



REQUEST FOR TENDER

Theodore and Moura Boat Ramps Extensions 2023

CONTRACT NO.: T2324.02

PART 1 – PREAMBLE				
Banana Shire Council invites tenders from suitably qualified contractors to tender on the works for the extension/upgrade of the Theodore and Moura Boat Ramps as per the maps supplied. Works are expected to be completed within 90 days of the awarding of the contract.				
PART 2 – GENERAL INFORMATION				
Contract details:	T2324.02 Theodore and Moura Boat Ramps Extensions 2023			
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
	1. Tender Briefing, to be held on the 8 August 2023 9.00am 62 Valentines Plains Road, Biloela Qld 4715 2. 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 7 August 2023 11.00am
Submission of Tender	Tenders must be submitted electronically only at tenders@banana.qld.gov.au by no later than 30 August 2023 11.00am <i>Note / Adequate time must be allowed for the Tender and all supporting documents to be uploaded or received by this time.</i>			
Evaluation Criteria	Evaluation Criteria			Weighting (%) (Optional)
	Price			30
	Experience (past performance) & Capability			20
	Availability to complete works in specified timeframe			30
	Quality, Environmental, Safety & Other Management Processes			15
	Local Content			5
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
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PART 3 – PROCUREMENT PROCESS CONDITIONS

The Procurement Process is governed by, and this Request for Tender is to be read in conjunction with, the Procurement Process Conditions:

attached to or provided with this request for tender and identified as Part 3 OF THE PROCUREMENT PROCESS CONDITIONS]

available for viewing or download from www.banana.qld.gov.au

PART 4 – CONTRACT [DRAFTING NOTE – CHECK ONLY ONE BOX]

- The contract shall be substantially in the form attached to or provided with this request for tender and identified as “T2324.02 Theodore and Moura Boat Ramps Extensions 2023 - Contract - Construct Only - Standard Risk” file attached.
 - The contract shall comprise the documents identified in clause 4 of the Principal’s standard terms and conditions which can be found at
 - 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
 - The contract shall be made in accordance with the terms and conditions of Local Buy contract
 - The Tenderer must request a copy of the form of contract from the Principal
- 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 into a contract with the Principal, unless and until that tenderer is subsequently engaged to provide works, goods and/or services pursuant to that appointment.*

PART 5 – SCOPE [DRAFTING NOTE – CHECK ONLY ONE BOX]

- The Scope is described in the document(s) attached to or provided with this request for tender and identified as “Appendix B – T2324.02 Theodore and Moura Boat Ramps Extensions 2023 - Pricing Schedule and Scope of Works” file attached
- The Scope is as follows:

PART 6 – RESPONSE SCHEDULES

The Tender must be submitted in the form provided in the response schedules attached to or provided with this request for tender and identified as “T2324.02 Theodore and Moura Boat Ramps Extensions 2023 - Part 6 Response Schedules” file attached



GENERAL SPECIFICATION

Theodore and Moura Boat Ramps Extensions 2023

CONTRACT NO.: T2324.02

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1. THE SPECIFICATION

- 1.1 **(Documents comprising this Specification)** The Specification comprises the following documents:
- (a) This General Specification;
 - (b) Scope of Works;
 - (c) Technical Specification;
 - (d) other documents to the extent that they are incorporated (whether physically or by reference) into the Specification, namely:
 - (i) Water Services Association of Australia (WSAA) standard specification;
 - (ii) relevant Australian Standards;
 - (iii) Principal's Policies and Procedures;
 - (iv) TMR Standard Specifications;
 - (v) Capricorn Municipal Development Guidelines.
- 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 1.1(a) 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. CONTRACTOR WARRANTIES

- 3.1 **(Ability)** The Contractor must ensure, and warrants and represents that the Contractor and, to the extent applicable to them, its Personnel:
- (a) have the experience, skills, expertise, and resources;
 - (b) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances, or other authorisations,
which are required for the Contractor 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 Contractor has completed its obligations under the Contract.
- 3.2 **(Standard)** The Contractor must, and warrants and represents that it will, and to the extent applicable to them will ensure that its Personnel, carry out WUC and Contractor's other obligations in connection with the Contract in accordance with Good Industry Practice.
- 3.3 **(Methodology)** The *Contractor*:
- (a) warrants and represents that the methodology for carrying out and completing *WUC* stated in the *Contract* is suitable, appropriate and adequate; and
 - (b) must, and warrants and represents that it will, carry out and complete *WUC* in accordance with that methodology (if any) unless otherwise directed by the *Superintendent* or permitted or required under the *Contract*.
- 3.4 **(Equipment)** The Contractor warrants and represents that the Equipment and all materials comprising the Equipment shall, at the time at which the Equipment is Delivered:
- (a) be new, free from defects, and of merchantable quality;
 - (b) comply in all respects with the Contract including as to quality, quantity, performance, functionality, and description;
 - (c) conform to any sample goods approved by the Principal or Superintendent;

- (d) comply with any applicable requirement, code, guideline, policy, drawing, or specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian standards applicable to the Equipment and any applicable Legislative Requirements; and
 - (e) be fit for:
 - (i) the purpose of the construction of the extension of the boat ramps at Theodore and Moura and the construction of the approach to the Theodore boat ramp; and
 - (ii) any other purpose stated in or to be reasonably inferred from the Contract.
- 3.5 **(Investigations)** The Contractor warrants and represents that the Contractor has:
- (a) carefully reviewed the Contract and all other information provided by the Principal to the Contractor for the purpose of WUC, and is satisfied that the Contract and other information is appropriate and adequate to enable the Contractor to comply with its obligations under the Contract;
 - (b) inspected the Site;
 - (c) familiarised itself with factors that could affect the ability of the Contractor to carry out WUC for the Contract Sum, including weather conditions and the availability of temporary access, temporary lighting, power, telephone services, water supply, waste disposal facilities and local labour.
- 3.6 **(Construction Plant)** The Contractor warrants and represents that all Construction Plants utilised in carrying out WUC shall be in good working condition, suitable and appropriate for the Work for which it is used, and compliant with all applicable Legislative Requirements.
- 3.7 **(Contractor Documents)** The Contractor warrants and represents that all Contractor Documents will:
- (a) comply with the requirements of the Contract and applicable law;
 - (b) be consistent with or exceed applicable industry standards;
 - (c) be of a standard and quality expected of a consultant using Good Industry Practice;
 - (d) be fit for:
 - (i) the purpose of the construction of the extension of the boat ramps at Theodore and Moura and the construction of the approach to the Theodore boat ramp; and
 - (ii) any other purpose stated in or to be reasonably inferred from the Contract.
- 3.8 **(Code of Conduct)** In this clause, Code of Conduct means the Principal's code of conduct which is available on the Principal's website. The Code of Conduct identifies the standards and behaviours expected from all workers, including contractors, in delivering services to the local community. The Contractor must:
- (a) communicate the Code of Conduct to all of the Contractor's Personnel;
 - (b) comply with, and ensure that its Personnel comply with, all requirements of the Code of Conduct, including all standards contained within the Code of Conduct; and

- (c) if directed to do so by the Superintendent, obtain and provide to the Superintendent a signed form from all Personnel engaged by the Contractor to perform any part of WUC which states that the person has read, understood and agrees to comply with the Code of Conduct.

4. **CONTRACT MANAGEMENT**

- 4.1 **(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.
- 4.2 **(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.
- 4.3 **(Design drawings)** The Contractor is deemed to have allowed for the time permitted by subclause 8.3 of the General Conditions for examination of the design drawings included in the Appendices of this tender. The Contractor must review and incorporate any comments received from the Principal or the Principal's nominated Personnel in relation to the design drawings. Unless otherwise directed, the Contractor is not required to (and must not) resubmit revised design drawings to the Principal or its Personnel.
- 4.4 **(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.

5. **PRINCIPAL SUPPLIED INFORMATION**

- 5.1 **(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.

5.2 **(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.

5.3 **(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.

6. PRINCIPAL SUPPLIED MATERIALS

6.1 **(Definitions)** In this clause, 'Principal Supplied Materials' means materials which the Principal is required under the Contract to supply, or which the Principal otherwise agrees in writing to supply, to the Contractor free of charge for use in WUC.

6.2 **(Principal's obligation to provide)** The Principal must:

- (a) deliver Principal Supplied Materials to the Site; or
- (b) make the Principal Supplied Materials available at the location (if any) stated in the Contract,

at the time at which the Program required the materials to be provided or made available, or such other time as the Principal agrees in writing.

6.3 **(Inspection by Contractor)** Upon any Principal Supplied Materials being delivered or made available, the Contractor must immediately inspect the materials and ensure that the specified quantity has been delivered and that the materials are in a condition which complies with the requirements of the Specification.

6.4 **(Notice of deficiencies)** If, within 5 Business Days of the materials being delivered or made available, the Contractor does not notify the Superintendent in writing of any deficiencies, then it shall be deemed that the specified quantity of Principal Supplied Materials has been delivered or made available to the Contractor in a condition that complies with the Specification.

6.5 **(Risk)** Any Principal Supplied Materials which, after it is delivered or made available to the Contractor, is lost, destroyed, contaminated, or altered in any way such that the materials no longer comply with the Specification, shall be immediately removed, disposed of, and replaced by the Contractor, at the Contractor's expense, with material which complies with the Specification, unless the Superintendent expressly directs otherwise. The Contractor must notify the Superintendent in writing of any lost, destroyed, contaminated, or altered materials within 5 Business Days of becoming aware of such events.

6.6 **(Excess)** Unless otherwise directed by the Superintendent, the Contractor must return any excess Principal Supplied Materials to the Principal at the place required by the Superintendent.

6.7 **(Ownership)** Principal Supplied Materials, other than destroyed, contaminated or altered material which is disposed of by the Contractor pursuant to clause 6.5 shall, notwithstanding anything else in this clause 6, remain the property of the Principal at all times.

7. APPROVALS AND OTHER LAW

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

- (a) TMR Permit to Occupy for the works on the Moura Boat Ramp
- (b) SARA development applications for both ramps (deemed not required by SARA for both ramps)

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

- 7.2 **(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.
- 7.3 **(Final certificates)** The Contractor must:
- (a) obtain all final certificates; and
 - (b) provide a list of all inspections and forms required for the final certificate before commencing any WUC.
- 7.4 **(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.
- 7.5 **(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 Approvals required for the Contractor to perform WUC.
- 7.6 **(Timing)** The Contractor is deemed to have allowed a reasonable time in its Program for all required Approvals to be applied for and obtained.
- 7.7 **(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.

8. SITE

- 8.1 **(Location)** The Site is identified in **Appendix A**.
- 8.2 **(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.

Item	Description	Relevant clause
A.	Updated Program	Clause 9 of this Specification

B.	Dilapidation survey	Clause 11.7 of this Specification
C.	Environmental protection	Clause 13 of this Specification
D.	Traffic management plan	Clause 17 of this Specification
E.	Quality management plan	Clause 10 of this Specifications

- 8.3 **(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).
- 8.4 **(Site specific requirements)** The Contractor must comply with the reasonable requirements of the Principal in relation to the Contractor's access to or conduct on the Site.
- 8.5 **(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.
- 8.6 **(Unauthorised entry to site)** The Contractor must use all reasonable endeavours to prevent any unauthorised entry to the Site.
- 8.7 **(Security fencing)** The Contractor must supply, install, maintain, repair, and remove security fencing around the Site suitable to ensure the safety of neighbouring park users. The security fencing must:
- (a) clearly identify the extents of the Site to the public;
 - (b) be covered with opaque screening/printed fence wrap to limit viewing into the Site and include any graphic design provided by the Principal; and
 - (c) be kept in good condition.
- 8.8 **(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.
- 8.9 **(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.
- 8.10 **(Setting out)** The Contractor's attention is drawn to clause 26 of the General Conditions of Contract. The Contractor must:
- (a) set out The Works from the information shown on the drawings;
 - (b) check all dimensions on Site before proceeding with WUC; and
 - (c) notify the Superintendent of any omissions or discrepancies within the drawings or Specification.

Notwithstanding subclause 26.2 of the General Conditions of Contract, any errors in the position, level, dimensions, or alignment of any WUC shall be rectified at the Contractor's

expense, unless the Contractor gave the Superintendent written notice of the error before commencing Work in reliance on the erroneous position, level, dimension, or alignment.

- 8.11 **(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.
- 8.12 **(Services)** Except to the extent that the Contract expressly provides otherwise, the Contractor must, at its expense, connect and otherwise provide all required services, including water, sewerage, drainage, electricity, and communications, and obtain all required Approvals for connection.
- 8.13 **(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. Subject to clause 25 of the General Conditions of Contract, the Contractor shall bear the cost of such relocation.

- 8.14 **(No latent condition for material to be excavated)** In addition to any other warranties given or representations made in the Contract, the Contractor warrants and represents that it has inspected the Site and has, carried out all necessary investigations to ascertain the materials which may need to be excavated for WUC and, if required, their suitability to be used in WUC. Notwithstanding clause 25 of the General Conditions of Contract, the Principal shall not be liable upon any Claim in connection with excavation, disposal of materials or replacement of materials irrespective of materials or conditions encountered at the Site.
- 8.15 **(Other property)** The Contractor must:
- (a) arrange for any other land (in addition to land made available by the Principal) required by the Contractor to carry out WUC, whether for the storage of materials, plant, or equipment, or for any other purposes;
 - (b) obtain the Principal's permission in writing to enter any private property (as that term is defined in the *Local Government Act 2009* (Qld) ('Private Property')) before entering the Private Property for the purpose of carrying out WUC or fulfilling any other obligation of the Contractor under the Contract;
 - (c) comply with all Legislative Requirements, including the *Local Government Act 2009* (Qld) in relation to entering Private Property;
 - (d) not unreasonably obstruct, destroy, or damage any Private Property, other land or other property, and ensure that all roadways, drains, watercourses, buildings, fences, gardens, walls, concrete surfaces and paths, grass and trees, and other property are left in a condition equivalent or better than that in which the property was found, unless the Contractor provides written evidence that the owner of the property agrees otherwise;

- (e) take over control of any approval, permit, or license that the Principal has in place, in relation to the Site or other land made available by the Principal, prior to commencing any WUC on the Site or using or occupying the other land.

The Contractor must ensure that all Personnel of the Contractor that enter Private Property in connection with WUC:

- (i) 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);
- (ii) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Contractor's Personnel are authorised as local government workers (as that term is defined in the *Local Government Act 2009* (Qld)) ('Local Government Worker') by the Principal; and
- (iii) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).

9. PROGRAM

9.1 **(Format and details)** The Program shall:

- (a) be prepared utilising native format Microsoft 'Project 2010' software, or alternative software as approved in writing by the Superintendent;
- (b) be submitted in electronic format with copies in both PDF format and native Microsoft "Project 2010" file format; and
- (c) detail the Contract milestone dates, the commencement and completion dates of each trade, and/or sub-contract
- (d) work activity, procurement activities and supply contract activity, with activities linked in a logical progression through a 'critical path' and identify any float based on a continuous cycle of WUC.

9.2 **(Allowances in program)** The Contractor must allow, and is deemed to have allowed, in the program for:

- (a) the time permitted under the General Conditions of Contract for the Superintendent to review documents for which the Contract requires the Contractor to obtain the Superintendent's Direction about such documents; and
- (b) other timeframes under the Contract within which the Superintendent and the Principal are permitted to act.

9.3 **(Constraints to Program)** The following information is to be taken into account when preparing Programs:

- (a) All works should be completed before the commencement of the 2023 end of year school holidays; and
- (b) Works on the Moura Boat Ramp should be schedule to avoid all QLD school holidays.

9.4 **(Approval of Program)** The approval of, or permission to adopt, a Program by the Superintendent will not relieve the Contractor of any of its obligations under the Contract, including the obligation to not, without reasonable cause, depart from an earlier approved Program.

9.5 **(Improving progress)** If, in the opinion of the Superintendent, the Contractor falls behind an approved Program, the Contractor must, unless otherwise directed by the Superintendent:

- (a) take such steps as are necessary to improve progress (including the use of additional resources);
- (b) promptly, and within the time directed by the Superintendent, submit a revised Program, identifying the steps taken or to be taken.

The Principal shall not be liable upon any Claim in connection with the Contractor's compliance with this clause.

10. QUALITY MANAGEMENT SYSTEM

- 10.1 **(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.
- 10.2 **(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) management of all services subcontractor/trades;
 - (ii) management of all services/operational commissioning;
 - (e) applicable inspection and test plans;
 - (f) a register of all proposed quality records; and
 - (g) a copy of the NATA terms of registration for the Contractor's compliance testing laboratory.
- 10.3 **(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.
- 10.4 **(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.
- 10.5 **(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) Construction of the access road for the Theodore Boat Ramp;
 - (b) Construction of the Theodore Boat Ramp; and
 - (c) Construction of the Moura Boat Ramp.

If the Contractor does not provide the required notification for an inspection, particularly in the event that 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.

11. REPORTS, MEETINGS AND RECORD KEEPING

- 11.1 **(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).
- 11.2 **(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.
- 11.3 **(Meetings – Specific)** The Contractor must attend and ensure that the Personnel noted below attend the following meetings:

Item	Meeting description	Topics for discussion	Time for meetings	Required attendees
(a)	Pre-start meeting	Discussion of the requirements of the contract and answer any questions the	Prior to commencement of WUC at the Site	Contractor project management /

		contractor may have regarding the projects/designs		supervision staff
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11.4 **(Record of compliance)** The Superintendent may direct the Contractor to provide reasonable evidence of its compliance with the requirements of the Contract, within the time reasonably required by the Superintendent. The Superintendent and the Principal shall be entitled to rely on any failure by the Contractor to provide reasonable evidence of compliance, with a particular requirement of the Contract as *prima facie* evidence that the Contractor has not complied with that requirement.

11.5 **(Audit)** The Principal may at any time up to the expiry of the last Defects Liability Period to expire (or where the Contract is earlier terminated, up to 12 months after the date on which the termination takes effect), on the giving of reasonable notice, audit the Contractor's compliance with the Contract or any obligation under it. The Contractor shall facilitate the audit by:

- (a) allowing the auditors to undertake any inspections;
- (b) providing such assistance, information and access to the Site, systems and equipment and other cooperation;
- (c) providing the auditor with copies of, and facilitating the copying by the auditor of, all the other records, information, and documentation required to be created under clause 11,

as reasonably required by the auditor. If the audit reveals any non-compliance by the Contractor 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 Contractor. Otherwise, the Principal shall bear the cost of the audit. For clarity, the Contractor is not required to provide to the Principal under this clause, any documents to the extent that they contain material which is subject to legal professional privilege.

11.6 **(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.

11.7 **(Dilapidation survey)** The Contractor must, prior to the commencement of WUC, undertake a dilapidation survey including a photographic record clearly indicating the date and time of photos taken, of all areas identified as forming part of the Site and the following areas:

- (a) The neighbouring park areas – Junction Park (Theodore) and Apex Riverside Park (Moura).

The dilapidation survey shall be replicated prior to and as a requirement of Practical Completion. The purpose of this survey is to confirm the pre and post-construction condition of the Site. The dilapidation survey shall be completed by the Contractor in the company of the Superintendent.

11.8 **(As constructed drawings)** The Contractor must give to the Superintendent, as a requirement of Practical Completion, a constructed drawings of The Works which, unless the Superintendent otherwise directs, shall comply with AS 1100.101-1992: Technical Drawing – General as amended or replaced from time to time. The Contractor must provide:

- (a) 1 complete copy of as constructed drawings in A3 hardcopy format;
- (b) 1 complete electronic copy of as constructed drawings in PDF; and
- (c) 1 complete copy in the electronic format in which the drawings were created (native format).

The as constructed drawings must clearly detail the finished line, level, arrangements, layouts, and the like of The Works as completed, including the pickup of any existing in-ground services encountered in the execution of WUC. The as constructed drawings must be prepared utilising the latest issued version of the construction drawings and must be prepared using AutoCAD 2010 format, or an alternative software package/format approved by the Superintendent. The as constructed drawings must be clearly identified as 'as constructed drawings', be appropriately titled, and must be dated and signed by the Contractor.

12. PAYMENT CLAIMS

12.1 **(Additional documentation)** In addition to the requirements stated in the General Conditions of Contract, the Contractor must provide the following documentation with each claim for payment submitted under the Contract:

- (a) Evidence of the completion of the works being claimed to the standard as required by this contract (including copies of all compliance test results);
- (b) Full breakdown (as per the supplied day labour rates) of any variation claims with a copy of the written instruction from the principal for the undertaking of the additional works.

13. ENVIRONMENTAL PROTECTION

13.1 **(Environmental Management Plan)** The Contractor must, within the time required by clause 8.2, prepare and provide to the Superintendent for review an environmental management plan ('EMP') for WUC, detailing how the Contractor will prevent or minimise the risk of harm to the environment in performing its obligations under the Contract. The Contractor must obtain and comply with the Superintendent's Direction regarding the plan pursuant to subclause 8.3 of the General Conditions of Contract. The Contractor must comply, and ensure that all of the Contractor's Personnel comply, with the EMP at all times until the expiration of the last Defects liability Period to expire. The EMP must:

- (a) cover all WUC to be undertaken at the Site;
- (b) describe the Contractor's process and procedures for the management of the risk of harm to the environment in connection with WUC;
- (c) be consistent with relevant Australian Standards and Legislative Requirements;
- (d) be a practical and achievable plan;
- (e) detail each environmental issue and impact which is to be addressed;
- (f) include all control measures which the Contractor shall undertake and any issues which the Contractor shall address during the construction process (including any required pre or post construction activity);
- (g) detail who is responsible for ensuring the control measures are undertaken, the verification of such actions, and the reporting process;
- (h) provide a trigger for undertaking an action, and where possible, timing of each action;
- (i) detail procedures for the monitoring of the EMP by the Contractor;
- (j) detail a procedure for recording any non-compliance with the EMP; and
- (k) detail a system for registration and action of environmental complaints.

If the Contractor wishes to commence any WUC prior to obtaining the Superintendent's Direction in relation to the complete EMP, sections of the EMP relevant to that WUC may be submitted at least 10 Business Days prior to the planned commencement of that WUC. A hold

point shall occur and no WUC shall proceed until written acceptance of the complete EMP or a section of the EMP relevant to a particular construction operation is received from the Superintendent.

13.2 **(Erosion and sediment control plan)** The Contractor must prepare and obtain the Superintendent's Direction regarding an erosion and sedimentation control plan ('ESCP'). The ESCP must describe the Contractor's process and procedures for the prevention or minimisation of harm caused by erosion and sediment in connection with WUC, including by control of overland flows, minimisation of flow path lengths, and the use of trapping devices to capture sediment. The Contractor must undertake the installation, inspection, repair, and maintenance of all environmental control measures required by the ESCP. The Contractor must inspect all environmental control measures at least:

- (a) once each week;
- (b) immediately after any major rainfall event; and
- (c) as otherwise directed by the Superintendent.

13.3 **(Protection of Fauna)** The Contractor must:

- (a) use all reasonable endeavours to minimise disruption to any fauna at or in the vicinity of the Site;
- (b) ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site:
 - (i) is appropriately trained in relation to the protection of fauna prior to carrying out any part of WUC;
 - (ii) aware of the potential for impacts on fauna and the need to minimise these impacts,prior to that person carrying out any WUC; and
- (c) use all reasonable endeavours to ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site minimises disruption to any fauna in the vicinity of the Site; and
- (d) at the Contractor's expense, comply with any Directions issued by the Superintendent to address any excessive or avoidable adverse impact on fauna at or in the vicinity of the Site.

13.4 **(Protection of Flora)** The Contractor must:

- (a) use all reasonable endeavours to minimise disruption to any flora at or in the vicinity of the Site;
- (b) ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site is appropriately trained in relation to the protection of fauna prior to that person carrying out any part of WUC;
- (c) use all reasonable endeavours to ensure that that each of the Contractor's Personnel and every other person carrying out WUC at the Site minimises disruption to existing flora at or in the vicinity of the Site;
- (d) make good any damage to flora caused by the Contractor or its Personnel, other than damage which is the unavoidable consequence of carrying out WUC; and

- (e) at the Contractor's expense, comply with any Directions issued by the Superintendent to address any excessive or avoidable adverse impact on flora at or in the vicinity of the Site.

14. WASTE MANAGEMENT

- 14.1 **(Definitions)** In this clause 'Levyable Waste Disposal Site', 'Levyable Waste', 'Waste', 'Waste Disposal Site' and 'Waste Levy' have the meanings given to those terms in the *Waste Reduction and Recycling Act 2011* (Qld).
- 14.2 **(Contractor's obligation)** The Contractor must:
- (a) ensure that all Waste from the Site is placed in appropriate containers and removed from the Site to a legal Waste Disposal Site in accordance with the *Waste Reduction and Recycling Act 2011* (Qld) and any other applicable Legislative Requirements;
 - (b) otherwise, ensure that all Waste arising from WUC is disposed of in accordance with the requirements of the *Waste Reduction and Recycling Act 2011* (Qld) and any other applicable Legislative Requirements relating to the disposal of Waste; and
 - (c) pay all royalties, levies, fees, charges, costs, expenses, taxes, or duties in connection with the disposal of Waste.
- 14.3 **(Evidence of payment)** With or in each progress claim submitted by the Contractor under the Contract, the Contractor must provide a separate breakdown of the amount of any Waste Levy which the Contractor is aware has been passed on to, and paid by, the Contractor in connection with the disposal of Levyable Waste arising from WUC.

15. BIOSECURITY MANAGEMENT

- 15.1 **(Definitions)** In this clause:
- (a) a **Biosecurity Risk** is the risk that exists when dealing with:
 - (i) any pest, disease, or contaminant (including plants, seeds, spores, eggs, vertebrate, and invertebrate pest); or
 - (ii) something that could carry a pest, disease or contaminant (e.g., animals, plants, soil, equipment and water—known as 'carriers').
 - (b) a **Potential Biosecurity Risk** is a Biosecurity Risk that does not currently occur at the Site, but which has the capacity to occur at the Site. It may be present but not visible or may be introduced during WUC. It includes risks associated with carriers and the movement and sourcing of materials, vehicles, and machinery; and the disturbance, import, or export of soils;
 - (c) a **Known Biosecurity Risk** is a Biosecurity Risk that is currently recorded within the footprint or proximity of the Site which is:
 - (i) identified within biosecurity plans or programs active for the area;
 - (ii) identified during WUC; or
 - (iii) otherwise identified by the Principal;
 - (d) **BRMP** means a Biosecurity Risk management plan;
 - (e) **General Biosecurity Obligation** has the meaning given to that term in the *Biosecurity Act 2014* (Qld).

- 15.2 **(Biosecurity Risk management plan)** The Contractor must prepare and obtain the Superintendent's Direction regarding a BRMP. The BRMP must:
- (a) describe the processes and procedures for the management of Biosecurity Risks in connection with WUC;
 - (b) outline reasonable and practical steps to address Biosecurity Risks;
 - (c) describe how the Contractor will meet its General Biosecurity Obligation;
 - (d) address both Potential Biosecurity Risks and Known Biosecurity Risks.

The Contractor must comply with and ensure that all of the Contractor's Personnel comply with the BRMP.

- 15.3 **(Training)** The Contractor must ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site is appropriately trained to be aware of Biosecurity Risks prior to that person carrying out any part of WUC. If at any time during WUC a breach of the BRMP or a significant Biosecurity Risk is identified, then the Contractor must immediately contact the Superintendent for Direction.

16. CULTURAL HERITAGE

- 16.1 **(Definitions)** In this clause:

- (a) **Aboriginal Cultural Heritage** has the same meaning as in the *Aboriginal Cultural Heritage Act 2003* (Qld);
- (b) **Aboriginal Party** has the same meaning as in the *Aboriginal Cultural Heritage Act 2003* (Qld);
- (c) **Cultural Heritage** includes Aboriginal Cultural Heritage, Torres Strait Islander Cultural Heritage and Commonwealth Cultural Heritage;
- (d) **Commonwealth Cultural Heritage** means significant Aboriginal areas and objects under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth);
- (e) **Torres Strait Islander Cultural Heritage** has the same meaning as in the *Torres Strait Islander Cultural Heritage Act 2003* (Qld); and
- (f) **Torres Strait Islander Party** has the same meaning as in the *Torres Strait Islander Cultural Heritage Act 2003* (Qld).

- 16.2 **(Cultural Heritage plan)** The Contractor must, within the time required by clause 8.2 prepare and provide to the Superintendent for review a Cultural Heritage plan for WUC, detailing how the Contractor will manage Cultural Heritage in performing its obligations under the Contract. The Contractor must obtain and comply with the Superintendent's Direction regarding the plan, pursuant to subclause 8.3 of the General Conditions of Contract. The Contractor must comply, and ensure that all of the Contractor's Personnel comply, with the Cultural Heritage plan at all times until the expiration of the last Defects liability Period to expire. The Cultural Heritage Plan must:

- (a) detail how the Contractor will comply with its obligations under the Contract in relation to the protection of Cultural Heritage;
- (b) include:
 - (i) the results of a search of the Aboriginal Cultural Heritage Database and Register under the *Aboriginal Cultural Heritage Act 2003* (Qld) for the Site;

- (ii) the steps that the Contractor intends to take to meet its duty of care under the *Aboriginal Cultural Heritage Act 2003* (Qld) or *Torres Strait Islander Cultural Heritage Act 2003* (Qld) including:
 - A. the details of any communication with the Aboriginal Party or Torres Strait Islander Party about WUC; and
 - B. details of any proposed Site inspections or monitoring of WUC;
 - (c) identify the roles and responsibilities of the Contractor's Personnel and the Contractor's processes and procedures for dealing with Cultural Heritage.
- 16.3 **(Training)** The Contractor must ensure that each of Contractor's Personnel, and every other person carrying out WUC at the Site, is appropriately trained to be aware of Cultural Heritage prior to that person carrying out any part of WUC.
- 16.4 **(General Obligations)** Without limiting any other clause in this Contract, the Contractor must, and must ensure that its Personnel, in carrying out and completing WUC:
 - (a) comply with its duty of care under section 23 of the *Aboriginal Cultural Heritage Act 2003* (Qld) and the *Torres Strait Islander Cultural Heritage Act 2003* (Qld) requiring the Contractor to take all reasonable and practicable measures not to harm or damage Aboriginal Cultural Heritage and Torres Strait Islander Cultural Heritage;
 - (b) act diligently to protect the Cultural Heritage of the Site, the area surrounding the Site, and any other land used by the Contractor in connection with WUC;
 - (c) comply with and discharge (and ensure that the Contractor's Personnel comply with and discharge) all obligations imposed on the Contractor under:
 - (i) the requirements of, the *Aboriginal Cultural Heritage Act 2003* (Qld), *Torres Strait Islander Cultural Heritage Act 2003* (Qld), and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), and any other law relating to the protection of Cultural Heritage which is applicable to WUC;
 - (ii) a Cultural Heritage management plan (if any) approved pursuant to the *Aboriginal Cultural Heritage Act 2003* (Qld), or the *Torres Strait Islander Cultural Heritage Act 2003* (Qld), and applicable to WUC
 - (iii) any consent, permission, or clearance provided by an Aboriginal Party or Torres Strait Islander Party;
 - (iv) any extent to which they are not inconsistent with the obligation in clause 16.4(c)(i), 16.4(c)(ii) or 16.4(c)(iii):
 - A. the Cultural Heritage plan prepared under clause 16.2;
 - B. directions of the Superintendent in relation to the protection of Cultural Heritage;
 - C. the Principal's Cultural Heritage management policies and plans; and
 - D. other standards, plans, requirements, codes, guidelines, policies, consents, and permissions relating to the protection of the Cultural Heritage which are applicable to WUC; and
 - (d) notify the Superintendent immediately of any communication with the Contractor by an Aboriginal Party or Torres Strait Islander Party (or a person claiming to be an Aboriginal Party or Torres Strait Islander Party) which may affect WUC.

16.5 **(Discovery of assets)** Without limiting anything else in this clause 16, if Cultural Heritage assets are encountered at the Site, the Contractor must immediately:

- (a) cease all Work in the area surrounding the asset;
- (b) notify the Superintendent,

and take appropriate actions as outlined in the Cultural Heritage plan or as otherwise directed by the Superintendent.

17. TRAFFIC MANAGEMENT

17.1 **(Traffic management plan)** The Contractor must, within the time required by clause 8.2, prepare and provide to the Superintendent for review a traffic management plan for WUC, detailing how the Contractor will manage traffic in accordance with the requirements of the Contract. The Contractor must obtain and comply with the Superintendent's Direction regarding the plan pursuant to subclause 8.3 of the General Conditions of Contract. The Contractor must comply, and ensure that all of the Contractor's Personnel comply, with the traffic management plan at all times until the expiration of the last Defects liability Period to expire.

17.2 **(General)** The Contractor:

- (a) is responsible for the safety of all pedestrians and vehicular traffic at, or adjacent to the Site, or in any way affected by the execution of WUC;
- (b) must provide all necessary lights, barriers, notices and signs, and other traffic control devices required for the safe and appropriate management of traffic.
- (c) must ensure that all traffic control devices conform to:
 - (i) the current Manual of Uniform Traffic Control Devices published by the Department of Transport and Main Roads ('TMR MUTCD'); and
 - (ii) AS1742 Manual of Uniform Traffic Control Devices ('AS1742 MUTCD'),

as amended or replaced from time to time. In the event of any inconsistency, ambiguity, discrepancy, or conflict between any requirement or standard in the TMR MUTCD and the AS1742 MUTCD, the TMR MUTCD shall take precedence.

17.3 **(No obstruction)** The Contractor must:

- (a) provide for the continuous operation of normal traffic along all roads, and pedestrian and vehicular access to properties included in the Contract or intersected by WUC;
- (b) where necessary, provide side-tracks which must be appropriately constructed, signposted, lit, and maintained; and
- (c) use all reasonable endeavours to avoid obstructing any side road, branch track, drain, or watercourse and to the extent that such obstructions cannot be avoided, remove such obstructions as soon as possible.

18. HEAVY VEHICLE NATIONAL LAW

18.1 **(Meaning of terms)** Terms used in this clause which are defined in the Heavy Vehicle National Law (Queensland) (the 'National Law') have the same meaning as in that law.

18.2 **(General obligations)** The Contractor must ensure, so far as is reasonably practicable, the safety of the Contractor's transport activities. Without limiting this, the Contractor 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 party's conduct does not directly or indirectly cause or encourage:
 - (i) the driver of the heavy vehicle to contravene the National Law; 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 National Law.

18.3 **(Notice)** The Contractor must immediately:

- (a) notify the Superintendent if the Contractor considers that anything in this Contract, or any act or omission of the Principal or its respective officers, employees, agents or representatives, has or is likely to, directly or indirectly, cause or encourage the Contractor or any Personnel of the Contractor:
 - (i) being the driver of a heavy vehicle to contravene the National Law; or
 - (ii) being the driver of a heavy vehicle to exceed a speed limit applying to the driver; or
 - (iii) being another person, including another party in the chain of responsibility, to contravene the National Law; and
- (b) notify the Principal and the Superintendent in writing in the event that it, or any Personnel, is issued with any warning, request for information or production of documents, notice or fine in respect of any breach of chain of responsibility law in respect of WUC. The Contractor undertakes to provide the Principal and the Superintendent with a copy of any such warning, request, notice or fine, and any response or submissions made by it in relation to the same.

18.4 **(Chain of Responsibility)** In addition to its obligations under the chain of responsibility law, the Contractor must comply with the following chain of responsibility compliance assurance conditions, that:

- (a) the Principal has a policy of compliance for its chain of responsibility obligations under the National Law. The Contractor agrees that it complies with its obligations under the chain of responsibility laws, and has a policy of training and compliance that is subject to periodic review and assessment. The Contractor will require its subcontractors and agents to comply with chain of responsibility obligations in any supply chain arrangement or any arrangement whatsoever in connection with WUC;
- (b) the Principal is committed to taking all reasonable steps to ensure that any carriage of goods by road performed as part of WUC is performed safely and in accordance with the National Law and the chain of responsibility provisions it contains. The Principal will not comply with any instruction or requirement of the Contractor that might have the effect of contributing to a breach of the National Law, or preventing the Principal from taking all steps that it considers necessary to prevent any breach of the National Law;
- (c) upon becoming aware of any breach of mass, dimension, load restraint, fatigue, speed, or maintenance requirement, the Principal may report the breach to the relevant Authority and retain records of the breach; and
- (d) as a requirement of access to the Site, the Contractor must provide copies of any/all:
 - (i) chain of responsibility policy;
 - (ii) mass, dimension, or load restraint policy;

- (iii) speed management policy;
 - (iv) fatigue management policy; and
 - (v) maintenance management policy,
- that is in place in respect of its business.

19. NON-CONFORMING BUILDING PRODUCTS

- 19.1 **(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').
- 19.2 **(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.
- 19.3 **(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.
- 19.4 **(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.
- 19.5 **(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 19, or by any failure of the Contractor to comply with its obligations under the QBCC Act in relation to building products.

20. BUILDING CODE 2016

- 20.1 **(Definitions)** In these clauses:

- (a) **Building Code 2016** means the Code for the Tendering and Performance of Building Work 2016, which at the date of this Contract is available at <https://www.legislation.gov.au/Details/F2022C00793>;
- (b) **building work** has the same meaning as in subsection 3(4) of the Building Code 2016; and
- (c) **Related Entity** has the same meaning as in subsection 3(2) of the Building Code 2016.

20.2 (Compliance) The Contractor:

- (a) declares as at the Date Of Acceptance Of Tender that it and its Related Entities comply with the Building Code 2016;
- (b) must ensure that during the term of this Contract that it and its Related Entities comply with the Building Code 2016; and
- (c) must only use products in building work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.

Compliance with the Building Code 2016 does not relieve the Contractor from responsibility to perform this Contract, or from liability for any defect in WUC arising from compliance with the Building Code 2016.

21. QUEENSLAND CODE

21.1 **(The Queensland Code)** If applicable, in addition to the terms defined in this document, terms used in this clause 21 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').

21.2 (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 21, 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.

21.3 **(Information)** The Contractor must maintain adequate records of compliance with the Queensland Code by it, its subcontractors, and related entities.

21.4 **(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.

- 21.5 **(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.
- 21.6 **(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.
- 21.7 **(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.
- 21.8 **(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.
- 21.9 **(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.

22. QUEENSLAND GOVERNMENT QUEENSLAND CHARTER FOR LOCAL CONTENT

- 22.1 **(Definitions)** Terms used in this clause 22 which are not separately defined in this Contract have the same meaning as is attributed to them in the Charter for Local Content.

- 22.2 **(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.

23. PRACTICAL COMPLETION

- 23.1 **(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) 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) material test results;
 - (ii) as constructed drawings which comply with clause 11.8;
 - (iii) completed warranties for all fittings and fixtures including major supply information;
 - (iv) operations & maintenance manuals;
 - (v) building surveyor inspection certificates where applicable; and
 - (vi) final inspection certificates from an approved registered certifier;
 - (b) Successful completion of a final inspection by the Superintendent/Principal's Representative; and
 - (c) Submission of the As Constructed drawings/information.



PROCUREMENT PROCESS

Theodore and Moura Boat Ramps Extensions 2023

CONTRACT NO.: T2324.02

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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 lodgment)** 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; or
- (c) if the Tender Box is a physical address, by delivering it to the Tender Box.

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

- 7.2 **(Time of lodgment)** 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 Qld.
- (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;
- (x) **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

Theodore and Moura Boat Ramp Extensions 2023

CONTRACT NO.: T2324.02

FORMAL INSTRUMENT OF AGREEMENT

Parties

BANANA SHIRE COUNCIL ABN 85 946 116 646 of 62 Valentine Plains Road Biloela in the State of Queensland

(*the Principal*)

ACN of , in the State of

(*the Contractor*)

Recitals:

- A. The *Contractor* has submitted an offer to carry out and complete the *WUC* and has given the *Principal* warranties and made representations to the *Principal*.
- B. In reliance on the warranties given and representations made by the *Contractor*, the *Principal* has accepted the *Contractor's* offer.
- C. The parties wish to enter into this *Contract* to record the terms of their agreement.

The Parties Agree:

1. THE CONTRACT

- 1.1 The *Contract* shall comprise the following documents:
 - (a) this *Formal Instrument of Agreement*;
 - (b) Annexure Part A to AS4000-1997 General Conditions of Contract;
 - (c) Annexure Part B to AS4000-1997 General Conditions of Contract;
 - (d) AS4000-1997 General Conditions of Contract (which form a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);
 - (e) Annexure Part E – Specification;
 - (f) Annexure Part C – Approved Form of Unconditional Undertaking (which forms a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);
 - (g) Annexure Part D – Drawings;
 - (h) Annexure Part F – Methodology;
 - (i) Annexure Part G – Price Schedule;
 - (j) Annexure Part H – Variation Rates; and
 - (k) Annexure Part I – Contractor's Statutory Declaration.

- 1.2 The *Contract* constitutes the entire, final and concluded agreement between the parties. It supersedes all prior representations, agreements, statements and understandings between the *Contractor* and the *Principal* (whether oral or in writing).
- 1.3 Subject to subclause 8.1, if there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1 of this *Formal Instrument of Agreement* then the ambiguity, inconsistency, conflict or discrepancy shall be resolved by giving precedence to the document which places the highest or more onerous requirement on the *Contractor*. If that does not resolve the issue, then the documents will take precedence in the order set out in clause 1.1 of this *Formal Instrument of Agreement*, with the *Formal Instrument of Agreement* being the highest in the order.
- 1.4 Where any obligation described in the *Contract* has been carried out by the *Principal* or the *Contractor* 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.

2. INTERPRETATION

- 2.1 Italicised terms used in this *Formal Instrument of Agreement* have the same meaning as defined in the documents listed in clauses 1.1(c) to 1.1(d) above.
- 2.2 The contra proferentem rule and other rules of construction will not apply to the *Contract* 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.
- 2.3 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.
- 2.4 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.
- 2.5 The rights and remedies of a party to the *Contract* are in addition to the rights or remedies conferred on the party elsewhere in the *Contract*, at law or in equity.
- 2.6 If a provision of the *Contract* is void or unenforceable it must be severed from this *Contract* and the provisions that are not void or unenforceable are unaffected by the severance.
- 2.7 In the *Contract* the words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.
- 2.8 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.
- 2.9 A reference to a *legislative requirement* means a reference to that *legislative requirement* as amended or replaced from time to time.
- 2.10 In Annexure Part A, items or words which have been struck through are deleted from Annexure Part A and items or words which have been underlined have been added to Annexure Part A.

EXECUTED AS AN AGREEMENT

EXECUTION BY THE PRINCIPAL

SIGNED for and on behalf of BANANA)
SHIRE COUNCIL by its duly authorised)
representative in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
Date)

.....)
Signature of authorised representative)

.....)
Name of authorised representative)

.....)
Date)

EXECUTION BY THE CONTRACTOR (WHERE SIGNATORY IS A CORPORATION)

SIGNED for and on behalf of the)
Contractor in accordance with its)
Constitution and Section 127 of the)
Corporations Act 2001 in the presence of:)

.....)
Director)

.....)
Name (block letters))

.....)
Date)

.....)
Director/Secretary)

.....)
Name (block letters))

.....)
Date)

EXECUTION BY CONTRACTOR (WHERE SIGNATORY IS NOT A CORPORATION)

SIGNED for and on behalf of the)
Contractor by its authorised representative)
(who warrants and represents that it has)
the power to execute this *Contract* on)
behalf of the *Contractor*) in the presence)
of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
Date)

.....)
Signature)

.....)
Name of authorised representative)

.....)
Date)

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

Item

1	<i>Principal</i> (clause 1)	Banana Shire Council ABN 85 946 116 646
2	<i>Principal's address</i>	62 Valentine Plains Road Biloela QLD 4715
3	<i>Contractor</i> (clause 1)	 ACN ABN
4	<i>Contractor's address</i>	
5	<i>Superintendent</i> (clause 1)	 ACN
6	<i>Superintendent's address</i>	
7*	a) <i>Date for practical completion</i> (clause 1)	
	OR	
	b) <i>Period of time for practical completion</i> (clause 1)	90 days
8	Governing law (page 5, clause 1(h))	Queensland If nothing stated, that of the jurisdiction where the <i>site</i> is located

Annexure Part A to AS4000 – 1997

9	<p>a) Currency (page 5, clause 1(g))</p> <p>b) Place for payments (page 5, clause 1(g))</p> <p>c) Not used</p>	<p>AUD</p> <p>If nothing stated, that of the jurisdiction where the <i>site</i> is located</p> <p>Payments will be made by electronic transfer into the bank account last notified in writing by the <i>Contractor</i> to the <i>Principal</i>.</p>
10	Not used	
10A	<p><u>Contract sum</u> (clause 1 and clause 2A)</p>	<p><u>The Contract is a:</u></p> <p><input type="checkbox"/> <u>schedule of rates contract</u></p> <p><input checked="" type="checkbox"/> <u>lump sum contract</u></p> <p><u>If nothing stated, the Contract is a lump sum contract.</u></p>
11	<p>Quantities in <i>schedule of rates</i>, limits of accuracy (subclause 2.5(b) 2A.4(b))</p>	<p>Upper Limit 110%</p> <p>Lower Limit 90%</p> <p>If nothing stated, upper limit is 120%, lower limit is 80%</p>
12	<p><i>Provisional sum</i>, percentage for profit and attendance (clause 3)</p>	<p>No profit and attendance is payable.</p>
13*	<p><i>Contractor's security</i></p> <p>a) Form (clause 5)</p> <p>b) Amount or maximum percentage of <i>contract sum</i> (clause 5)</p> <p>c) If retention moneys, percentage of each <i>progress certificate</i> (clause 5 and subclause 37.2)</p> <p>d) Time for provision (except for retention moneys) (clause 5)</p> <p>e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3)</p> <p>f) <i>Contractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4)</p>	<p>Two (2) unconditional bank guarantees in equal amounts.</p> <p>5%</p> <p>If nothing stated, 5% of the <i>contract sum</i></p> <p>Nil</p> <p>If nothing stated, 10% until the limit in <i>Item</i> 13(b)</p> <p>Within 10 <i>business days</i> after the <i>date of acceptance of tender</i></p> <p>If nothing stated, within 10 <i>business days</i> after <i>date of acceptance of tender</i></p> <p>Not applicable</p> <p style="text-align: center;">\$</p> <p>50% of amount held</p> <p>If nothing stated, 50% of amount held</p>

Annexure Part A to AS4000 – 1997

14*	<i>Principal's security</i>		
	a) Form (clause 5)	Not applicable	
	b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	Not applicable If nothing stated, nil	
	c) Time for provision (clause 5)	Not applicable If nothing stated, within 20 <i>business days</i> after the <i>date of acceptance of tender</i>	
	d) <i>Principal's security upon certificate of practical completion</i> is reduced by (subclause 5.4)	Not applicable If nothing stated, 50% of amount held	
15	<i>Principal-supplied documents</i> (subclause 8.2)	Document	No. of copies
		Copy of Contract	1
		Design Plans	1
		Pricing Schedule (Bill of Quantities)	1
		If nothing stated, 5 copies of the drawings, specification, <i>bill of quantities</i> or <i>schedule of rates</i> (if any)	
16	Time for <i>Superintendent's direction</i> about documents (subclause 8.3)	If nothing stated, 10 <i>business days</i>	
17	Subcontract <i>work</i> requiring approval (subclause 9.2)	The whole or any part of <i>WUC</i>	
18	Novation (subclause 9.4)	Subcontractor	Particular part of <i>WUC</i>
		Not applicable	
		<i>Selected subcontractor</i>	Particular part of <i>WUC</i>
		Not applicable	
19	<i>Legislative requirements</i>		
	a) Those excepted (subclause 11.1)	None excepted	

Annexure Part A to AS4000 – 1997

- b) Identified *WUC*
(subclause 11.2(a)(ii))

19A Portable long service
(subclause 11A.1)

The:

Principal

Contractor

is to make payments and give notices under the *Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld)*.

If nothing selected the Contractor is to do so

19B Work, health and safety
(Clause 12A)
Engagement as principal contractor

The Contractor:

is engaged

is not engaged

as principal contractor under the *Work Health and Safety Regulation 2011 (Qld)*.

If nothing selected, the Contractor is not appointed as principal contractor.

19C The Contractor's liability is limited to
(clauses 1 and 15A)

If nothing stated, the Contractor's liability is not limited

19D The Principal's liability is limited to
(clauses 1 and 15A)

If nothing stated, the Principal's liability is limited to the amount of contract sum as adjusted pursuant to the Contract.

20 Insurance of *the Works*
(clause 16)

- a) Alternative applying

Alternative 1

If nothing stated, Alternative 1 applies

If Alternative 1 applies

- b) Provision for demolition and removal of debris

\$

OR

10% of the *contract sum*

- c) Provision for consultants' fees

\$

OR

10% of the *contract sum*

- d) Value of materials or things to be supplied by the *Principal*

\$100,000

Annexure Part A to AS4000 – 1997

	e) Additional amount or percentage	\$	
		OR	
			10% of the total of paragraphs (a) to (d) in clause 16
21	Public liability insurance (clause 17)		
	a) Alternative applying	Alternative 1	
		If nothing stated, Alternative 1 applies	
	If Alternative 1 applies		
	b) Amount per occurrence shall be not less than	Twenty million dollars \$20,000,000	
		If nothing stated, then not less than \$20,000,000	
<u>21A</u>	<u>Key Personnel</u> (Clause 23A)	<u>Name</u>	<u>Role</u> <u>Period</u>
22	Time for giving possession (subclause 24.1)		Within 20 <i>business days</i> after the <i>date of acceptance of tender</i> If nothing stated, within 10 <i>working days</i> after the <i>date of acceptance of tender</i>
<u>22A</u>	<u>Working days and working hours</u> (clause 31)	<u>Working days</u>	<u>Working hours</u>
		Monday to Friday	7am to 6pm
		Saturday & Sunday	7am to 6pm
		<u>but shall not include:</u>	
		a) <u>a public holiday, special holiday or bank holiday at the site;</u>	
		b) <u>22 December to 10 January in any year; or</u>	
		c) <u>any other day which the Contract elsewhere provides is a day on which work cannot be carried out</u>	
23	<i>Qualifying causes of delay, causes of delay for which EOTs will not be granted</i> (page 3, paragraph (b)(iii) of clause 1 and subclause 34.3)		
24*	Liquidated damages, rate (subclause 34.7)		per day
25*	Bonus for early <i>practical completion</i> (subclause 34.8)		Not applicable

Annexure Part A to AS4000 – 1997

	a) Rate	per day	
	b) Limit	\$	
		OR	
		% of <i>contract sum</i>	
		If nothing stated, there is no waiver	
26*	Delay damages, costs, other <i>compensable causes</i> (page 1, clause 1 and subclause 34.9)	No other <i>compensable causes</i>	
<u>26A*</u>	<u>Delay costs, limit per working day</u> (subclause 34.9)	_____	<u>If nothing stated, \$500 per working day</u>
27	<i>Defects liability period</i> (clause 35)	12 months If nothing stated, 12 months	
<u>27A</u>	<u>Variations, percentage for profit and overheads</u> (subclause 36.4)	<u>Profit</u>	<u>5%</u> If nothing stated 5%
		<u>Overheads</u>	<u>5%</u> If nothing stated 5%
28	Progress Claims (subclause 37.1)		
	a) Times for progress claims	21 st day of each month in which <i>WUC</i> is carried out up to and including the month in which <i>practical completion</i> is reached, for work done to the 21 st day of the month	
		OR	
	b) Stages of <i>WUC</i> for progress claims		
29	Unfixed plant and materials for which payment claims may be made (subclause 37.3)	Nil	
30	Interest rate on overdue payments (subclause 37.5)	3 % per annum If nothing stated, 18% per annum	
31	Time for <i>Principal</i> to rectify inadequate possession (subclause 39.7)	If nothing stated, 25 <i>working days</i>	
32	Not used		

*If applicable, delete and instead complete equivalent Item in the separable portions section of the Annexure Part A.

Part A

Separable Portions

Annexure to AS4000-1997

- This section should be completed only if the *Contract* provides for *separable* portions.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of *the Works* should also be a *separable portion*.

	<i>Separable portion</i> (clause 1)	No.
	Description of <i>separable portion</i> (clause 1)	
<i>Item</i>		
7	a) <i>Date for practical completion</i> (clause 1)	
	OR	
	b) <i>Period of time for practical completion</i> (clause 1)	
13	<i>Contractor's security</i>	
	a) <i>Form</i> (clause 5)	Two (2) unconditional bank guarantees in equal amounts.
	b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)	5% If nothing stated, 5% of the value of this <i>separable portion</i>
	c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)	Nil If nothing stated, 10% until the limit in <i>Item 13(b)</i>
	d) <i>Time for provision (except for retention moneys)</i> (clause 5)	Within 10 <i>business days</i> after the <i>date of acceptance of tender</i> If nothing stated, within 10 <i>business days</i> after <i>date of acceptance of tender</i>
	e) <i>Additional security for unfixed plant and materials</i>	Not applicable \$

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(subclauses 5.4 and 37.3)

	f) <i>Contractor's security upon certificate of practical completion</i> is reduced by (subclause 5.4)	50% of amount held If nothing stated, 50% of amount held
14	<i>Principal's security</i>	
	a) Form (clause 5)	Not applicable
	b) Amount or maximum percentage value of this <i>separable portion</i> (clause 5)	Not applicable If nothing stated, nil
	c) Time for provision (clause 5)	Not applicable If nothing stated, within 20 <i>business days</i> after the <i>date of acceptance of tender</i>
	d) <i>Principal's security upon certificate of practical completion</i> is reduced by (subclause 5.4)	Not applicable If nothing stated, 50% of amount held
24	Liquidated damages, rate (subclause 34.7)	per day
25	Bonus for early <i>practical completion</i> (subclause 34.8)	Not applicable
	a) Rate	per day
	b) Limit	\$
		OR
		% of value of this <i>separable portion</i> If nothing stated, there is no waiver
26	Delay damages, costs , other <i>compensable causes</i> (page 1, clause 1 and subclause 34.9)	No other <i>compensable causes</i>
<u>26A</u>	<u>Delay costs, limit per <i>working day</i></u> (subclause 34.9)	<u> </u> If nothing stated, \$500 per <i>working day</i>

Part B

Annexure to the
Australian Standard General Conditions of Contract
AS4000 – 1997

Deletions, amendments and additions

1. The following clauses have been deleted from the General Conditions of Contract

See below
 2. The following clauses have been amended and differ from the corresponding clauses in AS4000-1997

See below
 3. The following clauses have been added to those of AS4000-1997

See below
-

1 INTERPRETATION AND CONSTRUCTION OF CONTRACT

Delete the definition of '*bill of quantities*' and replace with:

'bill of quantities means a *price schedule*;

Insert a new definition of '*building contract*':

'building contract has the same meaning as given to that term in section 67AAA of the *Queensland Building and Construction Commission Act 1991* (Qld);'

Insert a new definition of '*business day*':

'business day means:

- (a) when used in the definition of *payment period*, has the same meaning as given to that term in section 67W of the *Queensland Building and Construction Commission Act 1991* (Qld);
- (b) otherwise, has the same meaning as in the *security of payment legislation*;

Insert a new definition of '*claim*':

'claim includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including pursuant to a provision of the *Contract* (including any claim for a *variation*, an *EOT* or other adjustment of the *contract sum*), at law (including a breach 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 *Contract*, the *Works* or *WUC*;

Insert a new definition of '*claimable amount*':

'claimable amount means:

- (a) the value of *work* carried out by the *Contractor* in the performance of the *Contract* which the *Contractor* is entitled to include in a progress claim; and
- (b) amounts otherwise due from the *Principal* to the *Contractor* pursuant to the *Contract*;

Insert a new definition of '*compensable direction*':

'compensable direction means a *direction* pursuant to subclause 8.1 that is necessitated solely because of an inconsistency, ambiguity, discrepancy or error which is in a document prepared by or on behalf of the *Principal* for the purpose of carrying out *WUC* and which could not have been identified by a competent contractor at the time of the *Contractor's* tender if that contractor had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds;

Insert a new definition of '*conflict of interest*':

'conflict of interest means any actual, potential or perceived conflict between the interests of the *Contractor* and the *Contractor's* obligations under the *Contract*;

Delete the definition of '*Contract*' and replace with:

'Contract has the meaning in clause 1.1 of the *Formal Instrument of Agreement*;

Delete the definition of '*contract sum*' and replace with:

'contract sum means

- (a) where *Item 10A* states that the *Contract* is a *lump sum contract*, the sum of the lump sums contained in the *price schedule*; or
- (b) where *Item 10A* states that the *Contract* is a *schedule of rates contract*:
 - (i) the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *price schedule*; plus
 - (ii) any lump sums contained in the *price schedule*,

including *provisional sums* but excluding additions or deductions which may be required to be made under the *Contract*;

Insert a new definition of '*Councillor*':

'Councillor has the meaning given to that term in the *Local Government Act 2009* (Qld);'

Delete the definition of '*date of acceptance of tender*' and insert:

'date of acceptance of tender' means the date which appears on the written notice from the *Principal* to the *Contractor* advising that the *Contractor's* tender or quotation (as the case may be) is successful or, where no such notice is issued means the date on which the *Contract* is executed by the last party to do so;'

Delete paragraph (a) of the definition of '*date of practical completion*' and replace with:

- '(a) the date stated in a *certificate of practical completion* as the date on which *practical completion* was reached (which may be a date earlier than the date on which the *certificate of practical completion* is issued); or

Insert a new definition of '*Formal Instrument of Agreement*':

'Formal Instrument of Agreement' means the document of that name forming part of the *Contract*;

Insert a new definition of '*improper conduct*':

'improper conduct' means:

- (a) engaging in misleading or deceptive conduct;
- (b) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct;
- (c) failing to declare a *conflict of interest* in breach of subclause 2B.2;
- (d) canvassing, attempting to improperly influence, offering any inducement to, or accepting or inviting improper assistance from, the *Principal's Councillors* or other *personnel* (or former *personnel*);
- (e) using any information improperly obtained, or obtained in breach of any obligation of confidentiality;
- (f) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
- (g) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld);'

Insert a new definition of '*informal variation direction*':

'informal variation direction' means a *direction* by the *Superintendent* for a *variation* which is either:

- (a) not in writing; or
- (b) in writing but which does not expressly state that it is a *direction* for a *variation* pursuant to clause 36;'

Insert a new definition of '*liability limit*':

'liability limit' means:

- (a) in respect of the *Contractor*, the sum of:
 - (i) the amount specified in *Item 19C*; and

- (ii) the amount of any excess payable under a policy of insurance required to be effected and maintained by the *Contractor* under the *Contract*; and
- (b) in respect of the *Principal*, the sum of:
 - (i) the amount specified in *Item 19D*; and
 - (ii) the amount of any excess payable under a policy of insurance required to be effected and maintained by the *Principal* under the *Contract*;

Insert a new definition of '*lump sum contract*':

'lump sum contract' means a contract to which subclause 2A.3 applies;

Insert a new definition of '*payment period*':

'payment period' means:

- (a) if the *Contract* is a *building contract*, 15 *business days*;
- (b) otherwise, 25 *business days*,

after the progress claim or *final payment claim* (as the case may be) is given to the *Superintendent*;

Insert a new definition of '*payment schedule*':

'payment schedule' has the same meaning as in the *security of payment legislation*;

Insert a new definition of '*personal information*':

'personal information' has the same meaning as given to that term in the *Information Privacy Act 2009 (Qld)*;

Insert a new definition of '*personnel*':

'personnel' includes the officers, employees, agents, representatives, consultants and contractors (including, in respect of the *Contractor*, its subcontractors), of a party and any other person or entity for whom that party is vicariously liable and in respect of the *Principal* includes the *Councillors* of the *Principal* but does not include the *Contractor*;

Insert a new subparagraph at the end of the definition of '*practical completion*':

- (d) anything else which the *Contract* provides is to be done, provided or otherwise satisfied as a requirement of or prior to *practical completion* has been so done, provided or satisfied;

Delete the definition of '*prescribed notice*' and insert:

'prescribed notice' means a written notice which contains:

- (a) details of the basis of the *claim*; and
- (b) a detailed itemised breakdown of the quantum of the *claim*, or, where the quantum cannot be itemised at the time that the *prescribed notice* is given

because the costs are not yet known, an itemised breakdown of the estimated quantum of the *claim*;

Insert a new definition of '*price schedule*':

'price schedule the documents incorporated into Annexure Part G;

Insert a new definition of '*Principal's policies*':

'Principal's policies means the *Principal's* plans, policies, procedures, codes, standards and guidelines to the extent that these are made available by the *Principal* (whether to the public at large or to the *Contractor*) from time to time;

Insert a new definition of '*provisional work*':

'provisional work means:

- (a) any *work* or item to which a *provisional sum* relates; and
- (b) any other *work* or item which is identified in the *Contract* as 'provisional', 'if ordered', 'as directed' 'optional' or similar or which the *Contract* otherwise provides is not to be carried out or supplied by the *Contractor* unless the *Contractor* is given a *direction* to do so;

Delete the definition of '*qualifying cause of delay*' and insert:

'qualifying cause of delay means to the extent that they delay activities on the critical path of the *construction program*:

- (a) any of the following, which are beyond the control of the *Contractor* occurring on or before the *date for practical completion*:
 - (i) industrial action not exclusively directed at the *Contractor*;
 - (ii) inclement weather and the effects at the *site* of inclement weather;
- (b) any of the following which are beyond the control of the *Contractor* whether occurring before, on or after the *date for practical completion*:
 - (i) any act, default or omission of the *Superintendent*, the *Principal* or the *Principal's* consultants, agents or other contractors (not being employed by the *Contractor*);
 - (ii) *variations* (other than a *variation* for the convenience of the *Contractor*);
 - (iii) *latent conditions*;
 - (iv) a change in a *legislative requirement* which comes into effect after the 10th *business day* before the closing of tenders and which could not have been reasonably anticipated by a competent contractor;
 - (v) delays by municipal, public, or statutory authorities (including the *Principal* in its capacity as a local government authority);
 - (vi) claims referred to in subclause 15.1(e);
 - (vii) any breach of the *Contract* by the *Principal*,

but does not include any cause of delay identified in *Item 23*;

Insert a new definition of '*required deductions*':

'required deductions means:

- (a) amounts paid previously under the *Contract*;
- (b) retention moneys to be deducted pursuant to *Item 13*;
- (c) amounts which the *Superintendent* is required to certify pursuant to subclause 5.1A;
- (d) other amounts due from the *Contractor* to the *Principal* in connection with the *Contract*;
- (e) amounts due from the *Contractor* to the *Principal* otherwise than in connection with the *Contract*;
- (f) to the extent that such *work* has not yet been carried out by the *Contractor* and the cost of such *work* has not yet been incurred by the *Principal*, the estimated cost to the *Principal* of having any *work* of removal, demolition, reconstruction, replacement, correction or rectification the subject of a *direction* pursuant to subclause 29.3 or clause 35 carried out by a third party;
- (g) amounts in respect of *work* which is required by the *Contract* to be tested and for which any of the following conditions have not been met:
 - (i) all required *tests* have been completed;
 - (ii) the results of the *tests* do not reveal a failure of the *Contractor* to comply with the *Contract*; and
 - (iii) the *Contractor* has made good *WUC* and provided the results of the *tests* to the *Superintendent* and to the *Principal* in accordance with subclause 30.6;
- (h) other amounts which the *Contract* expressly provides are *required deductions* or which the *Contract* expressly entitles the *Principal* or the *Superintendent* to deduct from payments to the *Contractor*;

Insert a new definition of '*response period*':

'response period for a progress claim or *final payment claim* (as the case may be) means 15 *business days* after the claim is given to the *Principal*;

Delete the definition of '*schedule of rates*' and insert:

'schedule of rates means a *price schedule*;

Insert a new definition of '*schedule of rates contract*':

'schedule of rates contract means a contract to which subclause 2A.4 applies;

Delete paragraphs c) and d) of the definition of '*security*';

Insert a new definition of '*security of payment legislation*':

'security of payment legislation' means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and any associated subordinate legislation;

Insert a new definition of '*specified loss*':

'specified loss' means:

- (a) any loss of, or loss of anticipated, profit, income, revenue, saving, production; business, good will, contract or opportunity (including access to markets); 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; damage to credit rating; any other financial or economic loss; and
- (b) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraph, howsoever arising;

Insert a new definition of '*variation rates*':

'variation rates' means the rates included in Annexure Part H;

Insert a new definition of '*wilful misconduct*':

'wilful misconduct' means an intentional act or omission by a party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where that 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;

Insert a new definition of '*working day*':

'working day' means a day identified as such in *Item 22A*;

2 NATURE OF CONTRACT

Delete clause 2.

2A PERFORMANCE AND PAYMENT

Insert a new clause 2A as follows:

2A PERFORMANCE AND PAYMENT

2A.1 **(General)** The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and *directions* authorised by the *Contract* and shall otherwise comply with its obligations under the *Contract* at its expense.

Notwithstanding anything else in this clause, where the *price schedule* or the *Contract* elsewhere contains provisions for determining the *Contractor's* entitlement to payment for an item then the *Contractor's* entitlement to payment for that item shall be determined in accordance with such provisions.

2A.2 **(Price schedule)** Quantities in a *price schedule* are estimated quantities only. The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being

greater or less than the quantity shown in a *price schedule*.

The *Principal* gives no warranty and makes no representation as to the completeness, accuracy or adequacy of a *price schedule*. If a *price schedule* omits an item which should have been included, the item shall be deemed to have been allowed for in other items.

2A.3 (**Lump sum contract**) This subclause 2A.3 only applies where *Item 10A* states that the *Contract* is a *lump sum contract*.

The *Principal* shall pay the *Contractor* the sum of the lump sums stated in the *price schedule*, adjusted by any additions or deductions made pursuant to the *Contract*. Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *price schedule* the *Contractor* shall carry out that greater or lesser quantity as if it were originally stated in the *Contract* and there shall be no adjustment to the *contract sum*.

The *price schedule* may be used by the *Superintendent* as a guide in the assessment of progress claims, *variations* and other adjustments to the *contract sum* permitted by the *Contract*, but for no other purpose.'

2A.4 (**Schedule of rates contract**) This subclause 2A.4 only applies where *Item 10A* states that the *Contract* is a *schedule of rates contract*.

The *Principal* shall pay the *Contractor* the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate provided in the *price schedule* for the section or item adjusted by any additions or deductions made pursuant to the *Contract*. Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in a *price schedule* and:

- (a) the *price schedule* contains a lump sum for the item, the difference shall be a deemed *variation*;
- (b) the *price schedule* contains a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *price schedule* are stated in *Item 11*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.'

2A.5 (**Rise and fall**) The *contract sum* is not subject to adjustment for variations in the cost of labour and materials unless, and then only to the extent that, the *Contract* expressly elsewhere provides that such an adjustment is to be made and states the formula by which that adjustment is to be calculated.

2A.6 (**Inclusions**) Except to the extent that the *Contract* expressly allows an adjustment, the *Contractor* warrants and represents that the *contract sum*, and all rates, sums and prices included in the *contract sum* allow for:

- (a) all of the risks, contingencies and other circumstances which could have an effect on the *Contractor's* ability to carry out and complete *the Works* for the *contract sum*, except to the extent that the *Contract* expressly allows an adjustment;

- (b) the provision of all materials, plant, labour and other services necessary for the proper completion of *the Works*, whether or not those items are expressly mentioned in the *Contract*;
- (c) payment of all royalties, levies, fees, charges, costs, expenses, taxes or duties in connection with *WUC*; and
- (d) compliance with all of the *Contractor's* obligations under the *Contract*, including compliance with *directions* of the *Superintendent*.'

2B CONDUCT OF CONTRACTOR AND PERSONNEL

Insert a new clause 2B as follows:

'2B CONDUCT OF CONTRACTOR AND PERSONNEL

- 2B.1 (**General**) The *Contractor* must, and must ensure that its *personnel*, at all times whilst engaged in *WUC* act professionally and treat all of the *Principal's* *personnel*, other contractors and the general public respectfully and comply with all of the *Principal's* *policies*.
- 2B.2 (**Conflict of interest**) The *Contractor* warrants and represents that as at the *date of acceptance of tender* the *Contractor* is not aware of any *conflict of interest*. The *Contractor* 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.
- 2B.3 (**Improper Conduct**) The *Contractor* warrants and represents that neither the *Contractor* nor any of its *personnel* engaged in any *improper conduct* in connection with the procurement process pursuant to which the parties entered into the *Contract*. The *Contractor* must not, and must ensure that its *personnel* do not, engage in any *improper conduct* in connection with the *Contract*.

3 PROVISIONAL SUMS

Insert the following at the end of clause 3:

'The *Superintendent* shall not be obliged to give a *direction* that any *provisional work*, or any particular part or quantity of *provisional work*, be carried out or supplied by the *Contractor*. The *Principal* may carry out or supply the whole or any particular part or quantity of *provisional work* itself or engage a third party to do so on its behalf. The *Contractor* shall not be entitled to any monetary compensation (whether for costs incurred, lost profit, lost overheads or otherwise) in connection with any *provisional work* (or any particular part or quantity of *provisional work*) which it is not directed to carry out or supply. Unless the *Contract* elsewhere provides how particular *provisional work* is to be valued, it shall be valued in accordance with this clause 3 as if it were identified as a *provisional sum*.'

5 SECURITY

Insert the following at the end of subclause 5.1:

'Where, due to adjustments made pursuant to the *Contract*, the *contract sum* is increased by more than 10%, the *Superintendent* may direct the *Contractor* to

provide additional *security*. Unless the parties agree otherwise, the additional *security* shall be:

- (a) in the form stated in *Item 13*;
- (b) in an amount no more than is necessary to ensure that the total *security* held by the *Principal* is equivalent to the percentage stated in *Item 13(b)* of the *contract sum* as adjusted at the time of the *direction*; and
- (c) provided within 10 *business days* of the *Superintendent's direction*.'

Insert a new subclause 5.1A as follows:

5.1A Failure to provide security

Without limiting the *Principal's* other rights, unless and until the *Contractor* provides *security* (other than retention moneys) in accordance with subclause 5.1:

- (a) the *Superintendent* shall certify, as a *required deduction*, an amount equal to the value of the *security* which has not been provided; and
- (b) the *Principal* shall be entitled to hold that amount as *security*.

The *Principal* shall release and return any amounts held under this subclause 5.1A within 10 *business days* after *Contractor* provides the *security* in accordance with subclause 5.1.'

Delete the existing text of subclause 5.3 and replace with:

'The *Contractor* may at any time request the *Principal's* consent to substitute retention moneys or cash *security* with another form of *security*. The *Principal* may, at its absolute discretion, give or withhold consent or give consent subject to such conditions as the *Principal* sees fit. To the extent that another form of *security* is provided, the *Principal* shall not deduct, and shall promptly release and return, retention moneys and cash *security*.'

Delete the existing text of subclause 5.4 and replace with:

'To the extent permitted by law, upon the later of:

- (a) the issue of the *certificate of practical completion*; and
- (b) in respect of *security* under *Item 13* only, the rectification of all *defects* in respect of which the *Superintendent* has given the *Contractor* written notice either in, or prior to the issue of, the *certificate of practical completion*,

a party's entitlement to *security* (other than in *Item 13(e)*) shall be reduced by the percentage or amount in *Item 13(f)* or *14(d)* as applicable, and the reduction shall be released and returned within 10 *business days* to the other party.

The *Principal's* entitlement to *security* in *Item 13(e)* shall cease 10 *business days* after incorporation into *the Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 10 *business days* after the last of the following to occur:

- i) the issue of the *final certificate*;
- ii) in respect of security under *Item 13* only, compliance by the *Contractor* with all *directions* given under subclause 29.3 or clause 35 (other than *directions* which have been the subject of a *notice of dispute*); and
- iii) the resolution (whether pursuant to clause 42 or otherwise) of any *dispute* the subject of a *notice of dispute* referred to in subclause 37.4(d).⁷

6 EVIDENCE OF CONTRACT

Delete the existing text of clause 6 and replace with:

'Within the time reasonably required by the *Principal* (or where the *Principal* does not prescribe a time, 10 *business days*) after receiving a copy of a *Formal Instrument of Agreement* for execution ('*execution copy*'), the *Contractor* shall either:

- (a) properly execute the number of copies provided and return them; or
- (b) provide the *Principal* with written notice of any aspect of the *execution copy* which the *Contractor* considers is in error or which does not reflect the agreement between the *Principal* and the *Contractor*.

If the *Contractor*:

- (i) does not give the *Superintendent* the written notice required by subclause 6(b) within the time required by that subclause; or
- (ii) the *Contractor* commences *work* after receiving the *execution copy* and before giving the *Principal* the written notice required by subclause 6(b),

then the *Contractor* shall be deemed to have accepted and agreed to, and shall be legally bound by, the terms of the contract as evidenced by the *execution copy*.

Otherwise, until a *Formal Instrument of Agreement* is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*.

Within 25 *business days* after receiving executed copies of the *Formal Instrument of Agreement* from the *Contractor*, the *Principal* shall execute both copies and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.'

7 SERVICE OF NOTICES

Insert an additional subclause 7(b)(iv) (together with any consequential amendments) at the end of subclause 7(b) as follows:

- (iv) the time at which an email comprising or attaching the notice or other document becomes capable of being retrieved and read by the addressee at the addressee's email address.

Notwithstanding anything else in this clause 7, where the *Contract* elsewhere prescribes the manner in which a particular notice is to be given, then such a notice

shall only be deemed to have been given and received if given in the prescribed manner.'

8 CONTRACT DOCUMENTS

Delete the existing text of subclause 8.1 and replace with:

'Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in or between any document prepared for the purpose of carrying out *WUC* (including the documents incorporated into Annexure Parts D, E and F), that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Principal* shall not be liable upon any *claim* for compliance with a *direction*, under this subclause 8.1 unless the *direction* is a *compensable direction* and either:

- (a) the *direction* expressly states that it is a *compensable direction* pursuant to this subclause 8.1; or
- (b) the *Contractor* gives the *Superintendent* a written notice which identifies the *direction* and states that the *Contractor* considers that the *direction* is a *compensable direction* within 5 *business days* after the *direction* is given to the *Contractor*.

The *Contractor* must promptly give the *Superintendent* such additional information as the *Superintendent* reasonably requires in relation to a notice given under paragraph (b).

Subject to the *Contractor's* compliance with this clause and clause 41, if compliance with a *compensable direction* causes the *Contractor* to incur more cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to the *contract sum*.

If compliance with any *direction* under this subclause 8.1 (including a *compensable direction*) causes the *Contractor* to incur less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, then the difference shall be assessed by the *Superintendent* and deducted from the *contract sum*.'

Delete subclause 8.5 and insert:

'The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential or which are, of their nature, confidential.

If required in writing by the *Principal*, the *Contractor* shall enter into a separate agreement not to disclose to anyone else any confidential matter even after issue of the *final certificate* or earlier termination of the *Contract*.

Notwithstanding anything else in this subclause 8.5 or elsewhere in the *Contract*, documents and information provided on behalf of a party to the other party in connection with the *Contract* may be used, copied, modified or disclosed as required or permitted by any *legislative requirement* or other law and otherwise:

- (a) by the *Principal*, as the *Principal* considers to be reasonably necessary to:
 - i) carry out its obligations and exercise its rights under the *Contract*;

- ii) obtain legal, accounting or other professional advice in connection with the *Contract*, and/or
 - iii) otherwise properly carry out its functions as a local government authority;
- (b) by the *Contractor*, as is reasonably necessary to enable the *Contractor* to:
- i) carry out its obligations and exercise its rights under the *Contract*;
 - ii) obtain legal, accounting or other professional advice in connection with the *Contract*; and
 - iii) comply with the *Contractor's* corporate governance requirements.

If the *Contractor* is required by law to disclose confidential information of the *Principal*, the *Contractor* 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.

If the *Contractor* collects or has access to *personal information* in order to carry out its obligations under the *Contract*, the *Contractor* must comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this *Contract* as if the *Contractor* was the *Principal*. Where the *Principal* consents to the *Contractor* subcontracting the whole or part of the *Contractor's* obligations under this *Contract*, the *Contractor* 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).

The *Principal* collects *personal information* and non-personal 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 employees of the *Principal* and third-party personnel 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).'

Insert the following at the end of subclause 8.6:

'The *Principal* may organise official media releases for publication in relation to the *Works*. The *Contractor* shall provide any assistance that may be reasonably requested by the *Principal* to facilitate the production of any such media releases.'

9 ASSIGNMENT AND SUBCONTRACTING

Insert the following at the end of subclause 9.2:

'For the purposes of this subclause 9.2, the subcontractors which the *Contractor* nominated in its tender (as amended by post-tender negotiation) are approved by the *Superintendent*. In considering whether to approve a request by the *Contractor* to use other subcontractors, the *Superintendent* may, in addition to any other matter which the *Superintendent* is entitled to consider, also take into account whether the proposed subcontractor is:

- (a) a local supplier (as defined in the *Principal's* procurement policy as published at the *date of acceptance of tender*); or
 - (b) at least 50% owned by Aboriginal or Torres Strait Islander persons,
- and if not, whether such a supplier is available to undertake the *work* which is proposed to be subcontracted.'

11A SPECIFIC LEGISLATION AND OTHER REQUIREMENTS

Insert new clause 11A as follows:

'11A SPECIFIC LEGISLATION AND OTHER REQUIREMENTS

- 11A.1 (**Portable Long Service Leave**) The party identified in *Item 19A* shall pay any levy payable and give any relevant notices pursuant to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld) in relation to *WUC*.
- 11A.2 (**Goods and Services Tax**) If GST, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), is imposed on any supply made pursuant to this *Contract*, the amount payable for the supply is to be increased by the amount of that GST.
- 11A.3 (**Local Government**) Nothing in the *Contract* shall be taken to fetter the power, rights or authority of the *Principal* as a local government authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) or any other *legislative requirement*.
- 11A.4 (**Compliance**) The *Contractor* must, and must ensure that to the extent relevant to them its *personnel*, in carrying out the *Contractor's* obligations under the *Contract*:
 - (a) hold, maintain and are compliant with all requirements of, all necessary competencies, licences, accreditations, certifications, permits, clearances and other authorisations which are required:
 - (i) under contract;
 - (ii) pursuant to a *legislative requirement* or the *Principal's policies*; or
 - (iii) otherwise at law,for the *Contractor* to carry out its obligations under the *Contract*,
 - (b) act consistently with, and do all things reasonably necessary to enable the *Principal* to comply with, applicable *legislative requirements* and the *Principal's policies*;
 - (c) not do, or permit to be done, anything which would cause the *Principal* to be in breach of any *legislative requirements* or the *Principal's policies*;
 - (d) notify the *Principal* immediately if it becomes aware of any breach of this subclause 11A.4; and
 - (e) when directed to do so by the *Superintendent*, provide the *Superintendent* with such information and documentation

evidence as the *Superintendent* reasonably requests to satisfy the *Superintendent* that the *Contractor* has complied with this subclause 11A.4.

11A.5 (**Indemnity**) 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* in connection with:

- (a) the *Contractor's* failure to comply with this clause 11A or to satisfy a *legislative requirement* as required by subclause 11.1;
- (b) any breach by the *Contractor* of its obligations under any *legislative requirement*; and/or
- (c) any enforcement of obligations imposed on the *Contractor* under any *legislative requirement*,

but the indemnity will be reduced to the extent that the act or omission of the *Principal* or the *Superintendent* caused or contributed to the *claim* or loss.

11A.6 (**Interpretation**) In the event of any inconsistency, ambiguity, discrepancy or conflict in or between any obligation of the *Contractor* under subclauses 11A.1 to 11A.4, the *Contractor* must promptly notify the *Superintendent* who shall direct the *Contractor* as to the interpretation to be followed. In the absence of such a *direction*, the *Contractor* shall adopt the interpretation which places the higher or more onerous obligation on the *Contractor*.'

12A WORK HEALTH AND SAFTY

Insert new clause 12A as follows:

'12A WORK HEALTH AND SAFETY

12A.1 (**Interpretation**) In this clause:

- (a) 'Act' means the *Work Health and Safety Act 2011* (Qld);
- (b) 'WHS authority' means any government authority having jurisdiction under the *WHS Laws*;
- (c) 'Regulation' means the *Work Health and Safety Regulation 2011* (Qld);
- (d) 'inspector', 'notifiable incident', 'regulator' 'structure' and 'workplace' have the same meanings as in the *Act*;
- (e) 'principal contractor' has the same meaning as in the *Regulation*;
- (f) 'statutory notice' means any:
 - (i) infringement notice, prohibition notice, improvement notice or non-disturbance notice; and
 - (ii) any electrical safety protection notice or unsafe equipment notice,

issued by an *authority* pursuant to the *WHS Laws*;

- (g) '*WHS*' means work, health and safety;
- (h) '*WHS Laws*' means the *Act*, the *Regulation*, *Electrical Safety Act 2002* (Qld) and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards.

12A.2 (**Appointment as principal contractor**) Where *Item 19B* states that the *Contractor* is appointed as *principal contractor*, then from the *date of acceptance of tender*:

- (a) the *Principal* engages the *Contractor* to be the *principal contractor* under the *Regulation* in relation to *WUC* and authorises the *Contractor* to:
 - (i) have management and control of the *site* and any other *workplace* at which *WUC* is carried out; and
 - (ii) discharge the duties of the *principal contractor*;
- (b) the *Contractor* accepts the engagement as *principal contractor* from the *Principal* and agrees to fulfil all requirements and give effect to that engagement prior to the commencing any *WUC*; and
- (c) the *Contractor* will comply with and discharge all obligations imposed on the *Contractor*, as *principal contractor*, by the *WHS Laws*.

If *Item 19B* states that the *Contractor* is not engaged as *principal contractor*, the *Contractor* must comply with all *directions* of the *Superintendent* relating to *WHS*.

12A.3 (**Contractor's primary obligations**) From the *date of acceptance of tender*, the *Contractor* must:

- (a) comply with and discharge all obligations imposed on the *Contractor* as a person who conducts a business or undertaking and otherwise, by the *WHS Laws*;
- (b) consult with the *Principal* and consult with the designers of the whole or any part of a structure to be constructed under the *Contract*, about how to ensure that risks to health and safety arising from the design are eliminated during construction of *WUC* or, if it is not reasonably practicable to eliminate the risks, minimise, so far as is reasonably practicable;
- (c) in performing its obligations under the *Contract*, take into account and take appropriate action having regard to any information given to the *Contractor* by the *Principal* or any other person, about hazards and risks at or in the vicinity of the *workplace* where *WUC* is being carried out, and
- (d) without limiting paragraph 12A.2(c) ensure its officers, workers and agents, subcontractors and its subcontractors' officers, workers and agents, discharge their respective duties under the *WHS Laws* in connection with *WUC*.

12A.4 (**Contractor's WHS systems and documentation**) The *Contractor*:

- (a) must ensure, and 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 the *Contract*;
- (c) must prepare and adopt a *WHS* plan and other documentation which:
 - (i) addresses all the specific *WHS* hazards and issues relevant to the *Contractor's* obligations under the *Contract* which can be reasonably anticipated or ascertained from time to time during the performance of the *Contractor's* obligations under the *Contract*;
 - (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 this subclause 12A.4(c) at all times during the performance of its obligations under the *Contract*;

- (d) must:
 - (i) unless otherwise directed by the *Principal*, prior to commencing *WUC*, submit the *Contractor's* *WHS* plan and other 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 *Contractor* 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 *Contractor's* obligations under the *Contract* requests the *Contractor* 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 *Contractor's* obligations under the *Contract*;

12A.5 (**Notices and reports**) The *Contractor* must:

- (a) if a *notifiable incident* occurs at the *workplace* at which *WUC* is being undertaken:

- (i) immediately notify the *regulator* and the *Superintendent* of the *notifiable incident*; and
 - (ii) take all reasonably practicable steps to secure the *site* where the *notifiable incident* occurred until an *inspector* arrives at the *site* or any earlier time that an *inspector* directs;
- (b) provide a copy of every *statutory notice* received from an *authority* in connection with *WUC* to the *Principal* and the *Superintendent* within 1 *business day* after the notice is received;
- (c) if any of the *Contractor's personnel* are involved in an accident or other health and safety incident or otherwise suffer an injury in connection with the performance of *WUC*:
- (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
 - (iii) 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*;
- (d) within the time directed by the *Superintendent* make available to the *Superintendent* and the *Principal* all project *site* accident data which must include injuries and damage resulting from accidents or any incidents involving harm to a third party, particularly where legal action may be taken against them or the *Principal*.
- 12A.6 **(Site specific induction)** The *Contractor* must ensure that all *personnel* of the *Contractor* working at the *site* receive a site-specific induction and that each person visiting the *Contractor* or its *personnel* at that *site* receives a site-specific induction or is accompanied by someone who has received such an induction.
- 12A.7 **(Safety compliance)** If during the performance of *WUC* the *Superintendent* informs the *Contractor* that it is of the opinion the *Contractor* is:
- (a) not conducting *WUC* in compliance with the *Act*, *Regulation*, codes of practice or relevant policies and procedures; or
 - (b) conducting *WUC* in such a way as to endanger the health and safety of the *Contractor's personnel*, the *Principal's personnel* or the general public,

the *Superintendent* may direct the *Contractor* to promptly remedy the breach or take any other action permitted by the *Contract*, including suspending the whole or part of *WUC* pursuant to clause 33 until such time as the *Contractor* satisfies the *Superintendent* that *WUC* can be resumed in a safe manner.'

15 DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC

Delete clause 15.2.

15A LIABILITY

Insert a new clause 15A as follows:

'15A LIABILITY

- 15A.1 **(Limit and exclusion of liability)** Subject to subclause 15A.2, to the extent permitted by law:
- (a) the total aggregate liability of each party to the other in connection with the *Contract* (including in respect of any *claims*) shall not exceed that party's *liability limit*, and
 - (b) neither party shall be liable to the other upon any *claim* for any *specified loss* unless and then only to the extent that the *Contract* expressly provides for that liability.
- 15A.2 **(Application of clauses)** Subclause 15A.1 does not apply to:
- (a) liability of the *Principal* to pay the *contract sum* as adjusted pursuant to the *Contract*;
 - (b) liability of the *Contractor* for liquidated damages pursuant to subclause 34.7;
 - (c) liability of either party in connection with personal injury or death or damage to property;
 - (d) liability of a party arising as a result of:
 - (i) a breach of any *legislative requirement*;
 - (ii) an infringement of confidentiality or *intellectual property rights*;
 - (iii) a deliberate breach or abandonment of the *Contract*;
 - (iv) *wilful misconduct*; or
 - (v) fraud or other criminal conduct,by that party;
 - (e) liability of the *Contractor* which the *Contractor*:
 - (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 *Contractor* 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 *Contractor*,

and amounts referred to in paragraphs (a), (b), (c) (d) and (e) shall not be included in calculating whether the *liability limit* of a party has been reached.'

16 INSURANCE OF THE WORKS

In the third paragraph of Alternative 1, delete 'The insurance cover shall be for an amount not less than the aggregate of the:' and insert:

'The insurance cover shall be for an amount per occurrence of not less than the aggregate of the:'

In the second last paragraph of Alternative 1, delete 'be in the joint names of the parties' and insert 'be in the name of the *Contractor* and shall note the *Principal* as an interested party'.

17 PUBLIC LIABILITY INSURANCE

In Alternative 1, delete the existing text of subclause 17(a) and replace with:

'(a) be in the name of the *Contractor* with the *Principal* noted as an interested party;'

19 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

Delete subclauses 19.3 and 19.6.

20 SUPERINTENDENT

Delete the first paragraph of clause 20 and insert:

'The *Principal* shall ensure that at all times there is a *Superintendent*, and *that* the *Superintendent*, when acting as certifier, valuer or assessor, fulfils all aspects of the role and functions honestly, independently, and in accordance with the *Contract*. The *Contractor* acknowledges and accepts that the *Superintendent* and individuals appointed as *Superintendent's Representatives* under clause 21 may be employees of the *Principal* or may have a general commercial relationship with the *Principal* beyond the performance of the appointed roles under this *Contract*.'

23A KEY PERSONNEL

Insert a new clause 23A as follows:

'23A KEY PERSONNEL

Unless the *Superintendent* approves a change in key *personnel* in writing, the *Contractor* must provide the key *personnel* (if any) identified in *Item 21A* to perform the roles during the period or periods stated in *Item 21A* or where no period is stated, until the end of the last *defects liability period*. The *Contractor* may seek the approval of the *Superintendent* to change the role of any key *personnel* or to engage additional persons as key *personnel*.

The *Contractor* must promptly arrange a replacement approved by the *Superintendent* to replace any key *personnel*. The *Contractor* must provide any information reasonably required by the *Superintendent* in connection with the replacement. The *Superintendent* cannot unreasonably refuse to approve a

replacement person that is of equal or greater skill, experience and competency to the person being replaced.'

24 SITE

Delete the first sentence of subclause 24.1 and insert:

'The *Principal* shall give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site* on the later of:

- (a) the expiry of the time in *Item 22*; and
- (b) 10 *business days* after the *Contractor* has:
 - (i) complied with subclause 19.1; and
 - (ii) given the *Superintendent* all other information and documentation and done all other things which the *Contract* elsewhere requires to be given or done before possession of the *site* is given.

Possession of the *site* may be non-exclusive.'

25 LATENT CONDITIONS

Delete '28 days' from subclause 25.3 and insert '5 *business days*'.

29 QUALITY

Delete the first paragraph of subclause 29.3 and insert:

'If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):'

Delete the existing text of subclause 29.4 and insert:

'Instead of a *direction* pursuant to subclause 29.3 or clause 35, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*. Where the *Contract* elsewhere provides for an applicable reduced level of service for the subject *work*, then the *contract sum* shall be adjusted in accordance with such provisions. Otherwise, there shall be a deemed *variation*.'

31 WORKING HOURS

Delete the first sentence of clause 31 and replace with:

'The working hours and *workings days* for *work* on the *site* are stated in *Item 22A*.'

32 PROGRAMMING

In the fifth paragraph, delete 'It shall be deemed a *Contract* document'.

34 TIME AND PROGRESS

Delete '28 days' from paragraph (b) of subclause 34.3 and replace with '10 *business days*'.

Delete the first paragraph of subclause 34.4 and replace with:

'To the extent that delays caused by *qualifying causes of delay* overlap with delays caused by other causes of delay, the *Contractor* shall not be entitled to an *EOT*.'

Insert the following at the end of subclause 34.4:

'To avoid doubt, all *EOTs* shall be claimed and granted in *working days*.'

Delete the existing text of subclause 34.5 and replace with:

'Within 20 *business days* after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate*, in its absolute discretion and without any obligation to do so for the benefit of the *Contractor*, direct an *EOT*. The *Contractor* shall not be entitled to any monetary compensation (whether under subclause 34.9 or otherwise) in connection with an *EOT* granted by the *Superintendent* pursuant to this paragraph.

Neither:

- (a) a delay caused by a *compensable cause*; nor
- (b) a failure by the *Superintendent* to grant a reasonable *EOT* or to do so within the time required under subclause 34.5,

will set the *date for practical completion* at large or render subclause 34.7 unenforceable. Nothing in subclause 34.5 shall affect the *Contractor's* right to damages for a breach of contract.'

Delete subclause 34.9 and replace with:

'34.9 Delay costs

For every *working day* the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay costs pursuant to subclause 41.1, the *Superintendent* shall, under subclause 41.3, certify as due and payable to the *Contractor*, such extra costs as are reasonably and necessarily incurred by the *Contractor* by reason of the delay up to a maximum per *working day* of the amount stated in *Item 26A*.

Nothing in this subclause 34.9 shall oblige the *Principal* to pay extra costs for delay –

- (a) which have already been included in the value of a *variation* or any other payment under the *Contract*,
- (b) caused by inclement weather or its effects, even if that inclement weather or those effects would not have delayed the *Contractor* but for an earlier delay caused by a *compensable cause*;
- (c) to the extent that the *Contractor* has failed to take all reasonable steps to mitigate the delay or the extra costs incurred.'

36 VARIATIONS

At the end of subclause 36.1, insert:

'The *Principal* may itself perform or engage others to perform any *work* which is omitted pursuant to this subclause 36.1 without payment of monetary compensation to the *Contractor* for doing so. No *variation* shall invalidate or amount to a repudiation of the *Contract*.'

Delete the last sentence of subclause 36.2.

Delete the existing text of subclause 36.4 and replace with:

'The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) rates or prices in a *price schedule* to the extent that it is reasonable to use them;
- (c) *variation rates* (or where no applicable *variation rates* are included in the *Contract*, other applicable rates or prices in the *Contract*);
- (d) reasonable rates or prices, which shall include the percentage stated in *Item 27A* for profit, and if the *Superintendent* considers it reasonable to do so, the percentage stated in *Item 27A* for overheads,

and any deductions shall include the full value of the deducted *work* (including profit and overheads) unless the *Superintendent* considers it reasonable to exclude an amount for overheads, in which case the amount so excluded shall not exceed the percentage stated in *Item 27A* for overheads.

That price shall be added to or deducted from the *contract sum*, as the case may be.

For clarity, percentages for profit and overheads shall be calculated independently of each other, not cumulatively.

Notwithstanding anything else in the *Contract*, the *Principal* shall not be liable upon any *claim* in connection with an *informal variation direction* unless the *Contractor* gives the *Superintendent* a written notice which:

- (a) identifies the *informal variation direction*; and
- (b) states that the *Contractor* considers the *informal variation direction* is a *direction* for a *variation*,

within 5 *business days* after the *informal variation direction* is first given to the *Contractor*.'

37 PAYMENT

Delete the second paragraph of subclause 37.1, and insert:

'With each progress claim, the *Contractor* must submit the statutory declaration included in Annexure Part I, and any other documentation which the *Contract* elsewhere requires to be submitted with a progress claim.'

Delete the existing text of subclause 37.2 and insert:

'The balance remaining after all *required deductions* are deducted from the *claimable amount* shall be due from the *Principal* to the *Contractor*, or the *Contractor* to the *Principal*, as the case may be. The *Superintendent* shall, before the end of the *response period*, issue to the *Principal* and to the *Contractor* a *progress certificate* evidencing the *Superintendent's* opinion of that balance and, if that balance is different to the amount claimed by the *Contractor*, the reason for that difference.

If the *Contractor* does not make a progress claim in accordance with *Item 28*, the *Superintendent* may nevertheless issue the *progress certificate*.

Unless the *Principal* itself issues a *payment schedule* which complies with the requirements of the *security of payment legislation* within the timeframes permitted under that legislation, the *Superintendent's progress certificate* or *final certificate* (as the case may be) shall be deemed to be the *Principal's payment schedule*, and to the extent that it is necessary for the *Principal* to do so, the *Principal* authorises the *Superintendent* to receive progress claims and issue *payment schedules* on its behalf.

Subject to the following paragraph, if the *progress certificate* shows that an amount is due to the *Contractor*, then the *Principal* shall pay the amount of the *progress certificate* before the end of the *payment period*. If the *progress certificate* shows that an amount is due to the *Principal*, the *Contractor* shall pay the *Principal* the amount of the *progress certificate* within 15 *business days* after receiving the *progress certificate*.

The party entitled to receive payment must provide a tax invoice in the form required by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). If the payment is a progress payment to be made by the *Principal* to the *Contractor*, then the tax invoice shall be in the amount of the *Superintendent's progress certificate* issued pursuant to subclause 37.2 and must be provided to the *Principal* within 5 *business days* of receipt of such *progress certificate*.

To the extent permitted by law, if the *Superintendent* fails to include a *required deduction* in a *progress certificate*, then the *Principal* may nevertheless deduct that *required deduction* from the amount shown in the certificate and pay the balance (if any) to the *Contractor*.

Neither a *progress certificate* nor a payment of monies shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be on account only.'

In the second paragraph of subclause 37.4, delete 'Within 42 days after the expiry of the last defects liability period' and insert 'Before the end of the *response period*'.

Delete the third paragraph of subclause 37.4 and replace with:

'If the *final certificate* shows that an amount is due to the *Contractor*, then the *Principal* shall pay the amount of the *final certificate* before the end of the *payment period*. Otherwise, the *Contractor* shall pay the *Principal* the amount of the *final certificate* within 15 *business days* after receiving the *final certificate*.'

Delete subclause 37.6.

39 DEFAULT OR INSOLVENCY

Delete the existing text of paragraph (e) of subclause 39.2 and insert:

- '(e) in respect of subclauses 37.1 and 38.1, failing to provide a statutory declaration or documentary evidence or providing a statutory declaration or documentary evidence which is false, misleading or deceptive in any material respect; and
- (f) failing to comply with an obligation under, warranty given or representation made in clause 2B (including where a warranty given or representation made is found to be false).'

39A TERMINATION FOR CONVENIENCE

Insert a new clause 39A as follows:

'39A TERMINATION FOR CONVENIENCE

39A.1 (**Right to terminate**) The *Principal* may at any time, and for any reason, in its absolute discretion, terminate this *Contract* by giving 5 *business days* written notice to the *Contractor*.

39A.2 (**Obligations and rights after termination**) If the *Principal* exercises its right under this clause 39A, then:

- (a) the *Contractor* must comply with all reasonable *directions* of the *Principal* in connection with the termination;
- (b) the *Principal* may complete the uncompleted part of *WUC* itself or have it completed by others; and
- (c) the *Principal* may, without payment of compensation to the *Contractor*, take possession of and use any documents (including design documents) and any goods which have become the property of the *Principal* and the *Principal* shall have a right of access to any premises at which those things are held in order to recover possession of those things.

39A.3 (**Payment on Termination**) The *Superintendent* shall issue a certificate evidencing, and the *Principal* shall, subject to the *Contract*, pay the *Contractor*:

- (a) the same payments that would have been payable if the *Contract* was frustrated under clause 40 with references to 'frustrated' and 'frustration' in clause 40 being read as references to 'terminated' and 'termination' respectively; plus
- (b) an additional amount equal to 5% of the balance of the *contract sum* remaining after deducting all amounts paid or payable to the *Contractor* pursuant to the *Contract* (including under subclause 39A.3(a)),

except that the total amount payable to the *Contractor* under the *Contract* shall not exceed the amount which would have been payable had the *Contract* not been terminated and the *Contractor* completed *WUC* in accordance with the *Contract*. The *Principal* shall not be liable upon any other *claim* in connection with the termination.'

39B PRINCIPAL'S RIGHTS ON FAILURE OF CONTRACTOR TO CARRY OUT AN OBLIGATION

Insert new clause 39B as follows:

'39B PRINCIPAL'S RIGHTS ON FAILURE OF CONTRACTOR TO CARRY OUT AN OBLIGATION

Without limiting the *Principal's* other rights, where the *Contractor* fails to carry out any obligation under the *Contract* (including the obligation to comply with a *direction* of the *Superintendent*) within the time required by the *Contract* or reasonably directed by the *Superintendent* for performance of such an obligation, the *Principal* may, after giving 5 *business days* notice (unless urgent action is required, in which case the *Principal* need not give notice) to the *Contractor*, carry out that obligation itself or have it carried out by others.

If the *Principal* incurs more cost in carrying out the obligation itself, or having it carried out by others than it would have incurred if the *Contractor* had carried out the obligation then those additional costs shall be a debt due and payable by the *Contractor* to the *Principal* and shall be certified as such by the *Superintendent*. The *Principal* shall be entitled to have access to the *site* and any other place where an obligation under the *Contract* is to be carried out in order to exercise the rights provided by this clause 39B.'

41 NOTIFICATION OF CLAIMS

Delete the first paragraph of subclause 41.1 and replace with:

'References in clause 41 to a 'claim' are to be taken as references to a '*claim*' whether or not the term is italicised.'

In subclause 41.2, delete 'a party' and replace with 'the *Principal*' and delete 'the other party' and replace with 'the *Contractor*'.

Insert the following at the end of subclause 41.2:

'Notwithstanding any other provision of the *Contract*, the *Principal* shall not be liable upon any *claim* by the *Contractor*.

- (a) which is required to be communicated in accordance with another provision of the *Contract* unless the *claim* has been communicated strictly in accordance with that provision;
- (b) to which subclause 41.1 applies unless the *Contractor* has given the *Principal* a *prescribed notice* or a notice of *dispute* under subclause 42.1 within 45 *business days* after first becoming aware of the circumstances giving rise to the *claim*.'

Insert the following at the end of subclause 41.3:

'For clarity, within 42 days of receipt of a *prescribed notice*, the party receiving a *prescribed notice* may give the *Superintendent* and the other party submissions in respect of the *claim* and the *Superintendent* shall be entitled to consider those submissions in assessing the *claim*.'

42 DISPUTE RESOLUTION

Delete the last paragraph of subclause 42.1 and insert:

'Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39, 39A, 40 and subclause 42.4, continue to perform the *Contract*.'

In subclause 42.2:

Delete 'or to agree on methods of doing so' from the first paragraph.

Delete 'or methods' from the first paragraph.

Delete 'arbitration' from the second paragraph and insert:

'mediation which shall be conducted in accordance with the mediation rules published by the Resolution Institute current as at the *date of acceptance of tender*'.

Delete the existing text of subclause 42.3 and insert 'Not used'.

In subclause 42.4 delete 'herein' and insert 'in subclauses 42.1 and 42.2'.

Insert a new subclause 42.5 as follows:

'42.5 Disputing a direction of the Superintendent

Notwithstanding anything else in this clause or elsewhere in the *Contract*, unless a notice of *dispute* disputing a *direction* of the *Superintendent* is given in accordance with subclause 42.1 within 25 *business days* after the *direction* is given:

- (a) the *Contractor* will be deemed to have irrevocably accepted the *direction* and shall be barred from disputing the *direction* under this *Contract* or otherwise; and
- (b) the *Principal* shall not be liable upon any *claim* that is inconsistent with the *direction*.'

Annexure Part D – Drawings

Annexure Part D – Drawings

[DELETE THIS PAGE AND INSERT DRAWINGS IN EXECUTION COPY OF CONTRACT]

Annexure Part E – Specification

Annexure Part E – Specification

[DELETE THIS PAGE AND INSERT SPECIFICATION IN EXECUTION COPY OF CONTRACT]

[DELETE THIS PAGE AND INSERT SPECIFICATION IN EXECUTION COPY OF CONTRACT]



Annexure Part G – Price Schedule

Annexure Part G – Price Schedule

[DELETE THIS PAGE AND INSERT PRICE SCHEDULE IN EXECUTION COPY OF CONTRACT]

Annexure Part H – Variation Rates

Annexure Part H – Variation Rates

[DELETE THIS PAGE AND INSERT VARIATION RATES IN EXECUTION COPY OF CONTRACT]

Annexure Part I – Contractor's Statutory Declaration

**Oaths Act 1867
STATUTORY DECLARATION**

QUEENSLAND
TO WIT

I, _____ of _____ in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between [COUNCIL NAME] and _____ (Contractor), for the _____ (Contract):

1. I hold the position of _____. Having made all reasonable inquiries, I am in a position to know the facts contained herein and am duly authorised by the Contractor to make this declaration on its behalf.
2. All subcontractors, suppliers, and consultants ('subcontractors') of the Contractor have been paid all that:
 - (a) _____ is due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted in respect of their part of the work under the Contract; and
 - (b) _____ the subcontractors have claimed is due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted in respect of their part of the work under the Contract,

except as disclosed in paragraph 3.

3. The Contractor has not paid the following amounts which are due and payable to subcontractors or which subcontractors claim are due and payable to them:

Name of subcontractor	Date claim of	Date work the subject of the claim carried out	Amount claimed	Amount paid	Reason for not paying amount claimed

4. All the Contractor's employees who at any time have been engaged on work under the Contract by the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted (including, without limitation building industry superannuation and long service leave levies), except as disclosed in paragraph 5.
5. The Contractor has not paid the following amounts which are due and payable to workers:

Name of worker	Amount unpaid	Basis of payment (e.g. wages)	Reason for not paying amount claimed

6. All subcontracts and employee agreements are in accordance with applicable law and any specific requirements in the Contract.
7. The Contractor is not aware of any current or potential legal action against it which it has not previously disclosed to the Principal.
8. The Contractor remains able to pay its debts as and when they become due and payable. None of the events described in subclause 39.11(a), (b), (c) or (d) of the AS4000-1997 General Conditions of Contract (or any analogous event) has occurred in relation to the Contractor since the date on which the Contractor submitted its tender for the Contract to the Principal.
9. No non-conforming building products (as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld)) or building products the subject of a warning statement issued by the Minister have been incorporated into the works and all required information has been obtained and provided to the Principal or the Superintendent (where '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). .

10. All insurances which are required to be effected and maintained under the Contract remain in place.

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

Signature of Deponent



SCOPE

Theodore and Moura Boat Ramps Extensions 2023

CONTRACT NO.: T2324.02

1. INTERPRETATION AND DEFINITIONS

1.1 **(Documents comprising this Scope)** The Scope comprises the following documents:

- (a) Appendix A – Locality Maps;
- (b) Appendix B – Design Plans – Theodore Boat Ramp;
- (c) Appendix C – Design Plans – Moura Boat Ramp;
- (d) Appendix D – Permits;
- (e) Appendix E – List of Council Supplied Materials;
- (f) Appendix F – Pricing Schedule;
- (g) Technical Specification; and
- (h) General Specification.

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.

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 **(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. PROCUREMENT SERVICES

3.1 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).

4. PRINCIPAL SUPPLIED INFORMATION AND OTHER INVESTIGATIONS

4.1 **(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.

4.2 **(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

4.3 **(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.

5. SUPPLIER'S PERSONNEL

5.1 **(Minimum Personnel levels)** The Supplier must ensure that at all times 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.

5.2 **(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).

5.3 **(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.

6. MANAGEMENT PLAN

6.1 **(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) Workplace Health and Safety Management;
- (b) Environmental Management;
- (c) Erosion and Sediment Control; and
- (d) Traffic Management.

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).

6.2 **(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.

6.3 **(Compliance)** The Supplier must comply with the management plan at all times during the Term. Such compliance will not release or discharge the Supplier from any liability or obligation under the Contract.