkbox"/> attached to or provided with this request for tender and identified as the Procurement Process Conditions.</p> <p><input type="checkbox"/> available for viewing or download from www.banana.qld.gov.au</p>	
PART 4 – CONTRACT	
<p><input checked="" type="checkbox"/> The contract shall be substantially in the form attached to or provided with this request for tender and identified as “T22/23.35 Air Conditioner Servicing, RCD, and Cold-room Maintenance - Contract” file attached.</p> <p><input type="checkbox"/> The contract shall comprise the documents identified in clause 4 of the principal’s standard terms and conditions which can be found at</p> <p><input type="checkbox"/> The contract shall comprise the documents identified in clause 4 of the principal’s standard terms and conditions which are attached to or provided with this request for tender and identified as</p> <p><input type="checkbox"/> The contract shall be made in accordance with the terms and conditions of the Local Buy contract.</p> <p><input type="checkbox"/> The Tenderer must request a copy of the form of contract from the principal.</p> <p>Note// Where this request for tender is for appointment to a register of pre-qualified suppliers or as a preferred supplier then a contract will not be formed between the principal and a successful tenderer, and a successful tenderer will not be required to enter a contract with the principal, unless and until that tenderer is subsequently engaged to provide works, goods and/or services pursuant to that appointment.</p>	
PART 5 – SCOPE	
<p><input checked="" type="checkbox"/> The Scope is described in the document(s) attached to or provided with this request for tender and identified as “T22/23. 35 Air Conditioner Servicing, RCD, and Cold-room Maintenance - Scope of Works” file attached.</p> <p><input type="checkbox"/> The Scope is as follows</p>	
PART 6 – RESPONSE SCHEDULES	
<p>The Tender must be submitted in the form provided in the response schedules attached to or provided with this Request for Tender identified as “T22/23. 35 Air Conditioner Servicing, RCD, and Cold-room Maintenance - Response Schedules” file attached</p>	



GENERAL SPECIFICATION (STANDARD RISK)

Air Conditioner Servicing, RCD, and Cold-room Maintenance

CONTRACT NO.: T22/23.35

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1. THE SPECIFICATION

- 1.1 **(Documents comprising this Specification)** The Specification comprises the following documents:
- (a) Workplace Health and Safety Regulations 2011
 - (b) Environmental Protection Act 2014
 - (c) other documents to the extent that they are incorporated (whether physically or by reference) into the Specification, namely:
 - (i) relevant Australian Standards.
 - (ii) Principal's Policies and Procedures.
 - (iii) Councils' policies and procedure
 - (iv) These specifications.
- 1.2 **(Precedence of documents comprising Specification)** The documents comprising the Specification shall be taken to be mutually explanatory. If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1 then the documents will take precedence in the order set out in clause 1.1, with the document listed at **Error! Reference source not found.** being the highest in the order.
- 1.3 **(Documents incorporated by reference into Specification)** The Contractor is deemed to have obtained copies of, read, understood, and allowed for compliance with the Specification (including any documents which are incorporated into it by reference only).

2. DEFINITIONS

- 2.1 **(Definitions)** Capitalised terms used in the Specification have the meanings assigned to them in the General Conditions of Contract (if any) unless the context otherwise requires. Terms which are separately defined in a specific clause have the meanings assigned in those clauses. Otherwise, in the Specification:
- (a) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations, and permissions from any Authority and any related fees and charges;
 - (b) **Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality, or any other person having jurisdiction over the project;
 - (c) **Contractor Documents** means those records, reports, designs, specifications, certificates, plans (including management plans), procedures, manuals and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Contractor (and all information advice, designs, calculations and recommendations in those documents) (but does not include those that are incomplete at the time at which the Principal exercises its rights under subclause 39.4 of the General Conditions of Contract or the Contractor exercises its rights under subclause 39.9 of the General Conditions of Contract);
 - (d) **General Conditions of Contract** means the General Conditions of Contract referred to in the formal instrument of agreement to which this General Specification is attached;
 - (e) **Good Industry Practice** means:

- (i) the standard of skill, care, and diligence; and
 - (ii) the practices, methods, techniques, and acts,
- of a skilled, competent, and experienced contractor engaged in the business of carrying out Work similar to the WUC;
- (f) **Policies and Procedures** means the policies, procedures, codes, plans, guidelines, and the like provided or made available by or on behalf of the Principal to the Contractor from time to time, including those published on the Principal's website;
 - (g) **Principal** has the same meaning as given to the term "Principal" or "Purchaser" in the General Conditions of Contract (as the case may be):
 - (h) **Program** has the same meaning as given to the term "construction program" or "program" in the General Conditions of Contract (as the case may be):
 - (i) **Specification** means this document and all attachments to it which forms part of the Contract;

3. CONTRACT MANAGEMENT

- 3.1 **(Contractor's Superintendence)** The Contractor shall provide all superintendence necessary for the proper fulfilment of the Contractor's obligations under the Contract, including, unless the Superintendent directs otherwise, a competent site manager and site foreman approved by the Superintendent (with such approval not to be unreasonably withheld). Unless otherwise agreed by the Superintendent, the site manager shall be the Contractor's representative under clause 22 of the General Conditions of Contract.
- 3.2 **(Requests for review and information)** The Superintendent will endeavor to provide a response and/or Direction in relation to a written request for information from the Contractor within 5 Business Days of receipt of such request. The response time will be dependent on the complex nature and or quantity of clarifications per information request submitted. The Contractor is encouraged to make recommendations and or suggestions for the Superintendent's consideration when submitting such requests.
- 3.3 **(Direction by Principal or Superintendent)** The Principal shall not be bound by any verbal advice given or information furnished by any Personnel of the Principal or Superintendent in respect of the Contract. The Contractor must not accept instructions from any person other than the Superintendent and/or the Superintendent's Representative. The Contractor acknowledges and agrees that its obligations and liabilities in connection with the Contract are not affected by any:
 - (a) receipt or review of, or comment or Direction on, a document submitted by the Contractor;
 - (b) failure by the Principal or Superintendent to review, comment on, or give a Direction on any document submitted by the Contractor; or
 - (c) failure by the Superintendent to give its approval pursuant to clause 8.3.

'Before relying on the receipt, review, or comment by the Superintendent, or Principal, or complying with a Direction in relation to a document, the Contractor must notify the Superintendent in writing, if doing so will affect a warranty, representation or obligation of the Contractor under the Contract.

4. PRINCIPAL SUPPLIED INFORMATION

- 4.1 **(Definitions)** In this clause, Principal Supplied Information means any information relating to the Contract which either:

- (a) does not form part of the Contract but which is or has been provided or made available by or on behalf of the Principal to the Contractor; or
- (b) does form part of the Contract, but which is expressly identified as Principal Supplied Information or otherwise as information on which the Contractor should not or must not rely,

and includes information in any form and information which is made available before or after the Date Of Acceptance Of Tender.

4.2 **(No warranty or representation by Principal)** The Principal gives no warranty and makes no representation that the Principal Supplied Information is accurate, adequate, or complete.

4.3 **(No reliance)** The Contractor:

- (a) acknowledges and agrees that the Contractor has not relied; and
- (b) must not rely on the Principal Supplied Information,

unless and until the Contractor has independently verified the adequacy, accuracy, and completeness of that information.

5. APPROVALS AND OTHER LAW

5.1 **(Approvals obtained by the Principal)** The Principal has obtained the following Approvals:

- (a) Information Privacy Act 2009
- (b) Work Health and Safety Act 2011

The Contractor must comply with those Approvals to the extent that they are applicable to WUC.

5.2 **(Identifying, obtaining and maintaining Approvals)** The Contractor must identify and notify the Principal of all Approvals which are necessary for the proper performance of WUC (other than Approvals which the Principal has advised the Contractor it has already obtained). The Contractor must obtain and maintain all such Approvals until the end of the last Defects Liability Period to expire. The cost of obtaining and maintaining all such Approvals shall be borne by the Contractor.

5.3 **(Compliance)** The Contractor must ensure that its Personnel comply with all Approvals and other laws which are in anyway applicable to WUC, including, unless the Contract expressly provides otherwise, by paying all fees, royalties, levies, charges, costs, expenses, taxes, or duties.

5.4 **(Timing)** The Contractor is deemed to have allowed a reasonable time in its Program for all required Approvals to be applied for and obtained.

5.5 **(No fetter)** Nothing in the Contract shall be taken to fetter the power, rights, or authority of the Principal as an Authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld), or any other law.

6. SITE

6.1 **(Location)** The Site is identified in **in below excel sheet-**

>>Q19-20.00 Air Conditioner Details & Servicing Schedule 2020-2022

>>Q20.21.7- RCD Details & Testing Schedule 2020-2022 FINAL

6.2 **(Requirements of possession)** The Contractor's attention is drawn to clause 24 of the General Conditions of Contract. The following documentation and information must be provided to the

Superintendent as a requirement of the Principal giving access to or possession of the Site and within the earlier of:

- (a) 20 Business Days after the Date Of Acceptance Of Tender; and
- (b) 5 Business Days prior to any scheduled pre-start meeting.

6.3 **(Site specific induction)** The Contractor must ensure that:

- (a) each of the Contractor's Personnel working on Site receives a site-specific induction;
- (b) every visitor to the Site either receives a site-specific induction or is accompanied at all times at the Site by someone who has received a site-specific induction for that Site (or, where the Site comprises more than one location, the particular part of the Site).

6.4 **(Site specific requirements)** The Contractor must comply with the following site requirements, and any reasonable requirements of the Principal in relation to the Contractor's access to or conduct on the Site:

- (a) Sewerage and water treatment plants have specific rules of conduct, site restrictions, rules about entry to and exit from site and use of facilities.

6.5 **(Locations within Site)** The Contractor must ensure that all plants, equipment, materials, temporary workshops, stores, and offices are kept within the confines of the Site at locations approved by the Superintendent.

6.6 **(Unauthorised entry to site)** The Contractor must use all reasonable endeavours to prevent any unauthorised entry to the Site.

6.7 **(Signage)** No signage is to be placed on the Site or the perimeter (other than safety signage) without the prior written consent of the Superintendent.

6.8 **(Deliveries)** The Contractor is responsible for delivery and unloading of all goods, equipment and other materials used in WUC (including any such materials used by subcontractors), providing space for the storage of the materials, handling the materials, and checking that the materials comply with the requirements of the Contract.

6.9 **(Interference)** The Contractor must use all reasonable endeavours to minimise interference with existing amenities, whether natural or man-made, and the amount of noise caused by the carrying out of WUC.

6.10 **(Public utilities and other assets)** Without limiting the Contractor's obligations under clause 15 of the General Conditions of Contract, the Contractor must use all reasonable endeavours to identify, locate, and prevent damage to overhead public utility lines, surface drainage works, underground pipes, conduits, and cables in the vicinity of The Works. If the Contractor or any of its Personnel damage any such assets, then:

- (a) the Contractor must immediately report such damage to the owner of the asset and the Superintendent; and
- (b) comply with the requirements of the owner of the asset (including by paying for any required repairs or renewals).

The Contractor must notify the Superintendent immediately if the Contractor considers that it is necessary to alter the location or level of any existing assets to conform with the requirements of the Contract. If directed to do so by the Superintendent, the Contractor must arrange for the relocation Work to be carried out by the appropriate Authority.

7. QUALITY MANAGEMENT SYSTEM

- 7.1 **(Quality management system)** The Contractor must, prior to commencing WUC at the Site, implement a quality management system which accords with the requirements of ISO 9001 or with any alternative standard approved by the Superintendent (acting reasonably). The Contractor must comply with, and ensure that all of the Contractor's Personnel comply with the system. The Contractor shall appoint a suitably qualified quality management representative, who shall have such authority to effectively manage and control the implemented quality system.
- 7.2 **(Quality plan)** The Contractor's quality management system must include a project quality plan which contains at least the following information:
- (a) a project organisation chart clearly showing the lines of authority, responsibility, and communication that will be in effect;
 - (b) details of the qualifications and experience of all project management and supervision staff;
 - (c) a lot plan;
 - (d) details of project specific procedures, including those related to the following to the extent that they are applicable to WUC:
 - (i) all shop drawing formation and coordination;
 - (ii) management of all services subcontractor/trades;
 - (iii) management of all services/operational commissioning;
 - (e) applicable inspection and test plans;
 - (f) a register of all proposed quality records; and
- 7.3 **(Inspection and test plan)** The Contractor must, as part of the Contractor's quality management system, prepare and obtain the Superintendent's Direction regarding an inspection and test plan. The inspection and test plan must, at a minimum, detail:
- (a) the items of Work to be inspected or tested;
 - (b) the party who will carry out the inspection or test;
 - (c) the stages at which Work is to be inspected and tested or the frequency of inspections and tests;
 - (d) Work which shall not be covered up or made inaccessible without the prior approval of the Superintendent;
 - (e) hold points beyond which Work cannot proceed without approval of the Superintendent;
 - (f) relevant standards and criteria; and
 - (g) the records to be maintained by the Contractor.
- 7.4 **(Reporting)** The Contractor must provide the Superintendent with all documents and information:
- (a) reasonably requested to support or evidence the Contractor's quality management system;

- (b) which are produced by the Contractor in compliance with the quality management system.

7.5 **(Inspections)** The Principal and the Superintendent may carry out inspections of the Site at any time. During inspections, the Contractor shall provide the Principal and the Superintendent with all documents, access and assistance reasonably requested by either. The Contractor shall provide a sufficient and safe access for all inspections at the Site. Unless otherwise specified, the Contractor must give the Superintendent no less than 2 Business Days' notice of its intention to commence each stage of the following Work:

- (a) Principal will randomly inspect the work with appointed contractor anytime.

If the Contractor does not provide the required notification for an inspection, particularly if an urgent after-hours inspection is required to ensure WUC is not delayed, the Superintendent may deduct the cost of the inspection as a Required Deduction pursuant to clause 37.2 of the General Conditions of Contract.

8. REPORTS, MEETINGS AND RECORD KEEPING

8.1 **(Progress reports)** The Contractor must:

- (a) keep the Principal fully informed of the progress and performance of WUC;
- (b) at the times stated in the Contract and when otherwise reasonably required by the Principal, meet and discuss the performance of the Contractor and/or any other matter concerning the Principal in connection with the Contract; and
- (c) comply with any recommendations or directions given by the Principal in relation to the performance of the Contractor's obligations under the Contract (but such compliance will not release or discharge the Contractor from any liability or obligation under the Contract).

8.2 **(Meetings - General)** The Contractor must, at the times reasonably required by the Principal, meet and discuss the performance of the Contractor and/or any other matter concerning the Principal in connection with the Contract. The Contractor shall provide a sufficient and safe access for all inspections and meetings at the Site.

8.3 **(Record of compliance)** The Contractor must:

- (a) create and maintain complete and accurate records, reports and other documents demonstrating the Contractor's compliance with the Contract, including:
 - (i) All air conditioning model, serial number, and test report need to be record in the attached spreadsheet (Q19-20.00 Air Conditioner Details & Servicing Schedule 2020-2022 and Q20.21.7- RCD Details & Testing Schedule 2020-2022 FINAL).
 - (ii) All RCD model, serial number, and test report need to be record in the attached spreadsheet (Q19-20.00 Air Conditioner Details & Servicing Schedule 2020-2022 and Q20.21.7- RCD Details & Testing Schedule 2020-2022 FINAL).
 - (iii) All cold room models, serial number, and test report need to be record in the attached spreadsheet (Q19-20.00 Air Conditioner Details & Servicing Schedule 2020-2022 and Q20.21.7- RCD Details & Testing Schedule 2020-2022 FINAL).

and any other records, reports or documents reasonably required by the Principal in connection with the Contract; and

- (b) create any document required to be prepared under any management plan prepared under the Contract.

- 8.4 **(Photographic evidence)** The Contractor must provide to the Superintendent a progressive photographic record of the progress of WUC at the times required by the Superintendent. Photographs shall be in high-definition digital format and shall be dated and labelled to describe the photograph's content.

9. PAYMENT CLAIMS

- 9.1 **(Cash flow projection)** Within 3 days after submitting a tax invoice for payment, the Contractor must provide an updated cash flow projection schedule for the balance of WUC remaining at the end of each month, including revised cash flow projection based on approved progress claims and total cost to date.
- 9.2 **(Particular items in Price Schedule)** Further to clause 3 of the General Conditions of Contract where an item is identified in the Price Schedule as:
- (a) a prime cost item, then the relevant sum(s) included in the Price Schedule shall in themselves not be payable, but where that item of Work is to be supplied or carried out:
 - (i) the Contractor must, if directed to do so by the Superintendent:
 - A. use its best endeavours to obtain 3 quotes for the prime cost item from suppliers which the Contractor considers are capable of carrying out the relevant Work and that are reasonably available to do so; and
 - B. provide a complete written copy of each quote received to the Superintendent;
 - (ii) the Superintendent may (but shall not be obliged to) within 5 Business Days after receiving the quotation(s) direct the Contractor as to which supplier to engage and the Contractor must comply with that Direction. If the Superintendent does not give a Direction within this time, then the Contractor may engage any one of the suppliers that provided a quotation;
 - (iii) the Contractor shall be entitled to payment of the actual direct cost paid by the Contractor to the supplier for the supply of that item (excluding any damages payable to the supplier or vice versa) and without any payment for the Contractor's profit and overheads; and
 - (iv) the costs for labour, installation, and for all other costs required to incorporate the goods into The Works shall be deemed to have been included in the Price Schedule generally;
 - (b) a provisional quantity, provisional item, if ordered, as directed, optional or similar term (other than provisional sum), then where that item of Work is supplied or carried out in accordance with a Direction of the Superintendent:
 - (i) the relevant sum(s) included in the Price Schedule shall in themselves not be payable;
 - (ii) where there is a rate for the item in the Price Schedule, the Contractor shall be entitled to payment for the item at the rate provided in the Price Schedule for the measured quantity of the item so supplied or carried out; or
 - (iii) where there is a lump sum for the item in the Price Schedule, the Contractor shall be entitled to payment of that lump sum,

A Direction to carry out or supply such an item, or the absence of a direction to carry out or supply such an item, shall be deemed to be within the general scope of the Contract.

10. PROJECT TRUSTS AND RETENTION TRUSTS

- 10.1 **(Definitions)** Terms used in this clause 10 which are not separately defined in the Contract have the same meaning as is attributed to them in Chapter 2 of the Security Of Payment Legislation.
- 10.2 **(Compliance)** Nothing in this clause shall be taken to limit the Contractor's obligations under Chapter 2 of the Security Of Payment Legislation. The Contractor must provide all information and documentation that the Superintendent reasonably directs in connection with the Contractor's compliance with this clause.
- 10.3 **(Project trust account)** The Contractor must:
- (a) open and maintain a Project Trust Account; and
 - (b) give to the Superintendent and Principal all notices which the Security Of Payment Legislation requires the Contractor to give in connection with a Project Trust.
- 10.4 **(Retention trust account)** The Contractor must:
- (a) open and maintain a Retention Trust Account; and
 - (b) give to the Superintendent and Principal all notices which the Security Of Payment Legislation requires the Contractor to give in connection with a Retention Trust.
- 10.5 **(Variation to contract)** If at the Date Of Acceptance Of Tender:
- (a) the Contractor is not required to open and maintain a Project Trust Account but subsequently becomes required to do so under the Security Of Payment Legislation; or
 - (b) the Contractor is not required to open and maintain a Retention Trust Account but subsequently becomes required to do so under the Security Of Payment Legislation,
- the Contractor must give the Superintendent and Principal written notice of that changed requirement within 5 Business Days of the date on which the Contractor becomes aware, or ought to have become aware of the changed requirement and must comply with clauses 10.4 and or 10.5 as the case may be.
- 10.6 **(Substantial breach)** In addition to other acts or omissions which constitute a Substantial Breach of the Contract, Substantial Breaches include the Contractor failing to
- (a) establish a project trust account as required by the security of payment legislation, in breach of clause 10.3;
 - (b) establish a retention trust account as required by the security of payment legislation, in breach of clause 10.4;;
 - (c) comply with an obligation of the Contractor set out in Part 2, Divisions 4 and 5 of Chapter 2 of the security of payment legislation;
 - (d) comply with an obligation of the Contractor set out in Part 3, Divisions 4 and 5 of Chapter 2 of the security of payment legislation.

11. CONFIDENTIAL INFORMATION

- 11.1 **(Specific confidential information)** Without limiting subclause 8.5 of the General Conditions of Contract, the Contractor must, and must ensure that its Personnel, keep confidential the following documents and any other information obtained in the course of performing the Contract which is, of its nature, confidential:

- (a) the Contract;
- (b) Site maps and other machinery information.

12. SAFETY

12.1 **(Relationship to General Conditions of Contract)** The Contractor's attention is drawn to clause 12A of the General Conditions of Contract. Nothing in clause 18 shall be taken to limit or exclude any obligation or liability of the Contractor under the General Conditions of Contract or at law in relation to work, health and safety.

12.2 **(Electrical Safety)** The Contractor must:

- (a) comply with all provisions of the *Electrical Safety Act 2002* (Qld) and all related Legislative Requirements; and
- (b) ensure that:
 - (i) all electrical work conducted, including work performed by subcontractors, is fully documented and recorded on a 'Certificate of Electrical Safety';
 - (ii) all required 'AS3000 Test Results' are documented and recorded by the Contractor; and
 - (iii) the Contractor provides:
 - A. certificates of testing and safety pursuant to the Electrical Safety Regulation 2013 (Qld) for all electrical work carried out as part of WUC (whether by the Contractor or by subcontractors); and
 - B. records of all test results in accordance with AS3000:2007 for all electrical installation works on property owned by the Principal.

13. ENVIRONMENTAL PROTECTION

13.1 **(Environmental protection)** The Contractor must, and must ensure that its Personnel, perform the Contractor's obligations in accordance with:

- (a) best practice environmental management (as that term is defined in Section 21 of the *Environmental Protection Act 1994* (Qld));
- (b) the requirements of all other Legislative Requirements relating to the protection of the Environment; and
- (c) the Principal's Policies and Procedures relating to the protection of the Environment.

The Contractor must provide a copy of its environmental risk assessments and relevant control strategies for WUC for the Superintendent's review prior as a requirement of possession of the Site and prior to any pre-start meeting. The level of detail in the risk assessments shall be adequate to provide the Superintendent with a clear understanding of the required Work.

14. ASBESTOS

14.1 **(General)** The removal, transportation, and disposal of asbestos products must be undertaken in accordance with:

- (a) all Legislative Requirements;
- (b) relevant standards and codes of practice including "How to Safely Remove Asbestos 2021" as amended or replaced from time to time; and

- (c) to the extent not inconsistent with paragraphs (a) and (b), any management plan prepared under the Contract.
- 14.2 **(Work to be done by certified removalist)** Such Work must be undertaken by a certified asbestos removalist.
- 14.3 **(Monitoring)** The Contractor must arrange for daily air monitoring and reporting during the asbestos removal process by an independent air monitoring consultant/hygienist.
- 14.4 **(Certification)** At the completion of the asbestos removal process, the Contractor must provide certification that all asbestos has been safely removed from the Site and disposed of in accordance with this clause.

15. PERSONAL PROPERTY SECURITIES

- 15.1 **(Interpretation)** In this clause, 'PPS Act' means the *Personal Property Securities Act 2009* (Cth). Terms used in this clause which are defined in the PPS Act which are not separately defined in the Contract have the meaning attributed to them in the PPS Act.
- 15.2 **(Disclosure)** If this Contract contains a security interest, then each party agrees to the purposes of section 275(6) of the PPS Act that it will not disclose information of the type referred to in section 275(1) of the PPS Act, where a request is made under section 275(1) of the PPS Act in relation to this Contract or any part of it, except in circumstances where the party is compelled by law (other than section 275(1) of the PPS Act) to make that disclosure.
- 15.3 **(Contractor's obligations)** If the Principal determines that any clause of this Contract, or a transaction contemplated by this Contract or in connection with the performance of WUC, constitutes, or is likely to give rise to a security interest in respect of which the Principal is the security holder, then the Contractor:
- (a) the Contractor must, within the time required by the Principal, provide all assistance and cooperation requested by the Principal that the Principal determines is reasonably required to;
 - (i) register and maintain the registration of its security interest on the personal property securities register within any applicable time limits relevant to the effectiveness of the security interest;
 - (ii) ensure that the Principal's security interest is enforceable against third parties, perfected, or otherwise effective;
 - (iii) ensure that the security interest has the appropriate priority required by the Principal (including where applicable, as a purchase money security interest);
 - (iv) ensure that any security interest granted temporary perfection under the PPS Act is perfected by registration or other appropriate means prior to any applicable expiry of that temporary perfection;
 - (v) enable the Principal to register financing statements or financing change statements under the PPS Act, with respect to any such security interest;
 - (b) waives the right to receive notice of a verification statement in relation to the registration of that security interest;
 - (c) shall not register or permit to be registered any other security interest in respect of the personal property that comprises the collateral in respect of that security interest, other than one that has been consented to or granted by the Principal;
 - (d) shall not cause or allow any of the Contractor's personal property to become an accession to the Principal's personal property or cause or allow the Principal's personal

property to become an accession to the Contractor's personal property without the prior consent of the Principal; and

- (e) must immediately notify the Principal if any other person claims or attempts to enforce a security interest:
 - (i) in the Principal's personal property; or
 - (ii) in the Contractor's personal property to the extent that that purported enforcement affects or has the potential to affect the Contractor's ability to carry

16. **NON-CONFORMING BUILDING PRODUCTS**

- 16.1 **(Definitions)** In this clause, the terms 'person in the chain of responsibility', 'building product', 'Minister', 'non-conforming building product' and 'required information' each have the respective meanings given to those terms in the *Queensland Building and Construction Commission Act 1991* (Qld) ('QBCC Act').
- 16.2 **(General)** The Contractor:
- (a) acknowledges that, to the extent that the Contractor is a person in the chain of responsibility, it has obligations under Part 6AA of the QBCC Act in relation to non-conforming building products;
 - (b) warrants and represents that no building products incorporated into The Works are non-conforming building products, or the subject of a warning statement issued by the Minister;
 - (c) must ensure that it, and its subcontractors, suppliers, and consultants provide all required information for a building product incorporated into The Works to the Principal upon installation of the building product into The Works; and
 - (d) must provide all required information and any other information relevant to a building product to the Principal within the timeframes requested by the Principal.
- 16.3 **(Failure to comply)** If the Contractor installs, or incorporates into The Works, a building product without the required information, the Principal will be entitled to do either of the following in its sole and absolute discretion:
- (a) request the required information from the Contractor, in which case the Contractor will provide the required information as soon as reasonably practicable, or
 - (b) direct the Contractor to remove the building product from The Works and replace with a building product that is not non-conforming pursuant to subclause 29.3 of the General Conditions of Contract or clause 35 of the General Conditions of Contract.
- 16.4 **(Requirement of Practical Completion)** The Contractor shall, as a requirement of practical completion, provide to the Principal a signed statutory declaration confirming that all required information has been obtained and provided to the Principal, and that no non-conforming building products have been installed or incorporated into The Works.
- 16.5 **(Indemnity)** Without limiting clause 11A.6 of the General Conditions of Contract, the Contractor shall indemnify and keep indemnified the Principal against any Claim which may be brought against the Principal, and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered, or incurred by the Principal to the extent caused or contributed to any breach of the Contractor's obligations under this clause 16, or by any failure of the Contractor to comply with its obligations under the QBCC Act in relation to building products.

17. WORK HEALTH AND SAFETY ACCREDITATION SCHEME

- 17.1 **(Accreditation)** The Contractor must maintain accreditation under the Australian Government Work Health and Safety Accreditation Scheme ('the Scheme'), established by the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), while building work (as defined in section 6 of the Act) is carried out.
- 17.2 **(Compliance)** The Contractor must comply with all conditions of the Scheme accreditation and the National Construction Code performance requirements in relation to building materials.

18. QUEENSLAND CODE

- 18.1 **(The Queensland Code)** If applicable, in addition to the terms defined in this document, terms used in this clause 18 have the same meaning as is attributed to them in the Queensland Government's *Queensland Code of Practice for the Building and Construction Industry* (the 'Queensland Code').
- 18.2 **(Primary Obligations)** The Contractor must:
- (a) comply with, and meet any obligations imposed by, the Queensland Code;
 - (b) notify the Australian Building and Construction Commission ('ABCC') (or nominee) and the Principal, of any alleged breaches of the Queensland Code and of voluntary remedial action taken within 24 hours of becoming aware of the alleged breach;
 - (c) where the Contractor is authorised to engage a subcontractor and it does so, ensure that any secondary contract imposes on the subcontractor equivalent obligations to those in this clause 18, including that the subcontractor shall comply with, and meet any obligations imposed by, the Queensland Code; and
 - (d) not appoint or engage another party in relation to WUC, where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code.
- 18.3 **(Information)** The Contractor must maintain adequate records of compliance with the Queensland Code by it, its subcontractors, and related entities.
- 18.4 **(Access)** The Contractor must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the ABCC) to:
- (a) enter and have access to sites and premises controlled by the Contractor, including any Site at which WUC is being carried out;
 - (b) inspect any work, material, machinery, appliance, article, or facility;
 - (c) access information and documents;
 - (d) inspect and copy any records relevant to WUC;
 - (e) have access to personnel; and
 - (f) interview any person,
- as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code by the Contractor, its subcontractors, and related entities.
- 18.5 **(Production of documents)** The Contractor, and its related entities, shall agree to, and comply with, a request from Queensland Government authorised personnel (including personnel of the ABCC) for the production of specified documents by a certain date, whether in person, by post, or electronic means.

- 18.6 **(Sanctions)** The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code that would have precluded it from tendering for work to which the Queensland Code applies. If the Contractor does not comply with, or fails to meet any obligation imposed by the Queensland Code, a sanction may be imposed against it in connection with the *Queensland Code*. Where a sanction is imposed:
- (a) it is without prejudice to any rights that would otherwise accrue to the parties;
 - (b) the State of Queensland (through its agencies, Ministers and the ABCC) is entitled to:
 - (i) record and disclose details of non-compliance with the Queensland Code and the sanction; and
 - (ii) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Contractor, or its related entities, in respect of work to which the Queensland Code applies.
- 18.7 **(Cost)** The cost of ensuring the Contractor's compliance with the Queensland Code shall be borne by the Contractor. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of Queensland for such costs.
- 18.8 **(No relief)** Compliance with the Queensland Code does not relieve the Contractor from responsibility to perform WUC and any other obligation under the Contract, or from liability for any defect in The Works, or from any other legal liability, whether or not arising from its compliance with the Queensland Code.
- 18.9 **(Change)** Where a change in the Contract or WUC is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
- (a) the circumstances of the proposed change;
 - (b) the extent to which compliance with the Queensland Code will, or is likely to be, affected by the change; and
 - (c) what steps the Contractor proposes to take to mitigate any adverse impact of the change,

and the Principal will direct the Contractor as to the course it must adopt within 5 Business Days of receiving notice.

19. **QUEENSLAND GOVERNMENT QUEENSLAND CHARTER FOR LOCAL CONTENT**

- 19.1 **(Definitions)** Terms used in this clause 19 which are not separately defined in this Contract have the same meaning as is attributed to them in the Charter for Local Content.
- 19.2 **(Contractor's obligation)** The Contractor must, and must ensure its subcontractors, in carrying out WUC:
- (a) comply with the principles of the Charter for Local Content and any related requirements under the Contract;
 - (b) comply with any Statement of Intent or equivalent local content statement under the Contract;
 - (c) complete and submit a Charter for Local Content – Project Outcome Report (available from State Government website) to the Principal at, and as a requirement of, Practical Completion and at such other times as reasonably requested by the Principal, with a copy to gclc@dsgd.qld.gov.au.

20. PRACTICAL COMPLETION

(Requirements of achieving practical completion) The Contractor acknowledges that the Contract may elsewhere include additional obligations which must be satisfied as a requirement of Practical Completion. In addition to any such obligations, the Contract must, as a requirement of Practical Completion:

- (a) satisfy all requirements of the Contract in relation to commissioning and operator training;
- (b) provide to the Superintendent one (1) bound and one (1) PDF copy of an end-of-job report which shall contain the following as a minimum:
 - (i) completed warranties for all fittings and fixtures including major supply information;
 - (ii) electrical inspection certificates;



PROCUREMENT PROCESS CONDITIONS

Air Conditioner Servicing, RCD, and Cold-room Maintenance

CONTRACT NO.: T22/23.35

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1. GENERAL

- 1.1 **(Conduct of the Procurement Process)** The Principal will endeavour to conduct the Procurement Process in a manner which is consistent with these Procurement Process Conditions.
- 1.2 **(Rights of the Principal)** The Principal may do anything which it considers to be prudent or necessary for the proper conduct of the Procurement Process, including:
- (a) **(alteration of Procurement Documents)** amend, add to or delete any part of the Procurement Documents including:
 - (i) the procedures and timeframes provided in the Procurement Process Conditions;
 - (ii) the Evaluation Criteria (including weightings);
 - (iii) the Scope; and
 - (iv) where one is included in the Procurement Documents, the Contract;
 - (b) **(suspension or termination)** suspend or terminate the Procurement Process;
 - (c) **(attendances)** request any one or more Respondents to attend a briefing, site inspection or other meeting or to make a presentation of their Response in person at the Principal's office at no cost to the Principal;
 - (d) **(change or error in Procurement Documents)** request any one or more Respondents to change their Response to take account of a change in the Procurement Documents or any error in such documents;
 - (e) **(clarification or alteration)** request any one or more Respondents to clarify or alter any aspect of the Respondent's Response;
 - (f) **(additional information)** request additional information from one or more Respondents relating to a Response, the Procurement Process, the Respondent's compliance with the Procurement Process Conditions or any other matter which the Principal considers relevant to its assessment (including information that should have been, but was not, included in the Respondent's Response);
 - (g) **(negotiation)** negotiate amendments to any aspect of a Response with any one or more Respondents and suspend or terminate such negotiations at any time;
 - (h) **(revised Responses)** invite one or more Respondents to provide a revised Response or best and final offer; and/or
 - (i) **(shortlisting)** create a shortlist of one or more Respondents and exercise any of its rights only in respect of one or more of the shortlisted Respondents.
- 1.3 **(Conduct of Respondents)** The Respondent must not, and must ensure that its Personnel do not, engage in any Improper Conduct. The Respondent must immediately notify the Principal in the event that it becomes aware that it, or any of its Personnel, have engaged in Improper Conduct. Where appropriate, the Principal may report Improper Conduct by the Respondent to the appropriate Authority and provide that Authority with any relevant information related to that conduct.
- 1.4 **(Complaints in relation to the Procurement Process)** The Respondent must make any complaint in relation to the Procurement Process using the Communication Method immediately upon the cause of the complaint arising or upon the Respondent becoming aware of the cause.

The complaint must be made in writing to the Complaints Manager and must contain adequate detail to allow the Complaints Manager to properly investigate the complaint.

- 1.5 **(No warranty)** The Principal gives no warranty and makes no representation that the Procurement Documents or any other information provided to the Respondent in connection with the Procurement Process is accurate, adequate or complete.
- 1.6 **(No liability)** Neither the Principal nor its Personnel shall be liable upon any Claim for any Specified Loss in connection with the Procurement Process.

2. BRIEFINGS AND SITE INSPECTIONS (RFT AND RFEOI ONLY)

- 2.1 **(Attendance)** The Respondent must attend any briefing or a site inspection which is identified in the General Information as mandatory. Respondents are encouraged to attend any briefing or site inspection which is not described as mandatory.
- 2.2 **(RSVP)** The Respondent must confirm that it intends to attend the briefing or site inspection to the email address and by the time and date stated in the General Information and may only bring a maximum of the number of Personnel stated in the General Information.
- 2.3 **(Safety)** The Respondent must inform itself of risks to health and safety arising from attendance at the briefing or site inspection and take all reasonable steps to ensure that such risks are eliminated or, if it is not possible to eliminate them, to minimise them so far as is practicable.
- 2.4 **(Obligation to inspect)** Where no site inspection is identified in the General Information, the Respondent must make its own arrangements to inspect the site prior to lodging its Response.

3. COMMUNICATIONS DURING PROCUREMENT PROCESS

- 3.1 **(Communication Method)** All communications by the Principal to the Respondent shall at first instance be made using the Communication Method. Except where expressly permitted by these Procurement Process Conditions, all communications by the Respondent to the Principal in connection with the Procurement Process shall at first instance be directed to the Principal using the Communication Method. No other communication method may be utilised by the Respondent unless expressly permitted by the Principal or where technical difficulties prevent the Respondent from utilising the Communication Method or the Principal expressly agrees to an alternative method.
- 3.2 **(Respondent's responsibility)** The Respondent must ensure that it is capable of receiving and does receive all communications to the Respondent in connection with the Procurement Process. Where the Communication Method is email, it is the Respondent's responsibility to ensure that it notifies the Principal of the correct email address for receiving communications. Where the Communication Method is through a website, the Respondent must ensure that it is properly registered with and capable of receiving communications through the website.
- 3.3 **(Confidentiality of communications)** The Principal may notify any or all Respondents of a request for further information made by a Respondent and the Principal's response to it without identifying the submitting Respondent or may keep a request for information confidential and respond only to the Respondent if it considers that it is appropriate to do so.
- 3.4 **(No reliance)** The Respondent must not rely upon any information (including information provided at a briefing or site inspection) unless it is confirmed by the Principal through the Communication Method.
- 3.5 **(Communication Closing Time)** The Principal will not respond to any request for information received after the Communication Closing Time.

4. THE RESPONSE (RFT AND RFQ ONLY)

- 4.1 **(Application of clause)** This clause 4 only applies in respect of an RFT or an RFQ.
- 4.2 **(Acceptance of Contract and Scope)** If one has not been provided, the Respondent must obtain a copy of the Contract from the Principal by requesting a copy through the Communication Method. Except to the extent that the Respondent has detailed a proposed alternative, amendment, qualification or departure in a Response, the Respondent will be taken to have unconditionally accepted and agreed to:
- (a) be bound by the terms and conditions of the Contract; and
 - (b) carry out and complete the whole of the obligations described in or to be reasonably inferred from the Procurement Documents.
- 4.3 **(Price)** The Price must be submitted exclusive of GST and in Australian dollars.
- 4.4 **(Discrepancy in Price)** Where the Response Form requires the Respondent to provide a Price and there is a discrepancy between the amount stated in the Response Form as the Respondent's Price and the sum total of the items in any Price Schedule then:
- (a) if the Contract provides that it is a lump sum contract, then the sum total of the items in the Price Schedule shall be the Respondent's Price; or
 - (b) if the Contract provides that it is a schedule of rates contract or a part lump sum and part schedule of rates contract, then the rate, price or lump sum of each item will prevail over the total shown, and the total shall be adjusted accordingly.
- 4.5 **(Response Validity Period)** The Respondent's Response will remain valid and open for acceptance by the Principal until the end of the Response Validity Period and thereafter until it is withdrawn in writing by the Respondent or the Procurement Process is finalised. The Principal may consent to the Respondent withdrawing its Response before the end of the Response Validity Period. The Principal may request an extension of the Response Validity Period at any time by giving written notice to the Respondent. If the Respondent does not agree to the requested extension then the Principal may exclude the Respondent's Response from assessment or further assessment as the case may be.
- 4.6 **(Alternative Responses)** If the Respondent wishes to submit an Alternative Response, then the Respondent is encouraged to:
- (a) also submit a Conforming Response; and
 - (b) submit the Alternative Response on a separate Response Form to the Conforming Response, clearly marked, "ALTERNATIVE RESPONSE" accompanied by a clear summary of all points of difference between the Alternative Response and the Conforming Response.

5. RESPONDENT'S GENERAL WARRANTIES AND REPRESENTATIONS

- 5.1 **(Warranties and Representations)** By lodging a Response, the Respondent warrants and represents that:
- (a) **(conduct of Respondent)** neither the Respondent nor any of its employees or agents has engaged in any Improper Conduct;
 - (b) **(authority)** the Response has been signed and lodged by a person with authority to do so on behalf of the Respondent;
 - (c) **(basis of Response)** the Respondent:

- (i) has received or obtained copies of all of the Procurement Documents and all information or documents referred to in the Procurement Documents; and
- (ii) has not relied on the accuracy, adequacy or completeness of any documents or information provided or any representation made by or on behalf of the Principal in connection with the Procurement Process in preparing its Response;
- (d) **(accuracy of Response)** all information provided in or with the Response is accurate;
- (e) **(ability)** the Respondent and its relevant Personnel:
 - (i) hold (and are compliant with all requirements of) all necessary competencies, licences (including if necessary, a licence under the *Queensland Building and Construction Commission Act 1991* (Qld)), accreditations, certifications, permits, clearances and other authorisations which will be required for the Respondent to carry out the Scope if it is ultimately engaged to carry out that Scope; and
 - (ii) are not excluded from submitting a tender under any applicable Queensland or Federal Government scheme, code or policy;
- (f) **(suitability etc. of works, goods or services)** where the Principal has stated in the Procurement Documents the purpose(s) for which the works, goods or services must be suitable, appropriate, adequate or fit, the works, goods or services shall be suitable, appropriate, adequate and fit for those purposes (but this warranty and representation will not apply to the extent (if any) that the Respondent has expressly excluded or limited it in the Respondent's Response);
- (g) **(Effect of implied warranties)** neither clause 5 nor clause 6 shall operate in any way to limit, exclude or otherwise restrict the operation of any warranty implied by law.

6. RESPONDENT'S FURTHER WARRANTIES AND REPRESENTATIONS (RFT AND RFQ ONLY)

- 6.1 **(Application of clause)** This clause 6 only applies in respect of an RFT or an RFQ.
- 6.2 **(Warranties and Representations)** By lodging a Response, the Respondent warrants and represents that:
 - (a) **(investigations)** the Respondent has undertaken its own enquiries and investigations to satisfy itself of:
 - (i) the nature and extent of the Scope, its contractual obligations and all other risks, contingencies and other circumstances which could have an impact on its ability to carry out and complete the obligations it will have under the Contract if its Response is accepted for the Price; and
 - (ii) the suitability, appropriateness and adequacy of the Scope (including, in respect of contracts under which the successful Respondent is required to design works, any preliminary design included in the Scope) for the purposes stated in or to be reasonably inferred from the Scope;
 - (b) **(ability)** the Respondent and its relevant Personnel:
 - (i) have and will maintain the necessary experience, expertise and skill to perform its obligations under the Contract in accordance with the requirements of the Contract in the event that its Response is accepted; and

- (ii) have and will maintain the resources necessary to comply with the timeframes for the performance of the Contract stated in the Procurement Documents (as amended if at all, pursuant to these Procurement Process Conditions);
- (c) **(price)** the Price, and all rates, sums and prices included in the Response allow for:
 - (i) all of the risks, contingencies and other circumstances which could have an effect on the Respondent's ability to carry out and complete the obligations it will have under the Contract if its Response is accepted for the Price, except to the extent that the Contract expressly allows an adjustment;
 - (ii) the provision of all materials, plant, labour and other services necessary for the proper completion of the obligations it will have under the Contract if its Response is accepted, whether or not those items are expressly mentioned in the Contract; and
 - (iii) unless the Contract expressly allows an adjustment, rise and fall in costs;
- (d) **(competitive neutrality)** if the Respondent is required by law to comply with principles of competitive neutrality, the Respondent has properly considered, assessed and complied with the applicable competitive neutrality principles in relation to the Procurement Process and the acceptance by the Principal of the Respondent's Response will not breach those principles;
- (e) **(notice)** the Respondent has notified the Principal in its Response of any:
 - (i) ambiguity, inconsistency, uncertainty, error or omission which it has discovered in or from the Procurement Documents;
 - (ii) any assumptions that it has made in determining its Price;
 - (iii) further information or investigations which it considers that it requires to enable it to give the warranties and make the representations in this clause 6,

and otherwise gives all warranties and makes all representations which the Contract requires to be given or made by the successful Respondent. The Respondent acknowledges that the Principal will rely on these warranties and representations in entering into a contract with the successful Respondent.

7. LODGEMENT AND OPENING OF RESPONSES

7.1 (Method of lodgement) A Response must be lodged:

- (a) if the Tender Box is a website, by uploading it to the Tender Box;
- (b) if the Tender Box is an email address, by sending it as an attachment to an email to the Tender Box; and Banana Shire Council tendering email id: enquiries@banana.qld.gov.au
- (c) if the Tender Box is a physical address, by delivering it to the Tender Box and Banana Shire Council tendering box address is-

Chief Executive Officer

Banana Shire Council

PO Box 412

Biloela QLD 4715.

The Principal may direct or allow the Response to be lodged by an alternative method.

- 7.2 **(Time of lodgement)** A document forming part of a Response shall be deemed to have been lodged:
- (a) where the Tender Box is a website, at the time that the document is successfully uploaded to the Tender Box, as indicated on the electronic receipt issued to the Respondent;
 - (b) where the Tender Box is an email address, at the time that an email attaching the document is successfully delivered to the Tender Box, as indicated on the email system on which the Tender Box is hosted;
 - (c) where the Tender Box is a physical address, at the time that the document is physically received at the Tender Box; or
 - (d) where the Response is lodged by an alternative method allowed by the Principal, when it is received by the Principal by that method.
- 7.3 **(Response opening)** Responses will not be opened publicly and the Respondent will not be permitted to attend the opening of Responses.

8. ASSESSMENT OF RESPONSES

- 8.1 **(Evaluation Criteria)** In determining which Response(s) are most advantageous to the Principal, each Response evaluated in accordance with these Procurement Process Conditions will be assessed, but not necessarily exclusively, against the Evaluation Criteria (if any).
- 8.2 **(Considerations)** In assessing Responses, the Principal may consider any information which the Principal reasonably considers to be relevant to its assessment (however obtained), including:
- (a) information contained in the Response or any amendment to or clarification of a Response;
 - (b) information provided at a meeting with or presentation by the Respondent;
 - (c) outcomes from discussions with a Respondent's referees (if any);
 - (d) information obtained pursuant to clause 8.5;
 - (e) the Respondent's past performance under other contracts with the Principal or third parties; and
 - (f) the reasonably held subjective opinions of the persons appointed by the Principal to evaluate Responses or any advisor to such persons.
- 8.3 **(Uncertainties)** The Principal may ignore any part of a Response which is ambiguous, uncertain, unclear or illegible without seeking clarification from the Respondent and may assess the balance of the Response.
- 8.4 **(Right to exclude)** The Principal may, but shall not be obliged to, reject or exclude from assessment any Response including:
- (a) a Non-Conforming Response, an Alternative Response or a Late Response;
 - (b) a Response, in respect of which the Principal reasonably believes that the Respondent has:

- (i) failed to comply with these Procurement Process Conditions or any request made by or on behalf of the Principal pursuant to them within the time required; or
- (ii) breached a warranty given or representation made pursuant to these Procurement Process Conditions or that a warranty, declaration or representation in the Respondent's Response is false or misleading in any material respect;
- (c) a Response in respect of which the Principal reasonably believes that the Respondent cannot reasonably comply with the obligations which it will have under the Contract (in the event that its Response is successful) for the Price; or
- (d) a Response which fails to achieve a satisfactory score against any of the Evaluation Criteria, even if the overall score of the Response is satisfactory;

8.5 **(Other information or assistance)** The Principal may undertake its own investigations, or engage third parties to do so on its behalf, in relation to any aspect of a Response (including verifying any warranty, representation or declaration made or given in the Response or pursuant to these Procurement Process Conditions) or any other matter which it considers relevant to the conduct of the Procurement Process. The Respondent must cooperate with such investigations and provide all information and assistance reasonably requested by or on behalf of the Principal in connection with the investigation.

9. SHORTLISTING (RFEOI ONLY)

- 9.1 **(Application of clause)** This clause 9 only applies in respect of an RFEOI.
- 9.2 **(Shortlisting)** The Principal intends, but is not bound, to create a shortlist of Respondents and invite tenders from the shortlisted Respondents.
- 9.3 **(No obligation)** The Principal is not bound to shortlist or invite a tender from any Respondent, including the Respondents with the highest scores against the Evaluation Criteria. The Principal may shortlist and invite tenders from as many or as few Respondents as the Principal sees fit and may choose not to shortlist any Responses or invite any tenders.
- 9.4 **(Local preference)** The Principal may shortlist an EOI that is from a Local Supplier in preference to comparable EOIs from Non-Local Suppliers even if the EOIs from the Non-Local Suppliers have been assessed as more favourable in terms of one or more Evaluation Criteria.
- 9.5 **(RFT)** A Respondent shall not be entitled to submit a tender unless and until the Principal expressly invites the Respondent to submit a tender in writing.
- 9.6 **(Unsuccessful Respondents)** Unsuccessful Respondents will be notified after the Procurement Process is concluded. The Principal may provide feedback to unsuccessful Respondents if requested to do so, but such feedback may be general in nature, will be limited to the Respondent's EOI only and may be postponed until after any related Request for Tender process is finalised.

10. ACCEPTANCE (RFT AND RFQ ONLY)

- 10.1 **(Application of clause)** This clause 10 only applies in respect of an RFT or an RFQ.
- 10.2 **(Ability to accept)** The Principal is not bound to accept the Response with the lowest Price or the Response with the highest score against the Evaluation Criteria, or any Response. The Principal will, if it accepts a Response, accept the Response(s) which it reasonably believes are the most advantageous to it having regard to the Sound Contracting Principles and the requirements of the *Local Government Regulation 2012* (Qld) to the extent that they are applicable and relevant to the Procurement Process.

- 10.3 **(Local preference)** The Principal may accept a Response lodged by a Local Supplier in preference to comparable Responses from Non-Local Suppliers even if the Responses from the Non-Local Suppliers have been assessed as more favourable in terms of one or more Evaluation Criteria, so long as the overall differences are not substantial, and so long as it is clear that the Local Supplier can meet the Principal's requirements at an acceptable standard which is generally comparable to that of the Non-Local Suppliers.
- 10.4 **(Acceptance of more than one Response and acceptance of part of a Response)** The Principal may accept a Response in whole or in part. Without limiting this, where the Scope comprises distinct portions of works, goods or services, the Principal may accept a Response from one or more Respondents in relation to different portions of the works, goods or services as if those portions had been the subject of separate Procurement Processes.
- 10.5 **(No contract or appointment until formal acceptance)** Unless and until the Principal expressly notifies the Respondent in writing that the Respondent's Response (as amended by any post-Response negotiation, if any) has been successful or the parties execute a contract:
- (a) no binding contract for the provision of any work, services and/or goods by the Respondent will exist between the parties; and
 - (b) in respect of an RFT for appointment as a Pre-qualified Supplier or Preferred Supplier, the Respondent will not be considered to be appointed as a Pre-qualified Supplier or Preferred Supplier.

For clarity, a statement published by the Principal but not specifically notified to the Respondent (including a record of a council resolution) to the effect that a Response has been accepted or a contract has been awarded does not, of itself, constitute an acceptance of the Response or notice that the Response has been successful or constitute a rejection of any other Response.

- 10.6 **(Form of Contract)** Unless the RFT or RFQ stated that the Respondent would not be required to enter into a contract until it is separately engaged by the Principal to provide works, goods or services, if a Response is accepted, the successful Respondent will be required to enter into a contract in the form of the Contract, as amended by agreement between the parties.
- 10.7 **(Unsuccessful Respondents)** Unsuccessful Respondents will be notified after a Response has been accepted. The Principal may, at its discretion, notify unsuccessful Respondents of the name of, and Price submitted by, the successful Respondent. The Principal may provide feedback to unsuccessful Respondents if requested to do so, but such feedback may be general in nature and will be limited to the Respondent's Response only.
- 10.8 **(Arrangement with other local governments)** The Respondent acknowledges that if, pursuant to the Procurement Process, the Respondent is selected to be a Preferred Supplier or Pre-qualified Supplier for goods and/or services then any Related Local Government may make a contract with the Respondent for the supply of those goods and/or services, as if that Related Local Government had itself selected the Respondent to be a Preferred Supplier or Pre-qualified Supplier of those goods and/or services.

11. DOCUMENTS AND INFORMATION

- 11.1 **(Ownership)** The Procurement Documents remain the property of the Principal. The Response will become the property of the Principal upon lodgement.
- 11.2 **(Intellectual Property Rights)** Intellectual Property Rights in documents and information provided on behalf of a party in connection with the Procurement Process remain, as between the parties, with the party on whose behalf they were provided. The Principal and the Respondent grant each other a perpetual, non-exclusive, royalty free licence to do the things contemplated by clause 11.8. The licence so granted by the Respondent is irrevocable. The licence granted by the Principal may be revoked at any time on the giving of written notice.

- 11.3 **(Warranty and representation)** The Respondent warrants and represents that:
- (a) it owns or has a right to use the Intellectual Property Rights in its Response for the purpose of lodging a Response and undertaking the obligations which it will have under a contract with the Principal in the event that the Respondent's Response is accepted; and
 - (b) it has the right and authority to grant the licence in clause 11.2 and the Principal's exercise of the rights so granted will not infringe the Intellectual Property Rights of a third party.
- 11.4 **(Confidentiality)** Except to the extent otherwise provided in these Procurement Process Conditions, each party shall keep Confidential Information of the other party confidential. The Respondent must inform each of its Personnel and any other person to whom Confidential Information of the Principal is disclosed of the Respondent's obligations under this clause 11.4. Subject to clause 11.8(b), the Respondent must return any and all Confidential Information when requested to do so by the Principal.
- 11.5 **(Information Privacy Act)** If the Respondent collects or has access to 'Personal Information' as that term is defined in the *Information Privacy Act 2009* (Qld) in connection with the Procurement Process, the Respondent must comply with Parts 1 and 3 of Chapter 2 of that Act as if the Respondent was the Principal. The Principal collects and uses personal information and non-personal information in the Response so that it can properly conduct the Procurement Process and otherwise carry out its functions as a Local Government. The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information in the Respondent's Response will be accessible by employees of the Principal and third party personnel engaged to assist the Principal in conducting the Procurement Process or otherwise carrying out the functions of the Principal. Information in the Response may also be disclosed as required by the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld) as described below.
- 11.6 **(Local Government Regulation)** The *Local Government Regulation 2012* (Qld) provides that the Principal must, as soon as possible after entering into a contractual arrangement worth \$200,000 or more (exclusive of GST) publish relevant details of the contract (including the person with whom the Principal has entered into the contractual arrangement, the value of the contractual arrangement and the purpose of the contractual arrangement) on the Principal's website and display those details in a conspicuous place in the Principal's public office. The relevant details must be published or displayed in this manner for a period of at least 12 months.
- The *Local Government Regulation 2012* (Qld) may also require the Principal to make documentation and information contained in, or provided by the Respondent in connection with, a Response (including documentation and information identified by the Respondent as confidential) publicly available where that documentation or information is:
- (a) discussed in a Local Government Meeting;
 - (b) included in a report or other document that:
 - (i) relates to an item on the agenda for a Local Government Meeting and is made available to Councillors or committee members for the purposes of the meeting;
 - (ii) is directly relevant to a matter considered or voted on at a Local Government Meeting; or
 - (iii) is presented at a Local Government Meeting for the consideration or information of the Local Government or committee; or

- (c) otherwise required to be disclosed pursuant to a provision of *the Local Government Act 2009* (Qld) or the *Local Government Regulation 2012* (Qld).
- 11.7 **(Right to Information)** The *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including the Principal). The Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest. Information or documentation contained in or provided by the Respondent in connection with a Response is potentially subject to disclosure to third parties, including documentation and information identified by the Respondent as confidential. Any application for disclosure will be assessed in accordance with the terms of the Act. Notwithstanding any other provision of the Procurement Documents or a Response, if a Response is accepted, the Principal may publish on a Queensland Government website or by any other means, contract information including:
- (a) the name and address of the Principal and the successful Respondent;
 - (b) a description of the goods and/or services to be provided or works to be carried out pursuant to the contract;
 - (c) the date of award of the contract (including the relevant stages if the contract involves more than one stage);
 - (d) the contract value (including the value for each stage if the contract involves more than one stage and advice as to whether any non-price criteria were used in the evaluation of Responses);
 - (e) the procurement method used; and
 - (f) for contracts with a value over \$10 million, the contract, or summary information in respect of the contract, between the Principal and the Respondent.
- 11.8 **(Use of documents and information)** Documents and information provided on behalf of a party to the other party in connection with the Procurement Process (including documentation and information identified by the Respondent as confidential) may be used, copied, modified or disclosed as required by any law and otherwise:
- (a) by the Principal, as the Principal considers to be reasonably necessary to:
 - (i) properly conduct the Procurement Process;
 - (ii) exercise the rights granted to it in these Procurement Process Conditions;
 - (iii) obtain legal, accounting or other professional advice in connection with the Response;
 - (iv) report any actual or suspected Improper Conduct to the appropriate Authority; and/or;
 - (v) to otherwise properly carry out its functions as a Local Government;
 - (b) by the Respondent, as is reasonably necessary to enable the Respondent to:
 - (i) prepare the Response;
 - (ii) obtain legal, accounting or other professional advice in connection with the Response; or
 - (iii) comply with the Respondent's corporate governance requirements.

If the Respondent is required by law to disclose Confidential Information of the Principal, the Respondent must notify the Principal of this prior to making such disclosure and must only disclose the minimum amount of information required to meet its obligation to disclose.

- 11.9 **(Media)** The Respondent must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether verbal or written, in connection with the Procurement Process in any media without the prior approval of the Principal.

12. DEFINITIONS

- 12.1 **(Definitions)** In these Procurement Process Conditions, unless the context otherwise requires:

- (a) **Addenda and Addendum** means any communication issued to Respondents in accordance with these Procurement Process Conditions which is identified as an Addendum;
- (b) **Alternative Response** means a Response which is otherwise a Conforming Response but which in the opinion of the Principal, contains significant alternatives, qualifications or amendments to or departures from the Contract or the Scope;
- (c) **Authority** means a local government, the State of Queensland, the Commonwealth or other any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality having jurisdiction over the project;
- (d) **Business Day** means a day that is not a Saturday, Sunday or public holiday at Biloela, Banana Shire Council;
- (e) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including at law (including a breach of an express or implied term of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law, pursuant to any other principle of law, in connection with the Procurement Process;
- (f) **Communication Closing Time** means the time identified in the General Information as the time by which communications by Respondents must be submitted;
- (g) **Communication Method** means submitting an enquiry through the website forum or sending an email to the email address nominated for communications by Respondents in the General Information;
- (h) **Complaints Manager** means the person identified in the General Information as the person to whom complaints regarding the Procurement Process should be directed;
- (i) **Confidential Information** means documents and information provided or made available by or on behalf of one party to the other party in connection with the Procurement Process which are of their nature confidential (including copies of such documents and information) but not including documents and information which are in the public domain other than through a breach of clause 11.4;
- (j) **Conforming Response** means a Response which, in the opinion of the Principal:
 - (i) is substantially in the form and contains substantially all of the documentation, information, acknowledgements, warranties, declarations and undertakings required by the Response Schedules;
 - (ii) contains no significant alternatives, qualifications or amendments to or departures from the Contract or the Scope; and
 - (iii) in respect of Tenders or EOIs only, does not substantially exceed the Maximum Page Limit (if any);

- (k) **Contract** means:
- (i) a contract which may be entered into between the Principal and a Respondent pursuant to an RFT or RFQ and which will be in the form referenced in Part 4 – Contract of the RFT or RFQ, as amended (if at all) by the express written agreement of the Principal; and
 - (ii) where an RFT is for appointment as a Preferred Supplier or Pre-qualified Supplier, also includes a contract which may be entered into during the term of the appointment unless the context requires otherwise;
- (l) **Councillor** has the same meaning as in the *Local Government Act 2009* (Qld);
- (m) **EOI (Expression of Interest)** means a Response lodged by a Respondent in response to an RFEOI and includes all documents and information lodged with or as part of the expression of interest;
- (n) **Evaluation Criteria** means:
- (i) for an RFT or an RFEOI, the evaluation criteria (if any) set out in the General Information; and
 - (ii) for an RFQ, the evaluation criteria (if any) set out in the RFQ;
- (o) **General Information** means Part 2 – General Information of the RFQ, RFT or RFEOI (as the case may be);
- (p) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (q) **Improper Conduct** means:
- (i) engaging in any activity or obtaining any interest which results in or is likely to result in any actual, potential or perceived conflict between the interests of the Respondent and the Respondent's obligations to the Principal in connection with the Procurement Process;
 - (ii) engaging in misleading or deceptive conduct in connection with the Procurement Process;
 - (iii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other Respondent, or any other person in connection with the Procurement Process;
 - (iv) canvassing, attempting to improperly influence, offering any inducement to or accepting or inviting improper assistance from any Councillor or other Personnel (or former Personnel) of the Principal in connection with the Procurement Process;
 - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the Respondent's Response;
 - (vi) breaching any law in connection with the Procurement Process;
 - (vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
 - (viii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld);

- (r) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- (s) **Late Response** means any Response that is not received in the Tender Box (or otherwise received by the Principal by an alternative method permitted under the Procurement Process Conditions) by the Response Closing Time;
- (t) **Local Government** has the same meaning as in the *Local Government Act 2009* (Qld);
- (u) **Local Government Meeting** has the same meaning as in the *Local Government Act 2009* (Qld);
- (v) **Local Supplier:**
 - (i) where the Principal's procurement policy provides a meaning of local supplier, has the meaning given in the Principal's procurement policy, a copy of which can be obtained from the Principal upon request; or
 - (ii) where the Principal does not have a procurement policy, or the procurement policy does not provide a meaning of local supplier, means a supplier that:
 - A. is beneficially owned and operated by persons who are residents or ratepayers of the local government area of the Principal as determined under the *Local Government Regulation 2012* (Qld); or
 - B. has its principal place of business within that local government area; or
 - C. otherwise has a place of business within that local government area that solely or primarily employs persons who are residents or ratepayers of that local government area;
- (w) **Maximum Page Limit** means the number of pages which may be lodged as, with or in relation to the Response (including, unless otherwise indicated, all attachments, annexures, supplements, parts, schedules or appendices), which the General Information states a Response should not be longer than;
- (x) **Non-Conforming Response** means a Response which is not a Conforming Response or an Alternative Response;
- (y) **Non-Local Supplier** means a supplier (including a Respondent) that is not a Local Supplier;
- (z) **Personnel** includes the officers, employees, agents, representatives, contractors and consultants of a party and any other person or entity for whom that party is vicariously liable;
- (aa) **Preamble** means Part 1 – Preamble of the RFEOI, RFT or RFQ (as the case may be);
- (bb) **Preferred Supplier** means a supplier that has been selected as a preferred supplier pursuant to section 233 of the *Local Government Regulation 2012* (Qld);
- (cc) **Pre-qualified Supplier** means a supplier that has been selected as a pre-qualified supplier pursuant to section 232 of the *Local Government Regulation 2012* (Qld);
- (dd) **Price** means:

- (i) where the Procurement Process is for appointment as a Preferred Supplier or Pre-qualified Supplier, the rates, sums or prices stated in the Response;
- (ii) otherwise, subject to clause 4.4, the total price stated in the Response;
- (ee) **Price Schedule** means a Response Schedule which provides a breakdown of the Price, and which may include rates, lump sums, prices, provisional sums, estimated quantities and other information;
- (ff) **Principal or Purchaser** means Banana Shire Council;
- (gg) **Procurement Documents** means:
 - (i) the RFEOI, RFT or RFQ (as the case may be); and
 - (ii) any Addenda issued pursuant to these Procurement Process Conditions,and includes all documents included in or incorporated by reference into these documents;
- (hh) **Procurement Process** means the process by which the Principal intends to, or does, invite, assess and where applicable, accept or reject Responses in respect of the Scope;
- (ii) **Procurement Process Conditions** means these procurement process conditions;
- (jj) **Quotation** means a Response lodged by a Respondent in response to an RFQ and includes all documents and information lodged with or as part of the quotation;
- (kk) **Related Local Government** means a local government that has entered into an arrangement with the Principal, as contemplated in section 235(f) of the *Local Government Regulation 2012* (Qld), to the effect that the local government may make a contract with a supplier that has been selected by the Principal to be a Preferred Supplier or Pre-qualified Supplier of goods and/or services, as if that local government had itself selected the Respondent to be a Preferred Supplier or Pre-qualified Supplier of those goods and/or services.
- (ll) **Respondent** means:
 - (i) any person who lodges a Response; and
 - (ii) to the extent to which the term can apply to any other person who obtains a copy of any of the Procurement Documents during the Procurement Process, also includes such other persons,and includes a Tenderer;
- (mm) **Response** means, where these Procurement Process Conditions are incorporated into an:
 - (i) RFEOI, an EOI;
 - (ii) RFT, a Tender; or
 - (iii) RFQ, a Quotation;
- (nn) **Response Closing Time** means the time identified in the General Information as the time by which Responses must be submitted as varied (if at all) pursuant to these Procurement Process Conditions;

- (oo) **Response Form** means in respect of an:
- (i) RFEOI, the document identified as the EOI form in the Response Schedules;
 - (ii) RFT or RFQ:
 - A. the document identified as the tender form or the quotation form (as the case may be) in the Response Schedules; or
 - B. otherwise where there is no document identified as the tender form or quotation form, any document (other than a Price Schedule) which states the total price offered by the Respondent in the Response;
- (pp) **Response Schedules** means the schedules identified in Part 5 – Response Schedules of the RFEOI or Part 6 – Response Schedules of the RFT or RFQ (as the case may be);
- (qq) **Response Validity Period** means the period stated in the General Information as the time for which Responses are to be valid as extended (if at all) pursuant to clause 4.5;
- (rr) **RFEOI (or Request for Expressions of Interest)** means the request for expressions of interest issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions and the Scope);
- (ss) **RFQ (or Request for Quotation)** means the request for quotations issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions, the Contract and the Scope);
- (tt) **RFT (or Request for Tender)** means the request for tenders issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions, the Contract and the Scope);
- (uu) **Scope** means the scope described in Part 4 – Scope of the RFEOI or Part 5 – Scope of the RFT or RFQ (as the case may be) and all documents incorporated into it (whether physically or by reference), and includes any amendments provided for in an Addendum;
- (vv) **Sound Contracting Principles** has the meaning given in section 104(3) of the *Local Government Act 2009* (Qld);
- (ww) **Specified Loss** means:
- (i) any loss of, or loss of anticipated, profit, income, revenue, saving, production; business, contract or opportunity; increase in financing or operating costs; liability for loss or damage suffered by third parties; legal costs (on a solicitor and client basis); fines levied; loss of reputation or embarrassment and the cost of abating or reducing such; any other financial or economic loss; and
 - (ii) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraph, howsoever arising;
- (xx) **Tender** means a Response lodged by a Tenderer in response to an RFT and includes all documents and information lodged with or as part of the tender;
- (yy) **Tender Box** means the website, email address or physical location at which the General Information states that Responses are to be submitted;
- (zz) **Tenderer** means:
- (i) any person who lodges a Tender; and

- (ii) to the extent to which the term can apply to any other person who obtains a copy of any of the Procurement Documents during the Procurement Process, also includes such other persons,

and words or terms not defined in these Procurement Process Conditions but defined in a Contract have the same meaning as in the Contract, except where the context otherwise requires.

13. GENERAL PROVISIONS

- 13.1 **(Interpretation of Procurement Documents)** The Procurement Documents must be read and construed together and are intended to be mutually explanatory.
- 13.2 **(Joint and several obligations)** An obligation of two or more parties binds them jointly and each of them severally and an obligation incurred in favour of two or more parties is enforceable by them severally.
- 13.3 **(Headings)** Clause headings are for reference purposes only and must not be used in interpretation.
- 13.4 **(No limitation)** The words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.
- 13.5 **(Grammatical Forms)** Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.
- 13.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Procurement Documents expires on a day which is not a Business Day, the period will expire at the end of the next Business Day.
- 13.7 **(Discretion)** Unless expressly provided otherwise:
 - (a) any right of the Principal pursuant to these Procurement Process Conditions may be exercised; and
 - (b) any consent of the Principal required under these Procurement Process Conditions may be given, withheld or given subject to conditions,in the absolute discretion of the Principal without giving reasons and without reference to the Respondent unless, and then only to the extent that the Procurement Process Conditions provide otherwise.
- 13.8 **(Law)** A reference to 'law' includes:
 - (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licences, accreditations, clearances, authorisations, approvals, consents, and permits and any related fees and charges,

which are applicable to the Procurement Documents, the Procurement Process or the Contract or which are otherwise in force at any place where an obligation under the Contract is to be carried out.

- 13.9 **(Governing Law)** The Procurement Process is governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland. The Principal and the Respondent submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 13.10 **(Contra proferentem)** The *contra proferentem* rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 13.11 **(Rights Cumulative)** The rights and remedies of the Principal and the Respondent provided in the Procurement Process Conditions are cumulative on each other and on any rights or remedies conferred at law or in equity.
- 13.12 **(Severance)** If a provision of the Procurement Process Conditions is void or unenforceable it must be severed and the provisions that are not void or unenforceable are unaffected by the severance.
- 13.13 **(No waiver)** No waiver by the Principal of a provision of these Procurement Process Conditions is binding unless made in writing.
- 13.14 **(Other references)** A reference to:
- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
 - (b) the Respondent or the Principal includes their respective heirs, executors, successors and permitted assigns;
 - (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
 - (d) a monetary amount is a reference to an Australian currency amount; and
 - (e) a measurement or quantity is a reference to an Australian legal unit of measurement as defined under the *National Measurement Act 1960* (Cth).



CONTRACT

Air Conditioner Servicing, RCD, and Cold-room Maintenance

CONTRACT NO.: T22/23.35

REFERENCE SCHEDULE

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SCHEDULE1 – SCOPE AND PRICE

SCHEDULE2 – WORK ORDER COMPLETION DECLARATION

Reference Schedule

Item	Details		
1. Term (Clause 4) (a) Term Start Date: (b) Term End Date: (c) Extension Periods:			
2. Exclusivity (Clause 7)	The Contract is: <input type="checkbox"/> Exclusive <input type="checkbox"/> Not exclusive <i>If nothing selected, the Contract is not exclusive</i>		
3. Principal's Representative (Clause 9) (a) Name: (b) Address: (c) Telephone: (d) Email:			
4. Supplier's Representative (Clause 10) (a) Name: (b) Address: (c) Telephone: (d) Email:			
5. Key Personnel (Clause 12.2)	Name	Role	Period <i>(If nothing stated, for the duration of the Term)</i>
6. Time for Meetings (Clause 15)	<i>If nothing stated, as reasonably required by the Principal.</i>		
7. Invoices: (Clause 18) (a) Invoices may be submitted on:	[Insert date on which invoices may be submitted] for [Insert the Services for which payment may be claimed] <i>If nothing stated, on the 21st day of each month for Services provided up to the 21st of that month.</i>		

Item	Details
(b) Invoices should be emailed to: (c) Other requirements for invoices:	accounts.payable@banana.qld.gov.au
8. Applicable policies, guidelines, procedures and codes of the Principal (Clause 19.1)	
9. Liability Limit (Clause 24) (a) The Principal's liability is limited to: (b) The Supplier's liability is limited to:	<p><i>If nothing stated, the Principal's liability is limited to an amount equal to the Price paid in the 12 months preceding the relevant Claim.</i></p> <p><i>If nothing stated, the Supplier's liability is not limited.</i></p>
10. The Supplier must effect the following insurances: (Clause 25)	<ul style="list-style-type: none"> <input type="checkbox"/> Public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims <input type="checkbox"/> Professional indemnity insurance in the amount of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims <input type="checkbox"/> Third party and comprehensive motor vehicle insurance for each vehicle used by the Supplier in performing its obligations under the Contract <input type="checkbox"/> Plant and equipment insurance for each item of plant for the full replacement value of the plant <input type="checkbox"/> Workers' compensation insurance in respect of the Supplier's Personnel as required by law <p><i>If not selected, the Supplier is not required to effect the insurance.</i></p>
11. Intellectual Property (Clause 28) (a) Project IP, the alternative applying: (b) Moral Rights consent	<ul style="list-style-type: none"> <input type="checkbox"/> Alternative 1 – Project IP vests in the Principal <input type="checkbox"/> Alternative 2 – Project IP vests in the Supplier <p><i>If nothing stated, Alternative 1 applies.</i></p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Moral Rights consent is required <input type="checkbox"/> Moral Rights consent is not required <p><i>If nothing selected, a Moral Rights consent is required.</i></p>

Parties:

Banana Shire Council of 62 Valentine Plains Rd, Biloela QLD 4715 in the State of Queensland

(Principal)

[Insert Supplier's Name] of [Insert Supplier's address].

(Supplier)

Background:

- A. The Supplier has offered to provide the Services to the Principal and has made the representations and given the warranties stated in this Contract to the Principal in connection with its offer.
- B. In reliance on those representations and warranties, the Principal has accepted the Supplier's offer.
- C. The Parties wish to enter into the Contract to record the terms on which the Supplier will provide the Services to the Principal during the Term.

The Parties agree:

1. DEFINITIONS

- 1.1 In the Contract, unless inconsistent with the context or subject matter:
- (a) **Affected Party** has the meaning given in clause 31.1;
 - (b) **Applicable Standards** means the standards, plans, requirements, codes, guidelines, policies, standard drawings or standard specifications included or incorporated by reference into the Contract or a Work Order, or, if none is included or incorporated, any Australian standards applicable to the Goods, as current at the Time for Work Order Commencement;
 - (c) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
 - (d) **Authority** means a local government, the State of Queensland, the Commonwealth or any other Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality (including a stock exchange) having jurisdiction over the Contract or the obligations to be performed under the Contract;
 - (e) **Background IP** of a Party means all Intellectual Property Rights which are made available by a Party for the purpose of the provision of the Services in connection with the Contract which are in existence at the date of the Contract or brought into existence after the date of the Contract other than in connection with the Contract;
 - (f) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made in connection with the Contract;
 - (g) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of the Contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law (including without limitation any claim by the Supplier for an extension of time, Variation or other adjustment to the Price);

- (h) **Confidential Information** means the Contract and all documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a Party in connection with the Contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public domain other than through a breach of clause 27;
- (i) **Conflict of Interest** means any actual, potential or perceived conflict between the interests of the Supplier and the Supplier's obligations under the Contract;
- (j) **Contract** means the documents identified in clause 2.1;
- (k) **Discloser and Disclosee** have the meanings given in clause 1.1(h);
- (l) **Exceptional Circumstances** means disclosure:
 - (i) for the purpose of complying with the Disclosee's obligations or exercising the Disclosee's rights in connection with the Contract;
 - (ii) with the Discloser's prior consent;
 - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to whom it is necessary to disclose the information;
 - (iv) to the extent necessary to comply with the Disclosee's reasonable corporate governance or insurance requirements;
 - (v) to any of its Personnel who are bound to keep the information confidential and to whom it is necessary to disclose the information;
 - (vi) to comply with the law or a requirement of an Authority;
 - (vii) to the extent necessary to enforce its rights or defend a Claim in connection with the Contract;
 - (viii) by the Principal for the purposes of enabling the Principal to properly discharge its functions as a local government authority; and
 - (ix) to the extent otherwise expressly permitted by the Contract;
- (m) **Force Majeure** means:
 - (i) an act of God, earthquake, lightning, cyclone, tsunami, flooding, fire emanating from outside the Site, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;
 - (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
 - (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
 - (iv) embargo;
 - (v) illness declared by the World Health Organisation to be a pandemic;
 - (vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the Supplier or otherwise caused by or contributed to by the Supplier and which affects an essential portion of the Supplier's obligations under the Contract;

which:

- A. is beyond the immediate or reasonable control of the Affected Party;
 - B. is not directly or indirectly caused or contributed to by the Affected Party or the Affected Party's Personnel;
 - C. cannot reasonably be avoided, remedied or overcome by the Affected Party by a standard of care and diligence expected of a prudent and competent local government or supplier (as the case may be) or the expenditure of a reasonable sum of money;
- (n) **General Conditions** means these general conditions;
- (o) **Good Industry Practice** means:
- (i) the standard of skill, care and diligence; and
 - (ii) practices, methods, techniques and acts,
- of a skilled and competent supplier engaged in the business of providing goods, services or work similar to the Services;
- (p) **Goods** means any plant, equipment, materials, parts, consumables or other goods provided, or to be provided by the Supplier in connection with the Services and includes Goods which are required for the proper performance of the Services in accordance with the Contract, whether or not specifically mentioned in the Contract;
- (q) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (r) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (s) **HVNL** means the Heavy Vehicle National Law (Queensland) and the regulations made under that law, as may be amended or replaced from time to time;
- (t) **Improper Conduct** means:
- (i) engaging in misleading or deceptive conduct in relation to the Procurement Process or the Contract;
 - (ii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the Procurement Process;
 - (iii) failing to disclose a Conflict of Interest in breach of clause 8.3;
 - (iv) attempting to improperly influence any Personnel of the Principal, or violate any applicable law regarding the offering of inducements in connection with the Procurement Process or the Contract;
 - (v) accepting or inviting improper assistance of employees or former employees of the Principal in preparing its tender or any Claim against the Principal in connection with the Contract;
 - (vi) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract;

- (vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
- (viii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).
- (u) **Insolvency Event** in respect of a Party, means the Party:
 - (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
 - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
 - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (v) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, project management, industrial, scientific, literary or artistic fields, whether foreign or domestic and includes Moral Rights;
- (w) **Key Personnel** means the Personnel (if any) nominated as key personnel in the Reference Schedule;
- (x) **Liability Limit** means:
 - (i) in respect of the Principal, the sum of:
 - A. the amount specified in item 9(a) of the Reference Schedule; and
 - B. the amount of any excess payable under a policy of insurance required to be effected and maintained by the Principal under the Contract;
 - (ii) in respect of the Supplier, the sum of:
 - A. the amount specified in item 9(b) of the Reference Schedule; and
 - B. the amount of any excess payable under a policy of insurance required to be effected and maintained by the Supplier under the Contract;
- (y) **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
- (z) **Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth);
- (aa) **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- (bb) **National Police Certificate** means a hard copy or digital national police certificate issued by the Queensland Police Service;
- (cc) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;
- (dd) **Party or Parties** means one or both of the Principal and the Supplier as the context requires;

- (ee) **Payment Period** means:
- (i) if the Contract is a 'building contract' as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), the period ending 15 Business Days after receipt by the Principal of the claim;
 - (ii) otherwise, the period ending 25 Business Days after receipt by the Principal of the claim.
- (ff) **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld);
- (gg) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, suppliers, contractors and subcontractors of a Party and any other person or entity for whom that Party is vicariously liable but in respect of the Principal, does not include the Supplier;
- (hh) **Price** means the amount payable for the provision of Services as determined in accordance with Schedule 1 and the relevant Work Order;
- (ii) **Principal** means the entity identified as the Principal on page 5 of the Contract;
- (jj) **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the Supplier pursuant to clause 9.1 and includes, except where the context requires otherwise, a person authorised as a delegate of the Principal's Representative pursuant to clause 9.3;
- (kk) **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;
- (ll) **Project IP** means the Intellectual Property Rights in the Supplier Documents and all other materials, documents or data created in the performance of the Supplier's obligations under the Contract;
- (mm) **Qualifying Cause of Delay** means:
- (i) an act or omission of the Principal or the Principal's Personnel;
 - (ii) Force Majeure; or
 - (iii) any other cause of delay identified elsewhere in the Contract or Work Order as entitling the Supplier to an extension of the Time for Work Order Completion;
- (nn) **Reference Schedule** means the schedule of that name included in the Contract;
- (oo) **Regulator** has the meaning given in the WHS Act and WHS Regulation;
- (pp) **Scope** means the documents describing the Principal's requirements for the Services, Goods or Works which are provided at Schedule 1 and also provided with or as part of, or are identified in, the Work Order;
- (qq) **Services** means the services to be provided or the work to be carried out by the Supplier as described in Schedule 1 (including the supply, use or installation of any Goods, the construction of any Works and the provision of Supplier Documents) and any services or work not specifically mentioned in Schedule 1 but that is obviously and indispensably necessary for the performance of the services or work that is mentioned;
- (rr) **Site** means the site or sites made available by the Principal to the Supplier for the purpose of the Supplier carrying out its obligations under the Contract;

- (ss) **Substantial Breach** includes:
- (i) in respect of the Supplier:
 - A. a material breach of the Contract including:
 - I a material breach of clause 11.1;
 - II the Supplier or any of the Supplier's Personnel engaging in:
 - (1) any Improper Conduct in connection with the Contract;
or
 - (2) otherwise engaging in any Improper Conduct (whether or not in connection with the Contract) in a manner which, in the Principal's opinion, causes harm to the Principal's reputation;
 - III failing to make a payment to the Principal within 20 Business Days after the due date for the making of the payment in clause 18.6;
 - IV failing to effect and maintain the insurance policies required under clause 25;
 - V failing to comply with a direction given or purportedly given under clause 29;
 - VI a warranty given or representation made in or pursuant to this Contract is found to be incorrect, false or misleading in any material respect;
 - VII a material breach of a law in connection with the Contract;
 - B. the consistent or repeated breach of the Contract by the Supplier, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the defaulting Party;
 - C. anything else which the Contract elsewhere provides is a substantial breach of the Contract;
 - (ii) in respect of the Principal:
 - A. failing to make payment to the Supplier within 20 Business Days after the due date for the making of the payment in clause 18.6 or 18.7 as the case may be;
 - B. otherwise committing a material breach of the Contract; or
 - C. anything else which the Contract elsewhere provides is a substantial breach of the Contract;
- (tt) **Supplier** means the person or entity identified as the Supplier on page 5 of the Contract;
- (uu) **Supplier Documents** means those records, reports, designs, specifications, certificates, plans and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Supplier (including any WHS documentation and management plans required by the Contract)

and all information advice, procedures, undertakings designs, calculations and recommendations in those documents;

- (vv) **Supplier's Representative** means the person identified as the Supplier's representative in the Reference Schedule or as otherwise approved by the Principal pursuant to clause 10.2;
- (ww) **Term** means the period determined pursuant to clause 4.1;
- (xx) **Term End Date** means the date described as such in the Reference Schedule as extended (if at all) pursuant to the Contract;
- (yy) **Term Start Date** means the time stated in the Reference Schedule by which the Supplier is required to commence performing its obligations under the Contract (or where no time is stated, promptly after the date of the Contract);
- (zz) **Time for Work Order Commencement** means the time stated in a Work Order by which the Supplier is required to commence performing its obligations under the Work Order (or where no time is stated, as directed by the Principal) as extended (if at all) by agreement between the Parties;
- (aaa) **Time for Work Order Completion** means the time (if any) stated in a Work Order by which the Supplier is required to achieve Work Order Completion as extended (if at all) pursuant to the Contract;
- (bbb) **Variation** means any material increase, decrease or change to the Services described in a Work Order or the Supplier's obligations under the Contract;
- (ccc) **Warranty Period** for Goods means the longer of:
 - (i) the period stated in Contract or where no period is stated, 12 months after Work Order Completion; and
 - (ii) such further period required under or implied by any applicable law;
- (ddd) **WHS** means work, health and safety;
- (eee) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;
- (fff) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;
- (ggg) **Wilful Misconduct** means an intentional act or omission by or on behalf of a Party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;
- (hhh) **Work Order** means, unless the Parties expressly agree otherwise:
 - (i) where a written request or order for Services is issued by the Principal, the written document(s) issued by the Principal to the Supplier which:
 - A. detail the Principal's requirements for the provision of Services by the Supplier; and
 - B. either request the Supplier to provide, or accept the Supplier's offer to provide, those Services to the Principal,

including all documents attached to or incorporated by reference into those written documents and which may include a request for quotation, quotation, scope, specifications, drawings, product description, price list or other documents; and

- (ii) where a oral request or order for Services is made by the Principal, means the information provided by the Principal orally, and the information contained in any documents to which the Supplier's attention is directed by the Principal;
- (iii) **Work Order Completion** means that stage in the performance of the Supplier's obligations under the Contract at which:
 - (i) each and every part of the Services has been carried out and completed in accordance with the Contract and the relevant Work Order, except for minor omissions which do not reasonably affect the benefit to the Principal of the Services or prevent the Principal from using the Supplier Documents for the purpose or purposes stated in or to be reasonably inferred from the Contract or the Work Order;
 - (ii) all Supplier Documents have been updated and provided to the Principal in accordance with the Contract and the relevant Work Order;
 - (iii) other obligations of the Supplier which are stated in the Contract or the relevant Work Order to be a requirement of Work Order Completion, or which are otherwise required to be undertaken prior to Work Order Completion have been completed;
 - (iv) where the Supplier has been directed to do so, a properly executed statutory declaration in the form in Schedule 2;
- (jjj) **Workplace** has the meaning given in the WHS Act and the WHS Regulation; and
- (kkk) **Works** means any work which by the Contract, is to be handed over to the Principal.

2. CONTRACT

- 2.1 **(Documents comprising Contract)** The Contract comprises:
 - (a) the Reference Schedule;
 - (b) these General Conditions;
 - (c) Schedule 1 – Scope and Price; and
 - (d) Schedule 2 – Work Order Completion Declaration.
 - (e) Execution
- 2.2 **(Final agreement)** The Contract constitutes the entire, final and concluded agreement between the Parties as to its subject matter. It supersedes all prior representations, agreements, statements and understandings between the Supplier and the Principal (whether oral or in writing).
- 2.3 **(Order of precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 2.1, then the documents will take precedence in the order set out in clause 2.1 with the document described in clause 2.1(a) being the highest in the order.
- 2.4 **(Early Services)** Where any obligation described in the Contract has been carried out by the Principal or the Supplier prior to the date on which the Contract is executed, that obligation shall be taken to have been carried out pursuant to, and the carrying out of that obligation shall be

governed by, the Contract as if the obligation had been carried out after the Contract was executed.

3. PERFORMANCE AND PAYMENT

3.1 **(Performance)** Subject to clause 6.1, the Supplier must, at the Supplier's expense:

- (a) provide any Services described in a Work Order issued during the Term; and
- (b) perform the Supplier's other obligations under the Contract and all Work Orders issued pursuant to it,

in accordance with the Contract and all directions of the Principal issued pursuant to it.

3.2 **(Payment)** Subject to the Contract, the Principal must pay the Supplier the Price for Services provided in accordance with the Contract and Work Orders issued pursuant to it.

4. TERM

4.1 **(Term)** Subject to clause 4.2, the Term shall commence on the Term Start Date and end on the Term End Date, unless the Contract is earlier terminated.

4.2 **(Extension of Term)** The Principal may, in its absolute discretion, extend the Term End Date by the periods stated in the Reference Schedule on the same terms as the Contract, by giving written notice to this effect to the Supplier at any time prior to the Term End Date. For clarity:

- (a) the Principal may extend by a period shorter than that provided in the Reference Schedule; and
- (b) the Parties may agree to extend for further periods in addition to those contemplated in the Reference Schedule.

4.3 **(Continuation of obligations)** The Contract shall remain in force until the later of the expiration of the Term and the time at which all obligations of the Parties pursuant to it have been satisfied, unless the Contract is earlier terminated.

5. APPOINTMENT AS PREFERRED SUPPLIER OR PRE-QUALIFIED SUPPLIER

5.1 **(Effect of appointment)** The Supplier's appointment as a preferred supplier or pre-qualified supplier pursuant to the *Local Government Regulation 2012* (Qld) entitles the Principal to engage the Supplier during the term of that appointment without first seeking quotes or tenders but does not give rise to any obligation on the Principal to do so.

5.2 **(No exclusivity)** The Supplier is not the exclusive supplier to the Principal of the Services, or of services of the same or a similar type to the Services, during the Term. The Principal shall not be liable upon any Claim by the Supplier in connection with the Principal ordering a greater or lesser quantity or value of Services from the Supplier than the Supplier anticipated or desired, or for the Principal engaging other suppliers to supply similar or the same services.

5.3 **(Refresh)** The Principal may, during the Term, select other suppliers to become preferred suppliers or pre-qualified suppliers of the same or similar services to the Services pursuant to the *Local Government Regulation 2012* (Qld).

6. ENGAGEMENT OF SUPPLIER

6.1 **(Engagement by Work Order)** At any time during the Term, the Principal may but shall not be obliged to, issue a Work Order to the Supplier for the provision of Services. The Supplier must promptly after receiving the Work Order, notify the Principal as to whether or not it accepts the Work Order. The Supplier must accept a Work Order which is consistent with the Contract unless it cannot reasonably comply with the Work Order. The Principal may withdraw a Work

Order at any time prior to the Supplier notifying the Principal in writing that the Work Order is accepted.

6.2 **(No separate contract)** The Principal's acceptance of a Work Order under clause 6.1 does not create a separate contract. Subject to clause 6.3, any services of the same or a similar type to the Services provided by the Supplier to the Principal during the Term shall be taken to have been provided pursuant to this Contract.

6.3 **(Alternative terms and conditions)** Nothing in this Contract shall be taken to prevent the Parties from entering into one or more separate contracts, on different terms to the Contract, for the provision by the Supplier of services of the same or a similar type to the Services during the Term.

7. EXCLUSIVITY

7.1 **(Alternative 1 – Not exclusive)** If the Reference Schedule provides that the Contract is not exclusive, the Supplier is not the exclusive supplier of the Services, or of services of the same or a similar type to the Services, during the Term. The Principal may engage other suppliers to provide services of the same or a similar type to the Services during the Term.

7.2 **(Alternative 2 – Exclusive)** If the Reference Schedule provides that the Contract is exclusive, then subject to this clause 7.2, the Supplier is the exclusive supplier of the Services at the Site during the Term. During the Term, the Principal may:

(a) itself provide, or engage other contractors to provide, the Services or services of the same or a similar type to the Services:

(i) during any period for which the Principal acting reasonably determines that the Supplier is, for any reason, unable or unwilling to properly perform the Services in accordance with the Contract; and

(ii) otherwise where expressly or impliedly permitted by the Contract; and

(b) undertake any procurement process or other activities necessary or prudent for the appointment of a supplier to supply similar or the same services as the Services after the expiry or termination of the Contract.

7.3 **(No liability)** The Principal shall not be liable upon any Claim by the Supplier in connection with the Principal engaging other suppliers to supply similar or the same services as the Services consistently with this clause 7.

8. RELATIONSHIP OF THE PARTIES

8.1 **(Relationship)** The Supplier is an independent contractor of the Principal. The Contract does not create any partnership, joint venture or employment relationship. The Supplier is solely responsible for payments required to be made to its Personnel for the performance of services in connection with the Contract and solely responsible for determining the manner in which it complies with its obligations under the Contract. The Supplier must provide such materials, equipment, knowledge and Personnel as the Supplier deems necessary to comply with its obligations and under the Contract.

8.2 **(Representations)** The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Principal. Except to the extent expressly contemplated in the Contract, the Supplier must not represent itself or allow anyone else to represent that the Supplier is an agent of the Principal.

8.3 **(Conflict of Interest)** The Supplier warrants and represents that as at the date of the Contract, the Supplier is not aware of any Conflict of Interest. The Supplier must not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which does, or is likely to, result in a Conflict of Interest during the Contract and must immediately notify the Principal

in the event that a Conflict of Interest that has not previously been disclosed arises or is likely to arise.

9. PRINCIPAL'S REPRESENTATIVE

- 9.1 **(The Principal's Representative)** The Principal's Representative is appointed as the Principal's agent to exercise any of the Principal's rights or functions under the Contract. The Principal's Representative is not an independent certifier or valuer.
- 9.2 **(Rights and powers of the Principal's Representative)** The Principal's Representative may exercise any rights and powers granted to the Principal under this Contract. The Principal's Representative may give a direction in respect of any matter relating to this Contract, including the protection of people, property and the environment and the Supplier's performance of the Services.
- 9.3 **(Authorised delegates)** The Principal's Representative may, by giving written notice to the Supplier setting out the rights and powers which may be exercised, authorise another person to exercise all or some of the rights and powers under clause 9.2. Subject to clause 9.5, no other person is permitted to exercise any right or function of the Principal. The Supplier must notify the Principal immediately if it receives a purported direction in connection with the Contract from any other person. The Principal shall not be liable upon any Claim relating to a direction given to the Supplier by any other person.
- 9.4 **(Compliance)** The Supplier must, and must ensure that its Personnel, comply with all directions given by the Principal's Representative, within the time specified in the direction, or where no time is stated, as soon as is reasonably practicable.
- 9.5 **(Change)** The Principal may notify the Supplier of a change in the Principal's Representative at any time.

10. SUPPLIER'S REPRESENTATIVE

- 10.1 **(Supplier's Representative)** The Supplier's Representative is appointed by the Supplier to manage the Supplier's performance of the Contract. Matters which are in the knowledge of the Supplier's Representative are deemed to be within the knowledge of the Supplier.
- 10.2 **(Change)** The Supplier may seek the approval of the Principal to change the Supplier's Representative. The Supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal may refuse to approve a replacement person if the Principal reasonably believes that the person is inappropriate to take the role of Supplier's Representative or is of lesser skill, experience and competency to the person being replaced. If the Principal reasonably objects to the nominated representative, the Supplier shall promptly nominate another representative.

11. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

- 11.1 **(Obligations, Warranties and Representations)** The Supplier:
- (a) **(ability)** must ensure, and warrants and represents that the Supplier and, to the extent applicable to them, its Personnel:
- (i) have the experience, skills, expertise, resources and judgement;
 - (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

which are required for the Supplier to comply with its obligations under the Contract and will maintain such competencies, licences, accreditations, qualifications, permits, clearances or other authorisations at all times until the Supplier's obligations under the Contract are at an end;

- (b) **(standard of Services)** must, and to the extent applicable to them must ensure that its Personnel, provide the Services and carry out the Supplier's other obligations in connection with the Contract in accordance with Good Industry Practice and so that the Services are fit for the purpose or purposes stated in the Contract;
- (c) **(workmanship)** where the Services require the carrying out and completion of any Works, must ensure that at Work Order Completion those Works:
- (i) are free from defects; and
 - (ii) comply in all respects with:
 - A. the Contract;
 - B. the Work Order;
 - C. any approved design of the Works; and
 - D. Applicable Standards;
 - (iii) are fit for the purpose stated in or to be reasonably inferred from the Contract and/or the relevant Work Order,
- and that any design prepared by the Supplier in relation to the Works is in accordance with the requirements of the Contract;
- (d) **(condition of Goods)** must ensure that all Goods used or supplied in the performance of the Services:
- (i) at the time at which they are used or supplied and for the duration of any applicable Warranty Period:
 - A. are free from defects and of merchantable quality;
 - B. comply in all respects with the Contract and/or the relevant Work Order including as to quality, quantity, performance, functionality and description;
 - C. conform to any sample goods approved by the Principal; and
 - D. are fit for the purpose or purposes for which they are used or supplied;
 - (ii) at the time at which they are used or supplied, comply with applicable law and Applicable Standards and where manufactured, are new; and
 - (iii) when title passes, are free from all encumbrances and interests, except for an encumbrance or interest which arises by operation of a law and which cannot be excluded by agreement;
- (e) **(Supplier Documents)** must ensure that where the Supplier provides Supplier Documents under the Contract:
- (i) those Supplier Documents:
 - A. comply with the requirements of the Contract, the relevant Work Order and applicable law;
 - B. are of a standard and quality reasonably expected of a skilled and competent supplier using Good Industry Practice;

- C. are fit for the purpose for which they are provided; and
 - (ii) except to the extent that they are prepared strictly in accordance with technical plans or drawings provided to the Supplier by the Principal:
 - A. the Supplier Documents; and
 - B. the Principal's use of the Supplier Documents for a purpose stated in or to be reasonably inferred from the Contract or the relevant Work Order,
- will not infringe Intellectual Property Rights;
- (f) **(investigations)** warrants and represents that the Supplier has carefully reviewed the Contract and will carefully review each Work Order (including the Scope and all other information contained or referenced in the Work Order) prior to acceptance of it to satisfy itself that the Scope and other information is appropriate and adequate to enable the Supplier to comply with its obligations under the Contract;
 - (g) **(legal capacity)** must ensure, and warrants and represents that the Supplier has the full power, authority and capacity to enter into the Contract and that the Supplier's obligations under the Contract are valid and binding on it, and enforceable against it;
 - (h) **(Price)** warrants and represents that the rates and prices in the Contract include compliance with all of the Supplier's other obligations under the Contract except, and then only to the extent, that the Contract provides otherwise.
- 11.2 **(Improper Conduct)** The Supplier warrants and represents that neither the Supplier nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Supplier must not engage in any Improper Conduct in connection with the Contract.
- 11.3 **(Notice of breach)** The Supplier must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached a warranty given, representation made or obligation provided for, in clause 11.1 or 11.2.
- 11.4 **(Obligations, warranties and representations not affected)** The obligations, warranties and representations in clause 11.1 remain unaffected notwithstanding:
- (a) that the Scope was prepared by the Principal or the Principal's Personnel;
 - (b) any inspection, test, receipt, review, permission, approval or comment on, of or in relation to the Services by the Principal or the Principal's Personnel;
 - (c) any Variation or other direction by the Principal or the Principal's Personnel; or
 - (d) the adoption or incorporation into the Supplier Documents by the Supplier of any industry standard or work carried out by others (including work carried out by or on behalf of the Principal),

except that clauses 11.4(c) and 11.4(d) do not apply to the extent that the Supplier has, prior to acting or omitting to act in reliance on the direction or the affected Supplier Documents, given the Principal written notice expressly stating that the Variation, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

12. SUPPLIER'S PERSONNEL

- 12.1 **(General)** The Supplier must ensure that its Personnel involved in the performance of the Supplier's obligations under the Contract:

- (a) act professionally and courteously in all dealings with the Principal, the Principal's Personnel and the general public in connection with the Contract;
 - (b) do not engage in any Improper Conduct;
 - (c) do not directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Services are to be carried out or to the public generally;
 - (d) are familiar with and properly trained for their allocated role;
 - (e) perform their allocated role competently, safely and in accordance with Good Industry Practice and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations; and
 - (f) are not affected by alcohol or drugs whilst performing any part of the Supplier's obligations under the Contract (other than prescription medication which does not affect the ability of the person to perform the relevant obligations under the Contract).
- 12.2 **(Key Personnel)** The Supplier must ensure that only Key Personnel perform the roles identified in the Reference Schedule and that the nominated Key Personnel perform those roles for the period identified in the Reference Schedule. The Supplier may seek the approval of the Principal to change the identity or role of any Key Personnel or to engage additional persons as Key Personnel. The Supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal cannot unreasonably refuse to approve a replacement or additional key person that is of equal or greater skill, experience and competency to the person nominated in the Contract as the key person for that role.
- 12.3 **(Local Government Worker)** The Supplier must ensure that when acting as a Local Government Worker, the Supplier's Personnel:
- (a) have all appropriate qualifications, skills and training to exercise a power or perform a responsibility under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009* (Qld);
 - (b) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Personnel are authorised as Local Government Workers by the Principal; and
 - (c) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).
- 12.4 **(Police checks)** If the Principal directs the Supplier to obtain a National Police Certificate in respect of any of the Supplier's Personnel then the Supplier must not permit those Personnel to perform any part of the Services or to have access to any Confidential Information of the Principal or the Site unless and until 5 Business Days after the Supplier has given the Principal a written copy of the National Police Certificate for those Personnel. If the National Police Certificate contains any entries, the Principal may, in its absolute discretion, notify the Supplier that the person is not permitted to perform the Services or may otherwise place conditions upon that person's role in performing the Services. The Supplier must use its best endeavours to provide any additional information which the Principal may reasonably request in relation to a National Police Certificate.
- 12.5 **(Industrial relations)** The Supplier remains solely responsible for the management of industrial relations relating to its Personnel. The Supplier must promptly inform, and keep informed, the Principal in relation to any potential or actual industrial relations issues which could affect the ability of the Supplier to comply with its obligations under the Contract.
- 12.6 **(Modern Slavery)** The Supplier:

- (a) must not engage in Modern Slavery and warrants and represents that it has not engaged in any Modern Slavery;
- (b) must take, and warrants and represents that it has taken, all reasonable steps to identify and eliminate Modern Slavery in the business and operations of its subcontractors, suppliers and consultants;
- (c) immediately notify the Principal in writing if it becomes aware of any Modern Slavery in the Supplier's business or operations or the business or operations of its subcontractors, suppliers or consultants.

12.7 **(Labour Hire)** The Supplier must not provide or utilise any labour for any part of the Services, unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld)

12.8 **(Removal)** The Principal may at any time direct the Supplier to remove any of the Supplier's Personnel from the performance of the whole or part of the Supplier's obligations under the Contract if the Principal reasonably believes that the Supplier is in breach of any clauses 11.1(a), 11.2, 12.1, 12.3, 12.6 or 12.7 or if a National Police Certificate contains any entries in respect of that person, or that the person is otherwise responsible for a breach of the Contract by the Supplier.

13. SUBCONTRACTING, ASSIGNMENT AND NOVATION

13.1 **(By the Supplier)** The Supplier must not subcontract, assign or novate the whole or any part of its rights and/or obligations under the Contract unless it has first obtained the written consent of the Principal. Subcontracting of the Supplier's obligations shall not relieve the Supplier from any liability or obligation under the Contract. As between the Principal and the Supplier, the Supplier shall be responsible, and liable to the Principal, for the acts and omissions of the Supplier's Personnel in connection with the Contract as if they were the acts or omissions of the Supplier.

13.2 **(By the Principal)** The Principal may contract, assign or novate the whole or any part of its rights and/or obligations under the Contract in its absolute discretion and without obtaining the consent of the Supplier.

13.3 **(Third party warranties)** The Supplier shall obtain and provide to the Principal, the warranties required by the Contract. Unless otherwise directed by the Principal, the Supplier shall also obtain a warranty from each subcontractor, supplier, retailer or manufacturer on terms commonly provided by those subcontractors, suppliers, retailers or manufacturers for their parts of the Services, in the name of both the Principal and the Supplier.

13.4 **(Subcontracts)** The Supplier must ensure that any subcontracts into which it enters place the same obligations, responsibilities and liabilities on the subcontractor that this Contract places on the Supplier to the extent that they relevant to the services provided by the subcontractor.

14. SITE

14.1 **(Access for Supplier)** The Principal will give the Supplier sufficient, but non-exclusive, access to the Site to carry out the Supplier's obligations under the Contract. The Principal may refuse to give such access until the Supplier has given the Principal:

- (a) evidence of insurance required by clause 25.3;
- (b) copies of all competencies, licences, accreditations, qualifications, permits, clearances or other authorisations which are required for the Supplier to comply with its obligations under the Contract;

- (c) any other documents or information which the Contract requires to be given to the Principal before access to the Site shall be given, including those identified in the Work Order or elsewhere in the Contract; and
- (d) evidence that the Supplier has done all other things which the Contract requires to be done before access to the Site shall be given, including those identified in the Work Order or elsewhere in the Contract.

14.2 **(Access for Principal)** The Principal and its Personnel shall be entitled to access the Site and any other place where any obligation of the Supplier under the Contract is or is to be carried out on the giving of reasonable written notice, including to conduct tests, inspections or audit of the Supplier's compliance with the Contract or to carry out other services or work at the Site. The Supplier must cooperate, communicate and co-ordinate with the Principal and the Principal's Personnel in relation to the access by the Principal and the Principal's Personnel. The Principal must use reasonable endeavours to ensure none of the Principal's Personnel impedes the Supplier in the performance of the Services.

14.3 **(Site specific requirements)** The Supplier must comply with the reasonable requirements of the Principal in relation to the Supplier's access to or conduct on the Site.

15. MEETINGS

15.1 The Supplier must, at the times required by the Contract or the relevant Work Order and when otherwise reasonably required by the Principal, meet and discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract.

16. TIMING

16.1 **(Work Orders)** The Supplier must commence performing its obligations described in a Work Order by the Time for Work Order Commencement or where no time is stated, promptly after the Supplier receives the Work Order, and must perform those obligations:

- (a) within any working hours described in the Contract or the Work Order;
- (b) with due expedition and without delay;
- (c) in accordance with any requirements of the Contract and the Work Order and any reasonable directions of the Principal as to the order and timing of the performance of those obligations (including any program or schedule included in a Work Order or agreed between the Parties); and
- (d) so that all Services reach Work Order Completion by the applicable Time for Work Order Completion.

16.2 **(Delay or interruption)** The Supplier must promptly notify the Principal's Representative if it suspects, or becomes aware, that the performance of the whole or any part of the Services will be interrupted or delayed and must provide any further information reasonably requested by the Principal's Representative in relation to the delay or interruption.

16.3 **(Extension of time)** If the Supplier:

- (a) is delayed in reaching Work Order Completion by the Time for Work Order Completion because of a Qualifying Cause of Delay; and
- (b) the Supplier gives the Principal a written claim an extension of the Time for Work Order Completion within 10 Business Days of the delay first occurring,

then the Principal shall grant a reasonable extension of the Time for Work Order Completion. The Principal may at its absolute discretion, grant an extension of the Time for Work Order Completion for delay caused by any other cause of delay. The Supplier must provide the

Principal with all information reasonably directed by the Principal's Representative in connection with the delay.

16.4 **(Monetary compensation)** If the Supplier:

- (a) is entitled to an extension of the Time for Work Order Completion under clause 16.3 because of a delay caused by the Principal or the Principal's Personnel; and
- (b) submits a written claim for delay costs within 10 Business Days of the cessation of the delay,

then the Principal shall be liable for the direct costs which the Supplier has reasonably, necessarily and not prematurely incurred by reason of that delay and which it cannot reasonably mitigate. The Supplier shall not otherwise be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Supplier's obligations under the Contract or a Work Order however caused.

17. VARIATIONS

17.1 **(Direction for Variation)** The Principal may, in respect of any Work Order, at any time prior to the Time for Work Order Completion and for any reason, direct a Variation by giving written notice to the Supplier. The Principal cannot direct a Variation which is outside the general scope of the Contract. The Supplier cannot carry out a Variation without a written direction to do so from the Principal.

17.2 **(Variation proposal)** The Principal may direct the Supplier to provide an estimate or quotation for a Variation and/or a statement as to the impact of a Variation on the Services (including the cost and timing of the Services). The Principal may direct the Supplier to support the estimate, quotation or statement with documentary evidence and may direct the time within which the estimate, quotation or statement is to be provided. The Supplier must comply with such a direction at its expense.

17.3 **(Adjustment of Price)** Subject to clause 17.4, the effect of a Variation on the Supplier's entitlement to payment shall be determined using the following order of priority:

- (a) agreement between the Parties;
- (b) applicable fees, rates or prices (if any) stated in Schedule 1; or
- (c) by the Principal (acting reasonably).

17.4 **(No entitlement)** The Principal shall not be liable upon any Claim in connection with a direction for a Variation, unless:

- (a) the Principal's Representative has, expressly stated in writing that the direction is a direction for a Variation; or
- (b) within 10 Business Days of being given the direction, and where possible before the Supplier complies (in whole or part) with the direction the Supplier has notified the Principal in writing that it considers that the direction constitutes a Variation.

17.5 **(Variations requested by the Supplier)** The Principal may approve a request for a Variation by the Supplier. Unless the Principal agrees otherwise in writing, a Variation approved under this clause 17.5 shall have no effect on the Supplier's entitlement to payment, timing of the Supplier's obligations or any other obligation of the Supplier under the Contract.

17.6 **(Omissions)** Where the Principal directs a Variation omitting or reducing any part of the Services described in a Work Order, then the Principal may subsequently provide the omitted or reduced Services itself or engage others to do so on its behalf. The Supplier shall not be

entitled to any monetary compensation in connection with an omission or reduction and such omission or reduction shall not invalidate or constitute repudiation of the Contract.

18. INVOICES AND PAYMENT

- 18.1 **(Timing of invoices)** Subject to clause 18.11, the Supplier may submit invoices to the Principal for Services provided in accordance with the Contract and the relevant Work Order at the times and for the Services stated in the Reference Schedule. Unless otherwise directed, invoices should be submitted promptly and, in any event, no later than 5 Business Days after Work Order Completion.
- 18.2 **(Requirements of invoices)** Each invoice must comply with the GST Law and all other requirements:
- (a) stated in the Contract or the relevant Work Order; or
 - (b) which the Principal reasonably directs prior to the time for submission of the invoice.
- 18.3 **(Further supporting documentation)** The Principal may, acting reasonably, direct the Supplier to provide documentary evidence supporting the Supplier's entitlement to payment of the whole or part of the amount claimed. Until such evidence is provided the Principal may assess the claim on the basis that the supporting documentation does not exist.
- 18.4 **(Entitlement to payment)** The Supplier shall only be entitled to payment for Services which are provided in accordance with the requirements of the Contract (including the warranties given and representations made in the Contract).
- 18.5 **(Amount due)** The Principal may deduct from any amount claimed by the Supplier under or in connection with the Contract (including for a breach of the Contract):
- (a) any amount which the Contract entitles the Principal to deduct;
 - (b) any other amount due and owing by the Supplier to the Principal; and
 - (c) any amount which the Principal reasonably claims is or will become due and owing by the Supplier to the Principal (whether under the Contract or otherwise).
- The balance remaining after such deductions shall be due by the Principal to the Supplier or by the Supplier to the Principal as the case may be and shall be certified as such by the Principal within 15 Business Days after the invoice is received.
- 18.6 **(Due date for payment)** Subject to the Contract, the Principal shall pay the amount due to the Supplier (if any) including any applicable GST before the end of the Payment Period. If an amount is due from the Supplier to the Principal, the Supplier must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from the Principal.
- 18.7 **(Disputed Invoice)** If the Principal disputes an invoice issued by the Supplier:
- (a) the Principal will pay the undisputed portion of the relevant invoice (if any) less any deductions provided for under clause 18.5 and dispute the balance; and
 - (b) if the resolution of the dispute determines that the Principal must pay an amount to the Supplier, the Principal will pay that amount upon resolution of that dispute.
- 18.8 **(No admission)** Payments made by the Principal to the Supplier are made on account only and do not constitute an admission that the Supplier is entitled to the payment made or that the Services and/or the Supplier Documents the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.

- 18.9 **(Sole entitlement)** Except to the extent expressly provided otherwise in the Contract payment of the Price shall be the Supplier's only entitlement to monetary compensation for the provision of the Services and compliance with the Supplier's other obligations under the Contract and any Work Order issued pursuant to it.
- 18.10 **(Liability for GST)** If GST is imposed on any supply made pursuant to the Contract, the amount payable for the supply is to be increased by the amount of that GST. Each Party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Contract.
- 18.11 **(Recipient created tax invoices)** Where the Principal is the recipient of a taxable supply under this Contract the Principal may issue recipient created tax invoices or recipient created adjustment notes in respect of these supplies in accordance with the GST Law and direct the Supplier not to issue tax invoices or adjustment notes in respect of the same supplies.

19. LAW AND POLICIES

- 19.1 **(Compliance)** The Supplier must, and must ensure that its Personnel involved in the performance of the Services, comply with:
- (a) all law, standards and codes of practice applicable to the Supplier, the Supplier's business or the Supplier's obligations under the Contract; and
 - (b) any applicable policies, guidelines, procedures and codes of the Principal which are identified in the Contract or the relevant Work Order or which are publicly available or otherwise made known to the Supplier from time to time.
- 19.2 **(Change in law)** If a law:
- (a) necessitates:
 - (i) a change to the Services;
 - (ii) a change in a fee or charge; or
 - (iii) the payment of a new fee or charge;
 - (b) comes into effect after the date of the relevant Work Order and could not reasonably then have been anticipated by a competent contractor; and
 - (c) causes the Supplier to incur more or less cost than otherwise would have been incurred,

then the Supplier may notify the Principal in writing of the law and the effect of it on the Supplier. After the notice is given, the Parties shall attempt to agree on a change to either the Services and/or the Price. If the Parties have not reached agreement within 45 Business Days after the notice is given, then either Party may give a notice of dispute pursuant to clause 34. Unless otherwise directed by the Principal, but notwithstanding the giving of a notice of dispute, the Supplier must continue to comply with its obligations under the Contract, including by making any payments or doing any things required to comply with the law.

20. WORK HEALTH AND SAFETY

- 20.1 **(Relationship of obligations)** The obligations in this clause 20 are in addition to, and not in substitution for, any other obligation of the Supplier:
- (a) under the WHS Act and WHS Regulation; or

- (b) elsewhere in this Contract, a Work Order or at law relating to WHS.

Nothing in this clause 20 is intended to reduce or limit such other obligations and none of those other obligations shall be taken to reduce or limit the Supplier's obligations under this clause 20.

20.2 **(Primary obligations of Supplier and Personnel)** The Supplier must itself, and must ensure that its Personnel engaged in performing the Supplier's obligations under the Contract:

- (a) comply with all law (including the WHS Act and the WHS Regulation) and codes of practice relating to WHS that are in any way applicable to this Contract;
- (b) discharge the duties and comply with all relevant duties, obligations, standards and requirements under the WHS Act and WHS Regulation which are or may become applicable in connection with the Contract including any direction relating to WHS issued by the Regulator or any other Authority;
- (c) at all times identify and take all reasonably practicable steps to ensure health and safety of all persons who may be affected by the performance of the Supplier's obligations under the Contract;
- (d) consult with and co-operate with the Principal in relation to matters of WHS that the Principal (acting reasonably) considers the Supplier cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal to ensure any issues are resolved to that standard;
- (e) except where the Supplier is the principal contractor for a Site under the WHS Regulation, (in which case this clause 20.2(e) does not apply), comply with:
- (i) the reasonable requirements of any third party appointed by the Principal as principal contractor for the Site; or
- (ii) if no third party has been so appointed for the Site, the WHS policies and procedures and other WHS requirements of the Principal which are in any way applicable to this Contract for that Site.

20.3 **(Incident notification)** The Supplier must:

- (a) report any Notifiable Incidents to the Regulator within the specified time frame as per the WHS Act and WHS Regulation;
- (b) if any of the Supplier's Personnel are involved in an accident or other health and safety incident or otherwise suffer an injury in connection with the performance of the Services:
- (i) immediately notify the Principal of the accident, incident or injury; and
- (ii) within 3 Business Days of the accident, incident or injury (or such longer period as the Principal may agree) provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future; and
- (c) cooperate and assist (and procure its Personnel to cooperate and assist) the Principal with any investigation by the Principal into any accident, injury or other health and safety incident in connection with the Contract.

20.4 **(Supplier's WHS systems)** The Supplier:

- (a) warrants and represents that it has adequate WHS systems in place having regard to the nature of its obligations under the Contract and any hazards specific to any Workplace at which an obligation under the Contract is to be carried out;

- (b) must inform the Principal of all its WHS policies, procedures or measures implemented for the performance of its obligations under this Contract;
- (c) must prepare and adopt WHS documentation which:
 - (i) addresses all the specific WHS hazards and issues relevant to the Supplier's obligations under the Contract which can be reasonably anticipated or ascertained at that time;
 - (ii) documents the system and control methods to be implemented for the performance of its obligations under the Contract,and must update such documentation as required from time to time to ensure that it complies with clause 20.4(c);
- (d) must, where directed to do so by the Principal:
 - (i) prior to commencing the Services, submit the Supplier's WHS documentation (including the documentation required elsewhere under the Contract) to the Principal for review; and
 - (ii) within the time directed by the Principal submit to the Principal for review any other WHS documentation that the Principal directs it to prepare,and if the Principal notifies the Supplier that all or part of the WHS documentation is not suitable, at its cost amend and resubmit the relevant WHS documentation;
- (e) must, if the Principal at any time during the performance of the Supplier's obligations under the Contract requests the Supplier to review any of the WHS documentation, promptly and within the time required by the Principal, review any or all of the WHS documentation in accordance with the Principal's request and either:
 - (i) submit revised documentation to the Principal; or
 - (ii) provide written confirmation that the WHS documentation is appropriate to manage the risks associated with the Supplier's obligations under the Contract;
- (f) is not entitled to make any Claim (whether for additional costs or expense) in connection with its obligations under this clause.

20.5 **(Site specific induction)** Unless otherwise directed by the Principal, the Supplier must ensure that each of its Personnel working at the Site receives a site-specific induction and that each person visiting the Supplier or its Personnel at that Site receives a site-specific induction or is accompanied by someone who has received such an induction.

21. HEAVY VEHICLE NATIONAL LAW

- 21.1 **(Definitions)** Terms used in this clause which are defined in the HVNL have the same meaning as in that law unless the context otherwise requires.
- 21.2 **(Primary obligation)** The Supplier must ensure that, so far as is reasonably practicable, the safety of the Supplier's transport activities. Without limiting this, the Supplier must, so far as is reasonably practicable:
- (a) eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, minimise the public risks; and
 - (b) ensure the Supplier's conduct does not directly or indirectly cause or encourage:
 - (i) the driver of the heavy vehicle to contravene the HVNL; or

- (ii) the driver of the heavy vehicle to exceed a speed limit applying to the driver; or
- (iii) another person, including another party in the chain of responsibility, to contravene the HVNL.

21.3 **(Notice)** The Supplier must immediately notify the Principal if the Supplier considers that anything in this Contract, or any act or omission of the Principal or the Principal's Personnel has or is likely to directly or indirectly cause or encourage the Supplier or any employee or subcontractor of the Supplier:

- (a) being the driver of a heavy vehicle to contravene the HVNL; or
- (b) being the driver of a heavy vehicle to exceed a speed limit applying to the driver; or
- (c) being another person, including another party in the chain of responsibility, to contravene the HVNL.

22. PROTECTION OF PROPERTY AND THE ENVIRONMENT

22.1 **(General)** The Supplier must and must ensure that to the extent applicable to them, its Personnel:

- (a) perform the Supplier's obligations under the Contract safely and in a manner that will prevent pollution, contamination or damage to property or the environment; and
- (b) take all measures necessary to protect property and the environment in the performance of its obligations under the Contract.

22.2 **(Rectification of damage)** The Supplier must promptly rectify:

- (a) any damage to any property which is caused by the Supplier or the Supplier's Personnel in connection with the performance of its obligations under the Contract;
- (b) any damage to any property, which occurs whilst the Supplier is responsible for its care (whether or not due to any act or omission of the Supplier).

The Supplier shall be entitled to claim the cost which it reasonably and necessarily incurs in making good any such damage to the extent that the negligent act or omission or Wilful Misconduct of the Principal or the Principal's Personnel caused or contributed to the damage and/or the Principal failed to act reasonably to mitigate the damage.

23. INDEMNITY

23.1 **(Indemnity)** To the extent permitted by law, the Supplier shall indemnify and keep indemnified the Principal and the Principal's officers, employees and related bodies corporate against:

- (a) any of the following:
 - (i) loss of or damage to property of the Principal (including Supplier Documents);
 - (ii) Claims by any person against the Principal in respect of personal injury or death, or loss of or damage to property of any party; and
 - (iii) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal,

to the extent caused or contributed to by the negligence or Wilful Misconduct of the Supplier or its Personnel and/or the breach of Contract by the Supplier; and

- (b) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal resulting from an infringement or alleged infringement of Intellectual Property Rights in connection with the Services by the Supplier or its Personnel,

but the indemnity will be reduced to the extent that the act or omission of the Principal or the Principal's Personnel caused or contributed to the cost, expense, fine, penalty, loss, damage, injury or death and/or the Principal failed to act reasonably to mitigate the cost, expense, fine, penalty, loss or damage.

- 23.2 **(Acceptance of benefit)** The Principal has informed its officers, employees and related bodies corporate and communicates acceptance on their behalf, of the Supplier's undertaking to indemnify under clause 23.1.

24. LIMITATION OF LIABILITY

- 24.1 **(Limit of liability)** To the extent permitted by law:

- (a) the aggregate liability of each Party to the other in respect of any Claim in connection with the Contract will not exceed that Party's Liability Limit;
- (b) neither Party shall be liable to the other for any loss of profits, loss of opportunity, loss of agreement or loss of business in connection with the Contract unless, and then only to the extent, that the Contract expressly provides for that liability.

- 24.2 **(Exceptions)** Clause 24.1 does not apply to:

- (a) liability of the Principal to pay the Price;
- (b) liability of either Party in connection with personal injury, or death or damage to property;
- (c) liability of a Party arising as a result of:
 - (i) an infringement of confidentiality or Intellectual Property Rights;
 - (ii) a deliberate breach or abandonment of the Contract;
 - (iii) Wilful Misconduct;
 - (iv) a breach of any law; or
 - (v) fraud or other criminal conduct,by that Party; or
- (d) liability of the Supplier which the Supplier:
 - (i) is entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) unless and then only to the extent that the Supplier uses all reasonable endeavours to, but does not actually, recover that liability; or
 - (ii) would have been entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) but for any act or omission of the Supplier or the existence of this clause 24,

and amounts referred to in subclauses (a), (b), (c) and (d) shall not be included in calculating whether the relevant Party's Liability Limit in clause 24.1(a) has been reached.

25. INSURANCE

- 25.1 **(Insurances to be effected and maintained)** The Supplier must effect the insurances stated in the Reference Schedule and any other insurance which the Supplier considers is necessary to protect its interests or which is required by law.
- 25.2 **(Period of insurance)** The insurance policies required under clause 25.2 must be maintained at all times from the Term Start Date::
- (a) until 5pm on the later of:
 - (i) the Term End Date; and
 - (ii) the date on which the Supplier's obligations under the Contract are complete; and
 - (b) in respect of professional indemnity insurance only, for a period of 7 years after the date in clause 25.2(a).
- 25.3 **(Subcontractors)** The Supplier must ensure that any subcontractor, supplier or consultant of the Supplier has equivalent insurances to the extent that they are applicable to the part of the Services to be carried out by the subcontractor, supplier or consultant.
- 25.4 **(Evidence of insurance)** If requested by the Principal, the Supplier must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by the Principal of the Supplier's compliance with this clause 25. The Principal may suspend the Contract or any Work Order issued pursuant to it until such evidence is provided.
- 25.5 **(No implied limitation)** Nothing in this clause, nor the Supplier's compliance or non-compliance with it, shall be taken to limit or reduce the Supplier's liability under the Contract or at law.
- 25.6 **(Notification)** The Supplier must:
- (a) if any insurance policy required under the Contract is cancelled or the Principal's interest in respect of any of those policies is adversely affected, immediately notify the Principle's Representative of this;
 - (b) if any event occurs which may give rise to a claim involving the Principal under any policy of insurance to be effected by the Supplier under this clause 25:
 - (i) notify the Principal within 10 Business Days of that event; and
 - (ii) ensure the Principal is kept fully informed of any subsequent actions and developments concerning the relevant claim.

26. INSPECTIONS AND TESTS

- 26.1 **(Right to inspect and test)** The Principal may inspect and test, or engage a third party to inspect and test, any or all Services, Works, Goods and Supplier Documents provided to ensure that the Services, Works, Goods and the Supplier Documents comply with the Contract, including all warranties given and representations made by the Supplier in the Contract. Inspections or tests carried out by or on behalf of the Principal shall not relieve the Supplier of any obligation or liability under the Contract nor limit or waive any right of the Principal.
- 26.2 **(Cost)** If an inspection or test undertaken by or on behalf of the Principal reveals a failure by the Supplier to comply with the Contract, then the costs reasonably incurred by the Principal in undertaking the inspection or test shall be a debt due and payable by the Supplier to the Principal.

27. HANDLING OF INFORMATION

- 27.1 **(Obligation of confidence)** A Party must not use the other Party's Confidential Information for any purpose other than complying with its obligations or exercising its rights in connection with the Contract ("Permitted Purpose"). A Party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.
- 27.2 **(Breach of Confidence)** If a Party becomes aware of a suspected or actual breach of clause 27.1, that Party must immediately notify the other Party and take reasonable steps required to prevent, stop or mitigate the extent of the breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.
- 27.3 **(Return of Confidential Information)** Subject to this clause 27, the Disclosee of Confidential Information must return or destroy (at the Discloser's discretion) all Confidential Information and material containing Confidential Information when it is no longer required by the Disclosee for the Permitted Purpose or when otherwise directed by the Discloser. The Disclosee may, subject to its continuing obligation to comply with this clause 27, keep such copies as are required to comply with any law or to comply with its reasonable corporate governance requirements for so long as is necessary to satisfy those requirements.
- 27.4 **(Personnel)** The Parties must make every reasonable effort to ensure that only its Personnel that have a need to know any Confidential Information for the Permitted Purpose are permitted to access and use the other Party's Confidential Information and its Personnel are aware of and comply with the obligations of confidentiality in this clause 27.
- 27.5 **(Collection of information by the Supplier)** If the Supplier collects or has access to Personal Information as that term is defined in the *Information Privacy Act 2009* (Qld) in order to carry out its obligations under the Contract, the Supplier must comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Contract as if the Supplier was the Principal. Where the Principal consents to the Supplier subcontracting the whole or part of the Supplier's obligations under this Contract, the Supplier must ensure that any subcontract with a subcontractor that will collect or have access to Personal Information contains a clause requiring the subcontractor to acknowledge and agree that it is a 'bound contracted service provider' as that term is defined in the *Information Privacy Act 2009* (Qld).
- 27.6 **(Collection of information by the Principal)** The Principal collects Personal Information and other information in connection with the Contract so that it can properly administer the Contract and otherwise carry out its functions as a local government authority. The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information will be accessible by Personnel of the Principal engaged to assist the Principal in connection with the Contract or otherwise carrying out the functions of the Principal. Information may also be disclosed as otherwise permitted under the Contract or at law, including under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld).
- 27.7 **(Right to Information)** The Supplier acknowledges that:
- (a) the *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including the Principal);
 - (b) the Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest; and
 - (c) information provided by the Supplier in connection with the Contract is potentially subject to disclosure to third parties, including information marked as confidential.

The Principal will assess any application for disclosure in accordance with the terms of the *Right to Information Act 2009* (Qld).

27.8 **(Media)** The Supplier must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether oral or written, in connection with the Contract in any media without the prior approval of the Principal.

28. INTELLECTUAL PROPERTY

- 28.1 **(Background IP)** Background IP of a Party shall remain the exclusive property of that Party. The Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Principal's Background IP strictly for the purpose of complying with the Supplier's obligations under the Contract and for no other purpose. The Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy reproduce, modify and adapt the Supplier's Background IP for any purpose for which the Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract. Each Party warrants and represents to the other that the use of the Party's Background IP will not infringe any Intellectual Property Rights of a third party.
- 28.2 **(Project IP - Alternative 1)** If the Reference Schedule provides that Project IP vests in the Principal, then:
- (a) Project IP vests on creation in and is the exclusive property of the Principal;
 - (b) to the extent (if any) that clause 28.2(a) does not vest Project IP in the Principal, the Supplier assigns all right, title and interest in the Project IP to the Principal; and
 - (c) the Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Supplier to comply with the Supplier's obligations under the Contract and for no other purpose.
- 28.3 **(Project IP - Alternative 2)** If the Reference Schedule provides that Project IP vests in the Supplier, Project IP vests in the Supplier on creation and the Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Project IP for any purpose for which the Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract.
- 28.4 **(Moral Rights consent)** If the Reference Schedule provides that a Moral Rights consent is required then:
- (a) the Principal may do anything which would, but for this clause, constitute an infringement of the Moral Rights of the Supplier or any of its Personnel in the Background IP or the Project IP; and
 - (b) the Supplier must procure, and on request by the Principal provide to the Principal a copy of, a written consent to this effect from each of its Personnel that is the author of any Supplier Documents.
- 28.5 **(Warranty and representation by Supplier)** The Supplier warrants and represents that:
- (a) it has the necessary rights to exercise any Intellectual Property Rights that it uses to provide the Services, or to assign or license the Supplier's Background IP and Project IP in accordance with this clause 28;
 - (b) it has not infringed and will not infringe any Intellectual Property Rights of a third party in connection with the performance of its obligations under the Contract; and
 - (c) except to the extent that the infringement is caused by the Supplier's incorporation of the Principal's Background IP, the Project IP and the Principal's use of the Project IP for a purpose stated in or to be reasonably inferred from the Contract will not infringe the Intellectual Property Rights of a third party.

29. NON-CONFORMANCE

- 29.1 **(Non-conformance)** Where any of part of the Services provided by the Supplier does not conform strictly to the requirements of the Contract or the Supplier fails to comply with any other obligation of the Supplier under the Contract, the Principal may, in addition to or as an alternative to exercising its rights under clause 32 and 33, exercise the rights provided in clause 29.2.
- 29.2 **(Principal's rights)** Where permitted by clause 29.2, the Principal may:
- (a) direct the Supplier to provide a detailed proposal as to how the Supplier proposes to rectify the non-conformance and the time within which such a proposal is to be provided; or
 - (b) whether or not the Principal has given a direction under clause 29.2(a), direct the Supplier to:
 - (i) rectify the non-conformance or failure, including by:
 - A. performing or reperforming any non-conforming Services;
 - B. removing, demolishing, repairing, replacing or reconstructing any non-conforming Works or Goods;
 - C. replacing non-conforming Supplier Documents; and
 - (ii) make good any damage to any property (including Works or Goods) to the extent caused by the non-conformance or the rectification,at the Supplier's expense and within the timeframes reasonably directed by the Principal.
- 29.3 **(Step-in rights)** Where the Supplier fails to comply with a direction under clause 29.2(a) or 29.2(b), the Principal may:
- (a) after giving at least 5 Business Days written notice to the Supplier (except in the case of emergency, in which case no notice is required), take any of the steps contemplated by clause 29.2(b) itself or engage a third party to do so; or
 - (b) accept the non-conformance or failure and adjust the Price as if the Principal had directed a Variation for the non-conformance or failure.
- 29.4 **(Costs)** The cost reasonably incurred by the Principal in connection with any action taken pursuant to clause 29.2 or 29.3 shall be a debt due and owing by the Supplier to the Principal.
- 29.5 **(Timing)** The rights given to the Principal under clauses 29.2 or 29.3 may be exercised at any time up to 12 months after the later of:
- (a) the date on which the Services, Works, Goods or Supplier Documents were provided by the Supplier; and
 - (b) the Term End Date.
- 29.6 **(Application of clause)** For clarity, this clause 29 shall apply to all Services, Works, Goods and Supplier Documents provided or to be provided, under the Contract, including Services, Works, Goods and Supplier Documents provided in compliance with a direction under clause 29.2(b).

30. SUSPENSION

- 30.1 **(Right to suspend)** The Principal may direct the Supplier to suspend the performance of the whole or part of the Supplier's obligations under the Contract at any time and for any reason and may direct the Supplier to recommence performing those obligations by giving written notice to the Supplier. The Supplier must not suspend the performance of its obligations under the Contract without the prior written consent of the Principal.
- 30.2 **(Costs of suspension)** If the suspension is directed due to any act or omission of the Supplier or its Personnel (including a breach of the Contract by the Supplier) then the Supplier shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which the Supplier demonstrates it has reasonably, necessarily and not prematurely incurred by reason of the suspension and which the Supplier demonstrates it cannot reasonably mitigate.

31. FORCE MAJEURE

- 31.1 **(Notification of Force Majeure)** If either Party is rendered unable wholly or in part by Force Majeure to carry out any of its obligations under the Contract (other than an obligation to make a payment of monies), that Party ('the Affected Party'), shall give to the other Party prompt written notice of such Force Majeure detailing the particulars of the Force Majeure and to the extent that it is ascertainable at the time of giving the notice, the extent to which it will be unable to perform or be delayed in performing its obligations.
- 31.2 **(Suspension)** On the giving of a notice under clause 31.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.
- 31.3 **(Mitigation)** The Affected Party shall use all reasonable diligence to mitigate the effect of the Force Majeure on its obligations as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.
- 31.4 **(Industrial relations)** Clause 31.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on terms contrary to its wishes. The manner in which all such difficulties shall be handled shall be entirely within the discretion of the Affected Party.
- 31.5 **(Principal's rights)** Where the Supplier gives a notice under clause 31.1, the Principal may at its election:
- (a) itself perform, or engage others to perform the obligations which the Supplier is unable to perform and may continue to perform such obligations until the later of the time that the Principal is reasonably satisfied that the Supplier is able to resume performance of those obligations and the time at which any interim arrangements put in place by the Principal are able to be reasonably brought to an end;
 - (b) take such other action as the Principal, acting reasonably, considers appropriate.

The cost incurred by the Principal in exercising these rights shall be borne by the Principal.

- 31.6 **(Termination)** If Force Majeure extends for a period of greater than 20 consecutive Business Days then the Principal may terminate the Contract immediately by giving written notice to the Supplier.

32. CANCELLATION OF WORK ORDER

- 32.1 **(Cancellation of a Work Order)** The Principal may cancel any Work Order at any time, for any reason, at its convenience. Any Work Orders which are on foot at the time at which the Contract is terminated by either party pursuant to clause 33 shall be deemed to be immediately cancelled pursuant to this clause 32.1, unless the Parties expressly agree otherwise.
- 32.2 **(Consequences of cancellation)** If a Work Order is cancelled, then:

- (a) unless otherwise directed by the Principal, the Supplier must secure the Site in a safe and proper manner and remove all of its Personnel, plant and equipment from the Site within 5 Business Days of the date of cancellation of the relevant Work Order;
- (b) the Principal may carry out any obligation of the Supplier which has not been carried out and completed as at the date of cancellation itself or engage others to do so on the Principal's behalf; and
- (c) the Principal shall, subject to the Contract, pay the Supplier:
 - (i) the amount which the Supplier is entitled to be paid under the Contract for Services provided by the Supplier in accordance with the Contract up to and including the date of cancellation; and
 - (ii) if the cancellation is solely due to the act or omission of the Principal, without any fault on behalf of the Supplier, the amount of any other direct costs which the Supplier cannot reasonably mitigate and which the Supplier has reasonably, necessarily and not prematurely incurred:
 - A. prior to the cancellation in the expectation of completing its obligations under the Contract or the relevant Work Order; or
 - B. as a direct consequence of cancellation,

except that the total amount payable to the Supplier in respect of the Work Order shall not under any circumstances exceed the amount to which the Supplier would have become entitled to be paid had the Work Order not been cancelled and the Supplier had completed its obligations under the Work Order.

33. TERMINATION, DEFAULT AND INSOLVENCY

- 33.1 **(Termination for convenience)** The Principal may at any time and for any reason in its absolute discretion terminate the Contract by giving 25 Business Days written notice to the Supplier.
- 33.2 **(Notice to show cause)** If a Party ("the defaulting Party") commits a Substantial Breach of the Contract, then the other Party may give the defaulting Party a notice to show cause. The notice to show cause must state:
- (a) that it is a notice to show cause under clause 33.2;
 - (b) the alleged Substantial Breach;
 - (c) that the defaulting Party is required to show cause in writing why the other Party should not exercise a right referred to in clause 33.3 or clause 33.4 (as the case may be);
 - (d) the date and time by which the defaulting Party must show cause (which must be a reasonable period taking into account the nature of the breach); and
 - (e) where applicable, the place at which cause must be shown.

33.3 (Principal's rights) If:

- (a) the Supplier is subject to an Insolvency Event;
- (b) the Supplier commits a Substantial Breach which is incapable of remedy; or
- (c) by the time specified in the notice to show cause given by the Principal to the Supplier under clause 33.2, the Supplier fails to show reasonable cause why the Principal should not exercise a right under this clause 33.3,

the Principal may by giving written notice to the Supplier:

- (i) cancel any Work Order pursuant to clause 32.1;
- (ii) to the extent permitted by law, immediately terminate this Contract; or
- (iii) permanently or temporarily take the whole or any part of the obligations of the Supplier remaining to be completed pursuant to any Work Order (including the obligation to remedy the default) out of the hands of the Supplier and may itself perform those obligations or engage a third party to do so on the Principal's behalf, in which case:
 - A. the Supplier shall not be entitled to any further payment in respect of the obligations taken out of Supplier's hands;
 - B. the Supplier must continue to perform any obligations under the Contract and the relevant Work Order that were not taken out of the Supplier's hands;
 - C. the Principal or the third party so engaged may enter the Site and any relevant premises of the Supplier and use all of the Supplier's plant, equipment and materials as may be necessary to perform the obligation;
 - D. the Principal may, on the giving of reasonable notice, require the Supplier to resume the performance of the obligations of the Supplier under the Contract and the relevant Work Order which were taken out of the hands of the Supplier if the Supplier ceases to be subject to an Insolvency Event or the Principal is otherwise of the view that the Supplier is capable of continuing to perform its obligations under the Contract and the relevant Work Order in accordance with the Contract; and
 - E. if the costs incurred by the Principal in performing the obligations or engaging a third party to do so are greater than the costs which would have been incurred had the Supplier performed the obligation then the difference shall be a debt due and owing by the Supplier to the Principal and may be deducted from payments otherwise owing to the Supplier. Until such costs are incurred, the Principal may deduct the estimated costs from payments to the Supplier.

33.4 (Supplier's rights) If:

- (a) the Principal commits a Substantial Breach which is incapable of remedy; or
- (b) by the time specified in a notice to show cause given by the Supplier to the Principal under clause 33.2, the Principal fails to show reasonable cause why the Supplier should not exercise a right under this clause 33.4,

the Supplier may at its election:

- (i) suspend the whole or part of the Services (but only after ensuring that the Site is left in a secure and safe condition); or
- (ii) if the breach is not capable of remedy, terminate the Contract by giving written notice to the Principal.

If the Supplier suspends the whole or part of the Services under this clause 33.4, the Supplier shall lift the suspension if the Principal remedies the breach but if, within 45 Business Days after the suspension, the breach is not remedied and the Principal fails to make other arrangements to the reasonable satisfaction of the Supplier, then the Supplier may terminate the Contract by giving written notice to the Principal.

33.5 (Effect on other rights) To the extent permitted by law, the Supplier shall not be entitled to any monetary compensation in respect of:

- (a) the termination of the Contract by either Party;
- (b) the cancellation of a Work Order; or
- (c) the Principal taking obligations out of the hands of the Supplier,

other than as expressly provided in clause 32. Nothing in clauses 32 or 33 shall prejudice the Principal's right to claim and recover damages for breach of contract by the Supplier.

34. DISPUTE RESOLUTION

34.1 (Mandatory process) Unless otherwise stated in this Contract, any dispute between the Parties must be resolved in accordance with this clause 34.

34.2 (Notice of dispute) If a Party considers that a dispute has arisen between the Parties in connection with this Contract, then the Party must give written notice to the other, setting out the particulars of the dispute and stating that the notice is given under this clause 34. Unless the Parties otherwise agree in writing, the notice shall be delivered by hand or registered post.

34.3 (Initial conference) If a Party gives written notice to the other of a dispute under the Contract, representatives of the Parties shall promptly confer to attempt to resolve the dispute.

34.4 (Mediation) If the dispute is not resolved within 10 Business Days after the giving of the notice (or such longer period as may be agreed by the Parties) a Party may by written notice to the other Party refer the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute. The mediation must be conducted by a mediator to be appointed by agreement of the Parties or in default of agreement to be appointed by the President of the Queensland Law Society or his nominee at the request of a Party.

34.5 (Legal proceedings) If the dispute is not resolved within 20 Business Days after the appointment of the mediator any Party may take legal proceedings to resolve the dispute.

34.6 (Urgent relief) This clause 34 does not prevent any Party from taking any steps under any law out of which the Parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

34.7 (Obligation to continue) Notwithstanding the existence of a dispute, the parties shall, subject to clauses 30, 31, 32 and 33 continue to perform the Contract.

35. CLAIMS

35.1 (Claims pursuant to the Contract) The Principal shall not be liable upon any Claim by the Supplier for an extension of time, an adjustment to the Price (including due to a Variation) or other monetary compensation pursuant to the Contract unless the Supplier has complied with the requirements in the Contract for notifying the Principal of and making such a claim.

35.2 **(Other Claims)** The Principal shall not be liable upon any other Claim by the Supplier in connection with the Contract unless the Supplier has given the Principal written notice of its intention to make the Claim within 6 calendar months after the direction or other event on which the Claim is based was given or occurred.

36. INTERPRETATION

36.1 **(Headings)** Headings are for reference purposes only and must not be used in interpretation;

36.2 **(No limitation)** The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that the Principal 'may' do something the Principal is not obliged to do that thing and is not prevented from doing any other thing;

36.3 **(Grammatical forms)** Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.

36.4 **(Law)** A reference to 'law' includes all:

- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and
- (b) certificates, licences, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,

which are applicable to the Supplier or the Contract or which are otherwise in force at any place where an obligation under the Contract is carried out, as introduced, amended or replaced from time to time.

36.5 **(Other references)** A reference to:

- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
- (b) a clause is to a clause in the Contract unless expressly stated otherwise;
- (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
- (d) a monetary amount is a reference to an Australian currency amount.

36.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Contract or the relevant Work Order expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day. A reference to a day, week or month means a calendar day, week or month.

36.7 **(Indemnities)** Each indemnity provided in the Contract is a continuing indemnity which survives the expiration or termination of the Contract. The Principal need not incur any expense or make any payment in order to rely on an indemnity.

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

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

37. GENERAL PROVISIONS

- 37.1 **(Costs)** Each party must pay its own costs and expenses incurred in negotiating, executing, stamping, registering and performance of the Contract.
- 37.2 **(Joint and several obligations)** To the extent permitted by law, if either Party consists of two or more persons the Contract binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally, and any obligation incurred in favour of that Party may be enforceable by each person comprising that Party severally;
- 37.3 **(Governing law)** The Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 37.4 **(Binding on successor)** The Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.
- 37.5 **(Further assurance)** The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under the Contract.
- 37.6 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the Reference Schedule or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:
- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
 - (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.
- 37.7 **(Waiver)** No waiver by a Party of a provision of the Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.
- 37.8 **(Consent)** Any consent of the Principal under the Contract may be given, withheld or given subject to conditions at the absolute discretion of the Principal.
- 37.9 **(Consideration)** In consideration for the Supplier entering into this Contract, the Principal agrees to pay the Supplier the sum of \$10 on demand. In consideration for the Principal entering into this Contract, the Supplier agrees to pay the Principal the sum of \$10 on demand.
- 37.10 **(Discrepancy or inconsistency)** Where there is a discrepancy or inconsistency between any obligation of the Supplier under the Contract, the Supplier must notify the Principal in writing of the discrepancy or inconsistency, If the discrepancy or issue cannot be resolved using the order of precedence under clause 2.3 then unless otherwise directed by the Principal, the Supplier must comply with the highest or most onerous requirement.
- 37.11 **(Cumulative rights and obligations)** The rights and remedies of a Party provided in the Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of the Contract will not relieve the Supplier of any other obligation under the Contract, at law or in equity. The exercise by the Principal of a right provided in the Contract shall not invalidate or constitute a repudiation of the Contract.
- 37.12 **(Electronic execution)** The Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by

sending evidence of execution by email. For clarity, the Parties consent to the Contract being executed electronically using DocuSign or an equivalent electronic method to identify the Parties.

- 37.13 **(Current versions)** Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Supplier must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or prices in the Contract shall be deemed to have allowed for compliance with that version.
- 37.14 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, clauses 23, 24, 25.2(b), 27, 28, 32.2, 33.5 and 35 survive the expiration or earlier termination of the Contract.

Schedule 1 Scope and Price

[Scope and Price to be inserted into execution copy of Contract]

Scope of Works:

SCOPE OF WORKS - AIR CONDITIONERS & EVAPORATIVE COOLERS					
	Deliverables	Scheduled		Timeline	Outputs
		6 mthly	12mthly		
1	Check and dean all air filters	X	x		
2	Test Remote control handsets		x		
3	Visual inspection and clean condenser coils if required	X			
4	Check and clean drain pan	X			
5	Check and dean condensate drains to ensure no water overflow	X			
6	Visually inspect all coils and connections for refrigerant leaks	X			
7	Check capacitors for hazardous leaks		X		
8	Monitor refrigerant site glass		X		
9	Visual inspection of interior unit for possible contamination and mould growth	X			
10	Clean and sanitize evaporator coil to prevent mould and mildew build-up	X			
11	Check & clean barrel fam and remove if required - High Wall Splits only	X			
12	Check all supply vents for adequate air circulation		X		
13	Test heating elements for trouble-free operation		X		
14	Check crank case heater		X		
15	Check safety controls		X		
16	Check all pumps and auxiliary equipment		x		
17	Check all belts and pulleys		x		
18	Check reversing vale for correct operation		x		
19	Lubricate motor and blower bearings		x		
20	Take note of all corrosion spots and apply protective film on equipment, as needed		x		
21	Inspect, dean and spray controls and switches		X		
22	Check thermostat calibration & battery life		x		
23	Check all electrical components for proper operation		X		
24	Test compressor's running amperage		X		
25	Check all wire connections and replace if necessary		X		
26	Check all relays for trouble-free operations		x		
27	Inspect contact points		X		
28	Check refrigerant flow control device	X			
29	Test and monitor refrigerant pressure		X		
30	Check operating temperatures, and temperature drop across coils		x		
31	Run and evaluate system for performance/efficiency		X		
32	Full written report + preferred client status		X		

Schedule 1 Scope and Price

Pricing Schedule:

Item No.	Description	Unit	Price (ex. GST)	GST Component	Price (inc. GST)
Air Conditioner Maintenance:					
1	Biloela, Thangool				
2	Moura, Banana, Baralaba				
3	Theodore, Taroom				
TOTAL					
RCD Testing:					
1	Biloela, Thangool				
2	Moura, Banana, Baralaba				
3	Goovigen, Wowan, Dululu, Jambin				
4	Theodore, Taroom, Cracow				
TOTAL					
Cold Room Maintenance:					
1	Biloela,				
2	Moura,				
3	Taroom				
TOTAL					

Rates for Additional Work	
Description	Hourly Rate
Electrician	
Refrigeration Mechanic	
Apprentice	
Trades Assistant	
Travel rate for all areas	
After Hours Callout	

Schedule 2 Work Order Completion Declaration

**Oaths Act 1867
STATUTORY DECLARATION**

QUEENSLAND
TO WIT

I, [insert name of person signing] of [insert address] in the State of Queensland, do solemnly and sincerely declare that, in relation to the contract between Banana Shire Council and [insert Supplier's name] (**Supplier**), identified as contract no. [insert contract no.] (**Contract**) for the provision of [describe services] (**Services**) pursuant to work order [insert work order # or description] (**Work Order**):

1. I hold the position of [insert position].
2. Having made all reasonable inquiries, I am in a position to know the facts contained herein. I am duly authorised by the Supplier to make this declaration on its behalf.
3. The Services provided in respect of the Work Order comply in all respects with the requirements of the Contract.
4. All other obligations to be performed in connection with the Work Order have been performed in accordance with the Contract.
5. Each claim for payment which the Supplier has submitted in connection with the Work Order and all documentary evidence provided in support of such claims, is true and correct in every material respect.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

Taken and declared at)
this day of)
before me:)

 Solicitor Justice of the Peace
 Commissioner for declarations



Scope of Works

Air Conditioner Servicing, RCD, and Cold-room Maintenance

CONTRACT NO.: T22/23.35

1. INTERPRETATION AND DEFINITIONS

- 1.1 **(Documents comprising this Scope)** The Scope comprises the following information:
- (a) Technical specification;
 - (b) Price chart.
 - (c) Scope of service
- 1.2 **(Precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1, then the document which contains the higher standard or more onerous obligation will prevail. If that does not resolve the ambiguity, inconsistency, conflict or discrepancy then the documents will take precedence in the order set out in clause 1.1 with the document listed at 1.1(a) being the highest in the order.
- 1.3 **(Definitions)** In this Scope:
- (a) Scope of services means what kinds of jobs they need to perform;
 - (a) Scope of works means what kinds of schedule checking they need to perform and record;

2. APPROVALS AND OTHER LAW

- 2.1 **(Identifying, obtaining and maintaining Approvals)** The Supplier must identify and notify the Principal of all Approvals which are necessary for the proper performance of the Services (other than Approvals which the Principal has advised the Supplier it has already obtained). The Supplier must obtain and maintain all such Approvals until all of the Supplier's other obligations under the Contract are complete. The cost of obtaining and maintaining all such Approvals shall be borne by the Supplier.
- 2.2 **(Compliance)** The Supplier must and must ensure that its Personnel comply with all Approvals and other law which are in anyway applicable to the Services, including, unless the Contract expressly provides otherwise, by paying all fees, royalties, levies, charges, costs, expenses, taxes or duties.
- 2.3 **(Obtaining or granting of Approvals by Principal)** The Principal gives no warranty and makes no representation that:
- (a) it will be able to obtain, or obtain within any particular time; or
 - (b) where the Principal is the relevant Authority, that it will grant,
- any Approval required for the Supplier to perform the Services.
- 2.4 **(No fetter)** Nothing in the Contract shall be taken to fetter the power, rights or authority of the Principal as the sublessor under the *Land Act 1994* (Qld) or an Authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) or any other law.
- 2.5 **(Provision of the Services)** The Supplier must, and warrants and represents that it will, perform the Services so that the Site, at all times during the Term, complies with all Approvals and other applicable law.
- 2.6 **(Obligation to report breach)** The Supplier must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached an obligation under clauses 2.1, 2.2 or 2.3. Unless otherwise directed by the Principal, the Supplier must take immediate steps to remedy such a breach at its expense.

3. SERVICE LEVELS

- 3.1 In this clause
- (a) **Review Period** means the period stated in clause **Error! Reference source not found.** below in which the performance of the Supplier against a Service Level is to be reviewed;
 - (b) **Service Levels** means the service level(s) or key performance indicator(s) (if any) described as such in clause **Error! Reference source not found.** below.
- 3.2 (**Guarantee**) The Supplier must, and guarantees that it will, in providing the Services and carrying out its other obligations under the Contract, achieve or exceed all Service Levels in every Review Period.
- 3.3 (**Measuring performance**) The Principal will review the performance of the Supplier against the Service Levels at the times in clause **Error! Reference source not found.** below, and otherwise on the giving of reasonable notice. The Principal may direct the Supplier to provide a written explanation for its performance against any Service Level.
- 3.4 (**Performance liquidated damages**) If the Supplier has failed to meet any Service Level, the Supplier shall be indebted to the Principal for performance liquidated damages calculated in accordance with clause **Error! Reference source not found.**
- 3.5 (**Recovery of liquidated damages**) The Principal may deduct such performance liquidated damages from moneys otherwise owing to the Supplier to recover the performance liquidated damages. The Parties agree that the performance liquidated damages are an agreed genuine pre-estimate of the Principal's loss if the Supplier breaches its obligations under the Contract.
- 3.6 (**General damages**) If, for any reason, the Principal's entitlement to performance liquidated damages is found to be void, voidable or otherwise unenforceable (in whole or part), or the Principal is otherwise unable to recover the whole of the performance liquidated damages from the Supplier, the Supplier shall be liable to the Principal for any loss, damage, cost or expense suffered or incurred by the Principal as a result of the Supplier failing to achieve the Service Levels.
- 3.7 (**Review of Service Levels**) The representatives of the Parties may review the Service Levels from time to time and amend them in any way including by adding additional Service Levels, removing or amending Service Levels, amending the method of measuring performance or the consequence of achieving or failing to achieve a Service Level.
- 3.8 (**Substantial breach**) Failing to achieve or exceed:
- (a) the same Service Level for three consecutive Review Periods, even though the Supplier may have achieved or exceeded some or all of the other Service Levels for those same Review Periods; or
 - (b) any two Service Levels for two consecutive Review Periods,
- shall constitute a substantial breach of the Contract.

4. PROCUREMENT SERVICES

- 4.1 Where the Services require the Supplier to manage, conduct or otherwise participate in a Procurement Process for the engagement of a contractor or other supplier by the Principal, then the Supplier must, and must ensure that its Personnel, to the extent that it is within the control of the Supplier or its Personnel ensure that the procurement process is conducted consistently with:
- (a) the Principal's procurement policy;
 - (b) the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld);
 - (c) the requirements of the request for tender or request for quotation documentation issued to tenderers;

- (d) any probity plan or evaluation plan implemented for the Procurement Process;
- (e) principles of probity; and
- (f) Good Industry Practice,

with a view to ensuring that the selected contractor or supplier is the most advantageous to the Principal having regard to the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld).

5. PRINCIPAL SUPPLIED INFORMATION AND OTHER INVESTIGATIONS

- 5.1 **(Definitions)** In this clause “**Principal Supplied Information**” means any information relating to the Contract which does not form part of the Contract but which is or has been provided or made available by or on behalf of the Principal to the Supplier in any form, whether such information is made available before or after the date of the Contract.
- 5.2 **(Acknowledgement and agreement by Supplier)** The Supplier acknowledges and agrees that:
- (a) the Principal gives no warranty and makes no representation in respect of this Contract. Without limiting this, the Principal gives no warranty and makes no representation:
 - (i) that the Principal Supplied Information is accurate, adequate or complete; and
 - (ii) as to the physical condition, suitability or other characteristics of the Site;
 - (b) the Supplier has not relied and will not rely on the Principal Supplied Information unless and until the Supplier has independently verified the adequacy, accuracy and completeness of that information;
 - (c) the Supplier:
 - (i) has carefully, thoroughly and critically reviewed, examined, investigated, inspected and checked the Principal Supplied Information and the Site and undertaken all other necessary enquiries and investigations to satisfy itself of the suitability of the Site to enable the Supplier to comply with its obligations under this Contract and of any other logistical considerations, risks, contingencies and other circumstances which could have an effect on the cost of carrying out and completing Services or compliance with the Supplier's other obligations under the Contract;
 - (ii) the Supplier has made its own interpretations, deductions and conclusions from such enquiries and investigations and accepts full responsibility for those interpretations, deductions and conclusions; and
 - (iii) the Supplier, having undertaken those enquiries and investigations, accepts the risk of any inadequacy, inefficiency, deficiency or fault in the Site and that it can and will carry out and complete the Services in accordance with the Contract and comply with its other obligations under the Contract for the Price (as adjusted pursuant to the Contract); and
- 5.3 **(No liability)** The Principal shall not be liable upon any Claim by the Supplier in connection with the Principal Supplied Information or the physical condition, suitability or other characteristics of the Site.

6. SUPPLIER'S PERSONNEL

- 6.1 **(Minimum Personnel levels)** The Supplier must always ensure that during the Term, the minimum number of each type of Personnel identified in the Contract perform the roles identified in the Contract for the periods indicated in the Contract (**Minimum Personnel Levels**). The Minimum Personnel Levels must be maintained notwithstanding any planned or unplanned absences, personal breaks, attendance at training or performance of other duties by any Personnel. Provision of the Minimum Personnel Levels does not relieve the Supplier of any obligation under the Contract. If further Personnel are required in addition to the Minimum Personnel Levels for the Supplier to comply with its obligations under the Contract, then the Supplier must provide such additional Personnel at its expense.

- 6.2 **(Further requirements on Personnel)** In addition to any other requirement in the Contract, the Supplier must ensure that its Personnel:
- (a) are familiar with and properly trained for their allocated role;
 - (b) perform their allocated role competently and safely and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations.
 - (c) do not either directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Services are to be carried out (including Personnel of the Principal) or to the public generally;
 - (d) are not affected by alcohol or drugs whilst performing any part of the Supplier's obligations under the Contract (other than prescription medication which does not affect the ability of the person to perform the relevant obligations under the Contract).
- 6.3 **(Police checks)** If the Principal directs the Supplier to obtain police checks then the Supplier must not permit any Personnel to perform any part of the Services or to have access to any of the Site unless and until 5 Business Days after the Supplier has given the Principal a written copy of a criminal history check produced by the Queensland Police Service for that person. If the criminal history check contains any entries, the Principal may, in its absolute discretion, notify the Supplier that the person is not permitted to perform the Services or may otherwise place conditions upon that person's role in performing the Services.

7. MANAGEMENT PLAN

- 7.1 **(Preparation)** The Supplier must, prior to commencing the Services, prepare and obtain the Principal's approval of a management plan or plans which addresses the following matters:
- (a) Scheduling of servicing throughout the shire
- If the Principal notifies the Supplier that all or part of the plan(s) is not suitable, the Supplier must at its cost amend and resubmit the relevant plan(s).
- 7.2 **(Updating)** The management plan must be updated as often as required to:
- (a) ensure that the Supplier continues to comply with the warranties and representations as to Supplier Documents given in the Contract;
 - (b) address any deficiencies in the systems described in the plan of which the Supplier becomes aware; and
 - (c) take into account any Variations or improvements in the Services.
- A copy of a revised management plan must be submitted to the Principal for approval prior to implementation of it.
- 7.3 **(Compliance)** The Supplier must comply with the management plan at all times whilst performing the Services. Such compliance will not release or discharge the Supplier from any liability or obligation under the Contract.

8. MEETINGS

- 8.1 **(Meetings)** The Supplier must, at the following times:
- (a) Meeting will be held by request.
- and when otherwise reasonably required by the Principal, meet and in good faith discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract including:

- (b) the Supplier's performance of its obligations under this Contract, including the Service Level(s) (if any) identified in the Contract;
- (c) to promote safer and quieter work practices; and
- (d) improvements to efficiency of the Supplier's obligations under the Contract.

8.2 **(Recommendations or directions)** The Supplier shall comply with any recommendations or directions given by the Principal in relation to the performance of the Supplier's obligations under the Contract. Such compliance will not release or discharge the Supplier from any liability or obligation under the Contract.

9. SERVICE RECORDS AND AUDITING

9.1 **(Creation)** The Supplier must:

- (a) create and maintain the records, reports and other documents required by the Contract and any other records, reports or documents reasonably required by the Principal in connection with the Contract; and
- (b) create any document required to be prepared under the Supplier's management plan prepared under the Contract,

(Service Records).

9.2 **(Audit)** The Principal may at any time during the Term, on the giving of reasonable notice, audit the Supplier's compliance with the Contract or any obligation under it. The Supplier shall facilitate the audit by:

- (a) allowing the auditors to undertake any inspections or tests;
- (b) providing such assistance, information and access to the Site, systems and equipment and other cooperation;
- (c) providing to the auditor with copies of, facilitating the copying by the auditor of, the Services Records and all other records, information and documentation,

reasonably required by the auditor.

If the audit reveals any non-compliance by the Supplier with its obligations under the Contract, then the costs reasonably and necessarily incurred by the Principal in conducting the audit shall be a debt due and payable by the Supplier. Otherwise, the Principal shall bear the cost of the audit.

10. PERSONAL PROPERTY SECURITIES

10.1 **(Definitions)** In this clause, PPS Act means the *Personal Property Securities Act 2009* (Cth). Terms used in this clause which are defined in the PPS Act have the meanings given in that Act.

10.2 **(Disclosure)** If this Contract contains a security interest, then each Party agrees for the purposes of section 275(6) of the PPS Act that it will not disclose information of the type referred to in section 275(1) of the PPS Act where a request is made under section 275(1) of the PPS Act in relation to this Contract or any part of it, except in circumstances where the Party is compelled by law (other than section 275(1) of the PPS Act) to make that disclosure.

10.3 **(Supplier's obligations)** If the Principal determines that any clause of this Contract, or a transaction contemplated by this Contract or in connection with the performance of its obligations under this Contract constitutes, or is likely to give rise to a security interest in respect of which the Principal is the security holder, then:

- (a) the Supplier must, within the time required by the Principal, provide all assistance and cooperation requested by the Principal that the Principal determines is reasonably required to:

- (i) register and maintain the registration of its security interest on the personal property securities register within any applicable time limits relevant to the effectiveness of the security interest;
- (ii) ensure that the Principal's security interest is enforceable against third parties, perfected or otherwise effective;
- (iii) ensure that the security interest has the appropriate priority required by the Principal (including where applicable as a purchase money security interest);
- (iv) ensure that any security interest granted temporary perfection under the PPS Act is perfected by registration or other appropriate means prior to any applicable expiry of that temporary perfection; and
- (v) enable the Principal to register financing statements or financing change statements under the PPS Act with respect to any such security interest;
- (vi) the Supplier waives the right to receive notice of a verification statement in relation to the registration of that security interest;
- (vii) the Supplier shall not register or permit to be registered any other security interest in respect of the personal property that comprises the collateral in respect of that security interest other than one that has been consented to or granted by the Principal
- (viii) the Supplier shall not cause or allow any of the Supplier's personal property to become an accession to the Principal's personal property or cause or allow the Principal's personal property to become an Accession to the Supplier's personal property without the prior consent of the Principal, and
- (ix) the Supplier must immediately notify the Principal if any other person claims or attempts to enforce a security interest:
 - A. in the Principal's personal property, or
 - B. in the Supplier's personal property to the extent that that purported enforcement affects or has the potential to affect the Supplier's ability to carry out its obligations in accordance with the terms of the Contract.

Technical Specification

11. BACKGROUND

Banana Shire is situated in Central Queensland, Australia. The Banana Shire is sparsely populated, with its population of approx. 15,742 people spread over 28,577 square kilometres, of which only 27 square kilometres is urbanised. The main population centre is the town of Biloela, with Moura and Taroom being other significant urban centres in the Shire. The region is home to many natural attractions including gorges, rivers and National Parks such as the Glebe Weir and Expedition National Park, Lake Murphy, Kroombit Tops and Mt. Scoria Conservation Parks, and Isla and Cania Gorges.

Banana Shire Council is responsible for the management and maintenance of a variety of assets and infrastructure including: -

- Water and Sewerage Treatment Plants
- Airports
- Roads
- Parks and Gardens
- Plant and Equipment
- Swimming Pools
- Sporting Facilities
- Playgrounds
- Heritage and Cultural Facilities
- Bridges
- Libraries
- Entertainment Venues and Facilities
- Animal Pounds
- Various Other Buildings and Facilities

12. PARTICULARS OF GOODS AND SERVICES

Council is seeking submissions from suitably experienced contractors with appropriate resources to provide Air Conditioning Services and Maintenance, RCD testing and Cold-room Servicing to Council owned Facilities as outlined in the attachments.

The Contractor must demonstrate a proven high level of Customer Service with efficient communication practices.

Council will award the contract in whole. Contractors shall review all sites detailed in the attachments and provide prices as per Schedule of Rates.

The attached list details the subject sites for consideration. Council does not warrant the accuracy of the list and subsequent asset register and the contractor is responsible for conducting their own investigations prior to pricing.

The successful Contractor/s must appoint a permanent and proxy contact person to liaise direct with Council Officers. Full contact details for this person are to be provided to Council including name, phone number and email address. The nominated contact persons must familiarise themselves with Council facilities and all contractual requirements.

Council reserves the right to remove or add any site/building to the schedule over the life of the contract.

13. TERM OF CONTRACT

The initial term for this contract will be for **2 years** with a further **option for another 1-year term** (2 plus 1 further term available) at Council's discretion, upon the contractor fulfilling expectations and meeting established KPI's.

The term of the contract shall begin on the Contract Commencement date as determined by the Council representative and expire after the agreed terms.

14. PRICING

All prices are to be quoted GST inclusive and cover all costs associated with the performance of the service. Prices are to be calculated and guaranteed for the duration of each term of the contract. Consumables are to be charged at 10% above wholesale price.

If the Contractors business is sold or transferred to another entity the submission cannot be transferred and will be null and void.

15. PRICE REVIEW

The contractor has the right to a price review at the end of the 12 months from the time of implementation of the contract. To do this they must advise Council in writing of such a request **three (3) months before the due date**.

If agreement cannot be reached at any review time it constitutes ground for termination by either party.

Labour: BSC will accept an increase in the labour rate per hour equal to that of the increase in the "Consumer Price Index (CPI) Australian Bureau of Statistics **ALL GROUP**" for the period of the contract completed prior to the review period. However, BSC will give due diligence to any claim made by the contractor for increase over and above such a percentage.

Parts and Materials: The contractor is given the opportunity to submit a percentage discount off any parts required to complete the works. While this section of the pricing will not be subject to review, BSC reserves the right to carry random audits of the parts utilised to complete the work and compare the charges.

It is assumed that the list price for parts and material will increase in line with the CPI. However, BSC will give due diligence to the any claim made by the contractor for increase over and above prices.

Item No.	Description	Unit	Price (ex. GST)	GST Component	Price (inc. GST)
Air Conditioner Maintenance:					
1	Biloela, Thangool				
2	Moura, Banana, Baralaba				
3	Theodore, Taroom				
TOTAL					

RCD Testing:					
1	Biloela, Thangool				
2	Moura, Banana, Baralaba				
3	Goovigen, Wowan, Dululu, Jambin				
4	Theodore, Taroom, Cracow				
TOTAL					
Cold Room Maintenance:					
1	Biloela,				
2	Moura,				
3	Taroom				
TOTAL					

Rates for Additional Work	
Description	Hourly Rate
Electrician	
Refrigeration Mechanic	
Apprentice	
Trades Assistant	
Travel rate for all areas	
After Hours Callout	

16. SCOPE OF SERVICES

The Contractor shall provide maintenance Services for all air conditioning systems covered by this Contract, RCD Testing and Cold-rooms. The Services shall be carried out at the intervals as specified.

Relevant maintenance is typically addressed in the following specifications included in Mechanical Specification:

- Air Handling Units
- Air Filters
- Compressors Reciprocating
- Condensers Air Cooled
- Air Distribution Systems
- Air Conditioning Controls
- Residual Current Device Testing

17. OPERATIONAL MAINTENANCE

During the maintenance period, the successful tenderer is to provide appropriately licensed, experienced and suitably qualified tradespeople to perform the maintenance tasks in accordance with AIRAH DA19, applicable Australian Standards and as directed by the representative.

Where underqualified people such as labourers, cleaners and trades assistants are utilised and in attendance to save council costs they must be directly supervised by licensed, experienced, suitably qualified tradespeople at all times.

18. **REGULAR PREVENTATIVE MAINTENANCE**

Make 6 monthly service visits, to each building, in order to carry out the regular maintenance procedures as per AIRAH DA19 and RCD testing. **Spilt system and cassette servicing** – All spilt systems and Cassette A/C's are to have full bag cleans as part of the six month checks minimum standards for periodic inspection and servicing shall be as stated and in accordance with the requirements of the current editions of AS3666.2, AS/NZS 1677 parts 1 and 2, AS 3873, AS/NZS 3788, HB 40, the Manufacturer's Recommendations and other associated relevant codes, acts and regulations as well as the Electrical Safety Standards.

19. **BREAKDOWN**

Where repairs are required which aren't covered by routine maintenance, provide a quote to Councils Representative to undertake the work based on the scheduled hourly rates. Breakdown maintenance shall only be undertaken with written approval from Council. Maintenance staff shall be on site within 24 hours for a service call that is not an emergency.

20. **COMMUNICATION AND FEEDBACK**

Provide immediate feedback to Councils Representative on any identified faults, breakdowns, reduced performance arising from both preventative maintenance and breakdowns.

21. **MATERIALS**

Contractors are to supply all products for servicing and preventative maintenance requirements. Materials such as refrigerant, compressor oil, drive belts, replacement parts and the like shall be priced at market rate and a quote provided to the Principal for approval. Where a major item is replaced, the defective item must be made available for inspection by Council if requested.

22. **FILTERS**

All filters including lint, washable, deep bed and panel filters, including the media and the frame, are to be replaced every 12 months. If pressure measurements show that additional filter changes are required, the new filters shall be issued by a variation at the scheduled rates. Washable filters shall be cleaned as part of routine maintenance.

23. **DUCTWORK CLEANING**

A one off full internal audit and duct clean of all ductwork at the various sites where air conditioning ductwork is present will be included as part of this contract. Costs should be included as an identifiable separate cost within the schedule of rates. Where flexible ducting has degraded, or deemed uneconomical to clean, or is not to current BCA standards, allow to replace.

All duct cleaning is to be carried out in accordance with AIRAH HVAC Hygiene Best Practice Guidelines and council reserves the right to have third party sampling carried out to ensure the effectiveness of any duct cleaning. All duct cleaning shall be carried out after hours. Where commercial chemical HVAC

Hygiene products are used, control strategies shall be implemented to purge any residue chemicals from within the building and clearance certificates issued to ensure the safety of staff and the public.

Access panels shall be cut in at each side of every bend and no more than 5.0 metres along straight ducts to ensure thorough cleaning. Ducting that is internally lined shall be hand vacuumed and cleaned and compressed air cleaning methods are not permitted.

All staff engaged in duct cleaning shall be supervised by a NADCA certified Air Systems Cleaning Specialist. The tenderer is required to provide a price which will include all labour hours, travel, materials, and equipment required to complete the work. Council reserves the right to verify the accuracy of the details provided.

24. **MINIMUM QUALIFICATIONS**

The Contractor shall also ensure that only persons qualified in Refrigeration, Air conditioning and Mechanical Services and Electrical Safety with:

- Electrical Licence - Electrical mechanic licence/open electrical work licence
- QBCC License - Mechanical Services - Air-conditioning and refrigeration (Limited Design)
- Arctic License - RAC01 - Refrigerant handling licence – qualified persons (Full refrigeration and air conditioning licence: 2 & 3 years)
- Expertise in the Servicing and repair of Cold and Freezer Rooms;
- A Restricted Electrical or Electrical Licence; and
- Accreditation in the handling of Ozone Depleting Substances.
- Expertise in the Servicing and repair of Air Handling Units
- Expertise in the Servicing and repair of air-cooled condensers
- Expertise in the Servicing and repair of Air Distribution Systems
- Expertise in the Servicing and repair of Air-conditioning and Refrigeration Controls
- Expertise in the Servicing and repair of Room Air conditioners – single and split
- Accreditation in the handling of Ozone Depleting Substances
- Expertise in the Servicing and repair of Ventilation Systems
- Expertise in the Servicing and repair of Pumping Systems
- Expertise in RCD testing and tagging

SCOPE OF WORKS - AIR CONDITIONERS & EVAPORATIVE COOLERS					
Deliverables		Scheduled		Timeline	Outputs
		6 mthly	12mthly		
1	Check and dean all air filters	X	X		
2	Test Remote control handsets		X		
3	Visual inspection and clean condenser coils if required	X			
4	Check and clean drain pan	X			
5	Check and dean condensate drains to ensure no water overflow	X			
6	Visually inspect all coils and connections for refrigerant leaks	X			
7	Check capacitors for hazardous leaks		X		
8	Monitor refrigerant site glass		X		
9	Visual inspection of interior unit for possible contamination and mould growth	X			
10	Clean and sanitize evaporator coil to prevent mould and mildew build-up	X			
11	Check & clean barrel fan and remove if required - High Wall Splits only	X			
12	Check all supply vents for adequate air circulation		X		
13	Test heating elements for trouble-free operation		X		
14	Check crank case heater		X		
15	Check safety controls		X		
16	Check all pumps and auxiliary equipment		X		
17	Check all belts and pulleys		X		
18	Check reversing vale for correct operation		X		
19	Lubricate motor and blower bearings		X		
20	Take note of all corrosion spots and apply protective film on equipment, as needed		X		
21	Inspect, dean and spray controls and switches		X		
22	Check thermostat calibration & battery life		X		
23	Check all electrical components for proper operation		X		
24	Test compressor's running amperage		X		
25	Check all wire connections and replace if necessary		X		
26	Check all relays for trouble-free operations		X		
27	Inspect contact points		X		
28	Check refrigerant flow control device	X			
29	Test and monitor refrigerant pressure		X		
30	Check operating temperatures, and temperature drop across coils		X		
31	Run and evaluate system for performance/efficiency		X		
32	Full written report + preferred client status		X		

25. RCD'S

RCD testing is to be scheduled at the same time as the Air Conditioner maintenance. The successful contractor will be required to remove old labels/certificates and installation of updated Testing Certificates at each site. The successful Contractor is to complete and update (electronically) the list supplied by Council (including missing details, changes to types and test dates) and return to Council as soon as possible upon completion of works; also detail Switchboard type and location, Circuit Breaker type and number

26. PERFORMANCE MEASURES (KPI'S), TARGETS AND OUTCOMES

<i>Six (6) monthly</i>	<i>Twelve (12) monthly</i>	<i>Two (2) yearly</i>
Servicing & Cleaning of all Air Conditioners & Evap Coolers (internal and external coils & filters) Cassette A/C's are to have full bag cleans as part of the six-month checks	Air conditioner package units - replacement filters	
RCD Push Testing	RCD Push Testing	RCD Injection Testing
	Evap Coolers - replacement filters	
	Cold-room servicing	

27. PROGRAMME

Before the start of the maintenance period, submit a maintenance programme showing the proposed dates of service visits. Servicing will be in business hours. Council reserves the right to alter these hours, within reason, and shall notify the Contractor in writing of any such change, not less than 24 hours before the change.

A) SERVICE RECORDS

The Contractor is to provide an electronic system for the documenting of services, maintenance, and repairs of each air conditioning system per building, which is to be maintained by the contractor.

Details to be stored in the electronic system are to include, but not limited to:

- a) Date and details of the service performed.
- b) The name of the service technician
- c) Comments regarding the functioning of the system.
- d) Specifications of the equipment (serial #, model, brand etc).

Asset number

- a) items requiring replacement.
- b) test results and any necessary remedial action required,

Historical records for equipment

- a) Any other information deemed relevant.

The Contractor is to obtain the signature of Councils representative. The electronic system shall be capable of providing reports detailing service history and costs associated with that history. The council representative shall be provided with access to the system for contract management and monitoring purposes.

B) REFRIGERANT MANAGEMENT

- a) All maintenance and work practices are to be in accordance with The Australian Refrigeration and Air conditioning Code of Practice (HB40).
- b) All refrigerant usage is to be recorded and should be noted on the electronic system.
- c) Whilst undertaking servicing, maintenance and repairs to equipment pertaining to this Contract, service personnel shall take all necessary precautions to ensure that Chlorofluorocarbons (CFCs) are not deliberately or accidentally released into the atmosphere.
- d) All CFCs should be recovered using an approved recovery unit.
- e) It is the responsibility of the Contractor to provide a suitable recovery unit for the types of installations pertaining to the Contract.
- f) All reclaimed clean CFCs may be re-used. The Contractor shall ensure that the reuse of reclaimed CFCs does not cause any system malfunction due to unacceptable levels of contaminations.
- g) All reclaimed contaminated CFCs shall not be re-used

C) RCD MANAGEMENT

- a) All maintenance and work practices are to be in accordance with AS/NZS 3760:2101 in Service Safety Inspection and Testing of Electrical Equipmen

28. VARIATION OF ANY WORK

If any failures are found whilst servicing or testing the Air Conditioners and RCD's, the successful tenderer must notify immediately, the council representative in writing and supply a quote for the repairs. Once determined by the Council representative the best course of action, a order for the variation will be raised and forwarded to the successful contractor for rectification. From time-to-time Council may, by written notice given to the Contractor, require the Contractor to vary the Services in nature, scope or timing.

Council may direct the Contractor to:

- a) increase, decrease or omit any part of the Services; or
- b) perform additional work.

The Contractor **must not commence work** on the variation to the Services unless the variation is agreed in writing by Council and the Contractor, and **a valid Purchase Order is received with these amendments.**

29. EVIDENCE OF TENDERER'S LICENSING

It is a requirement of the *Queensland Building Services Authority Act 1991 (Qld)* ('Act') that a Contractor must be licensed to carry out 'building work' as that term is defined in the Act. The Tenderer's submission of a Tender in response to the Conditions of Tender means that the Tenderer irrevocably warrants that:

- a) it holds all relevant licences required under the Act (or otherwise) to perform the works described in the Specification;
- b) all licences held by it under the Act (or otherwise) are current, and are not subject to any conditions which preclude the Tenderer from performing works described in the Specification;
- c) all licences held by it under the Act (or otherwise) which are required for the performance of the works described in the Specification will remain current for the time during which those works are to be performed under the Contract in the event that the Tenderer is successful: and
- d) it otherwise complies in all respects with the Act, and will continue to do so for the duration of the Contract in the event that the Tenderer is successful.

If any of the work described in the Specifications constitutes 'building work' then the Tenderer must submit with its Tender evidence that it is appropriately licensed to perform that work.

For the avoidance of doubt, submission of evidence of licences under Part 3 shall not relieve the Tenderer of any of its obligations under the Act, the Tender of the Contract, nor shall it qualify, reduce or alter the scope of warranties provided by the Tenderer in Clause 3 above. The contractor will guarantee any work conducted on behalf of Council and will rectify or replace any faulty work at no charge to council.

<https://www.worksafe.qld.gov.au/injury-prevention-safety/electricity/electrical-equipment-and-tools-testing-and-tagging>

<https://www.arctick.org/refrigerant-handling-licence/>

<https://www.qbcc.qld.gov.au/air-conditioning>

https://www.qbcc.qld.gov.au/sites/default/files/Mechanical_services_-_licensing_requirements_for_Electricians.pdf

30. WORKMANSHIP

The Contractor shall be fully conversant with present day repair techniques and have a service organisation capable of first-class work standard. Replacement components shall be genuine replacement parts, unless otherwise approved by Banana Shire Council, to match existing equipment and shall carry the full supplier's warranty in favour of the Principal. Any warranty documents shall be submitted to the Principal's Representative with claims for payment.

31. DEALING WITH THE PUBLIC

Council requires the Contractor and all related employees to conduct themselves professionally and in a socially responsible manner and represent the Council and themselves in a professional, customer focused manner at all times. The Contractor shall not conduct any work additional to the Contract as a result of requests from residents or other members of the public without written authority or direction from the Principal or their representative. If a request is outside the Contractor's area of responsibility, the Contractor shall provide the customer with the contact details of the Councils Customer Service Department who will forward the customer enquiry to the council's representative.

32. ISSUING OF INSTRUCTIONS TO THE CONTRACTOR

The Contractor shall respond only to instruction from the Principal or the nominated representative, and the nominated person will be responsible for all coordination with the Primary Contractor.

33. CONTRACTOR'S WORKING HOURS AND AVAILABILITY

CORE WORKING HOURS

The Contractor's core working hours for this Contract is between 7.00am and 3.00pm, five (5) days per week, excluding weekends and public holidays.

Biloela Admin Building, CRC Building A/C and RCD servicing is to be carried out over a weekend and is to be organised with the Council Contact person

Biloela Library A/C and RCD servicing is to be carried out on Sunday and is to be organised with the Council Contact person

All council rental properties require 72 hours' notice prior to servicing to allow for Entry notices to be sent to tenants as per the *Residential Tenancies and Rooming Act 2008*

For any Leased building the Lessee is to be given 72 hours' notice prior to accessing the building (For example, Biloela Civic Centre)

All rates must include tools of trade, labour and travel to site as per schedule.

The Contractor shall not undertake work outside of these times without authorisation from the principal.

When the Contractor is requested to complete works on an existing job outside of core hours, additional works will be charged at the "Core Hours Hourly Rate" as detailed in the Contractor's Tendered price schedules.

These additional works do not constitute a Call Out. Alternatively, with authorisation from the Principal, the Contractor may request to remain on site outside of core hours to complete works thus releasing resources for the following day. E.g. the completion of works in a rural or remote location that requires significant mobilisation of plant and machinery should the Contractor be required to return the following day for a minimal amount of outstanding work.

34. WORK LOCATION

Tenderers will be required to service all location/s in the Banana Shire directorate as per worksheet supplied with this tender.

35. COMPLIANCE WITH STANDARDS

It is a mandatory requirement that all work performed under this arrangement shall meet all relevant current Australian Industry and Council Standards.

The applicable Australian Standards are:

- (a) AS 3666– Air handling and water systems of buildings
- (b) AS 3666.1 Design, installation and commissioning
- (c) AS 3666.2 Operation and maintenance
- (d) AS 3666.3 Performance – based maintenance of cooling water systems
- (e) AS 3666.4 Performance – based maintenance of air-handling systems
- (f) AS 1668 – The use of ventilation and air conditioning in buildings
- (g) AS/NZS 3000:2018 Electrical installations (the Wiring Rules)
- (h) AS/NZS 3012:2019 Electrical Installations – Construction and demolition sites
- (i) AS/NZS 3017:2007 Electrical installations – Verification guidelines
- (j) AS/NZS 3760:2010 In-service safety inspection and testing of electrical equipment AS/NZS 4836:2011 Safe working on low-voltage electrical installations and equipment.