



REQUEST FOR TENDER

Gravel Supply Defence Road

Contract No.: T2425.16

Request for Tender

PART 1 – PREAMBLE				
Banana Shire Council invites tenders from suitably qualified tenderers for the supply and delivery of Type 2.3 gravel to various stockpile locations on Defence Road as described in more detail in Part 5– Scope. Delivery of the gravel is to commence immediately on the execution of the contract.				
PART 2 – GENERAL INFORMATION				
1. Contract details:	T2425.16 Gravel Supply Defence Road			
2. Communications by Tenderers:	Communications regarding the Procurement Process must be submitted to enquiries@banana.qld.gov.au no later than 5 calendar days prior to the time stated in Item 4			
3. Briefing or site inspection:	Details	Maximum attendees	Mandatory	RSVP
	No Tender Briefing to be held	N/A	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
4. Submission of Tender:	Tenders must be submitted electronically only at tenders@banana.qld.gov.au or vendor panel by no later than 30 th October 2023 11:00 am <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
	Experience (past performance) & Capability			20
	Availability to complete works in specified timeframe			20
	Quality, Environmental, Safety & Other Management Processes			15
	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 the 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 T2425.16 Gravel Supply Defence Road - 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 **T2324.16 Gravel Supply Defence Road - Contract**

PART 5 – SCOPE

The Scope is described in the document(s) attached to or provided with this Request for Tender and identified as

T2324.16 Gravel Supply Defence Road – Scope of Work

T2324.16 Gravel Supply Defence Road – Technical Specification

T2324.16 Gravel Supply Defence Road – Appendix A Stockpile Location Map

T2324.16 Gravel Supply Defence Road – Appendix B Pricing Schedule

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 **T2425.16 Gravel Supply Defence Road Response Schedule**



PROCUREMENT PROCESS CONDITIONS

Gravel Supply Defence Road

Contract No.: T2425.16

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Procurement Process Conditions

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.

Procurement Process Conditions

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

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

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

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

3. COMMUNICATIONS DURING PROCUREMENT PROCESS

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

Procurement Process Conditions

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:

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- (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

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- (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;

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- (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;

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- (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.

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- 10.4 **(Acceptance of more than one Response and acceptance of part of a Response)** The Principal may accept a Response in whole or in part. Without limiting this, where the Scope comprises distinct portions of works, goods or services, the Principal may accept a Response from one or more Respondents in relation to different portions of the works, goods or services as if those portions had been the subject of separate Procurement Processes.
- 10.5 **(No contract or appointment until formal acceptance)** Unless and until the Principal expressly notifies the Respondent in writing that the Respondent's Response (as amended by any post-Response negotiation, if any) has been successful or the parties execute a contract:
- (a) no binding contract for the provision of any work, services and/or goods by the Respondent will exist between the parties; and
 - (b) in respect of an RFT for appointment as a Pre-qualified Supplier or Preferred Supplier, the Respondent will not be considered to be appointed as a Pre-qualified Supplier or Preferred Supplier.
- For clarity, a statement published by the Principal but not specifically notified to the Respondent (including a record of a council resolution) to the effect that a Response has been accepted or a contract has been awarded does not, of itself, constitute an acceptance of the Response or notice that the Response has been successful or constitute a rejection of any other Response.
- 10.6 **(Form of Contract)** Unless the RFT or RFQ stated that the Respondent would not be required to enter into a contract until it is separately engaged by the Principal to provide works, goods or services, if a Response is accepted, the successful Respondent will be required to enter into a contract in the form of the Contract, as amended by agreement between the parties.
- 10.7 **(Unsuccessful Respondents)** Unsuccessful Respondents will be notified after a Response has been accepted. The Principal may, at its discretion, notify unsuccessful Respondents of the name of, and Price submitted by, the successful Respondent. The Principal may provide feedback to unsuccessful Respondents if requested to do so, but such feedback may be general in nature and will be limited to the Respondent's Response only.
- 10.8 **(Arrangement with other local governments)** The Respondent acknowledges that if, pursuant to the Procurement Process, the Respondent is selected to be a Preferred Supplier or Pre-qualified Supplier for goods and/or services then any Related Local Government may make a contract with the Respondent for the supply of those goods and/or services, as if that Related Local Government had itself selected the Respondent to be a Preferred Supplier or Pre-qualified Supplier of those goods and/or services.

11. DOCUMENTS AND INFORMATION

- 11.1 **(Ownership)** The Procurement Documents remain the property of the Principal. The Response will become the property of the Principal upon lodgement.
- 11.2 **(Intellectual Property Rights)** Intellectual Property Rights in documents and information provided on behalf of a party in connection with the Procurement Process remain, as between the parties, with the party on whose behalf they were provided. The Principal and the Respondent grant each other a perpetual, non-exclusive, royalty free licence to do the things contemplated by clause 11.8. The licence so granted by the Respondent is irrevocable. The licence granted by the Principal may be revoked at any time on the giving of written notice.
- 11.3 **(Warranty and representation)** The Respondent warrants and represents that:
- (a) it owns or has a right to use the Intellectual Property Rights in its Response for the purpose of lodging a Response and undertaking the obligations which it will have under a contract with the Principal in the event that the Respondent's Response is accepted; and

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

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is potentially subject to disclosure to third parties, including documentation and information identified by the Respondent as confidential. Any application for disclosure will be assessed in accordance with the terms of the Act. Notwithstanding any other provision of the Procurement Documents or a Response, if a Response is accepted, the Principal may publish on a Queensland Government website or by any other means, contract information including:

- (a) the name and address of the Principal and the successful Respondent;
- (b) a description of the goods and/or services to be provided or works to be carried out pursuant to the contract;
- (c) the date of award of the contract (including the relevant stages if the contract involves more than one stage);
- (d) the contract value (including the value for each stage if the contract involves more than one stage and advice as to whether any non-price criteria were used in the evaluation of Responses);
- (e) the procurement method used; and
- (f) for contracts with a value over \$10 million, the contract, or summary information in respect of the contract, between the Principal and the Respondent.

11.8 **(Use of documents and information)** Documents and information provided on behalf of a party to the other party in connection with the Procurement Process (including documentation and information identified by the Respondent as confidential) may be used, copied, modified or disclosed as required by any law and otherwise:

- (a) by the Principal, as the Principal considers to be reasonably necessary to:
 - (i) properly conduct the Procurement Process;
 - (ii) exercise the rights granted to it in these Procurement Process Conditions;
 - (iii) obtain legal, accounting or other professional advice in connection with the Response;
 - (iv) report any actual or suspected Improper Conduct to the appropriate Authority; and/or;
 - (v) to otherwise properly carry out its functions as a Local Government;
- (b) by the Respondent, as is reasonably necessary to enable the Respondent to:
 - (i) prepare the Response;
 - (ii) obtain legal, accounting or other professional advice in connection with the Response; or
 - (iii) comply with the Respondent's corporate governance requirements.

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

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

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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 Queensland;
- (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 –

Procurement Process Conditions

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),

Procurement Process Conditions

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;

Procurement Process Conditions

- (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:

Procurement Process Conditions

- (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

Procurement Process Conditions

- (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.

Procurement Process Conditions

- 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

Gravel Supply Defence Road

CONTRACT NO.: T2425.16

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Reference Schedule

ITEM	DESCRIPTION	DETAILS	
1.	Supplier's Representative (Clauses 8) (a) Name: (b) Address: (c) Telephone: (d) Email:		
2.	Principal's Representative (Clause 8) (a) Name: (b) Address: (c) Telephone: (d) Email:	Ben Fuller 62 Valentine Plains Road, Biloela, QLD, 4715 (07) 49 929 500 enquiries@banana.qld.gov.au	
3.	Primary obligations, warranties and representations (Clause 9) (a) Purpose for which the Goods and Services are to be fit (b) Warranty Period (Goods) (c) Third party warranties required	Low Cost Seal of Defence Road from CH58184 to CH68550 <i>If nothing stated, the purpose to be reasonably inferred from the Contract and any other purpose for which the Goods and Services are commonly provided and any other purpose expressly made known by the Principal prior to the date of the Contract.</i> N/A	
4.	Key Personnel (Clause 10)	Name	Role
5.	Applicable policies, guidelines, procedures and codes of the Principal (Clause 11)	Banana Shire Council's Work Place Health and Safety Policy (available on Council's Website)	

Reference Schedule

ITEM	DESCRIPTION	DETAILS	
6.	Site (Clause 12) (a) Pre-conditions to access to the Site (b) Site specific requirements	NIL Delivery Personnel are to observe all safety requirements when at the job site	
7.	Time for Meetings (Clause 14)	N/A <i>If nothing stated, as reasonably required by the Principal.</i>	
8.	Deliverables (Clauses 15)	Deliverable	Time for provision
		43,000 tonne of Type 2.3 gravel – as per Department of Transport and Main Roads Specifications	Delivery to begin immediately
9.	Delivery Details (Goods) (Clause 16)	Delivery to be to the Stockpile locations located on Defence Road shown on the Stockpile Locations Map and as follows: <ul style="list-style-type: none"> - CH68580 (8,000 tonne) - CH66380 (10,000 tonne) - CH63540 (15,000 tonne) - CH58320 (10,000 tonne) <i>If nothing stated, as reasonably directed by the Principal</i>	
10.	Timing (Clause 18) (a) Working hours (b) Commencement Time (Services Only) (c) Completion Time (Services Only) (d) Program (e) Additional requirements of Completion (f) Additional causes of delay for which extension of time will be granted	 <i>If nothing stated, as reasonably directed by the Principal</i> Immediately <i>If nothing stated, as reasonably directed by the Principal</i> <i>If nothing stated, as reasonably directed by the Principal</i> <i>Note// additional requirements of Completion may be described elsewhere in the Contract.</i> <i>If nothing stated there are no additional causes of delay</i>	

Reference Schedule

ITEM	DESCRIPTION	DETAILS
11.	<p>Invoices: (Clause 20)</p> <p>(a) May be submitted on:</p> <p>(b) Should be emailed to:</p> <p>(c) Must be supported by:</p>	<p>20th day of each month</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> <hr/> <p>accounts.payable@banana.qld.gov.au</p> <hr/> <p>Delivery Dockets and Compliance Test Results</p>
12.	<p>Liability (Clause 24)</p> <p>(a) The Principal's liability is limited to:</p> <p>(b) The Supplier's liability is limited to:</p>	<p><i>If nothing stated, the Principal's liability is limited to the Price.</i></p> <hr/> <p><i>If nothing stated, the Supplier's liability is not limited.</i></p>
13.	<p>The Supplier must effect the following insurances: (Clause 25)</p>	<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 this 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 <p><i>If not selected, the Supplier is not required to effect the insurance</i></p>

General Conditions

Parties:

Banana Shire Council of 62 Valentine Plains Road, Biloela 4715, 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 goods and/or services to the Principal.
- B. The Parties wish to enter into this 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) **Affected Party** has the meaning given in clause 30.1;
 - (b) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
 - (c) **Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality or any other person having jurisdiction over the project;
 - (d) **Background IP** of a Party means all Intellectual Property Rights which are made available by a Party in connection with the Contract which are in existence at the date of the Contract or brought into existence after the date of the Contract other than in connection with the Contract.
 - (e) **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;
 - (f) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of the Contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law (including without limitation any claim for an extension of time, Variation or other adjustment to the Price);
 - (g) **Commencement Time** 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);
 - (h) **Completion** means the stage 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

General Conditions

- Principal from using the Deliverables for the purpose or purposes stated in or to be reasonably inferred from the Contract;
- (ii) all Deliverables have been updated and provided to the Principal in accordance with the Contract; and
 - (iii) 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) **Completion Time** 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;
 - (j) **Confidential Information** means documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**) 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 32;
 - (k) **Contract** means the documents identified in clause 4.1;
 - (l) **Deliverables** means those records, reports, designs, specifications, certificates and other documents, whether electronic documents or hard copy format) required by the Contract to be handed over to the Principal by the Supplier (and all information advice, designs, calculations and recommendations in those documents);
 - (m) **Delivered** means delivered to the Principal or made available for collection (as the case may be) at the Delivery Place along with all information and documentation required by the Contract;
 - (n) **Delivery Place** means the place for delivery or collection of the Goods as stated in the Reference Schedule;
 - (o) **Delivery Time** 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;
 - (p) **Discloser and Disclosee** have the meanings given in clause 1.1(j);
 - (q) **Exceptional Circumstances** means disclosure:
 - (i) for the purpose of performing the Contract;
 - (ii) with the other Party's consent;
 - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
 - (iv) to any of its Personnel who are bound to keep the information confidential and to who it is necessary to disclose the information;
 - (v) to comply with the law or a requirement of an Authority (including a stock exchange); and
 - (vi) to the extent necessary to enforce its rights or defend a Claim under the Contract.

General Conditions

- (r) **Force Majeure** means:
- (i) an act of God, earthquake, lightning, cyclone, tsunami, 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) illness declared by the World Health Organisation to be a pandemic;
 - (v) embargo enacted by Federal, State or Local Government;
 - (vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the Supplier or otherwise caused by or contributed to by the Supplier and which affects an essential portion of the Supplier's obligations under the Contract;
- which:
- A. is beyond the immediate or reasonable control of the Affected Party;
 - B. is not directly or indirectly caused or contributed to by the Affected Party or the Affected Party's Personnel;
 - C. cannot reasonably be avoided, remedied or overcome by the Affected Party by a standard of care and diligence expected of a prudent and competent local government or supplier (as the case may be) or the expenditure of a reasonable sum of money;
- (s) **General Conditions** means these general conditions;
- (t) **Good Industry Practice** means those practices, methods, techniques and acts that, as at the date of this Contract are equal or superior to those utilised by other competent suppliers experienced in the provision of goods and services similar to the Goods and Services;
- (u) **Goods** means the goods described in Schedule 1 and any other goods not specifically mentioned in Schedule 1, but that are obviously and indispensably necessary for the supply of the goods that are mentioned;
- (v) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (w) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (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) 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;

General Conditions

- (iv) 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;
 - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract;
 - (vi) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
 - (vii) 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; or
 - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966 (Cth)*, or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
 - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (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,;
- (aa) **Key Personnel** means the Personnel (if any) nominated as key personnel in the Reference Schedule;
- (bb) **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
- (cc) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;
- (dd) **Party or Parties** means one or both of the Principal and the Supplier as the context requires;
- (ee) **Payment Period** means:
- (i) if the Contract is a 'building contract' as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), the period ending 15 Business Days after receipt by the Principal of the claim;
 - (ii) otherwise, the period ending 25 Business Days after receipt by the Principal of the claim.
- (ff) **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;
- (gg) **Price** means the amount payable for the provision of Goods and Services as determined in accordance with the Schedule 1;

General Conditions

- (hh) **Principal** means the entity identified as the Principal on page 6 of this Contract;
- (ii) **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the Supplier pursuant to clause 8;
- (jj) **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;
- (kk) **Project IP** means the Intellectual Property Rights in the Deliverables and all other goods, materials, documents or data created in the performance of the Supplier's obligations under the Contract;
- (ll) **Reference Schedule** means the schedule of that name included in this Contract;
- (mm) **Review Period** means the period stated in Schedule 1 in which the performance of the Supplier against a Service Level is to be reviewed;
- (nn) **Service Level** means the service levels (if any) described as such in the Contract;
- (oo) **Services** means the services to be provided or the work to be carried out by the Supplier as described in Schedule 1 and any services or work not specifically mentioned in Schedule 1, but that is obviously and indispensably necessary for the performance of the services or work that is mentioned;
- (pp) **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;
- (qq) **Substantial Breach** includes:
 - (i) a failure to remedy a breach of a warranty given or representation made within 10 Business Days after being given a written notice to do so;
 - (ii) a failure to remedy any breach of an obligation under the Contract within 10 Business Days after being given a written notice to do so;
 - (iii) a breach that is incapable of remedy of an obligation under, or warranty given or representation made in, the Contract; or
 - (iv) a breach of clause 21;
 - (v) the Supplier 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;
 - (vi) if the defaulting Party is the Supplier, the consistent or repeated breach of the Contract by the Supplier, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the defaulting Party;
- (rr) **Supplier** means the person or entity identified as the Supplier on page 6 of this Contract;
- (ss) **Variation** means any material increase, decrease or change to the Goods or Services or the Supplier's obligations under the Contract;
- (tt) **WHS** means work, health and safety;

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- (uu) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;
- (vv) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;
- (ww) **Warranty Period** means the longer of:
 - (i) the period stated in the Reference Schedule or where no period is stated 12 months after the Goods are Delivered; 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;
- (xx) **Wilful Misconduct** means an intentional act or omission by or on behalf of a Party committed with reckless disregard for its foreseeable and 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;
- (a) **Workplace** has the meaning given in the WHS Act and the WHS Regulation.

2. INTERPRETATION

- 2.1 **(Headings)** Headings are for reference purposes only and must not be used in interpretation;
- 2.2 **(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;
- 2.3 **(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.
- 2.4 **(Law)** A reference to 'law' includes all:
 - (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of a local government authority, the State of Queensland, the Commonwealth or other Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licenses, 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 and a reference to a statute includes all regulations and subordinate legislation and amendments
- 2.5 **(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.

General Conditions

- 2.6 **(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;
- 2.7 **(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.
- 2.8 **(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.

3. GENERAL PROVISIONS

- 3.1 **(Joint and several obligations)** An obligation of two or more Parties binds them jointly and each of them severally. An obligation incurred in favour of two or more Parties is enforceable by them severally;
- 3.2 **(Governing law)** This 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.
- 3.3 **(Binding on successor)** This Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.
- 3.4 **(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.
- 3.5 **(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.
- 3.6 **(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.
- 3.7 **(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.
- 3.8 **(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.
- 3.9 **(Counterparts)** This 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 fax or email.

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- 3.10 **(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.
- 3.11 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, clauses 9.1(h)(ii), 23, 24, 25.2, 31.4, 31.6, 32, 33 and 35 survive the expiration or earlier termination of the Contract.

4. **CONTRACT**

- 4.1 **(Documents comprising Contract)** The Contract comprises:
- (a) Special Conditions
 - (b) the Reference Schedule;
 - (c) these General Conditions;
 - (d) Schedule 1 – Scope and Price; and
 - (e) Schedule 2 – Completion Declaration.
- 4.2 **(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).
- 4.3 **(Order of precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 4.1, then the documents will take precedence in the order set out in clause 4.1 with the Reference Schedule being the highest in the order.

5. **PERFORMANCE AND PAYMENT**

- 5.1 **(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.
- 5.2 **(Payment)** Subject to the Contract, the Principal must pay the Supplier the Price for Goods and Services provided in accordance with the Contract;

6. **NO EXCLUSIVITY**

- 6.1 The Supplier is not the exclusive supplier of the Goods and Services, or of goods and/or services of the same or a similar type to the Goods and Services.

7. **NATURE OF RELATIONSHIP**

- 7.1 The Supplier is an independent contractor of the Principal. The Supplier is solely responsible for payments required to be made to its Personnel for the performance of services in connection with the Contract and solely responsible for determining the manner in which it complies with its obligations under the Contract. The Supplier must provide such materials, equipment, knowledge and Personnel as the Supplier deems necessary to comply with its obligations and under the Contract.

8. **REPRESENTATIVES**

- 8.1 **(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

General Conditions

Principal's Representative is not an independent certifier or valuer. No other person is permitted to exercise any right or function of the Principal without the express written consent of the Principal or the Principal's Representative. The Supplier must notify the Principal immediately if it receives a purported direction in connection with the Contract from any person other than the Principal's Representative. The Principal shall not be liable upon any Claim relating to a direction given to the Supplier by any person other than the Principal's Representative.

8.2 **(Supplier's representative)** The Supplier must nominate an authorised representative for the purpose of managing the Contract and must notify the Principal in writing of the details of the nominated representative. Matters which are in the knowledge of the Supplier's representative are deemed to be within the knowledge of the Supplier. If the Principal reasonably objects to the nominated representative, the Supplier shall nominate another representative.

8.3 **(Change of representative)** Either Party must notify the other in writing of a change in representative prior to effecting the change. If the Principal reasonably objects to the representative nominated by the Supplier, the Supplier shall nominate another representative.

9. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

9.1 **(Supplier Warranties)** The Supplier must ensure, and warrants and represents that:

(a) **(Improper Conduct)** neither the Supplier nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Supplier must not, and must ensure that its Personnel do not, engage in any Improper Conduct in connection with the Contract;

(b) **(ability)** 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 has completed its obligations under the Contract;

(c) **(investigations)** 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;

(d) **(workmanship)** where the Services require the carrying out of work, that work shall:

(i) be free from defects;

(ii) comply in all respects with the Contract and any standard, plan, requirement, code, guideline, policy, ~~standard drawing~~ or standard specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian standards applicable to the materials and any applicable law;

(iii) ~~be fit for the purpose stated in or to be reasonably inferred from~~ meet the requirements stated in the Contract or otherwise made known to the Supplier prior to the date of the Contract;

(iv) any design prepared by the Supplier in relation to the work shall be in accordance with the requirements of the Contract;

General Conditions

- (e) **(legal capacity)** 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;
- (f) **(standard)** the Supplier will, and to the extent applicable to them, will ensure that its Personnel:
 - (i) provide the Goods and Services and carry out its other obligations in connection with the Contract:
 - A. to the standard of skill, care and diligence expected of a skilled and competent supplier engaged in the business of providing goods, services or work similar to the Goods and Services or to such higher standard as the Supplier has represented in writing to the Principal in relation to the Contract;
 - B. in accordance with Good Industry Practice; and
 - C. in a manner which achieves or exceeds each of the Service Levels in every Review Period; and
 - (ii) ensure that any goods, services or work provided under the Contract ~~are fit for the purpose or purposes~~ meet the requirements identified in the Reference Schedule;
- (g) **(Deliverables)** all Deliverables will:
 - (i) comply with the requirements of the Contract and applicable law;
 - (ii) be consistent with or exceed applicable industry standards;
 - (iii) be of a standard and quality expected of a skilled and competent supplier experienced in the preparation of documents similar to the Deliverables using Good Industry Practice; and
 - (iv) ~~be fit for the purpose or purposes stated in or to be reasonably inferred from the Contract;~~
- (h) **(condition of Goods)** the Goods shall:
 - (i) at the time at which they are Delivered:
 - A. comply with any applicable requirement, code, guideline, policy, drawing or specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian standards applicable to the Goods and any applicable law; and
 - B. where goods are manufactured, be new; and
 - (ii) at the time at which they are Delivered and for the duration of any applicable Warranty Period:
 - A. be 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;
 - D. be fit for the purposes stated in or to be reasonably inferred from the Contract;

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- (i) **(intellectual property)** except to the extent that Goods or Deliverables are manufactured or prepared strictly in accordance with technical plans or drawings provided to the Supplier by the Principal:
 - (i) the Goods and Deliverables do not; and
 - (ii) the Principal's use of the Goods and Deliverables for a purpose stated in or to be reasonably inferred from the Contract will not, infringe Intellectual Property Rights;
- (j) **(encumbrances)** when title passes, the Goods will not be subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a law that cannot be excluded by agreement;
- (k) **(Price)** the rates and prices in the Contract include the supply, delivery, insurance stage and packaging of the 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;

9.2 **(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 or representation made in clause 9.1.

9.3 **(Warranties unaffected)** The warranties, representations and acknowledgements in clause 9.1 remain unaffected notwithstanding:

- (a) that the scope of the Goods and Services was prepared by the Principal;
- (b) any Variation;
- (c) any inspection, test, receipt, review, comment or direction on the Goods, Services or Deliverables by the Principal or its Personnel; or
- (d) the adoption or incorporation into the Deliverables by the Supplier of any applicable industry standard or work carried out by others (including work carried out by or on behalf of the Principal),

except to the extent that, the Supplier has given the Principal prior written notice expressly stating that the Variation, inspection, test, receipt, review, comment, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

9.4 **(Third party warranties)** The Supplier shall obtain and provide to the Principal, the warranties required by the Contract. Unless otherwise stated, each warranty shall be in the name of the Principal and the Supplier and, if in respect of Services, commence on Completion or if in respect of Goods, commence on Delivery. If directed to do so by the Principal, the Supplier shall also obtain a warranty from each subcontractor, retailer or manufacturer on terms commonly provided by those subcontractors, retailers or manufacturers for their parts of the Goods and/or Services, in the name of both the Principal and the Supplier.

10. KEY PERSONNEL

10.1 **(Provision of Key Personnel)** The Supplier must ensure that only Key Personnel perform the roles identified in the Reference Schedule.

10.2 **(Change in Key Personnel)** The Supplier may seek the approval of the Principal to change the 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 person that is of equal or greater skill, experience and competency to the person being replaced.

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11. CONDUCT OF SUPPLIER AND PERSONNEL

- 11.1 **(General)** The Supplier must, and must ensure that to the extent applicable to them, 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 and the Principal's Personnel and the general public in connection with the Contract;
 - (b) comply with:
 - (i) any law, standards and codes of practice applicable to the Supplier, the Supplier's business or the Supplier's obligations under the Contract;
 - (ii) all directions of the Principal given pursuant to the Contract;
 - (iii) any applicable policies, guidelines, procedures and codes of the Principal which are identified in the Reference Schedule or which are publicly available or otherwise made known to the Supplier from time to time;
 - (c) do not either directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Services are to be carried out, or the Goods are to be delivered, or to the public generally.
- 11.2 **(Local Government Worker)** The Supplier must ensure that when acting as a Local Government Worker, the Supplier's Personnel:
- (a) have all appropriate qualifications, skills and training to exercise a power or perform a responsibility under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009* (Qld);
 - (b) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Personnel are authorised as Local Government Workers by the Principal; and
 - (c) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).
- 11.3 **(Conflict)** Where there is any conflict between any standard or obligation described in clause 11.1 or 11.2, the Supplier and its Personnel must adopt the higher standard or more onerous obligation unless directed otherwise by the Principal.
- 11.4 **(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 clause 11.1 or clause 11.2 or a warranty and representation given in clause 9.1(a) or clause 9.1(b) in respect of that person, or that the person is otherwise responsible for a breach of the Contract by the Supplier.
- 11.5 **(Industrial relations)** The Supplier remains solely responsible for the management of industrial relations relating to its Personnel. The Supplier must promptly inform, and keep informed, the Principal in relation to any potential or actual industrial relations issues which could affect the ability of the Supplier to comply with its obligations under the Contract.

12. SITE

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

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- (a) evidence of insurance required by clause 25.3;
- (b) 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.

12.3 **(Cooperation with Principal's Personnel)** The Supplier must use all reasonable endeavours to cooperate, communicate and co-ordinate with the Principal's Personnel at the Site. 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.

12.4 **(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. SUBCONTRACTING, ASSIGNMENT AND NOVATION

13.1 **(By the Supplier)** The Supplier may subcontract, assign or novate the whole or any part of its obligations under the Contract but only with the prior written consent of the Principal (which may be given, withheld or given subject to conditions at the absolute discretion of the Principal). Subcontracting of the Supplier's obligations shall not relieve the Supplier from any liability or obligation under the Contract.

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

14. MEETINGS

14.1 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.

15. DELIVERABLES

15.1 **(Provision of copies)** The Supplier must create and provide the Principal with copies of the Deliverables at the times required by the Reference Schedule or where no time is stated, promptly whenever requested by the Principal.

15.2 **(Updated Deliverables)** Where directed by the Principal to do so, as a requirement of Completion (or where the Contract is earlier terminated, no later than 10 Business Days after the notice of termination under clause 31 is given), the Supplier must provide the Principal with a complete updated copy of the Deliverables accompanied by a statutory declaration in the form contained in Schedule 2.

16. DELIVERY OF GOODS

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

16.2 **(Change to delivery details)** The Principal may request the Supplier to vary the Delivery Time 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 Delivery Time or the Delivery Place unless the Supplier notifies the Principal of such additional costs prior to taking any steps to comply with the request.

16.3 **(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~~

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The supply of the delivery docket with the claim shall be evidence only that Goods have been received and not that those Goods comply with the Contract.

17. TITLE AND RISK IN GOODS

- 17.1 **(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 the Goods are received by the Principal. If Goods are rejected pursuant to clause 28.2, the Goods shall be at the risk of the Supplier from the time that the Principal gives notice of the rejection by the Principal.
- 17.2 **(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.
- 17.3 **(No acknowledgement)** Taking possession of Goods shall not constitute an admission by the Principal that those Goods comply with the Contract.

18. TIMING

- 18.1 **(Timing)** Subject to clause 18.2, the Supplier must commence performing its obligations under the Contract by the Commencement Time 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 included in the Contract or agreed between the Parties);
 - (d) so that all Services reach Completion by the applicable Completion Time and all Goods are Delivered by the applicable Delivery Time.
- 18.2 **(Delay)** The Supplier must promptly notify the Principal if the Supplier is or will be delayed in providing the Goods and/or Services. Where the Supplier is delayed in delivering the Goods by the Delivery Time or reaching Completion by the Completion Time because of an act or omission of the Principal or the Principal's Personnel or any other cause of delay identified in the Reference Schedule or elsewhere in the Contract as entitling the Supplier to an extension of the Completion Time or the Delivery Time, the Principal shall grant a reasonable extension of the Delivery Time or the Completion Time as the case may be. The Principal may grant an extension of the Delivery Time or the Completion Time as the case may be for delay caused by any other cause of delay.
- 18.3 **(Prevention and Mitigation)** The Supplier shall take all reasonable steps to prevent the occurrence and to mitigate the effects of a delay.
- 18.4 **(No monetary compensation)** The Supplier shall not 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.

19. VARIATIONS

- 19.1 **(Direction for Variation)** The Principal may at any time and for any reason direct a Variation by giving written notice to the Supplier but 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.
- 19.2 **(Adjustment of Price)** The Price shall be adjusted for each Variation directed by the Principal in accordance with clause 19.1 by the amount agreed by the Parties or failing agreement by a

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reasonable amount determined by the Principal. The Supplier shall not otherwise be entitled to any payment in connection with a Variation.

- 19.3 **(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.

20. INVOICES

- 20.1 **(Submission of invoices)** Subject to clause 20.8, the Supplier may submit invoices to the Principal for Goods and Services provided in accordance with the Contract at the times and for the Goods and Services stated in the Reference Schedule. The invoice must comply with the GST Law and be accompanied by any documentation which the Reference Schedule requires to be provided with an invoice or which the Principal reasonably directs prior to the time for submission of the invoice. Unless otherwise directed, invoices should be submitted promptly and, in any event, no later than 5 Business Days of the later of Completion or the date on which Goods required under the Contract are delivered.
- 20.2 **(Amount due)** The Principal may deduct any amount due and owing by the Supplier to the Principal and any amount which the Principal reasonably claims is or will become due and owing by the Supplier to the Principal (whether under the Contract or otherwise) from any amount claimed by the Supplier under or in connection with the Contract (including for a breach of the Contract). The balance remaining after such a deduction shall be due by the Principal to the Supplier or by the Supplier to the Principal as the case may be.
- 20.3 **(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.
- 20.4 **(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 Deliverables the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.
- 20.5 **(Sole entitlement)** 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.
- 20.6 ~~**(Final invoice)** Where directed to do so by the Principal, as a pre-condition to entitlement to payment of its final invoice, the Supplier must provide to the Principal a statutory declaration in the form contained in Schedule 2, dated after all Goods, Services and Deliverables have been provided.~~
- 20.7 **(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.
- 20.8 **(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.

21. WORK HEALTH AND SAFETY

- 21.1 **(Relationship of obligations)** The obligations in this clause **Error! Reference source not found.** are in addition to, and not in substitution for any other obligation of the Supplier:
- (a) under the WHS Act and WHS Regulation; or

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- (b) elsewhere in this Contract or at law relating to WHS.

Nothing in this clause **2Error! Reference source not found.** 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 **Error! Reference source not found.**

21.2 **(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 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 subclause 21.2(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 of the Principal which are in any way applicable to this Contract for that Site.

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

- (a) promptly (and no more than 12 hours after the occurrence) notify the Principal of any accident, injury, property or environmental damage, which occurs during the carrying out of an obligation of the Supplier under the Contract;
- (b) report any Notifiable Incidents to the Regulator within the specified time frame as per the WHS Act and Regulation; and
- (c) immediately notify the Principal of any lost time incident and within 3 Business Days of any such incident 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.

21.4 **(Supplier's WHS systems and documentation)** 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 submit to review the Principal the WHS documentation that the Principal directs it to prepare within the time directed by the Principal and must ensure

General Conditions

that such documentation:

- (i) addresses all the specific WHS hazards, 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 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;

- (d) 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;
- (e) is not entitled to make any Claim (whether for additional costs or expense or extension to a Delivery Time) in connection with its obligations under this clause.

21.5 **(Site specific induction for construction sites)** If any Site is a construction site, then the Supplier must ensure that all Personnel of the Supplier working on that construction site receive 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.

22. PROTECTION OF PROPERTY AND THE ENVIRONMENT

22.1 **(General)** The Supplier must:

- (a) perform its obligations under the Contract and ensure that its Personnel perform their part of those obligations safely and in a manner that will prevent pollution, contamination or damage to property; and
- (b) take all measures necessary to protect property in the performance of its obligations under the Contract.

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

- (a) any damage to any property which is caused by the Supplier 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.

22.3 **(Urgent action)** If urgent action is necessary to protect persons, property or the environment in connection with the performance of the Supplier's obligations under the Contract, and the Supplier has not taken that action, the Principal may take such action itself or have it undertaken by others without prior notice to the Supplier. The cost incurred by the Principal in doing so shall be a debt due and owing by the Supplier to the Principal and may be deducted from any payments otherwise owing to the Supplier.

General Conditions

23. INDEMNITY

23.1 **(Indemnity)** To the extent permitted by law, the Supplier shall indemnify and keep indemnified be liable to the Principal and the Principal's Personnel ~~against~~ for:

- (a) loss of or damage to property of the Principal; and
- (b) Claims by any person against the Principal in respect of personal injury or death, or loss of or damage to property of any party;
- (c) 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 in connection with:
 - (i) a breach of the Supplier's obligations under clauses 21 or 22.1;
 - (ii) the Supplier's failure to satisfy a law as required by the Contract;
 - (iii) any breach by the Supplier of its obligations under any law; and/or
 - (iv) any enforcement of obligations imposed on the Supplier under any law,

arising out of or in connection with the performance of the Supplier's obligations under the Contract, but the ~~indemnity~~ liability will be reduced 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 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, damage.

23.2 **(Acceptance of benefit)** The Principal has informed its Personnel and communicates acceptance on behalf of its Personnel, of the Supplier's undertaking to indemnify under clause 23.1.

24. LIMITATION OF LIABILITY

24.1 **(Limit of liability)** To the extent permitted by law, the aggregate liability of each Party to the other in respect of any Claim will not exceed the amount specified in the Reference Schedule. Where no limits of liability are stated in the Reference Schedule, the liability of the Principal shall be limited to the Price and the liability of the Supplier shall not be limited.

24.2 **(Consequential loss)** To the extent permitted by law, neither Party shall be liable to the other for any loss of profits, loss of opportunity, loss of agreement or loss of business unless, and then only to the extent, that the Contract expressly provides for that liability.

24.3 **(Exceptions)** Clauses 24.1 and 24.2 do 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 either Party arising under an indemnity given under the Contract or as a result of an infringement of confidentiality or Intellectual Property Rights, a deliberate breach or abandonment of the Contract, Wilful Misconduct, gross negligence or fraud or other criminal conduct;
- (d) liability of either Party to the extent that the Party is entitled to be indemnified under a policy of insurance required to be effected under the Contract or would have been so entitled if this clause 24 did not form part of the Contract, the Party had effected and maintained the insurance policy in accordance with the Contract, complied with its obligations under the Contract, lodged and diligently pursued a claim under the policy

General Conditions

and complied with the terms of, and any other obligation or duty in connection with, the policy and the insurer had remained solvent;

- (e) liability of either Party incurred because of a breach of any law by the other Party;
- (f) liability of the Supplier to the extent that the Supplier is entitled to recover that liability from any other third party (including any subcontractor, consultant or supplier of the Supplier) or would have been entitled to recover that liability but for any act or omission of the Supplier,

and amounts referred to in subclauses (a), (b), (c), (d), (e) and (f) shall not be included in calculating whether the limit of liability of a Party in clause 24.1 has been reached.

25. **INSURANCE**

25.1 **(Insurances to be effected and maintained)** The Supplier must effect the insurances stated in the Reference Schedule and any other insurance which the Supplier considers is necessary to protect its interests. Where the Reference Schedule does not provide for the insurances to be effected then the Supplier must effect the following insurance policies on terms and with an insurer reasonably acceptable to the Principal:

- (a) 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;
- (b) 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;
- (c) ~~Third party and comprehensive motor vehicle insurance for each vehicle used by the Supplier in performing its obligations under the Contract;~~
- (d) Plant and equipment insurance for each item of plant for the full replacement value of the plant;
- (e) Workers' compensation insurance in respect of the Supplier's Personnel as required by law.

25.2 **(Period of insurance)** The insurance policies required under clause 25.1 must be maintained at all times from the date on which the Supplier commences the performance of its obligations under the Contract until the Supplier's obligations under the Contract are complete (and, in respect of professional indemnity insurance only, for a period of 7 years after those obligations are complete).

25.3 **(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. The Principal may suspend the Contract or withhold payment from the Supplier until such evidence is provided.

25.4 **(No implied limitation)** Nothing in this clause, nor the Supplier's compliance or non-compliance with it, shall be taken to limit or reduce the Supplier's liability under the Contract or at law.

25.5 **(Notification)** The Supplier must immediately notify the Principal's Representative 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.

26. **SERVICE LEVELS**

26.1 **(Guarantee)** The Supplier must, and guarantees that it will, in providing the Goods and Services and carrying out its other obligations under the Contract, achieve or exceed all Service Levels.

General Conditions

26.2 **(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.

27. INSPECTIONS AND TESTS

27.1 **(Right to inspect and test)** The Principal's Representative shall be entitled to inspect and test all Goods, Services and Deliverables provided to ensure that the Goods, Services and the Deliverables comply with the Contract, including all warranties given and representations made by the Supplier in the Contract. Inspections or tests carried out by the Principal 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.

27.2 **(Cost)** If an inspection or test undertaken by 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.

28. NON-CONFORMANCE

28.1 **(Non-conforming Goods, Services or Deliverables)** Where:

(a) any of part of the Goods, Services or Deliverables provided by the Supplier does not conform strictly to the requirements of the Contract (including where the Supplier has failed to achieve any Service Level); or

(b) 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 31, exercise the rights provided in clause 28.2.

28.2 **(Principal's rights in respect of non-conformance or failure)** Where permitted by clause 28.1, the Principal may:

(a) direct the Supplier to provide a detailed proposal as to how the Supplier proposes to rectify the non-conformance and the time within which such a proposal is to be provided;

(b) whether or not the Principal has given a direction under clause 28.2(a), direct the Supplier to:

(i) rectify the non-conformance or failure (including by performing or reperforming, removing, demolishing, repairing, replacing or reconstructing any non-conforming Goods, Services, Deliverables or work); and

(ii) make good any damage to any other property or work 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;

(c) reject non-conforming Goods, in which case the Principal may:

(i) return the whole of the Goods Delivered (or, at its discretion, the non-conforming part of those 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;

(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;

General Conditions

- (d) accept the non-conformance or failure, in which case the Price will be adjusted as if the Principal had directed a Variation for the non-conformance or failure;
 - (e) where it is impractical to give the Supplier a direction pursuant to clause 28.2(a), take any of the steps contemplated by that clause itself, in which case the costs reasonably incurred by the Principal in doing so shall be a debt due and owing by the Supplier to the Principal.
- 28.3 **(Step-in rights)** If the Supplier fails to comply with a direction under clause 28.2, then the Principal may 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) carry out that other obligation itself or have it carried out by others.
- 28.4 **(Costs)** The cost incurred by the Principal in connection with any action taken, or purportedly taken, pursuant to clause 28.2 or 28.3 so shall be a debt due and owing by the Supplier to the Principal.
- 28.5 **(Timing)** A direction under clause 28.2 may be given at any time up to 12 months after the Goods, Services or Deliverables were provided by the Supplier.
- 28.6 **(Application of clause)** For clarity, this clause 28 shall apply to all Goods, Services, Deliverables and work provided or to be provided, under the Contract, including Goods, Services and Deliverables provided in compliance with a direction under clause 28.2(b) or 28.2(c)
29. **SUSPENSION**
-
- 29.1 **(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 notice in writing to the Supplier. The Supplier must not suspend the performance of its obligations under the Contract without the prior written consent of the Principal.
- 29.2 **(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 the Supplier by reason of the suspension and which the Supplier demonstrates it cannot reasonably mitigate.
30. **FORCE MAJEURE**
-
- 30.1 **(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.
- 30.2 **(Suspension)** On the giving of a notice under clause 30.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.
- 30.3 **(Removal of Force Majeure)** The Affected Party shall use all reasonable diligence to remedy or remove such Force Majeure as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.
- 30.4 **(Industrial relations)** Clause 30.3 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.

General Conditions

30.5 **(Principal's rights)** Where the Supplier gives a notice under clause 30.1, 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.

30.6 **(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.

31. TERMINATION AND DEFAULT

31.1 **(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.

31.2 **(Default by Supplier)** Where the Supplier has committed a Substantial Breach or is subject to an Insolvency Event, the Principal may by giving written notice to the Supplier immediately:

- (a) take out of the Supplier's hands the whole or part of the Supplier's obligations remaining to be completed pursuant to the Contract and suspend payment to the Supplier under the Contract until it becomes due and payable under clause 31.5; or
- (b) to the extent permitted by law, terminate the Contract.

The Principal may itself perform, or may engage others to perform, any obligations of the Supplier taken out of the hands of the Supplier or which remain unperformed at the time of termination.

31.3 **(Default by Principal)** Where the Principal has committed a Substantial Breach, the Supplier may suspend the performance of its obligations under the Contract by giving written notice to this effect to the Principal. If the default has not been remedied within 20 Business Days after the notice of suspension is given to the Principal, the Supplier may terminate the Contract by giving written notice to this effect.

31.4 **(Payment on Termination)** If the Contract is terminated by either Party the Principal shall, subject to the Contract and its other rights at law, pay the Supplier:

- (a) the amount which the Supplier is entitled to be paid under the Contract for Goods and Services provided up to and including the date of termination; and
- (b) 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 has reasonably, necessarily and not prematurely incurred prior to the termination in the expectation of completing its obligations under the Contract, and which the Supplier demonstrates it cannot reasonably mitigate.

31.5 **(Payment on take out)** On completion of the obligations of the Supplier which have been taken out of the hands of the Supplier, the Principal shall determine the cost incurred in completing those obligations and the amount which would have been paid to the Supplier had the Supplier completed those obligations (including any payment suspended under clause 31.2(a) and the difference shall be a debt due and payable by the Supplier to the Principal or by the Principal to the Supplier as the case may be.

General Conditions

31.6 **(No other compensation)** Except to the extent expressly provided in this clause 31, 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 pursuant to this clause 31.

32. HANDLING OF INFORMATION

32.1 **(Obligation of confidence)** A Party must not use the other Party's Confidential Information for a purpose other than performing the Contract. 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.

32.2 **(Breach of Confidence)** If a Party becomes aware of a suspected or actual breach of clause 32.1, that Party must immediately notify the other Party and take reasonable steps required to prevent or stop the actual breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.

32.3 **(Return of Confidential Information)** The Discloser of Confidential Information must return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Discloser or when otherwise directed by the Discloser, subject to any record keeping requirements at law.

32.4 **(Personnel)** The Parties must make every reasonable effort to ensure that its Personnel are aware of and comply with the obligations of confidentiality in this clause 32.

32.5 **(Information Privacy Act)** 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 the Contract as if the Supplier was the Principal. Personal information collected by the Principal in connection with the Contract is collected for the purposes of enabling the Principal to properly discharge its functions as a local government authority in connection with the Contract and may be accessible by and disclosed to personnel engaged to assist the Principal in doing so. Personal information will otherwise be dealt in accordance with the Principal's privacy policy. The Principal is authorised to collect personal information in accordance with the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) and related legislation.

32.6 **(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 verbal or written, in connection with the Contract in any media without the prior approval of the Principal.

33. INTELLECTUAL PROPERTY

33.1 **(Background IP)** Background IP of a Party shall remain the 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 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 the Supplier's Background IP for any purpose for which the Goods and Services are provided. 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.

33.2 **(Project IP)** Unless the Contract elsewhere expressly provides otherwise, Project IP vests in the Principal and 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. If the Contract expressly provides that Project IP vests in the Supplier, then Project IP vests in the Supplier and the Supplier grants the Principal a royalty free, non-exclusive, non-transferable licence to use the Supplier's Project IP for any purpose for which the Goods and Services are provided.

General Conditions

33.3 **(Warranty and representation by Supplier)** The Supplier warrants and represents that the Supplier 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 that, except to the extent that the infringement is caused by the Supplier's incorporation of the Principal's Background IP, the Project IP will not infringe the Intellectual Property Rights of a third party.

33.4 **(Indemnity)** Each Party indemnifies the other in respect of breach of a warranty given or representation made in this clause 33.

34. **DISPUTE RESOLUTION**

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

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

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

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

35. **CLAIMS**

35.1 The Principal shall not be liable upon any Claim by the Supplier for monetary compensation (other than for the Price) in connection with the Contract unless the Supplier has given the Principal written notice of its intention to make the Claim within 25 Business Days after the direction or other event on which the Claim is based was given or occurred.

Execution

EXECUTION BY THE PRINCIPAL

SIGNED for and on behalf of Banana Shire Council in accordance with section 236 of the *Local Government Act 2009* and in the presence of:

.....)
Signature of witness)	Chief Executive Officer
.....)	Date: / /
Name of witness (block letters))	
Date: / /)	

EXECUTION BY THE SUPPLIER (WHERE SUPPLIER IS A CORPORATION)

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

.....)
Signature of witness)	Director
.....)
Name of witness (block letters))	Director/Secretary
Date: / /)	Date: / /

EXECUTION BY SUPPLIER (WHERE SUPPLIER IS NOT A CORPORATION)

SIGNED for and on behalf of the Supplier by its authorised representative in the presence of:

.....)
Signature of witness)	Signature
.....)
Name of witness (block letters))	Name of authorised representative
Date: / /)	Date: / /

Schedule 1 – Scope and Price

Schedule 2 – Supplier’s Statutory Declaration

Oaths Act 1867 STATUTORY DECLARATION

QUEENSLAND
TO WIT

I,

of

in the State of Queensland, do solemnly and sincerely declare that, in relation to the contract between Banana Shire Council and **[Insert Supplier's Name] (Supplier)**, identified as contract no. T2425.XX (**Contract**) for the provision of Type 2.3 Gravel to Defence Road Theodore (**Goods and Services**):

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

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

Signature of declarant/deponent

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

 Solicitor Justice of the Peace
 Commissioner for declarations



SCOPE OF WORKS

Gravel Supply Defence Road

CONTRACT NO.: T2425.16

1. THE SCOPE OF WORKS

- 1.1 **(Documents comprising this Scope of Works)** The Scope of Works comprises this Scope of Works, including;
- (a) Appendix A – Stockpile Location Map
 - (b) Appendix B – Pricing Schedule
 - (c) Technical Specification
- 1.2 **(Precedence of documents comprising the Scope of Works)** The documents comprising the Scope of Works shall be taken to be mutually explanatory. If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1 then the documents will take precedence in the order set out in clause 1.1, with the document listed at 1.1 being the highest in the order.
- 1.1 **(Documents incorporated by reference into the Scope of Works)** The Contractor is deemed to have obtained copies of, read, understood, and allowed for compliance with the Scope of Works (including any documents which are incorporated into it by reference only).
- 1.2 **(Definitions)** Capitalised terms used in the Scope of Works have the meanings assigned to them in the General Conditions of Contract (if any) unless the context otherwise requires. Terms which are separately defined in a clause of this Scope of Works have the meanings given in those clauses.

2. SCOPE OF WORKS

The Works Under the Contract (WUC) are for the supply and Delivery to several designated stockpile locations on Defence Road Theodore of 43,000 tonnes of Type 2.3 gravel.

- 2.1 Stockpile locations are identified in Appendix A – Stockpile Locations Map
- 2.2 Except to the extent expressly permitted by the Contract, the Contractor must carry out WUC in accordance with the Technical Specification and the requirements of the Department of Transport and Main Roads Standards/Specifications.



TECHNICAL SPECIFICATION

Gravel Supply Defence Road

CONTRACT NO.: T2425.16

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TECHNICAL SPECIFICATION

1. INTRODUCTION

As part of Council's regular road inspections, it was noted that there was a for upgrading of sections of Defence Road from a gravel road standard to a bitumen sealed road standard. To undertake these works Council requires a stockpile of Type 2.3 gravel to various stockpile locations along Defence Road (Cracow end).

Council is looking for a contractor to undertake the supply and delivery of Type 2.3 gravel as per the Appendices of this document.

All material supplied under this contract is to meet the requirements of the Department of Transport and Main Roads (DTMR) Standards/Specifications.

2. AVAILABLE INFORMATION

The following information is available to help with your understanding of existing and intended scope of this project:

- Stockpile Locations Map (Appendix A); and
- Pricing Schedule (Appendix B).

The Contractor shall familiarise themselves as to the nature of the Site of the Works and of all matters and things relating to the Works, including but not limited to the nature of ground, slope stability, services and amenities, in ground services, condition of the sites, access to the sites and likely weather conditions.

3. SCOPE OF WORKS

The scope of this tender is for the supply and delivery to various specified stockpile locations of 43,000 tonnes of Type 2.3 gravel which meets the requirements of the DTMR specifications.

The delivery locations for the gravel area as follows **(with delivery to be priorities in the order shown below)**:

1. Stockpile at Chainage 68580 (near Eidsvold Theodore Road Intersection) – **8,000 tonne**
2. Stockpile at Chainage 66380 – **10,000 tonne**
3. Stockpile at Chainage 63540 – **15,000 tonne**
4. Stockpile at Chainage 58320 – **10,000 tonne**

The scope of the project may be increased or decreased due to budget requirements at any time. Council reserves the right to award any, all or none of the scheduled items in any combination.

Note Chainage 0 is at the intersection of Defence Road and Leichhardt Highway north of Theodore.

4. NATURE OF TENDER

This tender is to be considered a Lump Sum Contract. The submitted price shall be based on a Pricing Schedule (included in Appendix B of this document) and payment shall be made on the basis of:

- a unit rate for those Material Items which have a stated unit of measurement and a stated quantity

Unless stated otherwise in this Document, the Tender shall be for the whole of the Works specified in the Tender Documents and Notices to Contractor (if any) with all rates submitted fixed for the life of the contract.

5. LAPSING OF OFFER

Offers submitted under this tender shall remain valid for a period of three (3) months after the closing time and date and may be accepted by Council at any time before the expiry of that period unless otherwise notified, in writing, by Council.

6. TERM OF CONTRACT

The initial term of this Contract shall begin on the issuing of the Letter of Acceptance by Council.

Delivery of materials to site is to commence immediately on receipt of the Acceptance of tender and be completed within 30 days.

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

7. WORKING HOURS

Allowable working hours for the contract shall be restricted to 6am to 6pm Monday to Friday and 7am to 4pm Saturday (excluding Public Holidays and the Christmas period 22 December 2023 to 10 January 2024).

8. PRICING

All prices are to be quoted as GST excl. and cover all costs associated with the performance of the service. **Prices are to be fixed and guaranteed for the duration of the contract.**

9. LODGEMENT OF CLAIMS

Progress Claims are to be submitted by the Contractor each month.

Progress claims are to be made via the following process:

- A spreadsheet listing the quantity of works completed for the month along with the associated quality records (including supporting documentation for the quantities listed) is to be submitted to Council no later than the 21st of each month
- Council will then assess this information
- Council will forward a request for an invoice to be submitted for the approved claim amount by the Contractor

- Payment of the invoice will be made through Council's payment procedures on receipt of the invoice

All progress claim amounts/quantities (including any variations) are subject to approval by Council before payment is agreed.

Banana Shire Council will not have any obligation to pay the respondent for Goods until the Authorised Officer has been given a correctly rendered invoice.

A correctly rendered invoice must:

- Specify details of order in sufficient detail to enable Authorised Officer to assess; and
- Specify BSC Order number and Tender number; and
- Specify the respondent's Invoice number and Invoice date; and
- Specify the Contract Price payable by BSC and particulars of any GST payable in respect of the Contract Price; and
- Otherwise comply with the requirements of a Tax Invoice for the purposes of the GST Act.

10. PROJECT VARIATIONS

Council may, by written notice given to the Contractor, require the Contractor to vary the Works in nature, scope (extent and quantity) or timing.

The Contractor may be directed to:

- Increase, decrease or omit any part of the Works and / or
- Perform additional work.

Where the contractor is given a direction to vary the work under the contract which is not expressly identified in writing as a variation, the contractor must promptly, and where practicable before complying with the direction, give the Council Representative a written notice which identifies the direction and states that the contractor considers that the direction involves a variation. The approved variation number should be noted on the Invoice and be itemised.

All project variations must be approved by Council before a claim can be made. The Contractor is to include a breakdown of the proposed cost of any variation (based on the day labour rates submitted as part of this tender) as part of any variation submission.

11. MATERIAL, PLANT & EQUIPMENT AND LABOUR

All materials supplied in the works under contract (WUC) are to be the best of their respective kinds and in accordance with the current specifications of the Standards Association of Australia for those particular materials where such specifications are applicable and do not otherwise conflict with an express requirement of this Contract. If there is no relevant Australian Standard, the British Standard Specification if any, will apply.

The Superintendent may require samples of any or all materials to be submitted for its approval before their use. Whether the Superintendent has called for samples or not, all materials used in the WUC are subject to the Superintendent's written approval: -

- a) the Contractor may request the Superintendent to direct that alternative materials or equipment be substituted; and
- b) the Superintendent may, if the Superintendent is of the opinion that the characteristics of type, quality, appearance, finish, method of construction and/or performance are not less than is required by the Contract, direct a variation for the convenience of the Contractor allowing the substitution.

The Contractor shall provide all materials, plant, personnel and other items of work necessary for the proper completion of WUC or the compliance by the Contractor with any of its other obligations under the Contract, (including items which are not expressly mentioned in the Contract but which are obviously and indispensably necessary for the proper completion of such work or the compliance of the Contractor with its other obligations under the Contract);

All plant and equipment shall be appropriately licenced/registered and worthy for use in accordance with current legislative requirements and manufacturer's specifications.

All work shall be carried out by suitably qualified persons having experience in the particular types of work to be executed.

12. SPECIFICATIONS

The Department of Transport and Main Roads Gravel Specifications apply for this tender.

13. INSPECTIONS, MONITORING AND COMPLIANCE TESTING

The Contractor shall be responsible for the quality of all products supplied under the Contract, and provide all necessary facilities and resources to perform the inspection and tests required to achieve the specified quality.

Test results that meet the frequency and quality requirements of the DTMR specifications are to be submitted to Council before the delivery of gravel to site. Approval is to be given by Council for the gravel testing results before delivery commences.

APPENDICIES

A. STOCKPILE LOCATION MAP

B. PRICING SCHEDULE