



REQUEST FOR TENDER

Culvert Supply – Theodore – 2023 - 2024

CONTRACT NO: T2324.26

Request for Tender



PART 1 – PREAMBLE				
Banana Shire Council invites tenders from suitably qualified tenderers for the supply and delivery to ground at the Council Theodore Depot of RCPs and RCBCs for use in the construction of the Theodore Heavy Vehicle Bypass as described in more detail in Part 5 – Scope. Delivery of the culverts is to begin as soon as possible and be completed no later than 31 May 2024.				
PART 2 – GENERAL INFORMATION				
1. Contract details:	T2324.26 Culvert Supply – Theodore – 2023 - 2024			
2. Communications by Tenderers:	Communications regarding the Procurement Process must be submitted to enquiries@banana.qld.gov.au no later than five (5) calendar days prior to the time stated in Item 4			
3. Briefing or site inspection:	Details	Maximum attendees	Mandatory	RSVP
	N/A		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A
4. Submission of Tender:	Tenders must be submitted electronically only at tenders@banana.qld.gov.au by no later than 11:00am on 8 th of January 2024. <i>Note// Adequate time must be allowed for the Tender and all supporting documents to be uploaded or received by this time.</i>			
5. Evaluation Criteria:	Evaluation Criteria			Weighting (%) (Optional)
	Price			40%
	Proposed delivery timeframes			35%
	Previous Experience			20%
	Local Content			5%
6. Tenders should not be longer than:	N/A			
7. 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)			
8. Complaints:	Complaints regarding Procurement Process to be directed to: enquiries@banana.qld.gov.au			
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 T2324.26 Culvert Supply - Theodore - 2023 – 2024 – Procurement Process Conditions				
PART 4 – CONTRACT				
The contract shall be substantially in the form attached to or provided with this Request for Tender and identified as T2324.26 Culvert Supply - Theodore - 2023 – 2024 – Contract				
PART 5 – SCOPE				
The Scope is described in the document(s) attached to or provided with this Request for Tender and identified as T2324.26 Culvert Supply - Theodore - 2023 – 2024 – Scope . T2324.26 Culvert Supply - Theodore - 2023 – 2024 – Delivery Location Plan – Appendix A T2324.26 Culvert Supply - Theodore - 2023 – 2024 – Pricing Schedule – Appendix B				
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 T2324.26 Culvert Supply - Theodore - 2023 – 2024 – Response Schedule				



Procurement Process Conditions

Culvert Supply – Theodore - 2023 - 2024

CONTRACT NO: T2324.26

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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.

Procurement Process Conditions



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

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

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

3. COMMUNICATIONS DURING PROCUREMENT PROCESS

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

4. THE RESPONSE (RFT AND RFQ ONLY)

- 4.1 **(Application of clause)** This clause 4 only applies in respect of an RFT or an RFQ.
- 4.2 **(Acceptance of Contract and Scope)** If one has not been provided, the Respondent must obtain a copy of the Contract from the Principal by requesting a copy through the Communication Method. Except to the extent that the Respondent has detailed a proposed

alternative, amendment, qualification or departure in a Response, the Respondent will be taken to have unconditionally accepted and agreed to:

- (a) be bound by the terms and conditions of the Contract; and
- (b) carry out and complete the whole of the obligations described in or to be reasonably inferred from the Procurement Documents.

4.3 **(Price)** The Price must be submitted exclusive of GST and in Australian dollars.

4.4 **(Discrepancy in Price)** Where the Response Form requires the Respondent to provide a Price and there is a discrepancy between the amount stated in the Response Form as the Respondent's Price and the sum total of the items in any Price Schedule then:

- (a) if the Contract provides that it is a lump sum contract, then the sum total of the items in the Price Schedule shall be the Respondent's Price; or
- (b) if the Contract provides that it is a schedule of rates contract or a part lump sum and part schedule of rates contract, then the rate, price or lump sum of each item will prevail over the total shown, and the total shall be adjusted accordingly.

4.5 **(Response Validity Period)** The Respondent's Response will remain valid and open for acceptance by the Principal until the end of the Response Validity Period and thereafter until it is withdrawn in writing by the Respondent or the Procurement Process is finalised. The Principal may consent to the Respondent withdrawing its Response before the end of the Response Validity Period. The Principal may request an extension of the Response Validity Period at any time by giving written notice to the Respondent. If the Respondent does not agree to the requested extension then the Principal may exclude the Respondent's Response from assessment or further assessment as the case may be.

4.6 **(Alternative Responses)** If the Respondent wishes to submit an Alternative Response, then the Respondent is encouraged to:

- (a) also submit a Conforming Response; and
- (b) submit the Alternative Response on a separate Response Form to the Conforming Response, clearly marked, "ALTERNATIVE RESPONSE" accompanied by a clear summary of all points of difference between the Alternative Response and the Conforming Response.

5. RESPONDENT'S GENERAL WARRANTIES AND REPRESENTATIONS

5.1 **(Warranties and Representations)** By lodging a Response, the Respondent warrants and represents that:

- (a) **(conduct of Respondent)** neither the Respondent nor any of its employees or agents has engaged in any Improper Conduct;
- (b) **(authority)** the Response has been signed and lodged by a person with authority to do so on behalf of the Respondent;
- (c) **(basis of Response)** the Respondent:
 - (i) has received or obtained copies of all of the Procurement Documents and all information or documents referred to in the Procurement Documents; and
 - (ii) has not relied on the accuracy, adequacy or completeness of any documents or information provided or any representation made by or on behalf of the Principal in connection with the Procurement Process in preparing its Response;

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

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

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

- (ii) the provision of all materials, plant, labour and other services necessary for the proper completion of the obligations it will have under the Contract if its Response is accepted, whether or not those items are expressly mentioned in the Contract; and
- (iii) unless the Contract expressly allows an adjustment, rise and fall in costs;
- (d) **(competitive neutrality)** if the Respondent is required by law to comply with principles of competitive neutrality, the Respondent has properly considered, assessed and complied with the applicable competitive neutrality principles in relation to the Procurement Process and the acceptance by the Principal of the Respondent's Response will not breach those principles;
- (e) **(notice)** the Respondent has notified the Principal in its Response of any:
 - (i) ambiguity, inconsistency, uncertainty, error or omission which it has discovered in or from the Procurement Documents;
 - (ii) any assumptions that it has made in determining its Price;
 - (iii) further information or investigations which it considers that it requires to enable it to give the warranties and make the representations in this clause 6,

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

7. LODGEMENT AND OPENING OF RESPONSES

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

- (a) if the Tender Box is a website, by uploading it to the Tender Box;
- (b) if the Tender Box is an email address, by sending it as an attachment to an email to the Tender Box; 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 lodgement)** A document forming part of a Response shall be deemed to have been lodged:

- (a) where the Tender Box is a website, at the time that the document is successfully uploaded to the Tender Box, as indicated on the electronic receipt issued to the Respondent;
- (b) where the Tender Box is an email address, at the time that an email attaching the document is successfully delivered to the Tender Box, as indicated on the email system on which the Tender Box is hosted;
- (c) where the Tender Box is a physical address, at the time that the document is physically received at the Tender Box; or
- (d) where the Response is lodged by an alternative method allowed by the Principal, when it is received by the Principal by that method.

7.3 **(Response opening)** Responses will not be opened publicly and the Respondent will not be permitted to attend the opening of Responses.

8. ASSESSMENT OF RESPONSES

- 8.1 **(Evaluation Criteria)** In determining which Response(s) are most advantageous to the Principal, each Response evaluated in accordance with these Procurement Process Conditions will be assessed, but not necessarily exclusively, against the Evaluation Criteria (if any).
- 8.2 **(Considerations)** In assessing Responses, the Principal may consider any information which the Principal reasonably considers to be relevant to its assessment (however obtained), including:
- (a) information contained in the Response or any amendment to or clarification of a Response;
 - (b) information provided at a meeting with or presentation by the Respondent;
 - (c) outcomes from discussions with a Respondent's referees (if any);
 - (d) information obtained pursuant to clause 8.5;
 - (e) the Respondent's past performance under other contracts with the Principal or third parties; and
 - (f) the reasonably held subjective opinions of the persons appointed by the Principal to evaluate Responses or any advisor to such persons.
- 8.3 **(Uncertainties)** The Principal may ignore any part of a Response which is ambiguous, uncertain, unclear or illegible without seeking clarification from the Respondent and may assess the balance of the Response.
- 8.4 **(Right to exclude)** The Principal may, but shall not be obliged to, reject or exclude from assessment any Response including:
- (a) a Non-Conforming Response, an Alternative Response or a Late Response;
 - (b) a Response, in respect of which the Principal reasonably believes that the Respondent has:
 - (i) failed to comply with these Procurement Process Conditions or any request made by or on behalf of the Principal pursuant to them within the time required; or
 - (ii) breached a warranty given or representation made pursuant to these Procurement Process Conditions or that a warranty, declaration or representation in the Respondent's Response is false or misleading in any material respect;
 - (c) a Response in respect of which the Principal reasonably believes that the Respondent cannot reasonably comply with the obligations which it will have under the Contract (in the event that its Response is successful) for the Price; or
 - (d) a Response which fails to achieve a satisfactory score against any of the Evaluation Criteria, even if the overall score of the Response is satisfactory;
- 8.5 **(Other information or assistance)** The Principal may undertake its own investigations, or engage third parties to do so on its behalf, in relation to any aspect of a Response (including verifying any warranty, representation or declaration made or given in the Response or pursuant to these Procurement Process Conditions) or any other matter which it considers relevant to the conduct of the Procurement Process. The Respondent must cooperate with such investigations and provide all information and assistance reasonably requested by or on behalf of the Principal in connection with the investigation.

9. SHORTLISTING (RFEOI ONLY)

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

10. ACCEPTANCE (RFT AND RFQ ONLY)

- 10.1 **(Application of clause)** This clause 10 only applies in respect of an RFT or an RFQ.
- 10.2 **(Ability to accept)** The Principal is not bound to accept the Response with the lowest Price or the Response with the highest score against the Evaluation Criteria, or any Response. The Principal will, if it accepts a Response, accept the Response(s) which it reasonably believes are the most advantageous to it having regard to the Sound Contracting Principles and the requirements of the *Local Government Regulation 2012* (Qld) to the extent that they are applicable and relevant to the Procurement Process.
- 10.3 **(Local preference)** The Principal may accept a Response lodged by a Local Supplier in preference to comparable Responses from Non-Local Suppliers even if the Responses from the Non-Local Suppliers have been assessed as more favourable in terms of one or more Evaluation Criteria, so long as the overall differences are not substantial, and so long as it is clear that the Local Supplier can meet the Principal's requirements at an acceptable standard which is generally comparable to that of the Non-Local Suppliers.
- 10.4 **(Acceptance of more than one Response and acceptance of part of a Response)** The Principal may accept a Response in whole or in part. Without limiting this, where the Scope comprises distinct portions of works, goods or services, the Principal may accept a Response from one or more Respondents in relation to different portions of the works, goods or services as if those portions had been the subject of separate Procurement Processes.
- 10.5 **(No contract or appointment until formal acceptance)** Unless and until the Principal expressly notifies the Respondent in writing that the Respondent's Response (as amended by any post-Response negotiation, if any) has been successful or the parties execute a contract:
- (a) no binding contract for the provision of any work, services and/or goods by the Respondent will exist between the parties; and
 - (b) in respect of an RFT for appointment as a Pre-qualified Supplier or Preferred Supplier, the Respondent will not be considered to be appointed as a Pre-qualified Supplier or Preferred Supplier.

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

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

11. DOCUMENTS AND INFORMATION

- 11.1 **(Ownership)** The Procurement Documents remain the property of the Principal. The Response will become the property of the Principal upon lodgement.
- 11.2 **(Intellectual Property Rights)** Intellectual Property Rights in documents and information provided on behalf of a party in connection with the Procurement Process remain, as between the parties, with the party on whose behalf they were provided. The Principal and the Respondent grant each other a perpetual, non-exclusive, royalty free licence to do the things contemplated by clause 11.9. 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 11.9(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.
- 11.7 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).
- 11.8 **(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.
- 11.9 **(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.

11.10 **(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 Theodore;
- (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 that supplier to be a Preferred Supplier or Pre-qualified Supplier of those goods and/or services.

- (ll) **Respondent** means:
- (i) any person who lodges a Response; and
 - (ii) to the extent to which the term can apply to any other person who obtains a copy of any of the Procurement Documents during the Procurement Process, also includes such other persons,
- and includes a Tenderer;
- (mm) **Response** means, where these Procurement Process Conditions are incorporated into an:
- (i) RFEOI, an EOI;
 - (ii) RFT, a Tender; or
 - (iii) RFQ, a Quotation;
- (nn) **Response Closing Time** means the time identified in the General Information as the time by which Responses must be submitted as varied (if at all) pursuant to these Procurement Process Conditions;
- (oo) **Response Form** means in respect of an:
- (i) RFEOI, the document identified as the EOI form in the Response Schedules;
 - (ii) RFT or RFQ:
 - (A) the document identified as the tender form or the quotation form (as the case may be) in the Response Schedules; or
 - (B) otherwise where there is no document identified as the tender form or quotation form, any document (other than a Price Schedule) which states the total price offered by the Respondent in the Response;
- (pp) **Response Schedules** means the schedules identified in Part 5 – Response Schedules of the RFEOI or Part 6 – Response Schedules of the RFT or RFQ (as the case may be);
- (qq) **Response Validity Period** means the period stated in the General Information as the time for which Responses are to be valid as extended (if at all) pursuant to clause 4.5;
- (rr) **RFEOI (or Request for Expressions of Interest)** means the request for expressions of interest issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions and the Scope);
- (ss) **RFQ (or Request for Quotation)** means the request for quotations issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions, the Contract and the Scope);
- (tt) **RFT (or Request for Tender)** means the request for tenders issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions, the Contract and the Scope);
- (uu) **Scope** means the scope described in Part 4 – Scope of the RFEOI or Part 5 – Scope of the RFT or RFQ (as the case may be) and all documents incorporated into it (whether physically or by reference), and includes any amendments provided for in an Addendum;
- (vv) **Sound Contracting Principles** has the meaning given in section 104(3) of the *Local Government Act 2009* (Qld);

(ww) **Specified Loss** means:

- (i) any loss of, or loss of anticipated, profit, income, revenue, saving, production; business, contract or opportunity; increase in financing or operating costs; liability for loss or damage suffered by third parties; legal costs (on a solicitor and client basis); fines levied; loss of reputation or embarrassment and the cost of abating or reducing such; any other financial or economic loss; and
- (ii) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraph, howsoever arising;

(xx) **Tender** means a Response lodged by a Tenderer in response to an RFT and includes all documents and information lodged with or as part of the tender;

(yy) **Tender Box** means the website, email address or physical location at which the General Information states that Responses are to be submitted;

(zz) **Tenderer** means:

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

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

13. GENERAL PROVISIONS

13.1 **(Interpretation of Procurement Documents)** The Procurement Documents must be read and construed together and are intended to be mutually explanatory.

13.2 **(Joint and several obligations)** An obligation of two or more parties binds them jointly and each of them severally and an obligation incurred in favour of two or more parties is enforceable by them severally.

13.3 **(Headings)** Clause headings are for reference purposes only and must not be used in interpretation.

13.4 **(No limitation)** The words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.

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

13.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Procurement Documents expires on a day which is not a Business Day, the period will expire at the end of the next Business Day.

13.7 **(Discretion)** Unless expressly provided otherwise:

- (a) any right of the Principal pursuant to these Procurement Process Conditions may be exercised; and
- (b) any consent of the Principal required under these Procurement Process Conditions may be given, withheld or given subject to conditions,

in the absolute discretion of the Principal without giving reasons and without reference to the Respondent unless, and then only to the extent that the Procurement Process Conditions provide otherwise.

13.8 **(Law)** A reference to 'law' includes:

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

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

13.9 **(Governing Law)** The Procurement Process is governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland. The Principal and the Respondent submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.

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

13.11 **(Rights Cumulative)** The rights and remedies of the Principal and the Respondent provided in the Procurement Process Conditions are cumulative on each other and on any rights or remedies conferred at law or in equity.

13.12 **(Severance)** If a provision of the Procurement Process Conditions is void or unenforceable it must be severed and the provisions that are not void or unenforceable are unaffected by the severance.

13.13 **(No waiver)** No waiver by the Principal of a provision of these Procurement Process Conditions is binding unless made in writing.

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

- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
- (b) the Respondent or the Principal includes their respective heirs, executors, successors and permitted assigns;
- (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
- (d) a monetary amount is a reference to an Australian currency amount; and
- (e) a measurement or quantity is a reference to an Australian legal unit of measurement as defined under the *National Measurement Act 1960* (Cth).



CONTRACT

Culvert Supply – Theodore – 2023 - 2024

CONTRACT NO: T2324.26

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SCHEDULE 1 - SCOPE AND PRICE

Reference Schedule

Item	Details																	
1. Principal's Representative (Clause 6)		(a) Name:	Leesa Millar															
		(b) Address:	62 Valentine Plains Road Biloela QLD 4715															
		(c) Telephone:	(07) 49 929 500															
		(d) Email:	enquiries@banana.qld.gov.au															
2. Supplier's Representative (Clause 7)		(a) Name:																
		(b) Address:																
		(c) Telephone:																
		(d) Email:																
3. Goods	(a) Warranty Period (Clause 8)	12 months <i>If nothing stated, 12 months after the Hand Over Time</i>	(b) Delivery Details (Clause 9)															
		Delivery is to be to ground at the Council Theodore Depot located at the Theodore Airport (13524 Eidsvold Theodore Road, Theodore QLD)																
		<i>If nothing stated, as reasonably directed by the Principal.</i>																
4. Key Personnel (Clause 10.2)	<table border="1"> <thead> <tr> <th data-bbox="608 1142 948 1254">Name</th> <th data-bbox="951 1142 1220 1254">Role</th> <th data-bbox="1224 1142 1492 1254">Period <i>(If nothing stated, until the date of Completion)</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="608 1254 948 1305"></td> <td data-bbox="951 1254 1220 1305"></td> <td data-bbox="1224 1254 1492 1305"></td> </tr> <tr> <td data-bbox="608 1305 948 1357"></td> <td data-bbox="951 1305 1220 1357"></td> <td data-bbox="1224 1305 1492 1357"></td> </tr> <tr> <td data-bbox="608 1357 948 1408"></td> <td data-bbox="951 1357 1220 1408"></td> <td data-bbox="1224 1357 1492 1408"></td> </tr> <tr> <td data-bbox="608 1408 948 1453"></td> <td data-bbox="951 1408 1220 1453"></td> <td data-bbox="1224 1408 1492 1453"></td> </tr> </tbody> </table>	Name	Role	Period <i>(If nothing stated, until the date of Completion)</i>														
Name	Role	Period <i>(If nothing stated, until the date of Completion)</i>																
5. Site (Clause 12)	(a) Additional pre-conditions to access to the Site	Contact is to be made with the Principal Representative on day of delivery to ensure that access to the depot is available																
	(b) Site specific requirements																	
6. Time for Meetings (Clause 13)		<i>If nothing stated, as reasonably required by the Principal.</i>																
7. Timing (Clause 14)	(a) Working hours	<i>If nothing stated, as reasonably directed by the Principal.</i>																
	(b) Time for Commencement	<i>If nothing stated, as reasonably directed by the Principal.</i>																

Reference Schedule

Item	Details
(c) Time for Completion for Completion (d) Program (e) Additional requirements of Completion	<p><i>If nothing stated, as reasonably directed by the Principal.</i></p> <p>The Supplier is required to complete delivery as soon as possible on the issuing of the Letter of Acceptance and no later than 31st May 2024</p> <p><i>Note// additional requirements of Completion may be described elsewhere in the Contract.</i></p>
8. Invoices: (Clause 16) (a) Invoices may be submitted on: (b) Invoices should be emailed to: (c) Other requirements for invoices:	<p>Invoices are to be issued on completion of each delivery</p> <p><i>If nothing stated, on the 21st day of each month for Goods and Services provided up to the 21st of that month.</i></p> <p>accounts.payable@banana.qld.gov.au</p> <p>A copy of the delivery dockets are to be submitted with each invoice</p>
9. Applicable policies, guidelines, procedures and codes of the Principal (Clause 17.1(b))	<p>Council Policies and Procedures which can be found at www.banana.qld.gov.au</p>
10. Liability Limit (Clause 22) (a) The Principal's liability is limited to: (b) The Supplier's liability is limited to:	<p><i>If nothing stated, the Principal's liability is limited to an amount equal to the Price paid in the 12 months preceding the relevant Claim.</i></p> <p><i>If nothing stated, the Supplier's liability is not limited.</i></p>
11. The Supplier must effect the following insurances: (Clause 23)	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims <input type="checkbox"/> Professional indemnity insurance in the amount of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims <input checked="" type="checkbox"/> Third party and comprehensive motor vehicle insurance for each vehicle used by the Supplier in performing its obligations under the Contract <input type="checkbox"/> Plant and equipment insurance for each item of plant for the full replacement value of the plant <input checked="" type="checkbox"/> Workers' compensation insurance in respect of the Supplier's Personnel as required by law <input checked="" type="checkbox"/> Transit insurance for any Goods which are required by the Contract to be Delivered whilst those Goods are in transit <p><i>If not selected, the Supplier is not required to effect the insurance.</i></p>
12. Intellectual Property (Clause 26) (a) Project IP, the alternative applying	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Alternative 1 – Project IP vests in the Principal <input type="checkbox"/> Alternative 2 – Project IP vests in the Supplier

Reference Schedule

Item	Details
	<i>If nothing stated, Alternative 1 applies.</i>
(b) Moral Rights consent	<input checked="" type="checkbox"/> Moral Rights consent is required <input type="checkbox"/> Moral Rights consent is not required
	<i>If nothing selected, a Moral Rights consent is required.</i>

General Conditions



PARTIES:

Banana Shire Council ABN 85 946 116 646 of 62 Valentine Plains Road Biloela in the State of Queensland.

(Principal)

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

(Supplier)

BACKGROUND:

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

THE PARTIES AGREE:

1. DEFINITIONS

- 1.1 In the Contract, unless inconsistent with the context or subject matter:
 - (a) **Acceptance** means unless otherwise agreed between the Parties, the earlier of the time at which:
 - (i) written notification of acceptance is given by the Principal to the Supplier; or
 - (ii) five Business Days have elapsed from the time at which the Goods were received by the Principal and the Principal has not given a direction;
 - (b) **Affected Party** has the meaning given in clause 29.1;
 - (c) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
 - (d) **Authority** means a local government, the State of Queensland, the Commonwealth or any other Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality (including a stock exchange) having jurisdiction over the Contract or the obligations to be performed under the Contract;
 - (e) **Background IP** of a Party means all Intellectual Property Rights which are made available by a Party for the purpose of the provision of the Goods and/or Services which are in existence at the date of the Contract or brought into existence after the date of the Contract other than in connection with the Contract;
 - (f) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made in connection with the Contract;
 - (g) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law

(including without limitation any claim by the Supplier for an extension of time, Variation or other adjustment to the Price);

- (h) **Completion** means the stage in the performance of the Supplier's obligations under the Contract at which:
- (i) each and every part of the Services has been carried out and completed in accordance with the Contract, except for minor omissions which do not reasonably affect the benefit to the Principal of the Services or prevent the Principal from using the Supplier Documents for the purpose or purposes stated in or to be reasonably inferred from the Contract;
 - (ii) where the Contract requires the Supplier to deliver Goods, the whole of the Goods have been Delivered;
 - (iii) all Supplier Documents have been updated and provided to the Principal in accordance with the Contract; and
 - (iv) other obligations of the Supplier which are stated in the Contract to be a requirement of Completion, or which are otherwise required to be undertaken prior to Completion have been completed;
- (i) **Confidential Information** means the Contract and all documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a Party in connection with the Contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public domain other than through a breach of clause 25;
- (j) **Conflict of Interest** means any actual, potential or perceived conflict between the interests of the Supplier and the Supplier's obligations under the Contract;
- (k) **Contract** means the documents identified in clause 2.1;
- (l) **Delivered** means delivered to the Principal or made available for collection (as the case may be) at the Delivery Place in a condition which complies with the requirements of the Contract, along with all information and documentation required by the Contract;
- (m) **Delivery Place** means the place for delivery or collection of the Goods as stated in the Reference Schedule;
- (n) **Discloser and Disclosee** have the meanings given in clause 1.1(i);
- (o) **Exceptional Circumstances** means disclosure:
- (i) for the purpose of complying with the Disclosee's obligations or exercising the Disclosee's rights in connection with the Contract;
 - (ii) with the Discloser's prior consent;
 - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to whom it is necessary to disclose the information;
 - (iv) to the extent necessary to comply with the Disclosee's reasonable corporate governance or insurance requirements;
 - (v) to any of its Personnel who are bound to keep the information confidential and to whom it is necessary to disclose the information;
 - (vi) to comply with the law or a requirement of an Authority;

- (vii) to the extent necessary to enforce its rights or defend a Claim in connection with the Contract;
 - (viii) by the Principal for the purposes of enabling the Principal to properly discharge its functions as a local government authority; and
 - (ix) to the extent otherwise expressly permitted by the Contract;
- (p) **Force Majeure** means:
- (i) an act of God, earthquake, lightning, cyclone, tsunami, flooding, fire emanating from outside the Site, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;
 - (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
 - (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
 - (iv) embargo;
 - (v) illness declared by the World Health Organisation to be a pandemic;
 - (vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the Supplier or otherwise caused by or contributed to by the Supplier and which affects an essential portion of the Supplier's obligations under the Contract;
- which:
- (A) is beyond the immediate or reasonable control of the Affected Party;
 - (B) is not directly or indirectly caused or contributed to by the Affected Party or the Affected Party's Personnel; and
 - (C) cannot reasonably be avoided, remedied or overcome by the Affected Party by a standard of care and diligence expected of a prudent and competent local government or supplier (as the case may be) or the expenditure of a reasonable sum of money;
- (q) **General Conditions** means these general conditions;
- (r) **Good Industry Practice** means:
- (i) the standard of skill, care and diligence; and
 - (ii) practices, methods, techniques and acts,
- of a skilled and competent supplier engaged in the business of providing goods, services or work similar to the Goods and Services;
- (s) **Goods** means any plant, equipment, materials, parts, consumables or other goods provided, or to be provided by the Supplier under the Contract (including any such Goods which are not specifically mentioned in the Contract but which are obviously and indispensably necessary for the supply of Goods that are mentioned);
- (t) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (u) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings;

- (v) **Hand Over Time** means:
- (i) where Goods are used, supplied or installed by the Supplier in connection with the performance of Services, at the time at which they used, supplied or installed by the Supplier; and
 - (ii) where Goods are supplied other than in connection with the performance of Services, at the time at which they are Delivered;
- (w) **HVNL** means the Heavy Vehicle National Law (Queensland) and the regulations made under that law, as may be amended or replaced from time to time;
- (x) **Improper Conduct** means:
- (i) engaging in misleading or deceptive conduct in relation to the Procurement Process or the Contract;
 - (ii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the Procurement Process;
 - (iii) failing to disclose a Conflict of Interest in breach of clause 5.3;
 - (iv) attempting to improperly influence any Personnel of the Principal, or violate any applicable law regarding the offering of inducements in connection with the Procurement Process or the Contract;
 - (v) accepting or inviting improper assistance of employees or former employees of the Principal in preparing its tender or any Claim against the Principal in connection with the Contract;
 - (vi) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract;
 - (vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
 - (viii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).
- (y) **Insolvency Event** in respect of a Party, means the Party:
- (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation;
 - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
 - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (z) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, project management, industrial, scientific, literary or artistic fields, whether foreign or domestic and includes Moral Rights;

- (aa) **Key Personnel** means the Personnel (if any) nominated as key personnel in the Reference Schedule;
- (bb) **Liability Limit** means:
 - (i) in respect of the Principal, the sum of:
 - (A) the amount specified in item 10(a) of the Reference Schedule; and
 - (B) the amount of any excess payable under a policy of insurance required to be effected and maintained by the Principal under the Contract;
 - (ii) in respect of the Supplier, the sum of:
 - (A) the amount specified in item 10(b) of the Reference Schedule; and
 - (B) the amount of any excess payable under a policy of insurance required to be effected and maintained by the Supplier under the Contract;
- (cc) **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
- (dd) **Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth);
- (ee) **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- (ff) **National Police Certificate** means a hard copy or digital national police certificate issued by the Queensland Police Service;
- (gg) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;
- (hh) **Party or Parties** means one or both of the Principal and the Supplier as the context requires;
- (ii) **Payment Period** means:
 - (i) if the Contract is a 'building contract' as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), the period ending 15 Business Days after receipt by the Principal of the claim;
 - (ii) otherwise, the period ending 25 Business Days after receipt by the Principal of the claim;
- (jj) **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld);
- (kk) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, suppliers, contractors and subcontractors of a Party and any other person or entity for whom that Party is vicariously liable but in respect of the Principal, does not include the Supplier;
- (ll) **Price** means the amount payable for the provision of Goods and/or Services as determined in accordance with Schedule 1;
- (mm) **Principal** means the entity identified as the Principal on page 6 of the Contract;
- (nn) **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the Supplier pursuant to clause 6.1 and includes, except where the context requires otherwise, a person authorised as a delegate of the Principal's Representative pursuant to clause 6.3;

- (oo) **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;
- (pp) **Project IP** means the Intellectual Property Rights in the Supplier Documents and all other goods, materials, documents or data created in the performance of the Supplier's obligations under the Contract;
- (qq) **Qualifying Cause of Delay** means:
- (i) an act or omission of the Principal or the Principal's Personnel;
 - (ii) Force Majeure; or
 - (iii) any other cause of delay identified elsewhere in the Contract as entitling the Supplier to an extension of the Time for Completion for Completion;
- (rr) **Reference Schedule** means the schedule of that name included in the Contract;
- (ss) **Regulator** has the meaning given in the WHS Act and WHS Regulation;
- (tt) **Scope** means the documents and information contained in, or incorporated into, Schedule 1 which detail the Principal's requirements for the provision of the Goods and/or Services by the Supplier;
- (uu) **Services** means the services to be provided or the work to be carried out as described in Schedule 1, including:
- (i) the supply, use or installation of any Goods, the construction of any Works and the provision of Supplier Documents, in connection with the performance of such services or work; and
 - (ii) any services, work or goods not specifically mentioned in Schedule 1 but that are obviously and indispensably necessary for the performance of the services, work or goods that are mentioned;
- (including the provision of Supplier Documents) and any services not specifically mentioned in Schedule 1 but that is obviously and indispensably necessary for the performance of the services that is mentioned;
- (vv) **Site** means the site or sites made available by the Principal to the Supplier for the purpose of the Supplier carrying out its obligations under the Contract;
- (ww) **Substantial Breach** includes:
- (i) in respect of the Supplier:
 - (A) a material breach of the Contract including:
 - I a material breach of clause 8.1;
 - II the Supplier or any of the Supplier's Personnel engaging in:
 - (1) any Improper Conduct in connection with the Contract; or
 - (2) otherwise engaging in any Improper Conduct (whether or not in connection with the Contract) in a manner which, in the Principal's opinion, causes harm to the Principal's reputation;

- III failing to make a payment to the Principal within 20 Business Days after the due date for the making of the payment in clause 16.6;
 - IV failing to effect and maintain the insurance policies required under clause 23;
 - V failing to comply with a direction given or purportedly given under clause **Error! Reference source not found.**;
 - VI a warranty given or representation made in or pursuant to this Contract is found to be incorrect, false or misleading in any material respect;
 - VII a material breach of a law in connection with the Contract;
- (B) a material departure from any program or schedule included in the Contract without reasonable cause or the Principal's approval or, where there is no program, failing to proceed with due expedition and without delay;
 - (C) suspending performance of its obligations under the Contract without the prior written consent of the Principal;
 - (D) the consistent or repeated breach of the Contract by the Supplier, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the Supplier;
 - (E) anything else which the Contract elsewhere provides is a substantial breach of the Contract;
- (ii) in respect of the Principal:
 - (A) failing to make payment to the Supplier within 20 Business Days after the due date for the making of the payment in clause 16.6 or 16.7 as the case may be;
 - (B) otherwise committing a material breach of the Contract; or
 - (C) anything else which the Contract elsewhere provides is a substantial breach of the Contract;
- (xx) **Supplier** means the person or entity identified as the Supplier on page 6 of this Contract;
 - (yy) **Supplier's Representative** means the person identified as the Supplier's representative in the Reference Schedule or as otherwise approved by the Principal pursuant to clause 7;
 - (zz) **Supplier Documents** means those records, reports, designs, specifications, certificates, plans and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Supplier (including any WHS documentation and management plans required by the Contract) and all information advice, procedures, undertakings, designs, calculations and recommendations in those documents;
 - (aaa) **Time for Commencement** means the time stated in the Reference Schedule by which the Supplier is required to commence performing its obligations under the Contract (or where no time is stated, promptly after the date of the Contract);

- (bbb) **Time for Completion** means the time (if any) stated in the Reference Schedule by which the Supplier is required to achieve Completion as extended (if at all) pursuant to the Contract;
- (ccc) **Time for Delivery** means the time by which Goods are to be Delivered as stated in the Reference Schedule as extended (if at all) pursuant to the Contract;
- (ddd) **Variation** means any material increase, decrease or change to the Goods or Services or the Supplier's obligations under the Contract;
- (eee) **Warranty Period** for Goods means the longer of:
- (i) the period stated in the Reference Schedule or where no period is stated, 12 months after the Hand Over Time; and
 - (ii) such further period required under or implied by any applicable law, which period may continue after the Contract has come to an end;
- (fff) **WHS** means work, health and safety;
- (ggg) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;
- (hhh) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;
- (iii) **Wilful Misconduct** means an intentional act or omission by or on behalf of a Party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;
- (jjj) **Workplace** has the meaning given in the WHS Act and the WHS Regulation; and
- (kkk) **Works** means any work which by the Contract, is to be handed over to the Principal.

2. CONTRACT

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

3. PERFORMANCE AND PAYMENT

- 3.1 **(Performance)** The Supplier must, at the Supplier's expense, provide the Goods and/or Services and otherwise comply with its other obligations under the Contract in accordance with the Contract and all directions of the Principal issued pursuant to it.
- 3.2 **(Payment)** Subject to the Contract, the Principal must pay the Supplier the Price for the Goods and/or Services provided in accordance with the Contract.

4. NO EXCLUSIVITY

- 4.1 The Supplier is not the exclusive supplier of the Goods and/or Services, or of goods and/or services of the same or a similar type to the Goods and/or Services. The Principal may engage other suppliers to provide services of the same or a similar type to the Services.

5. RELATIONSHIP OF THE PARTIES

- 5.1 **(Relationship)** The Supplier is an independent contractor of the Principal. The Contract does not create any partnership, joint venture or employment relationship. The Supplier is solely responsible for payments required to be made to its Personnel for the performance of services in connection with the Contract and solely responsible for determining the manner in which it complies with its obligations under the Contract. The Supplier must provide such materials, equipment, knowledge and Personnel as the Supplier deems necessary to comply with its obligations and under the Contract.
- 5.2 **(Representations)** The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Principal. Except to the extent expressly contemplated in the Contract, the Supplier must not represent itself or allow anyone else to represent that the Supplier is an agent of the Principal.
- 5.3 **(Conflict of Interest)** The Supplier warrants and represents that as at the date of the Contract, the Supplier is not aware of any Conflict of Interest. The Supplier must not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which does, or is likely to, result in a Conflict of Interest during the Contract and must immediately notify the Principal in the event that a Conflict of Interest that has not previously been disclosed arises or is likely to arise.

6. PRINCIPAL'S REPRESENTATIVES

- 6.1 **(The Principal's Representative)** The Principal's Representative is appointed as the Principal's agent to exercise any of the Principal's rights or functions under the Contract. The Principal's Representative is not an independent certifier or valuer.
- 6.2 **(Rights and powers of the Principal's Representative)** The Principal's Representative may exercise any rights and powers granted to the Principal under this Contract. The Principal's Representative may give a direction in respect of any matter relating to this Contract, including the protection of people, property and the environment and the Supplier's performance of its obligations under the Contract.
- 6.3 **(Authorised delegates)** The Principal's Representative may, by giving written notice to the Supplier setting out the rights and powers which may be exercised, authorise another person to exercise all or some of the rights and powers under clause 6.2. Subject to clause 6.5, no other person is permitted to exercise any right or function of the Principal. The Supplier must notify the Principal immediately if it receives a purported direction in connection with the Contract from any other person. The Principal shall not be liable upon any Claim relating to a direction given to the Supplier by any other person.
- 6.4 **(Compliance)** The Supplier must, and must ensure that its Personnel, comply with all directions given by the Principal's Representative, within the time specified in the direction, or where no time is stated, as soon as is reasonably practicable.

6.5 **(Change)** The Principal may notify the Supplier of a change in the Principal's Representative at any time.

7. SUPPLIER'S REPRESENTATIVE

7.1 **(Supplier's Representative)** The Supplier's Representative is appointed by the Supplier to manage the Supplier's performance of the Contract. Matters which are in the knowledge of the Supplier's Representative are deemed to be within the knowledge of the Supplier.

7.2 **(Change)** The Supplier may seek the approval of the Principal to change the Supplier's Representative. The Supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal may refuse to approve a replacement person if the Principal reasonably believes that the person is inappropriate to take the role of Supplier's Representative or is of lesser skill, experience and competency to the person being replaced. If the Principal reasonably objects to the nominated representative, the Supplier shall promptly nominate another representative.

8. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

8.1 **(Obligations, Warranties and Representations)** The Supplier:

(a) **(ability)** must ensure, and warrants and represents that the Supplier and, to the extent applicable to them, its Personnel:

- (i) have the experience, skills, expertise, resources and judgement;
- (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

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

(b) **(standard)** must, and to the extent applicable to them must ensure that its Personnel, provide the Goods and/or Services and carry out the Supplier's other obligations in connection with the Contract in accordance with Good Industry Practice and so that the Goods and/or Services are suitable and adequate for the purpose or purposes stated in the Contract;

(c) **(workmanship)** where the Contract requires the carrying out and completion of any Works, must ensure that at Completion those Works:

- (i) are free from defects; and
- (ii) comply in all respects with:
 - (A) the Contract;
 - (B) any approved design of the Works; and
 - (C) Applicable Standards; and
- (iii) are suitable and adequate for the purpose or purposes stated in the Contract,

and that any design prepared by the Supplier in relation to the Works is in accordance with the requirements of the Contract;

(d) **(condition of Goods)** must ensure that all Goods used, supplied or installed by the Supplier in connection with the Contract:

- (i) at the Hand Over Time and for the duration of any applicable Warranty Period:
 - (A) are free from defects and of merchantable quality;
 - (B) comply in all respects with the Contract including as to quality, quantity, performance, functionality and description;
 - (C) conform to any sample goods approved by the Principal; and
 - (D) are suitable and adequate for the purpose or purposes for which they are used or supplied by the Supplier;
 - (ii) at the Hand Over Time comply with applicable law and Applicable Standards; and, where manufactured, are new; and
 - (iii) when title passes, are free from all encumbrances and interests, except for an encumbrance or interest which arises by operation of a law and which cannot be excluded by agreement;
- (e) **(Supplier Documents)** must ensure that where the Supplier provides Supplier Documents under the Contract:
- (i) those Supplier Documents:
 - (A) comply with the requirements of the Contract and applicable law;
 - (B) are of a standard and quality reasonably expected of a skilled and competent supplier using Good Industry Practice;
 - (C) are suitable and adequate for the purpose for which they are provided;
- (f) **(intellectual property)** must ensure that, except to the extent that the Goods or Supplier Documents are manufactured or prepared strictly in accordance with technical plans or drawings provided to the Supplier by the Principal:
- (i) the Goods and Supplier Documents; and
 - (ii) the Principal's use of the Goods and the Supplier Documents for a purpose stated in or to be reasonably inferred from the Contract,
- will not infringe Intellectual Property Rights;**(investigations)** warrants and represents that the Supplier has carefully reviewed the Contract (including the Scope and all other information contained or referenced in Schedule 1) and is satisfied that the Scope and other information is appropriate and adequate to enable the Supplier to comply with its obligations under the Contract;
- (g) **(legal capacity)** must ensure, and warrants and represents that the Supplier has the full power, authority and capacity to enter into the Contract and that the Supplier's obligations under the Contract are valid and binding on it, and enforceable against it;
 - (h) **(Price)** warrants and represents that the rates and prices in the Contract include the supply, delivery, insurance and packaging of Goods and compliance with all of the Supplier's other obligations under the Contract except, and then only to the extent, that the Contract provides otherwise.

8.2 **(Improper Conduct)** The Supplier warrants and represents that neither the Supplier nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Supplier must not engage in any Improper Conduct in connection with the Contract.

8.3 **(Notice of breach)** The Supplier must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the

Supplier has breached a warranty given, representation made or obligation provided for in clause 8.1 or 8.2.

8.4 **(Obligations, warranties and representations not affected)** The obligations, warranties and representations in clause 8.1 remain unaffected notwithstanding:

- (a) that the Scope was prepared by the Principal or the Principal's Personnel;
- (b) any inspection, test, receipt, review, permission, approval or comment on, of or in relation to the Goods or Services by the Principal or the Principal's Personnel;
- (c) any Variation or other direction by the Principal or the Principal's Personnel; or
- (d) the adoption or incorporation into the Supplier Documents by the Supplier of any industry standard any information or documentation provided by others (including information or documentation provided by or on behalf of the Principal),

except that clauses 8.4(c) and 8.4(d) do not apply to the extent that the Supplier has, prior to acting or omitting to act in reliance on the direction or the affected Supplier Documents, given the Principal written notice expressly stating that the Variation, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

9. GOODS

9.1 **(Delivery)** The Supplier shall comply with all requirements relating to delivery which are stated in the Contract or which are otherwise reasonably directed by the Principal.

9.2 **(Change to delivery details)** The Principal may request the Supplier to vary the Time for Delivery and/or the Delivery Place and the Supplier shall comply with the varied requirements at its expense unless it cannot reasonably do so. The Supplier shall not be entitled to any monetary compensation in connection with a change to the Time for Delivery or the Delivery Place unless the Supplier notifies the Principal of such additional costs prior to taking any steps to comply with the request.

9.3 **(Delivery dockets)** The Supplier must provide a true and correct delivery docket to the Principal at the time at which the Goods are Delivered. The signing of a delivery docket by the Principal shall be evidence only that Goods have been received and not that those Goods comply with the Contract.

9.4 **(Title and risk)** Title to and property in the Goods shall pass immediately to the Principal upon payment. Risk in the Goods shall remain with the Supplier until Acceptance by the Principal. If, after Acceptance, the Principal gives the Supplier a direction under clause **Error! Reference source not found.** in respect of the Goods, then Goods shall be at the risk of the Supplier from the earlier of:

- (a) 1 Business Day after the Principal gives the direction; and
- (b) the time at which the Supplier takes possession of the Goods the subject of the direction.

9.5 **(Security Interest)** The Supplier acknowledges that the Principal has a security interest in the Goods and the proceeds of the Goods for the purpose of the *Personal Property Securities Act 2009* (Cth) and agrees to provide all reasonable assistance to the Principal in order to perfect and enforce that security interest.

9.6 **(No acknowledgement)** Taking possession of, or Acceptance of, Goods shall not constitute an admission by the Principal that those Goods comply with the Contract.

10. SUPPLIER'S PERSONNEL

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

Principal in relation to any potential or actual industrial relations issues which could affect the ability of the Supplier to comply with its obligations under the Contract.

10.6 **(Modern Slavery)** The Supplier:

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

10.7 **(Labour Hire)** The Supplier must not provide or utilise any labour hire services in connection with the Contract, unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld).

10.8 **(Removal)** The Principal may at any time direct the Supplier to remove any of the Supplier's Personnel from the performance of the whole or part of the Supplier's obligations under the Contract if the Principal reasonably believes that the Supplier is in breach of any clauses 8.1(a), 8.2, 10.1, 10.3, 10.6 or 10.7 or if a National Police Certificate contains any entries in respect of that person, or that the person is otherwise responsible for a breach of the Contract by the Supplier.

11. SUBCONTRACTING, ASSIGNMENT AND NOVATION

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

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

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

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

12. SITE

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

- (a) evidence of insurance required by clause 23.4;
- (b) copies of all competencies, licences, accreditations, qualifications, permits, clearances or other authorisations which are required for the Supplier to comply with its obligations under the Contract;

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

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

12.3 **(Site specific requirements)** The Supplier must comply with the reasonable requirements of the Principal in relation to the Supplier's access to or conduct on the Site, including those identified in the Reference Schedule.

13. MEETINGS

13.1 The Supplier must, at the times stated in the Reference Schedule and when otherwise reasonably required by the Principal, meet and discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract.

14. TIMING

14.1 **(Timing)** Subject to clause 14.2, the Supplier must commence performing its obligations under the Contract by the Time for Commencement and must perform those obligations:

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

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

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

- (a) is delayed in reaching Completion by the Time for Completion or in delivering the whole or any part of the Goods by a relevant Time for Delivery because of a Qualifying Cause of Delay; and
- (b) the Supplier gives the Principal a written claim for an extension of the Time for Completion or Time for Delivery within 10 Business Days of the delay first occurring,

then the Principal shall grant a reasonable extension of the Time for Completion for Completion or Time for Delivery as the case may be. The Principal may, grant an extension of the Time for

Completion or Time for Delivery for delay caused by any other cause of delay. The Supplier must provide the Principal with all information reasonably directed by the Principal's Representative in connection with the delay.

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

- (a) is entitled to an extension of Time for Completion or Time for Delivery under clause 14.3 because of a delay caused by the Principal or the Principal's Personnel; and
- (b) submits a written claim for delay costs within 10 Business Days of the cessation of the delay,

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

15. VARIATIONS

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

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

15.3 **(Adjustment of Price)** Subject to clause 15.4, the effect of a Variation on the Supplier's entitlement to payment shall be determined using the following order of priority:

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

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

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

15.5 **(Variations requested by the Supplier)** The Principal may approve a request for a Variation by the Supplier. Unless the Principal agrees otherwise in writing, a Variation approved under this clause 15.5 shall have no effect on the Supplier's entitlement to payment, timing of the Supplier's obligations or any other obligation of the Supplier under the Contract.

15.6 **(Omissions)** Where the Principal directs a Variation omitting or reducing any part of the Goods and/or Services, then the Principal may subsequently provide the omitted or reduced Goods and/or Services itself or engage others to do so on its behalf. The Supplier shall not be entitled to any monetary compensation in connection with an omission or reduction, and such omission or reduction shall not invalidate or constitute repudiation of the Contract.

16. INVOICES AND PAYMENT

- 16.1 **(Timing of invoices)** Subject to clause 16.11, the Supplier may submit invoices to the Principal for Goods and/or Services provided in accordance with the Contract at the times and for the Goods and/or Services stated in the Reference Schedule. Unless otherwise directed, all invoices should be submitted promptly and final invoices should be submitted no later than 5 Business Days after Completion.
- 16.2 **(Requirements of invoices)** Each invoice must comply with the GST Law and all other requirements stated in the Contract or which the Principal reasonably directs prior to the time for submission of the invoice.
- 16.3 **(Further supporting documentation)** The Principal may, acting reasonably, direct the Supplier to provide documentary evidence supporting the Supplier's entitlement to payment of the whole or part of the amount claimed. Until such evidence is provided the Principal may assess the claim on the basis that the supporting documentation does not exist.
- 16.4 **(Entitlement to payment)** The Supplier shall only be entitled to payment for Goods and/or Services which are provided in accordance with the requirements of the Contract (including the warranties given and representations made in the Contract).
- 16.5 **(Amount due)** The Principal may deduct from any amount claimed by the Supplier under or in connection with the Contract (including for a breach of the Contract):
- (a) any amount which the Contract entitles the Principal to deduct; and
 - (b) any other amount due and owing by the Supplier to the Principal.
- The balance remaining after such deductions shall be due by the Principal to the Supplier or by the Supplier to the Principal as the case may be and shall be certified as such by the Principal within 15 Business Days after the invoice is received.
- 16.6 **(Due date for payment)** Subject to the Contract, the Principal shall pay the amount due to the Supplier (if any) including any applicable GST before the end of the Payment Period. If an amount is due from the Supplier to the Principal, the Supplier must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from the Principal.
- 16.7 **(Disputed Invoice)** If the Principal disputes an invoice issued by the Supplier:
- (a) the Principal will pay the undisputed portion of the relevant invoice (if any) less any deductions provided for under clause 16.5 and dispute the balance; and
 - (b) if the resolution of the dispute determines that the Principal must pay an amount to the Supplier, the Principal will pay that amount upon resolution of that dispute.
- 16.8 **(No admission)** Payments made by the Principal to the Supplier are made on account only and do not constitute an admission that the Supplier is entitled to the payment made or that the Goods, Services and/or the Supplier Documents the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.
- 16.9 **(Sole entitlement)** Except to the extent expressly provided otherwise in the Contract, payment of the Price shall be the Supplier's only entitlement to monetary compensation for the provision of the Goods and Services and compliance with the Supplier's other obligations under the Contract.
- 16.10 **(Liability for GST)** If GST is imposed on any supply made pursuant to the Contract, the amount payable for the supply is to be increased by the amount of that GST. Each Party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment or refund

in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Contract.

- 16.11 **(Recipient created tax invoices)** Where the Principal is the recipient of a taxable supply under this Contract the Principal may issue recipient created tax invoices or recipient created adjustment notes in respect of these supplies in accordance with the GST Law and direct the Supplier not to issue tax invoices or adjustment notes in respect of the same supplies.

17. LAW AND POLICIES

- 17.1 **(Compliance)** The Supplier must, and must ensure that its Personnel involved in the provision of the Goods and performance of the Services, comply with:

- (a) all law, standards and codes of practice applicable to the Supplier, the Supplier's business or the Supplier's obligations under the Contract; and
- (b) any applicable policies, guidelines, procedures and codes of the Principal which are identified in the Contract or which are publicly available or otherwise made known to the Supplier from time to time.

- 17.2 **(Change in law)** If a law:

- (a) necessitates:
 - (i) a change to the Goods and/or Services;
 - (ii) a change in a fee or charge; or
 - (iii) the payment of a new fee or charge;
- (b) comes into effect after the date of the Contract and could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the Supplier to incur more or less cost than otherwise would have been incurred,

then the Supplier may notify the Principal in writing of the law and the effect of it on the Supplier.

After the notice is given, the Parties shall attempt to agree on a change to either or both of the Supplier's obligations under the Contract or the Price. If the Parties have not reached agreement within 45 Business Days after the notice is given, then either Party may give a notice of dispute pursuant to clause 31. Unless otherwise directed by the Principal, but notwithstanding the giving of a notice of dispute, the Supplier must continue to comply with its obligations under the Contract, including by making any payments or doing any things required to comply with the law.

18. WORK HEALTH AND SAFETY

- 18.1 **(Relationship of obligations)** The obligations in this clause 18 are in addition to, and not in substitution for, any other obligation of the Supplier:

- (a) under the WHS Act and WHS Regulation; or
- (b) elsewhere in this Contract or at law relating to WHS.

Nothing in this clause 18 is intended to reduce or limit such other obligations and none of those other obligations shall be taken to reduce or limit the Supplier's obligations under this clause 18.

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

- (a) comply with all law (including the WHS Act and the WHS Regulation) and codes of practice relating to WHS that are in any way applicable to this Contract;
- (b) discharge the duties and comply with all relevant duties, obligations, standards and requirements under the WHS Act and WHS Regulation which are or may become applicable in connection with the Contract including any direction relating to WHS issued by the Regulator or any other Authority;
- (c) at all times identify and take all reasonably practicable steps to ensure health and safety of all persons who may be affected by the performance of the Supplier's obligations under the Contract;
- (d) consult with and co-operate with the Principal in relation to matters of WHS that the Principal (acting reasonably) considers the Supplier cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal to ensure any issues are resolved to that standard;
- (e) except where the Supplier is the principal contractor for a Site under the WHS Regulation, (in which case this clause 18.2(e) does not apply), comply with:
 - (i) the reasonable requirements of any third party appointed by the Principal as principal contractor for the Site; or
 - (ii) if no third party has been so appointed for the Site, the WHS policies and procedures and other WHS requirements of the Principal which are in any way applicable to this Contract for that Site.

18.3 (Incident notification) The Supplier must:

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

18.4 (Supplier's WHS systems) The Supplier:

- (a) warrants and represents that it has adequate WHS systems in place having regard to the nature of its obligations under the Contract and any hazards specific to any Workplace at which an obligation under the Contract is to be carried out;
- (b) must inform the Principal of all its WHS policies, procedures or measures implemented for the performance of its obligations under this Contract;
- (c) must prepare and adopt WHS documentation which:
 - (i) addresses all the specific WHS hazards and issues relevant to the Supplier's obligations under the Contract which can be reasonably anticipated or ascertained at that time;

- (ii) documents the system and control methods to be implemented for the performance of its obligations under the Contract,

and must update such documentation as required from time to time to ensure that it complies with clause 18.4(c);

- (d) must, where directed to do so by the Principal:

- (i) prior to commencing the Supplier's other obligations under the Contract, submit the Supplier's WHS documentation (including the documentation required elsewhere under the Contract) to the Principal for review; and
- (ii) within the time directed by the Principal, submit to the Principal for review any other WHS documentation that the Principal directs it to prepare,

and if the Principal notifies the Supplier that all or part of the WHS documentation is not suitable, at its cost amend and resubmit the relevant WHS documentation;

- (e) must, if the Principal at any time during the performance of the Supplier's obligations under the Contract requests the Supplier to review any of the WHS documentation, promptly and within the time required by the Principal, review any or all of the WHS documentation in accordance with the Principal's request and either:

- (i) submit revised documentation to the Principal; or
- (ii) provide written confirmation that the WHS documentation is appropriate to manage the risks associated with the Supplier's obligations under the Contract;

- (f) is not entitled to make any Claim (whether for additional costs or expense or an extension to the Time for Completion) in connection with its obligations under this clause.

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

19. HEAVY VEHICLE NATIONAL LAW

19.1 **(Definitions)** Terms used in this clause which are defined in the HVNL have the same meaning as in that law unless the context otherwise requires.

19.2 **(Primary obligation)** The Supplier must ensure that, so far as is reasonably practicable, the safety of the Supplier's transport activities. Without limiting this, the Supplier must, so far as is reasonably practicable:

- (a) eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, minimise the public risks; and
- (b) ensure the Supplier's conduct does not directly or indirectly cause or encourage:
 - (i) the driver of the heavy vehicle to contravene the HVNL; or
 - (ii) the driver of the heavy vehicle to exceed a speed limit applying to the driver; or
 - (iii) another person, including another party in the chain of responsibility, to contravene the HVNL.

19.3 **(Notice)** The Supplier must immediately notify the Principal if the Supplier considers that anything in this Contract, or any act or omission of the Principal or the Principal's Personnel has

or is likely to directly or indirectly cause or encourage the Supplier or any employee or subcontractor of the Supplier:

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

20. PROTECTION OF PROPERTY AND THE ENVIRONMENT

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

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

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

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

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

21. INDEMNITY

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

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

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

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

but the indemnity will be reduced to the extent that the act or omission of the Principal or the Principal's Personnel caused or contributed to the cost, expense, fine, penalty, loss, damage,

injury or death and/or the Principal failed to act reasonably to mitigate the cost, expense, fine, penalty, loss or damage.

- 21.2 **(Acceptance of benefit)** The Principal has informed its officers, employees and related bodies corporate and communicates acceptance on their behalf, of the Supplier's undertaking to indemnify under clause 21.1.

22. LIMITATION OF LIABILITY

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

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

- 22.2 **(Exceptions)** Clause 22.1 does not apply to:

- (a) liability of the Principal to pay the Price;
- (b) liability of either Party in connection with personal injury, or death or damage to property;
- (c) liability of a Party arising as a result of:
 - (i) an infringement of confidentiality or Intellectual Property Rights;
 - (ii) a deliberate breach or abandonment of the Contract;
 - (iii) Wilful Misconduct;
 - (iv) a breach of any law; or
 - (v) fraud or other criminal conduct,by that Party; or
- (d) liability of the Supplier which the Supplier:
 - (i) is entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) unless and then only to the extent that the Supplier uses all reasonable endeavours to, but does not actually, recover that liability; or
 - (ii) would have been entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) but for any act or omission of the Supplier or the existence of this clause 22,

and amounts referred to in subclauses (a), (b), (c) and (d) shall not be included in calculating whether the relevant Party's Liability Limit in clause 22.1(a) has been reached.

23. INSURANCE

- 23.1 **(Insurances to be effected and maintained)** The Supplier must effect the insurances stated in the Reference Schedule and any other insurance which the Supplier considers is necessary to protect its interests or which is required by law.

- 23.2 **(Period of insurance)** The insurance policies required under clause 23.1 must be maintained at all times from the date on which the Supplier commences the performance of its obligations under the Contract:
- (a) until 5pm on the later of:
 - (i) the date on which Completion is achieved; and
 - (ii) the date on which the Supplier's obligations under the Contract are complete; and
 - (b) in respect of professional indemnity insurance only, for a period of 7 years after the date in clause 23.2(a).
- 23.3 **(Subcontractors)** The Supplier must ensure that any subcontractor, supplier or consultant of the Supplier has equivalent insurances to the extent that they are applicable to the part of the Supplier's obligations under the Contract to be carried out by the subcontractor, supplier or consultant.
- 23.4 **(Evidence of insurance)** If requested by the Principal, the Supplier must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by the Principal of the Supplier's compliance with this clause 23. The Principal may suspend the Contract or withhold payment from the Supplier until such evidence is provided.
- 23.5 **(No implied limitation)** Nothing in this clause, nor the Supplier's compliance or non-compliance with it, shall be taken to limit or reduce the Supplier's liability under the Contract or at law.
- 23.6 **(Notification)** The Supplier must:
- (a) if any insurance policy required under the Contract is cancelled or the Principal's interest in respect of any of those policies is adversely affected, immediately notify the Principal's Representative of this;
 - (b) if any event occurs which may give rise to a claim involving the Principal under any policy of insurance to be effected by the Supplier under this clause 23:
 - (i) notify the Principal within 10 Business Days of that event; and
 - (ii) ensure the Principal is kept fully informed of any subsequent actions and developments concerning the relevant claim.

24. INSPECTIONS AND TESTS

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

25. HANDLING OF INFORMATION

- 25.1 **(Obligation of confidence)** A Party must not use the other Party's Confidential Information for any purpose other than complying with its obligations or exercising its rights in connection with the Contract ("Permitted Purpose"). A Party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take

reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.

- 25.2 **(Breach of Confidence)** If a Party becomes aware of a suspected or actual breach of clause 25.1, that Party must immediately notify the other Party and take reasonable steps required to prevent, stop or mitigate the extent of the breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.
- 25.3 **(Return of Confidential Information)** Subject to this clause 25, the Disclosee of Confidential Information must return or destroy (at the Discloser's discretion) all Confidential Information and material containing Confidential Information when it is no longer required by the Disclosee for the Permitted Purpose or when otherwise directed by the Discloser. The Disclosee may, subject to its continuing obligation to comply with this clause 25, keep such copies as are required to comply with any law or to comply with its reasonable corporate governance requirements for so long as is necessary to satisfy those requirements.
- 25.4 **(Personnel)** The Parties must make every reasonable effort to ensure that only its Personnel that have a need to know any Confidential Information for the Permitted Purpose are permitted to access and use the other Party's Confidential Information and its Personnel are aware of and comply with the obligations of confidentiality in this clause 25.
- 25.5 **(Collection of information by the Supplier)** If the Supplier collects or has access to Personal Information as that term is defined in the *Information Privacy Act 2009* (Qld) in order to carry out its obligations under the Contract, the Supplier must comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Contract as if the Supplier was the Principal. Where the Principal consents to the Supplier subcontracting the whole or part of the Supplier's obligations under this Contract, the Supplier must ensure that any subcontract with a subcontractor that will collect or have access to Personal Information contains a clause requiring the subcontractor to acknowledge and agree that it is a 'bound contracted service provider' as that term is defined in the *Information Privacy Act 2009* (Qld).
- 25.6 **(Collection of information by the Principal)** The Principal collects Personal Information and other information in connection with the Contract so that it can properly administer the Contract and otherwise carry out its functions as a local government authority. The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information will be accessible by Personnel of the Principal engaged to assist the Principal in connection with the Contract or otherwise carrying out the functions of the Principal. Information may also be disclosed as otherwise permitted under the Contract or at law, including under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld).
- 25.7 **(Right to Information)** The Supplier acknowledges that:
- (a) the *Right to Information Act 2009* (Qld):
 - (i) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including the Principal);
 - (ii) requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest; and
 - (b) information provided by the Supplier in connection with the Contract is potentially subject to disclosure to third parties, including information marked as confidential;
 - (c) the Principal will assess any application for disclosure in accordance with the terms of the *Right to Information Act 2009* (Qld).
- 25.8 **(Media)** The Supplier must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether oral or written, in connection with the Contract in any media without the prior approval of the Principal.

26. INTELLECTUAL PROPERTY

- 26.1 **(Background IP)** Background IP of a Party shall remain the exclusive property of that Party. The Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Principal's Background IP strictly for the purpose of complying with the Supplier's obligations under the Contract and for no other purpose. The Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Supplier's Background IP for any purpose for which the Goods and/or Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract. Each Party warrants and represents to the other that the use of the Party's Background IP will not infringe any Intellectual Property Rights of a third party.
- 26.2 **(Project IP - Alternative 1)** If the Reference Schedule provides that Project IP vests in the Principal, then:
- (a) Project IP vests on creation in and is the exclusive property of the Principal;
 - (b) to the extent (if any) that clause 26.2(a) does not vest Project IP in the Principal, the Supplier assigns all right, title and interest in the Project IP to the Principal; and
 - (c) the Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Supplier to comply with the Supplier's obligations under the Contract and for no other purpose.
- 26.3 **(Project IP - Alternative 2)** If the Reference Schedule provides that Project IP vests in the Supplier, Project IP vests in the Supplier on creation and the Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Project IP for any purpose for which the Goods and/or Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract.
- 26.4 **(Moral Rights consent)** If the Reference Schedule provides that a Moral Rights consent is required then:
- (a) the Principal may do anything which would, but for this clause, constitute an infringement of the Moral Rights of the Supplier or any of its Personnel in the Background IP or the Project IP; and
 - (b) the Supplier must procure, and on request by the Principal provide to the Principal a copy of, a written consent to this effect from each of its Personnel that is the author of any Supplier Documents.
- 26.5 **(Warranty and representation by Supplier)** The Supplier warrants and represents that:
- (a) it has the necessary rights to exercise any Intellectual Property Rights that it uses to perform its obligations under the Contract, or to assign or license the Supplier's Background IP and Project IP in accordance with this clause 26;
 - (b) it has not infringed and will not infringe any Intellectual Property Rights of a third party in connection with the performance of its obligations under the Contract; and
 - (c) except to the extent that the infringement is caused by the Supplier's incorporation of the Principal's Background IP, the Project IP and the Principal's use of the Project IP for a purpose stated in or to be reasonably inferred from the Contract will not infringe the Intellectual Property Rights of a third party.

27. NON-CONFORMANCE

- 27.1 **(Non-conformance)** Where any of part of the Goods and/or Services provided by the Supplier does not conform strictly to the requirements of the Contract or the Supplier fails to comply with

any other obligation of the Supplier under the Contract, the Principal may, in addition to or as an alternative to exercising its rights under clause 30, exercise the rights provided in clause 27.2.

27.2 **(Principal's rights)** Where permitted by clause 27.1, the Principal may direct the Supplier to provide a detailed proposal as to how the Supplier proposes to rectify the non-conformance and the time within which such a proposal is to be provided. Whether or not the Principal has directed the Supplier to provide a proposal the Principal may:

- (a) direct the Supplier to rectify the non-conformance or failure including by:
 - (i) performing or reperforming any non-conforming Services;
 - (ii) removing, demolishing, repairing, replacing or reconstructing any non-conforming Works;
 - (iii) replacing non-conforming Supplier Documents; and
 - (iv) make good any damage to any property (including Works or Goods) to the extent caused by the non-conformance or the rectification,at the Supplier's expense and within the timeframes reasonably directed by the Principal;
- (b) direct the Supplier to rectify the non-conformance or failure by removing, repairing or replacing non-conforming Goods;
- (c) reject non-conforming Goods, in which case the Principal may:
 - (i) return the non-conforming Goods (or where it is reasonable do so, the whole of the Goods) to the Supplier or direct the Supplier to collect those Goods at the Supplier's expense and within the timeframes reasonably directed by the Principal; and
 - (ii) direct the Supplier to either refund all monies paid for the returned Goods or to replace the returned Goods at the Supplier's expense at a time and place directed by the Principal.

27.3 **(Step-in rights)** Where the Supplier fails to comply with a direction under clause 27.2, 27.2(a) or 27.2(c) the Principal may:

- (a) after giving at least 5 Business Days written notice to the Supplier (except in the case of emergency, in which case no notice is required), take any of the steps contemplated by those clauses itself or engage a third party to do so; or
- (b) accept the non-conformance or failure and adjust the Price as if the Principal had directed a Variation for the non-conformance or failure..

27.4 **(Costs)** The cost reasonably incurred by the Principal in connection with any action taken pursuant to clause 27.2 or 27.3 shall be a debt due and owing by the Supplier to the Principal.

27.5 **(Timing)** Unless a Work Order provides otherwise, the Principal may exercise the rights given to the Principal:

- (a) under clause 27.2 at any time up to 12 months after Completion;
- (b) under clause 27.2(a) at any during the Warranty Period;
- (c) under clause 27.2(c) at any time prior to Acceptance of the Goods.

27.6 **(Application of clause)** For clarity, this clause 27 shall apply to all Services, Works, Goods and Supplier Documents provided or to be provided, under the Contract, including Services, Works, Goods and Supplier Documents provided in compliance with a direction under clause 27.2.

28. SUSPENSION

28.1 **(Right to suspend)** The Principal may direct the Supplier to suspend the performance of the whole or part of the Supplier's obligations under the Contract at any time and for any reason and may direct the Supplier to recommence performing those obligations by giving written notice to the Supplier. The Supplier must not suspend the performance of its obligations under the Contract without the prior written consent of the Principal.

28.2 **(Costs of suspension)** If the suspension is directed due to any act or omission of the Supplier or its Personnel (including a breach of the Contract by the Supplier) then the Supplier shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which the Supplier demonstrates it has reasonably, necessarily and not prematurely incurred by reason of the suspension and which the Supplier demonstrates it cannot reasonably mitigate.

29. FORCE MAJEURE

29.1 **(Notification of Force Majeure)** If either Party is rendered unable wholly or in part by Force Majeure to carry out any of its obligations under the Contract (other than an obligation to make a payment of monies), that Party ('the Affected Party'), shall give to the other Party prompt written notice of such Force Majeure detailing the particulars of the Force Majeure and to the extent that it is ascertainable at the time of giving the notice, the extent to which it will be unable to perform or be delayed in performing its obligations.

29.2 **(Suspension)** On the giving of a notice under clause 29.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.

29.3 **(Mitigation)** The Affected Party shall use all reasonable diligence to mitigate the effect of the Force Majeure on its obligations as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.

29.4 **(Industrial relations)** Clause 29.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on terms contrary to its wishes. The manner in which all such difficulties shall be handled shall be entirely within the discretion of the Affected Party.

29.5 **(Principal's rights)** Where the Supplier gives a notice under clause 29.1, the Principal may at its election:

(a) itself perform, or engage others to perform the obligations which the Supplier is unable to perform and may continue to perform such obligations until the later of the time that the Principal is reasonably satisfied that the Supplier is able to resume performance of those obligations and the time at which any interim arrangements put in place by the Principal are able to be reasonably brought to an end;

(b) take such other action as the Principal, acting reasonably, considers appropriate.

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

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

30. TERMINATION, DEFAULT AND INSOLVENCY

30.1 **(Termination for convenience)** The Principal may at any time and for any reason in its absolute discretion terminate the Contract by giving 25 Business Days written notice to the Supplier.

30.2 **(Notice to show cause)** If a Party (“the defaulting Party”) commits a Substantial Breach of the Contract, then the other Party may give the defaulting Party a notice to show cause. The notice to show cause must state:

- (a) that it is a notice to show cause under clause 30.2;
- (b) the alleged Substantial Breach;
- (c) that the defaulting Party is required to show cause in writing why the other Party should not exercise a right referred to in clause 30.3 or clause 30.4 (as the case may be);
- (d) the date and time by which the defaulting Party must show cause (which must be a reasonable period taking into account the nature of the breach); and
- (e) where applicable, the place at which cause must be shown.

30.3 **(Principal’s rights)** If:

- (a) the Supplier is subject to an Insolvency Event;
- (b) the Supplier commits a Substantial Breach which is incapable of remedy; or
- (c) by the time specified in a notice to show cause given by the Principal to the Supplier under clause 30.2, the Supplier fails to show reasonable cause why the Principal should not exercise a right under this clause 30.3,

the Principal may by giving written notice to the Supplier:

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

Until such costs are incurred, the Principal may deduct the estimated costs from payments to the Supplier.

30.4 **(Supplier's rights)** If:

- (a) the Principal commits a Substantial Breach which is incapable of remedy; or
- (b) by the time specified in a notice to show cause given by the Supplier to the Principal under clause 30.2, the Principal fails to show reasonable cause why the Supplier should not exercise a right under this clause 30.4,

the Supplier may at its election:

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

If the Supplier suspends the whole or part of the Supplier's obligations under this clause 30.4, the Supplier shall lift the suspension if the Principal remedies the breach but if, within 45 Business Days after the suspension, the breach is not remedied and the Principal fails to make other arrangements to the reasonable satisfaction of the Supplier, then the Supplier may terminate the Contract by giving written notice to the Principal.

30.5 **(Consequences of termination)** If the Contract is terminated by either Party for any reason, then:

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

except that the total amount payable to the Supplier under the Contract shall not under any circumstances exceed the amount to which the Supplier would have become entitled to be paid had the Contract not been terminated and the Supplier had completed those obligations itself.

30.6 **(Effect on other rights)** To the extent permitted by law, the Supplier shall not be entitled to any monetary compensation in respect of the termination of the Contract by either Party or the Principal taking obligations out of the hands of the Supplier other than as expressly provided in

this clause 30. Nothing in this clause 30 shall prejudice the Principal's right to claim and recover damages for breach of contract by the Supplier.

31. DISPUTE RESOLUTION

- 31.1 **(Mandatory process)** Unless otherwise stated in this Contract, any dispute between the Parties must be resolved in accordance with this clause 31.
- 31.2 **(Notice of dispute)** If a Party considers that a dispute has arisen between the Parties in connection with this Contract, then the Party must give written notice to the other, setting out the particulars of the dispute and stating that the notice is given under this clause 31. Unless the Parties otherwise agree in writing, the notice shall be delivered by hand or registered post.
- 31.3 **(Initial conference)** If a Party gives written notice to the other of a dispute under the Contract, representatives of the Parties shall promptly confer to attempt to resolve the dispute.
- 31.4 **(Mediation)** If the dispute is not resolved within 10 Business Days after the giving of the notice (or such longer period as may be agreed by the Parties) a Party may by written notice to the other Party refer the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute. The mediation must be conducted by a mediator to be appointed by agreement of the Parties or in default of agreement to be appointed by the President of the Queensland Law Society or his nominee at the request of a Party.
- 31.5 **(Legal proceedings)** If the dispute is not resolved within 20 Business Days after the appointment of the mediator any Party may take legal proceedings to resolve the dispute.
- 31.6 **(Urgent relief)** This clause 31 does not prevent any Party from taking any steps under any law out of which the Parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.
- 31.7 **(Obligation to continue)** Notwithstanding the existence of a dispute, the Parties shall, subject to clauses 28, 29 and 30 continue to perform the Contract.

32. CLAIMS

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

33. INTERPRETATION

- 33.1 **(Headings)** Headings are for reference purposes only and must not be used in interpretation.
- 33.2 **(No limitation)** The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that the Principal 'may' do something the Principal is not obliged to do that thing and is not prevented from doing any other thing.
- 33.3 **(Grammatical forms)** Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.
- 33.4 **(Law)** A reference to 'law' includes all:
- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licences, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,

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

33.5 (Other references) A reference to:

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

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

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

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

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

34. GENERAL PROVISIONS

34.1 (Costs) Each Party must pay its own costs and expenses incurred in negotiating, executing, stamping, registering and performance of the Contract.

34.2 (Joint and several obligations) To the extent permitted by law, if either Party consists of two or more persons the Contract binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally, and any obligation incurred in favour of that Party may be enforceable by each person comprising that Party severally.

34.3 (Governing law) The Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.

34.4 (Binding on successor) The Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.

34.5 (Further assurance) The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under the Contract.

34.6 (Service of notices) A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the Reference Schedule or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:

- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
 - (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.
- 34.7 **(Waiver)** No waiver by a Party of a provision of the Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.
- 34.8 **(Amendments)** This Contract may only be amended by written agreement executed by or on behalf of each Party.
- 34.9 **(Consent)** Any consent of the Principal under the Contract may be given, withheld or given subject to conditions at the absolute discretion of the Principal.
- 34.10 **(Discrepancy or inconsistency)** Where there is a discrepancy or inconsistency between any obligation of the Supplier under the Contract, the Supplier must notify the Principal in writing of the discrepancy or inconsistency. If the discrepancy or issue cannot be resolved using the order of precedence under clause 2.3 then unless otherwise directed by the Principal, the Supplier must comply with the highest or most onerous requirement.
- 34.11 **(Cumulative rights and obligations)** The rights and remedies of a Party provided in the Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of the Contract will not relieve the Supplier of any other obligation under the Contract, at law or in equity. The exercise by the Principal of a right provided in the Contract shall not invalidate or constitute a repudiation of the Contract.
- 34.12 **(Electronic execution)** The Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by email. For clarity, the Parties consent to the Contract being executed electronically using DocuSign or an equivalent electronic method to identify the Parties.
- 34.13 **(Current versions)** Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Supplier must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or prices in the Contract shall be deemed to have allowed for compliance with that version.
- 34.14 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, clauses 21, 22, 23.2(b), 25, 26, 30.5, 30.6 and 32 survive the expiration or earlier termination of the Contract.

Schedule 1 - Scope and Price

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

Execution

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 SUPPLIER (WHERE SIGNATORY IS A CORPORATION)

SIGNED for and on behalf of the Supplier in accordance with its Constitution and Section 127 of the *Corporations Act 2001*:

.....)

Director)

.....)

Name (block letters))

.....)

Date)

.....)

Director/Secretary)

.....)

Name (block letters))

.....)

Date)

EXECUTION BY SUPPLIER (WHERE SIGNATORY IS NOT A CORPORATION)

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

.....)

Signature of witness)

.....)

Name of witness (block letters))

.....)

Date)

.....)

Signature)

.....)

Name of authorised representative)

.....)

Date)



SCOPE

Culvert Supply – Theodore – 2023 - 2024

CONTRACT NO: T2324.26

1. INTERPRETATION AND DEFINITIONS

- 1.1 **(Documents comprising this Scope)** The Scope comprises the following documents:
- (a) Appendix A – Delivery Location Plan; and
 - (b) Appendix B – Pricing Schedule.
- 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. SCOPE

- 2.1 The Works Under the Contract (WUC) comprise of the supply and delivery **to ground** of the precast reinforced concrete culverts and end structures listed in the Pricing Schedule (Appendix B). Delivery is to be to the Council Theodore Depot located adjacent to the Theodore Airport at:
- 13524 Eidsvold Theodore Road
Lonesome Creek QLD 4719
- Between the hours of 6am to 3pm Monday to Friday.

3. APPROVALS AND OTHER LAW

- 3.1 **(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.
- 3.2 **(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.
- 3.3 **(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.
- 3.4 **(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.
- 3.5 **(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 3.1, 3.2 or 3.3. Unless otherwise directed by the Principal, the Supplier must take immediate steps to remedy such a breach at its expense.

4. SERVICE LEVELS

- 4.1 In this clause:
- (a) **Review Period** means the period stated in clause 4.2 below in which the performance of the Supplier against a Service Level is to be reviewed;
 - (b) **Service Levels** means the service level(s) or key performance indicator(s) (if any) described as such in clause 4.2 below.
- 4.2 **(Guarantee)** The Supplier must, and guarantees that it will, in providing the Services and carrying out its other obligations under the Contract, achieve or exceed all Service Levels in every Review Period.
- 4.3 **(Measuring performance)** The Principal will review the performance of the Supplier against the Service Levels at the times in clause 4.2 below, and otherwise on the giving of reasonable notice. The Principal may direct the Supplier to provide a written explanation for its performance against any Service Level.
- 4.4 **(Performance liquidated damages)** If the Supplier has failed to meet any Service Level, the Supplier shall be indebted to the Principal for performance liquidated damages calculated in accordance with clause 4.2.
- 4.5 **(Recovery of liquidated damages)** The Principal may deduct such performance liquidated damages from moneys otherwise owing to the Supplier to recover the performance liquidated damages. The Parties agree that the performance liquidated damages are an agreed genuine pre-estimate of the Principal's loss if the Supplier breaches its obligations under the Contract.
- 4.6 **(General damages)** If, for any reason, the Principal's entitlement to performance liquidated damages is found to be void, voidable or otherwise unenforceable (in whole or part), or the Principal is otherwise unable to recover the whole of the performance liquidated damages from the Supplier, the Supplier shall be liable to the Principal for any loss, damage, cost or expense suffered or incurred by the Principal as a result of the Supplier failing to achieve the Service Levels.
- 4.7 **(Review of Service Levels)** The representatives of the Parties may review the Service Levels from time to time and amend them in any way including by adding additional Service Levels, removing or amending Service Levels, amending the method of measuring performance or the consequence of achieving or failing to achieve a Service Level.
- 4.1 **(Substantial breach)** Failing to achieve or exceed:
- (a) the same Service Level for three consecutive Review Periods, even though the Supplier may have achieved or exceeded some or all of the other Service Levels for those same Review Periods; or
 - (b) any two Service Levels for two consecutive Review Periods,
- shall constitute a substantial breach of the Contract.
- 4.2 **(Service Levels)** The Service Levels are:

Service Levels			
Service Level	Requirement	Review Period	Performance Liquidated Damages
Quality of product	The quality of the culverts is to be as per the requirements listed in the Pricing Schedule	After each delivery	Replacement of the substandard culvert at no cost to Council within the contract timeframes

5. LATE COMPLETION

- 5.1 **(Delay liquidated damages)** If the Supplier does not reach Completion by the Completion Time (as extended, if at all, by the Principal) then the Supplier shall be indebted to the Principal for delay liquidated damages at a rate of \$500 for each calendar day from the Completion Time to the time at which Completion is reached, up to a limit of \$10,000. The Principal shall be entitled to deduct delay liquidated damages from payments to the Supplier and recover any balance as a debt due and owing from the Supplier. If the Principal's entitlement to delay liquidated damages is found to be void or otherwise unenforceable, the Principal shall be entitled to recover general damages.

6. MEETINGS

- 6.1 **(Meetings)** The Supplier must, when reasonably required by the Principal, meet and in good faith discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract including:
- (a) the Supplier's performance of its obligations under this Contract, including the Service Level(s) (if any) identified in the Contract; and
 - (b) improvements to efficiency of the Supplier's obligations under the Contract.
- 6.2 **(Recommendations or directions)** The Supplier must comply with any reasonable recommendations or directions given by the Principal in relation to the performance of the Supplier's obligations under the Contract. Such compliance will not release or discharge the Supplier from any liability or obligation under the Contract.