

PART 5

GENERAL CONDITIONS OF CONTRACT

For the Hire of Plant & Equipment (Wet & Dry)

(WSCT-2122-01-VP)



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1. CONSTRUCTION OF CONTRACT

- 1.1 A reference to a party to the Contract includes:
- (a) in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
 - (b) in the case of a corporation, the corporation, its successors and assigns (transferees).
- 1.2 Where a party is composed of 2 or more persons, each item of agreement by the party binds:
- (a) all of those persons collectively; and
 - (b) each of them as an individual.
- 1.3 A reference to:
- (a) the singular includes the plural, and vice versa;
 - (b) a gender includes each other gender;
 - (c) a person includes a corporation, a firm, and a voluntary association;
 - (d) an Act includes an Act that amends, consolidates or replaces the Act;
 - (e) a section or other provision of an Act includes a section or provision that amends, consolidates or replaces the section or provision;
 - (f) money is a reference to Australian dollars and cents;
 - (g) a time of day is a reference to Australian Eastern Standard Time;
 - (h) a document includes, but is not limited to, any drawing, specification, material, record or other means by which information can be stored or reproduced.
- 1.4 Clause headings exist for convenience only and are to be disregarded when interpreting the Contract.
- 1.5 All information delivered as part of the Deliverables supplied under the Contract must be written in English. Where any document is a translation into English, the translation must be accurate.
- 1.6 If a provision of the Contract is found by a court of competent jurisdiction to be void, voidable, illegal or unenforceable, then that provision shall be deemed to be deleted from the Contract and the remaining provisions of this Contract shall continue in full force and effect.

2. DEFINITIONS

- 2.1 In the Contract, except where the context otherwise requires:

'Act' means an Act passed by the Commonwealth Parliament or the Queensland Parliament and includes subordinate legislation under an Act.

'Authorised Officer' see Clause 28.1.

'Clause' means a clause of the Contract.

'Contract' means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

'Contract Commencement Date' means the date set out in the Letter of Acceptance.

'Contract Expiry Date' means twelve (12) months after the Contract Commencement Date or as extended pursuant to Clause 3.

'Contract Price' means:

- (a) where payment is to be made on a lump sum basis, the sum which is stated in the Order to be payable to the Contractor for the provision of the Deliverables by the Contractor and the performance of the obligations of the Contractor under the Contract; and



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- (b) where payment is to be made on a schedule of rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the Pricing Schedule and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the schedule of rates; and
- (c) where payment is to be made on a lump sum and a schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b),

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

'Contractor' means the party whose Offer to supply the Deliverables is accepted by the Principal (by Letter of Acceptance).

'Defective Deliverables' see Clause 9.1.

'Deliverables' or **'Services'** or **'Goods and Services'** means the supply of wet and/or dry plant hire the subject of the Contract which are more particularly described in the Specification including all variations to the Deliverables, tasks, work and requisites provided for by the Contract or such of them as shall be described in an Order.

'Dispute Notice' see Clause 19.2.

'Extension Period' means a period or periods up to twelve (12) months in total.

'Force Majeure' means anything outside the control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, and acts (including laws, regulations, disapprovals or failures to approve) of any statutory authority.

'General Conditions of Contract' means these General Conditions of Contract.

'GST' means the goods and Deliverables tax under the GST Act.

'GST Act' means *A New Tax System (Goods and Deliverables Tax) Act 1999* and includes other GST related legislation.

'Letter of Acceptance' means a letter from the Principal to the Contractor advising the Contractor of the Principal's acceptance of the Offer.

'Local Government' means a local government for a local government area described by regulation under the *Local Government Act 2009*.

'Materials' means the substances or items required to complete the works (i.e. gravel; bitumen; etc.).

'Offer' means the written offer (in the form of the Tender Response) submitted to the Principal by the Contractor to provide the Deliverables and, if applicable, as amended in writing by any post offer negotiations.

'Order' means an order for Deliverables placed by the Principal with the Contractor under the terms of the Contract and **'Ordered'** has a corresponding meaning.

'Personal Information' has the meaning given in the *Information Privacy Act 2009 (Qld)*.

'Pricing Schedule' means the schedule of hourly rates submitted by the Contractor as part of its Tender and as otherwise varied pursuant to these General Conditions of Contract.

'Principal' or **'Council'** or **'WSC'** means **Winton Shire Council**.

'Register of Pre-Qualified Suppliers' or **'RPQS'** means a register of pre-qualified suppliers pursuant to section 232 of the *Local Government Regulation 2012*.

'Request for Quotation' or **'RFQ'** means a request for quotation issued by the Principal to the Contractor which sets out the specific details of the Services to be provided and seeking the Contractor's best pricing.

'Request for Tender' or **'RFT'** means the Request for Tender given to prospective tenderers inviting offers to tender for the supply of the Deliverables of which these General Conditions of Contract form part.

'RTI Act' means the *Right to Information Act 2009 (Qld)*.

'Special Conditions of Contract' means the Special Conditions of Contract included in the Request for Tender (if any).

'Specification' includes any specification included in the Request for Tender.

'Term' means the period for which the Contract will be in effect as specified in Clause 3, including any period of extension under Clause 3.



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3. TERM

- 3.1 The Term of the Contract shall begin on the Contract Commencement Date and expire on the Contract Expiry Date unless:
- terminated earlier in accordance with the terms and conditions of the Contract; or
 - extended by the Principal for the Extension Period.
- 3.2 The Principal may, in its sole discretion, by written notice (an “Extension Notice”) to the Contractor given not less than 1 month prior to the Contract Expiry Date extend the Term by the Extension Period.

4. EVIDENCE OF CONTRACT

- 4.1 In consideration of the Council accepting the Contractor’s Offer to be included on the Council’s Register of Pre-Qualified Suppliers for Hire of Plant & Equipment (Wet & Dry), the Contractor agrees to comply fully with these General Conditions of Contract.
- 4.2 The Contract is formed when the Contractor’s Offer is accepted by the Council by way of Letter of Acceptance.
- 4.3 The Contract between the Principal and the Contractor is constituted by the following documents:
- Letter of Acceptance;
 - Order
 - Special Conditions of Contract (if any);
 - General Conditions of Contract;
 - Clarifications and Addendums issued in writing by Council as part of the RFT process;
 - Specification;
 - Offer; and
 - correspondence passing between the Principal and the Contractor clarifying any aspect of the Request for Tender.
- 4.4 Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from document (a) to (h) in Clause 4.3.
- 4.5 After formation of the Contract, the Principal may deliver a completed Contract to the Contractor. Within fourteen (14) days after the date of delivery of the completed Contract to the Contractor, the Contractor must execute and return the completed Contract to the Principal for execution by the Principal. The Principal may extend the period for execution of the completed Contract by giving written notice to the Contractor.
- 4.6 This Contract is made pursuant to section 232 of the *Local Government Regulation 2012* and the Contractor is one supplier on the Principal’s Register of Pre-Qualified Suppliers.

5. RFQS AND PROVISION OF DELIVERABLES BY ORDER

- 5.1 Where the Principal intends to make a purchase under the RPQS, the Principal may issue an RFQ to one or more suppliers on the RPQS or where the details of the Contractor’s offering are sufficiently clear, place an Order directly with the supplier of its choice. RFQs will be issued to Contractors via the VendorPanel system.



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- 5.2 An Order will commence on the date specified in that Order or as otherwise advised in writing by the Council's Authorised Officer. An Order will end once the Services have been completed to the Council's Authorised Officer's reasonable satisfaction.
- 5.3 Where the Principal issues an RFQ, the Principal is not obliged to accept the lowest or any RFQ response and may negotiate with any supplier on the RPQS.
- 5.4 Where an Order is placed with the Contractor, the Contractor must supply Deliverables:
- (a) in accordance with the terms and conditions of the Order; and
 - (b) that comply with the Specification.
- 5.5 The Contractor must supply all Orders for Deliverables placed by the Principal during the Term.
- 5.6 The Principal may Order:
- (a) any 1 type or item of the Deliverables; and
 - (b) Deliverables in 1 lot or installments or in such quantities as may be required from time to time.
- 5.7 Where the Contractor receives an Order from a person other than the Authorised Officer the Contractor must:
- (a) not supply the Deliverables identified in the Order; and
 - (b) refer the Order to the Authorised Officer.
- 5.8 In consideration of the Principal using the Contractor as its preferred supplier of the Deliverables, the Contractor agrees to supply the Deliverables in full compliance with the Contract including but not limited to the Specification.
- 5.9 The Contract does not confer on the Contractor an exclusive right to supply the Deliverables to the Principal.
- 5.10 The Principal may obtain the Deliverables or any part of the Deliverables from an alternate supplier at any time during the Term.
- 5.11 The Principal does not guarantee any volumes or levels of income. Any figures set out in the RFT documents or otherwise supplied to the Contractor are based on historical data and do not reflect future volumes or spend.
- 5.12 For the avoidance of doubt, Services must only commence once a valid Council Order number has been issued. The Council shall not be liable for the payment for any Services provided without a valid Council Order number having been issued prior to the works being commenced.
- 5.13 These General Conditions of Contract apply to all Orders placed by the Council.
- 5.14 Where the Council deems it necessary, the Council may elect to use an Australian Standard Minor Works contract for the delivery of Services under an Order. Where the Council elects to use an Australian Standard Minor Works contract, the Contractor must not commence delivery of the Services until that contract has been executed by both parties.



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6. QUALITY OF DELIVERABLES

- 6.1 Unless the Specification states otherwise, all Deliverables supplied must be in accordance with Australian Standards, industry and government guidelines and relevant legislation where such exist. Where an Australian Standard does not exist the relevant ISO Standard shall apply.
- 6.2 If no sample or standard is stated in the Specification, the Deliverables must be of the highest standard and carried out promptly with all due skill, care and diligence.
- 6.3 The Contractor must:
- (a) engage and retain personnel who are able to competently provide the Deliverables; and
 - (b) ensure that all personnel engaged in the supply of the Deliverables have all skills and qualifications necessary to perform the Deliverables; and
 - (c) consult regularly during the Term with the Principal (through the Authorised Officer and the Contractor's representative).
- 6.4 The Contractor must document its compliance with its obligations under the Contract and use a Quality Assured System to assist in this compliance where relevant. The Contractor is not released or discharged from its obligations under the Contract from use of a Quality Assured System.
- 6.5 If relevant, the Contractor shall allow access to the Contractor's Quality Assured System by the Principal to enable effective monitoring of the Contractor's compliance in the supply of the Deliverables under the Contract.

7. SUPPLY OF DELIVERABLES

- 7.1 The Contractor must supply the Deliverables punctually. However, if a time for supply of the Deliverables is stated in an Order or the Contract, the Deliverables must be supplied within the time stated in the Order or the Contract, as the case may be.
- 7.2 Where a timeframe is indicated by the Principal in the relevant RFQ or Order, time shall be of the essence.
- 7.3 Upon it becoming evident to the Contractor that supply of the Deliverables is likely to be delayed, the Contractor must promptly notify the Council in writing. Such notification shall not release the Contractor from its obligation to supply the Deliverables by the due date or from any other obligation under the Contract, unless the Council agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with any delay.
- 7.4 The Contractor shall not be entitled to any extension of time for provision of the Deliverables except with the prior written consent of the Principal. The Council may in its sole discretion:
- (a) grant its consent; or
 - (b) refuse its consent.
- 7.5 Performance of the Services shall not of itself constitute acceptance of the Services by the Principal, with acceptance being subject to the approval of the Authorised Officer.
- 7.6 The Principal may conduct any examination or testing of the Services. If the testing shows that the Services do not comply with the Specification, the Order or the Contract, or are otherwise defective, the cost of the testing shall be a debt due and payable by the Contractor to the Principal.



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- 7.7 Where Key Performance Indicators are set by Council, the Contractor shall use its best endeavours to meet or exceed these requirements.

8. INSURANCE

- 8.1 The Contractor must have and maintain:
- (a) insurance under the *Workers' Compensation and Rehabilitation Act 2003* to cover workers, eligible persons, self-employed contractors, directors, trustees and partners; and
 - (b) public liability insurance in an amount not less than **\$10,000,000.00** in respect of any one occurrence and for an unlimited number of claims; and
 - (c) any insurance required by the Principal as set out in the relevant RFQ or Order; and
 - (d) any insurances set out by the Contractor in its Tender; and
 - (e) any other insurances as may be expected to be held by a supplier supplying similar goods and services to the Services.
- 8.2 The Contractor must, upon receipt of a written request at any time from the Principal, produce evidence that the insurances required by this Clause 8 have been effected and maintained.
- 8.3 Each insurance policy must remain current at all times during the Term.
- 8.4 If an insurance policy obtained by the Contractor provides for a deductible, the Contractor indemnifies the Principal against any cost attributable to the deductible.
- 8.5 The Contractor must promptly pay all premiums, stamp duty, GST and other money entailed in maintaining any insurance required under this Clause 8.
- 8.6 The Contractor must give the Principal upon request, a copy of the relevant policy document and the insurer's receipt for the last premium paid or a certificate of currency with respect to each of the insurance policies the Contractor is required to maintain under this Clause 8.
- 8.7 The Contractor must inform the Principal in writing of any claim or of the occurrence of any event that may give rise to a claim under any policy of insurance effected pursuant to this Clause 8 within seven (7) days thereof and must ensure that the Principal is kept fully informed of subsequent actions and developments concerning the event or claim.
- 8.8 The Contractor shall provide the Principal with such assistance as the Principal reasonably requires to lodge an insurance claim.
- 8.9 This Clause 8 shall survive termination or expiration of the Contract.

9. DEFECTIVE DELIVERABLES

- 9.1 Where, at any time during the supply of the Deliverables or any part of the Deliverables pursuant to an Order, or after the supply of the Deliverables pursuant to an Order, an Authorised Officer determines, acting reasonably, that the Deliverables or a part of the Deliverables do not comply with the Specification, the Order or the Contract ("Defective Deliverables"), the Principal may give written notice to the Contractor of the lack of compliance, and require the Contractor to promptly perform or perform again the Deliverables or such part of the Deliverables as do not comply.



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- 9.2 The Principal may, without derogating from any other right it may have on account of such unsatisfactory or defective performance, defer payment of that part of an invoice as relates to the Defective Deliverables until the Authorised Officer has certified that the re-performed Deliverables comply with the Specification, the Order or the Contract, as the case may be.
- 9.3 If the Contractor fails to comply with a requirement of a notice given under Clause 9.1, the Principal reserves the right to arrange for the supply of the Deliverables from another supplier.
- 9.4 All costs and expenses incurred by the Principal in exercising the rights of the Principal under Clause 9.3 in excess of the Contract Price, shall be a debt due and payable by the Contractor to the Principal.
- 9.5 The Contractor shall be responsible for all damages caused by Defective Deliverables.

10. OBLIGATIONS OF CONTRACTOR

- 10.1 The Contractor must supply all personnel and equipment necessary for the proper supply or performance of the Deliverables.
- 10.2 The Contractor warrants that it has the necessary skills and expertise to be able to competently supply the Deliverables.
- 10.3 If any Contract material is produced or reproduced in an electronic format, the Contractor must deliver it to the Principal in a format approved in writing by the Principal.

11. VARIATION OF DELIVERABLES

- 11.1 The Principal may, by written notice given to the Contractor, require the Contractor to vary the Deliverables in nature, scope or timing.
- 11.2 Without limiting the generality of Clause 11.1, the Principal may direct the Contractor to:
- (a) increase, decrease or omit any part of the Deliverables; or
 - (b) change the character or content of any part of the Deliverables; or
 - (c) change the direction or dimensions of any part of the Deliverables; or
 - (d) perform additional work.
- 11.3 Where the Principal requires a variation to the Deliverables which results in a measurable increase in the Contractor's costs, the parties must negotiate in good faith a variation of the Contract Price and the time for completion or supply of the Deliverables and failing agreement, either party may invoke the dispute resolution procedure in Clause 19.
- 11.4 The Contractor must not commence work on the variation to the Deliverables unless and until the variation is agreed in writing by the Principal and the Contractor.

12. INVOICING

- 12.1 The Contractor must submit invoices to the Authorised Officer within seven (7) days of service, unless otherwise specified in an Order. The Principal will not have any obligation to pay the Contractor for Deliverables until the Authorised Officer has been given a correctly rendered invoice.



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- 12.2 A correctly rendered invoice must:
- (a) identify the Deliverables the subject of the invoice; and
 - (b) specify the title of the Contract; and
 - (c) specify the Contract number allocated to the Contract by the Principal (or any other number as the Principal may specify in writing to the Contractor for the purposes of the Contract) (if any); and
 - (d) where Deliverables are charged on a time basis, be supported by records of time spent by individual persons on the Deliverables, verified by the Authorised Officer; and
 - (e) specify details of the Order; and
 - (f) specify details of the Contract Price requested by the Principal; and
 - (g) provide sufficient detail to enable the Authorised Officer to assess progress against targets (if any) set out in the Order or the Specification; and
 - (h) specify the Australian Business Number of the Contractor; and
 - (i) specify the address for payment of the Contractor; and
 - (j) specify the date of supply of the Deliverables identified in the invoice; and
 - (k) specify the Contractor's invoice number and invoice date; and
 - (l) specify the Contract Price payable by the Principal and particulars of any GST payable in respect of the Contract Price; and
 - (m) otherwise comply with the requirements of a tax invoice for the purposes of the GST Act.
- 12.3 Upon receipt of an invoice, the Authorised Officer may require the Contractor to provide additional information to assist the Authorised Officer to determine whether or not an amount is payable.

13. PAYMENT

- 13.1 Subject to the Authorised Officer's certification that:
- (a) the Deliverables supplied by the Contractor comply with the relevant Order, the Specification and the Contract; and
 - (b) the Deliverables supplied by the Contractor are complete; and
 - (c) the Contractor's invoice is in accordance with the Contract,
- unless issued under the provision of the *Building Industry Fairness (Security of Payment) Act 2017*, the Principal must pay the amount due to the Contractor within twenty-eight (28) days after the month end of the invoice date (or such other period as may be mutually agreed in writing between the parties) or, if additional information is required by the Authorised Officer, within twenty-eight (28) days after the month end of the invoice date (or such other period as may be mutually agreed in writing between the parties) after receipt of the additional information.
- 13.2 If the Principal pays an invoiced amount to the Contractor, and it is subsequently found not to have been a correctly rendered invoice, the Principal may deduct any overpaid amount owed to the Principal from the next invoiced payment or, if no other payment is due to the Contractor pursuant to the Contract, recover the amount from the Contractor as a debt due and payable to the Principal.
- 13.3 Payment of money to the Contractor does not constitute an admission by the Principal that Deliverables have been supplied in accordance with the Contract.
- 13.4 Failure by the Principal to pay the amount payable by the due time will not be grounds to invalidate or avoid the Contract.
- 13.5 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.



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- 13.6 The Principal may deduct from moneys due to the Contractor under the Contract or on any other account, any moneys due from the Contractor to the Principal under the Contract or on any other account, and if those moneys are insufficient, the Principal may have recourse to any security held by the Principal under the Contract. Nothing in this Clause 13 shall affect the right of the Principal to recover from the Contractor any moneys due from the Contractor to the Principal or any balance that remains owing after the deduction of moneys due from the Contractor to the Principal.

14. TEMPORARY SUSPENSION OF DELIVERABLES

- 14.1 The Principal may give written notice to the Contractor requiring the Contractor to suspend the progress of the whole or any part of the supply of the Deliverables for a period specified in the notice within a reasonable time after receipt of the notice, if the suspension is required by the Principal because of any change in the nature, scope or timing of the Deliverables.
- 14.2 The Principal may, by giving written notice to the Contractor, require the Contractor to recommence all or any part of the supply of the Deliverables suspended by written notice given under Clause 14.1.
- 14.3 Where the Contractor is required to suspend the supply of the Deliverables pursuant to Clause 14.1:
- (a) the Principal and the Contractor must negotiate in good faith as to reasonable compensation payable to the Contractor; and
 - (b) any previously agreed date for completion of the supply of the Deliverables will be postponed by a period equal to the duration of the suspension.
- 14.4 The Principal must reimburse the Contractor for any additional reasonable costs incurred by the Contractor which are directly attributable to the suspension of the supply of the Deliverables. If the Principal and the Contractor do not agree on the amount of reasonable compensation within a reasonable period, either party may invoke the dispute resolution procedure in Clause 19.

15. PRICE

- 15.1 The Contractor's hourly rates set out in its Tender are firm and not subject to rise during the first year of the Term.
- 15.2 The Principal shall be entitled to issue an Order to purchase the Services at the rates set out in the Contractor's Pricing Schedule. Where such an Order is placed by the Principal, the Contractor shall provide the Services at the rates detailed in the Pricing Schedule.
- 15.3 Where the Principal issues an RFQ, the Contractor may respond with a price which is equal to or lower than the rates set out in the Contractor's Pricing Schedule (but not higher).
- 15.4 The Principal reserves the right to negotiate a lower rate than that set out in the Pricing Schedule with the Contractor.
- 15.5 Changes to the Contract Price at any time during the Term shall only be allowed in extenuating circumstances (which the Contractor must document in writing) and entirely at the Principal's sole discretion.
- 15.6 Where extraordinary market circumstances (including a sustained rise in the price of fuel) have adversely affected the Contractor's ability to continue to provide the Deliverables at the agreed pricing under the Contract, an application for an increase to pricing may be submitted by the Contractor to the Principal's



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Authorised Officer. Any such application must be made in writing and must be submitted to the Principal's Authorised Officer as soon as practicable. Upon receipt of such an application, the Principal's Authorised Officer may ask the Contractor to provide additional evidence to support such an application. Within five (5) Business Days of receipt of such an application, or within five (5) Business Days of receipt of the requested additional evidence to support such an application, the Principal's Authorised Officer will advise the Contractor in writing whether the application has been accepted or declined.

- 15.7 The Contractor is to notify the Principal's Authorised Officer of any decrease in the Pricing Schedule rates as soon as practicable and in writing. Upon receipt of such notification, any decrease to the Contract Rates will have immediate effect.

16. DUTY

- 16.1 The Contractor must pay all duty imposed under the *Duties Act 2001* on the Contract (if applicable).

17. GOODS AND SERVICES TAX

- 17.1 Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.
- 17.2 The Contract Price includes the Principal's liability for GST on the supply of the Deliverables. The Principal is not obliged to pay any additional amount to the Contractor on account of GST on the supply of the Deliverables.
- 17.3 The Contractor must ensure that all invoices rendered to the Principal under the Contract are in a format that identifies any GST paid, and which permits the Principal to claim an input tax credit. However, this Clause 17.3 does not apply if the supply of the Deliverables is not a taxable supply.

18. TERMINATION

- 18.1 If the Contractor:
- (a) breaches any Clause of the Contract; or
 - (b) suspends payment of its debts or is unable to pay its debts; or
 - (c) has execution levied on any of the assets of the Contractor and the execution is not satisfied within twenty-eight (28) days; or
 - (d) enters into an arrangement, reconstruction or compromise with its creditors or any of them; or
 - (e) has a receiver appointed for all or any part of the assets of the Contractor; or
 - (f) has an application made or order filed for the Contractor's administration, voluntary or compulsory liquidation, winding-up, dissolution or bankruptcy; or
 - (g) brings the Council into disrepute; or
 - (h) ceases to carry on business,
- the Contractor will be in breach of the Contract and the Principal may give to the Contractor a written notice to remedy the breach.
- 18.2 If within fourteen (14) days of receiving a notice under Clause 18.1 the Contractor does not remedy the breach, the Principal may immediately terminate the Contract by giving written notice to the Contractor.
- 18.3 In addition, or as an alternative to termination of the Contract in accordance with Clause 18.2, the Principal may, in circumstances which would otherwise entitle the Principal to terminate the Contract in accordance with Clause 18.2:



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- (a) let such contracts as the Principal decides are necessary to perform that part of the obligations of the Contractor under the Contract as are yet to be performed or any of them; and
- (b) suspend or cease all payments otherwise due to the Contractor.

18.4 This Clause 18 shall survive termination or expiration of the Contract.

18.5 Upon termination of the Contract pursuant to Clause 18.2 or 18.5, all money which has been paid and all money to be paid for Deliverables supplied to the date of the termination will be in full and final satisfaction of all claims by the Contractor under the Contract.

18.6 Notwithstanding any other provision of the Contract, the Principal may terminate the Contract at any time upon thirty (30) days' notice, or such other reasonable time period, to the Contractor.

18.7 The Principal will not be liable for payment to the Contractor for any compensation arising from the termination of the Contract, including without limitation compensation relating to loss of profit revenue, goodwill or business opportunities, damage to reputation or indirect or consequential loss.

19. DISPUTE RESOLUTION

19.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.

19.2 If a dispute arises between the parties regarding the Contract, a party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.

19.3 A Dispute Notice must be referred to a panel consisting of a representative of the Contractor who is authorised to settle the dispute and the Authorised Officer.

19.4 Within seven (7) days of the giving of the Dispute Notice, the panel must confer at least once to attempt to resolve the dispute or to agree on resolving the dispute by other means.

19.5 If the dispute has not been resolved within twenty-eight (28) days of the giving of the Dispute Notice, the dispute may be referred to mediation by either party.

19.6 Mediation shall be effected by a mediator who shall be nominated by the Authorised Officer. The mediation shall be conducted in accordance with the provisions of the *LEADR Mediation Rules*.

19.7 Nothing in this Clause shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under this Clause 19 or any matter arising under the Contract.

20. CLAUSES TO SURVIVE EXPIRATION OR TERMINATION

20.1 The following Clauses survive the expiration or termination of the Contract:

- (a) Clause 21 – Release and Indemnity; and
- (b) Clause 23 – Confidentiality; and
- (c) Clause 31 – Right to Information and Disclosure; and
- (d) Clause 32 – Information Privacy.



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21. RELEASE AND INDEMNITY

- 21.1 The Contractor will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by the Principal or any officer, servant or agent of the Principal arising from the unlawful or negligent acts or omissions of the Contractor, its employees, representatives, sub-contractors or agents, in the course of the supply (or attempted or purported supply) of Deliverables under the Contract.
- 21.2 The Contractor releases and indemnifies the Principal and all officers, servants and agents of the Principal from and against all actions whatsoever and howsoever arising which may be brought or made against any of them by any person, including the Contractor, arising from:
- (a) any willful or negligent act or omission of the Contractor or any person for whose conduct the Contractor is liable; and
 - (b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Contractor; and
 - (c) death, injury, loss or damage suffered by the Contractor, its employees, sub-contractors, representatives or agents, or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the negligence or other wrongful act or omission of the Principal or any officer, servant or agent of the Principal.
- 21.3 In the event of any claim or action being made or brought against the Principal, the Principal may retain any money due to the Contractor in respect of Deliverables supplied under the Contract for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the claim or action, the balance outstanding in respect of the claim or action may be recovered from the Contractor as a debt due and payable to the Principal.

22. CONFLICT OF INTEREST

- 22.1 The Contractor warrants that, to the best of its knowledge, information and belief, at the commencement of the Term, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract. If, during the Term, a conflict of interest or risk of such conflict arises because of work undertaken for any person other than Principal, the Contractor must promptly give written notice to the Authorised Officer of that conflict of interest or risk of it.
- 22.2 The Contractor must take all reasonable measures to ensure that its employees, agents, representatives and sub-contractors do not, during the Term, engage in any activity or obtain any interest, which is in conflict with providing the Deliverables to the Principal. Any such activity must be disclosed in writing to the Authorised Officer immediately.
- 22.3 Where the Authorised Officer receives a notice of conflict of interest under this Clause, the Principal may give the Contractor a written notice to remedy the conflict under Clause 18.1.

23. CONFIDENTIALITY

- 23.1 The Contractor must, and must ensure that its employees, agents, representatives and approved sub-contractors, keep confidential any information obtained in the course of performing the Contract.
- 23.2 If required by the Special Conditions of Contract, the Contractor's employees, agents, representatives and approved sub-contractors must deliver to the Principal a confidentiality undertaking in the form required by the Principal.



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- 23.3 In the event of a breach of a confidentiality undertaking entered into pursuant to Clause 23.2, the Principal may terminate the Contract by giving written notice to the Contractor.
- 23.4 However, the Contractor may disclose any information:
- (a) which it is legally required or entitled to disclose; or
 - (b) to its legal and accounting advisers for the purposes of obtaining advice in relation to the Contract or any matter arising from the Contract.

24. ASSIGNMENT

- 24.1 The Contractor must not assign or sub-contract any of the rights or obligations of the Contractor under the Contract (either for the supply of the Deliverables or otherwise) without the prior written consent of the Principal. Any consent given by the Principal:
- (a) may be conditional; and
 - (b) will not relieve the Contractor from any of its liabilities or obligations under the Contract.
- 24.2 The Contractor is liable to the Principal for the acts and omissions of sub-contractors and employees, agents and representatives of sub-contractors as if they were the acts or omissions of the Contractor.

25. NEGATION OF EMPLOYMENT AGENCY ETC.

- 25.1 The Contractor must not represent itself or allow itself to be represented as being an employee or agent of the Principal.
- 25.2 The Contractor will not, by virtue of the Contract, be or become an employee or agent of the Principal.
- 25.3 Nothing in the Contract is to be taken or construed as creating the relationship of a partnership, joint venture or principal and agent, between any of the parties to the Contract.

26. NOTICES

- 26.1 Notices under the Contract may be delivered by pre-paid postage or certified mail, by hand, or by email transmission. Notices are deemed given five (5) days after deposit in the mail with postage pre-paid or certified, when delivered by hand, or if sent by email transmission, upon completion as evidenced by an email transmission record. The addresses for service of notices are:
- (a) for the Principal – Council's registered office address;
 - (b) for the Contractor – the address for service and email address of the Contractor specified in the Offer.
- 26.2 A party may change its address for service of notices by giving written notice to every other party to the Contract.

27. FORCE MAJEURE

- 27.1 A party will not be entitled to exercise its rights or remedies upon the default of another party to the Contract (whether at common law or pursuant to the Contract) if that default:
- (a) is caused by Force Majeure; or
 - (b) continues for less than three (3) days.



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- 27.2 Without limitation, where the event of Force Majeure continues for a period of more than fourteen (14) days, the Principal may terminate the Contract by giving written notice to the Contractor.

28. AUTHORISED OFFICER

- 28.1 The Principal must, by giving written notice to the Contractor, appoint a representative (the “Authorised Officer”) who shall be responsible for administering the Contract on behalf of the Principal. The Principal may change the identity of the Authorised Officer from time to time. The Principal must give written notice to the Contractor of any change in the identity of the Authorised Officer from time to time. The appointment of an Authorised Officer does not prevent the Principal from exercising any of its rights under the Contract.
- 28.2 For the avoidance of doubt, the Principal may appoint more than one (1) Authorised Officer. If the Principal appoints more than one (1) Authorised Officer:
- (a) each Authorised Officer must be responsible for administering a specified part of the Contract on behalf of the Principal; and
 - (b) the Principal may not appoint more than one (1) Authorised Officer to administer a specified part of the Contract; and
 - (c) the Principal must give written notice to the Contractor detailing which part of the Contract is to be administered by each Authorised Officer.
- 28.3 Not later than fourteen (14) days after the Contract Commencement Date the Contractor must appoint a representative who shall be responsible for administering the Contract on behalf of the Contractor by giving written notice to the Principal. The Contractor may change the identity of the Contractor’s representative from time to time. The Contractor must give written notice to the Principal of any change in the identity of the Contractor’s representative from time to time.
- 28.4 The Contractor’s representative must have a detailed knowledge of all activities associated with the provision and performance of the Deliverables and be authorised by the Contractor to make decisions and act on behalf of the Contractor.
- 28.5 The Contractor’s representative must:
- (a) liaise with and report to the Authorised Officer; and
 - (b) be available for discussions with, and attend briefings when reasonably requested by, the Authorised Officer; and
 - (c) reply promptly to any correspondence from the Authorised Officer dealing with the Contract; and
 - (d) if required, supply written reports to the Authorised Officer in a form, to a standard, and containing such information as may be required by, the Authorised Officer.

29. SECURITY AND ACCESS

- 29.1 The Contractor must, when using any premises or facilities of the Principal, comply with all reasonable directions and procedures as notified by the Principal or an Authorised Officer, including those relating to security and workplace health and safety which are in effect at the premises or facility.

30. INDUSTRIAL DISPUTES

- 30.1 The Contractor must not involve the Principal in any industrial dispute arising between the Contractor and any employee of the Contractor.



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31. RIGHT TO INFORMATION AND DISCLOSURE

- 31.1 The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including Local Governments).
- 31.2 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt, or on balance, disclosure is contrary to the public interest.
- 31.3 Information provided by the Contractor is potentially subject to disclosure to third parties pursuant to the RTI Act.
- 31.4 If disclosure under the RTI Act, or general disclosure of information provided by the Contractor, would be of substantial concern to the Contractor, because it would disclose trade secrets, information of commercial value, the purpose or results of research, or other information of a confidential nature, including Personal Information, this should be indicated by the Contractor. The Principal cannot guarantee that any information provided by the Contractor will be protected from disclosure under the RTI Act.

32. INFORMATION PRIVACY

- 32.1 Where the Contractor, its employees, representatives, agents or sub-contractors have access to or are responsible for holding Personal Information, the Contractor must:
- (a) comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* as if the Contractor were the Principal; and
 - (b) ensure that the Personal Information is protected against loss, unauthorised access, use, modification or disclosure, and against other misuse; and
 - (c) not use the Personal Information other than for the purpose of the Contract, unless required or authorised by law; and
 - (d) not disclose the Personal Information without the written agreement of the Principal, unless required or authorised by law; and
 - (e) not transfer the Personal Information outside Australia without the consent of the Principal; and
 - (f) ensure that its personnel do not access, use or disclose the Personal Information other than in the performance of their duties; and
 - (g) immediately notify the Principal if it becomes aware that a disclosure of Personal Information is, or may be, required or authorised by law; and
 - (h) fully cooperate with the Principal, to enable the Principal to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints; and
 - (i) comply with such other privacy and security requirements as the Principal reasonably advises the Contractor from time to time.
- 32.2 Where the Principal is not reasonably satisfied, on the basis of information provided to it by the Contractor, that proper practices are in place to ensure that the privacy and disclosure of information requirements for Personal Information are being observed and maintained, the Principal may at any time require the Contractor to make its sub-contractors aware of its obligations, in accordance with this Clause 32 including, when requested by the Principal, requiring any sub-contractor to promptly sign a privacy undertaking in a form approved by the Principal.



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33. MISCELLANEOUS

- 33.1 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority in providing the Deliverables.
- 33.2 The Contract is governed by and construed in accordance with the laws of the State of Queensland, and the parties submit to the jurisdiction of the Courts of that State and all Courts competent to hear appeals therefrom.
- 33.3 No agreement or understanding that varies or amends the Contract will bind any party unless and until agreed to in writing by all parties.
- 33.4 None of the conditions of the Contract will be waived or deemed waived, except by notice in writing signed by the party waiving the right.
- 33.5 The Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements either oral or written between the parties with respect to the subject matter referred to in the Contract.
- 33.6 The parties to the Contract are independent Contractors and nothing in the Contract will appoint the Contractor as an agent or employee of the Principal.

34. WORKS

- 34.1 The Clauses 34 to 67 (inclusive) apply where any component of the Services includes a works aspect.
- 34.2 Unless otherwise required by the context, the following definitions apply to Clauses 35 to 67 (inclusive):
- (a) **'Date for Practical Completion'** means:
 - (i) the date for practical completion set out in the Order; or
 - (ii) if an extension of time is directed or allowed, the date stated in paragraph (i) as adjusted for the extension of time.
 - (b) **'Date of Practical Completion'** means the date on which the Services reaches Practical Completion.
 - (c) **'Defects Liability Period'** means the defects liability period set out in the Order or where not so specified means 52 weeks.
 - (d) **'Direction'** includes any direction, permission, decision, certification, demand, notice, approval, refusal, requirement or authorization and "Directed" has a corresponding meaning.
 - (e) **'Liquidated Damages Amount'** means the amount which is payable by the Contractor to the Council per day for the period between the Date for Practical Completion and the Date of Practical Completion as set out in the Order.
 - (f) **'Practical Completion'** means the stage of execution of the Services under an Order when the Service is complete and ready for use except for minor omissions and defects which will not affect the use or occupation of the works.
 - (g) **'Site'** or **'Location'** means the lands and other places to be made available to the Contractor by the Council for the purpose of the execution and completion of the Services under the Order.
 - (h) **'Site Access Date'** means the date on which Council must provide the Contractor with access to the Site as set out in the Order.



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35. EXECUTION AND COMPLETION OF THE WORK

- 35.1 The Contractor must, until the Authorised Officer has certified that the Services have reached Practical Completion in accordance with the Order, execute and complete the Services in accordance with the Order and any Directions given by the Authorised Officer under the Order.
- 35.2 Where so required as part of an Order, the Contractor must execute and complete the Services in accordance with a Quality Assurance System approved by the Council.
- 35.3 Unless otherwise stated in the Order, the Contractor must supply all things and items required to execute and complete the Services including, without limitation, things and items not expressly mentioned in the Order.
- 35.4 The Contractor must comply with all relevant laws and the requirements of any relevant statutory authority affecting the execution and completion of the Services including, without limitation, paying all fees and obtaining all necessary consents of or incidental to the execution and completion of the Services.
- 35.5 The Contractor must supply all personnel and equipment necessary for the proper supply or performance of the Services.
- 35.6 The Contractor warrants that it has the necessary skills and expertise to be able to competently provide the Services.

36. CARE OF THE WORK

- 36.1 From the date of commencement of the Services until the Date of Practical Completion, the Contractor will be responsible for the care of the Services.
- 36.2 The Contractor must:
- (a) liaise and collaborate with all persons performing work on the Site; and
 - (b) not damage any work on the Site being undertaken by persons other than the Contractor.
- 36.3 The Contractor must promptly give written notice to the Council if the Contractor damages:
- (a) any of the Services; or
 - (b) any existing construction; or
 - (c) any property of the Contractor or any other person on the Site or any land or property (including private property) adjoining the Site.
- 36.4 If damage under Clause 36.3 occurs, the Contractor must, at the Contractor's expense, promptly repair and reinstate, as the case may be, the damaged Services, existing construction or property.
- 36.5 The damage referred to in Clause 36.3 above shall include vandalism to the Services. The Contractor must have protection on-site to guard against damage/vandalism occurring during the construction period.
- 36.6 This Clause 36 does not apply to loss or damage caused by the negligence or other wrongful act or omission of the Council or any officer, servant or agent of the Council.
- 36.7 The Council reserves the right to reject the use by the Contractor of any equipment which in the opinion of Council's representative is not suitable and which by its use could cause damage to existing construction.



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36.8 The Services are to be undertaken in a manner that minimises disruption to adjacent businesses and residents. In this regard, the Contractor is to consult with and negotiate a satisfactory agreement with each business and resident.

36.9 In addition, the Contractor is to provide a minimum of 48 hours written notice whenever access to businesses and residents needs to be restricted by the work. A copy of these notices is to be provided to the Council.

37. DIRECTIONS

37.1 The Council or the Authorised Officer may give a Direction to the Contractor orally or in writing.

37.2 If a Direction is given orally, the person giving the Direction must promptly confirm the Direction in writing in accordance with Clause 26.

37.3 The Contractor and its employees must comply with any Direction within the time set out in the Direction or, if no time is stipulated, promptly after receipt of the Direction, unless otherwise specified in the Order.

37.4 However, no Direction can alter or change the Contractor's fundamental rights under the General Conditions of Contract.

38. SITE

38.1 The Council must use reasonable endeavours to provide the Contractor with access to the Site:

- (a) from the Site Access Date; and
- (b) as is necessary to enable the Contractor to execute and complete the Services.

38.2 The Council may defer the Site Access Date by giving written notice to the Contractor.

38.3 If the Council defers the Site Access Date under Clause 38.2 for a specified period, the Date for Practical Completion must be deferred for the specified period.

38.4 If the Council defers the Site Access Date by giving written notice under Clause 38.2:

- (a) the Contractor may claim a variation of the Order Price; and
- (b) the deferral of the Site Access Date under Clause 38.2 is not a breach of the Order by the Council.

38.5 If the Contractor claims a variation of the Order Price under Clause 38.4(a), the variation of the Order Price must be:

- (a) reasonable compensation for loss or damage suffered by the Contractor resulting from the deferral of the Site Access Date; and
- (b) an amount mutually agreed between the Council and the Contractor or, failing agreement, as determined in accordance with Clause 19 and the Order Price must be varied accordingly.

38.6 In any event, the Contractor must use its best endeavours to mitigate any loss or damage suffered by the Contractor resulting from the deferral of the Site Access Date.

38.7 The Contractor may only access the Site so far as is necessary to enable the Contractor to execute and complete the Services.



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38.8 The Contractor shall be deemed to have satisfied itself of and be responsible for the physical condition of the Site and in particular the suitability of the Site for the execution and completion of the Services.

38.9 The Contractor shall not be entitled to any extension of the Date for Practical Completion or any increase in the Order Price by reason, directly or indirectly, of the physical condition of the Site.

39. TIME

39.1 The Contractor must substantially commence the execution of the Services at the Site within 14 days after the Site Access Date.

39.2 The Contractor must execute the Services in a manner and according to a program so that the Services reach Practical Completion on or before the Date for Practical Completion.

39.3 Each party must promptly give to the other written notice of any delay of or incidental to the execution of the Services.

39.4 If the Contractor determines that execution of the Services will be delayed by any act or omission of the Council or any agent or employee of the Council, other than an employee of the Contractor, the Contractor must give written notice to the Council within 7 days after the delay occurs and provide details of the delay and its cause.

39.5 If the Contractor gives written notice to the Council under Clause 39.4, the Contractor shall be entitled to an extension of time for execution and completion of the Services as determined by the Authorised Officer acting reasonably.

39.6 In any event, the Contractor must take all reasonable steps to prevent and minimise delays.

39.7 If the Authorised Officer determines that the Contractor is entitled to an extension of time for execution and completion of the Services, the Authorised Officer must give written notice to the Contractor evidencing the extension of time so determined by the Authorised Officer.

39.8 If the Authorised Officer does not give written notice under Clause 39.7, the Contractor shall not be entitled to an extension of time for the delay claimed by notice in writing given under Clause 39.4.

39.9 If the Authorised Officer gives the Contractor written notice of an extension of time under Clause 39.7, the Contractor may give written notice to the Council of the Contractor's claim for a variation of the Order Price.

39.10 For the purposes of Clause 39.9 the variation of the Order Price must be:

- (a) reasonable compensation for loss or damage suffered by the Contractor resulting from the delay; and
- (b) an amount mutually agreed between the Council and the Contractor or, failing agreement, as determined in accordance with Clause 19 and the Order Price must be varied accordingly.

40. MATERIALS AND WORKMANSHIP

40.1 In the execution and completion of the Services under the Order, all materials used, and the standard of workmanship must comply with the requirements of the Order. In the absence of such provisions, in the execution and completion of the Services under the Order, the material or standard of workmanship, as the



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case may be, must be of a kind which is suitable for its purpose and consistent with the nature and character of the Services.

- 40.2 Unless stated otherwise in the Specification or the Order:
- (a) all materials used in the execution and completion of the Services must be new; and
 - (b) all materials will be supplied by Council; and
 - (c) all workmanship must be in accordance with the relevant manufacturer's recommendations or, if there are no relevant manufacturer's recommendations, the relevant Australian Standard where applicable.
- 40.3 The Contractor warrants that it has all the licences, memberships, approvals and/or registrations set out in the Contract and Order and/or is necessary to carry out the Services (including where appropriate, BSA registration). The Contractor shall immediately notify the Council should any of its licences, memberships, approvals and/or registrations expire, lapse, be withdrawn or for any other reason no longer be current.

41. EXAMINATION AND TESTING

- 41.1 The Authorised Officer may, at any time, give a Direction that any Deliverables executed or completed under the Order by the Contractor be examined or tested.
- 41.2 The Contractor must provide all such assistance and samples and make accessible such parts of the Deliverables under the Order as may be required by the Authorised Officer.
- 41.3 If the Authorised Officer, acting reasonably, determines that any Deliverables do not comply with the requirements of the Order, the Contractor must remedy the non-compliance within a period of time stipulated in writing in a Direction given by the Authorised Officer acting reasonably, failing which, the Council may have such Deliverables remedied by persons other than the Contractor at the Contractor's expense. Alternatively, the Council may accept the Deliverables and deduct any reduced value or additional costs from payments due to the Contractor or recover the reduced value or additional costs as a debt due and payable by the Contractor to the Council.

42. DEFECTS LIABILITY

- 42.1 At any time during the period of engagement and defects in Deliverables are identified, the Council's Authorised Officer or Site Supervisor may give the Contractor a Direction requiring the Contractor to remedy any omission, defective workmanship, damage, loss or injury of or incidental to the Services occasioned by faulty workmanship.
- 42.2 The Contractor must, at the Contractor's expense, comply with the requirements of any Direction given to the Contractor under Clause 42.1.
- 42.3 If the Contractor does not comply with the requirements of a Direction given under Clause 42.1, the Council may have the omission, defect, damage, loss, or injury or that part of the omission, defect, damage, loss or injury as remains outstanding remedied by other persons and the costs so incurred shall be a debt due and payable by the Contractor to the Council which may be deducted from payments otherwise owing by the Council to the Contractor under the Order.



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43. CLEANING OF SITE

- 43.1 At all times during the execution of the Services the Contractor must clear away and remove from the Site all surplus material and rubbish arising from the execution of the Services.
- 43.2 On completion of the Services, the Contractor must clear away and remove from the Site all constructional plant, surplus material, rubbish and temporary works of every kind and leave the whole of the Site and the Services in a clean and tidy condition.

44. PROGRESS PAYMENT

- 44.1 Subject to Clause 18, from each reference date agreed by the Council under the Order, the Contractor is entitled to a progress payment if the Contractor has undertaken to carry out construction work, or supply related services, under the Order.
- 44.2 The amount of the progress payment to which the Contractor is entitled under Clause 44 is the amount calculated on the basis of the value of the construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, by the Contractor under the Order.
- 44.3 The Council and the Contractor must value:
- (a) construction work carried out or undertaken to be carried out under the Order; and
 - (b) related goods and services supplied or undertaken to be supplied under the Order,
- in accordance with section 72 of the *Building Industry Fairness (Security of Payment) Act 2017*.
- 44.4 A progress payment under the Order becomes payable 14 days after a payment claim for the progress payment is made under Clause 44.5.
- 44.5 If the Contractor claims to be entitled to a progress payment, the Contractor may serve a payment claim on the Council. The payment claim must:
- (a) state the information mentioned in section 68 of the *Building Industry Fairness (Security of Payment) Act 2017*; and
 - (b) be served within the period stated in section 75(2) of the *Building Industry Fairness (Security of Payment) Act 2017*.
- 44.6 If the Council is served with a payment claim, the Council may:
- (a) reply to the payment claim by serving a payment schedule on the Contractor in accordance with section 76 of the *Building Industry Fairness (Security of Payment) Act 2017* (and pay the scheduled amount on or before the due date); or
 - (b) pay the whole of the progress payment identified in the payment claim to the Contractor on or before the due date for the progress payment.
- 44.7 If the Council has served a payment schedule on the Contractor under Clause 44.6(a), the Council may serve a later payment schedule on the Contractor to correct an error or mistake in the earlier payment schedule.
- 44.8 For the purposes of the calculation of progress payments under the Order, the Council and the Contractor must take into account the deduction of:
- (a) retention monies (if any); and
 - (b) any amount which the Council is or may be entitled to deduct under the Order; and
 - (c) any amount which is due and payable by the Contractor to the Council under the Order or any other contract entered into between the Council and the Contractor.



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- 44.9 If the total of the monies to be deducted under Clause 44.8 exceeds the liability of the Council to the Contractor, the Council may have recourse to any security deposit or bank guarantee held by the Council under the Order.
- 44.10 The payment of monies by the Council to the Contractor under this Clause 44 is not:
- (a) evidence of the value of the construction work carried out or undertaken to be carried out under the Order; or
 - (b) evidence of the value of the related Services supplied or undertaken to be supplied under the Order; or
 - (c) an admission of liability of the Council; or
 - (d) evidence that the Services has been executed or executed and completed to the satisfaction of the Council.
- 44.11 For the purposes of this Clause 44:
- (a) the expressions "construction contract", "construction work", "due date", "progress payment" and "related goods and services" have the meaning given in the *Building Industry Fairness (Security of Payment) Act 2017*; and
 - (b) "reference date" means the last day of the month in which the construction work was first carried out, or the related goods and services were first supplied, under the Order and the last day of each subsequent month.

45. WORKPLACE HEALTH AND SAFETY

- 45.1 In this Clause 45, unless the context indicates otherwise:
- (a) the expressions "notifiable incident" and "workplace" have the meaning given in the Work Health and Safety Act 2011 ("the WHS Act"); and
 - (b) the expression "principal contractor" has the meaning given in the Work Health and Safety Regulation 2011 ("the WHS Regulation").
- 45.2 If the Site is a workplace for the purposes of the WHS Act and if the Contractor is engaged by the Council as the principal contractor, from the commencement date of the relevant Order until completion of the Services under that Order:
- (a) the Council engages the Contractor to act as the principal contractor for the purposes of section 293(2) of the WHS Regulation; and
 - (b) the Council authorises the Contractor to manage and control the workplace at which the Services are to be undertaken, and to discharge the duties of a principal contractor under Chapter 6 of the WHS Regulation for the Work; and
 - (c) the Contractor is deemed to have accepted the engagement in Clause 45.2(a); and
 - (d) the Contractor is deemed to have accepted responsibility for the management and control of the workplace at which the Services are to be undertaken, and undertakes to discharge the duties of a principal contractor under Chapter 6 of the WHS Regulation for the Services; and
 - (e) for the purposes of the execution and completion of the Services under the relevant Order, the Contractor is responsible for performance of the functions of the principal contractor under each of the WHS Act and WHS Regulation.
- 45.3 The engagement of the Contractor as the principal contractor under the WHS Regulation in accordance with Clause 45.2 continues for the period specified in Clause 45.2 unless revoked by the Council in writing. The Council may revoke the engagement of the Contractor as the principal contractor under the WHS Act by giving reasonable written notice to the Contractor at any time.



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- 45.4 The Contractor must indemnify and keep indemnified the Council against all liabilities which may be imposed under, or which may arise out of, the enforcement of any provision of the WHS Act or the WHS Regulation.
- 45.5 If a notifiable incident occurs of or incidental to the execution or completion of the Services, the Contractor must promptly give written notice of the occurrence of the event to the Council.
- 45.6 If the Site is a workplace and more than one contractor is appointed by the Council to undertake work at the Site at the same time, Clauses 45.2 to 45.4 inclusive do not apply.
- 45.7 If during the performance of the Services, the Council informs the Contractor that it is of the opinion that the Contractor, its sub-contractors and/or agents are:
- (a) not conducting the Services (or any part of the Services) in compliance with any workplace health and safety legislation or relevant policies and procedures; or
 - (b) conducting the Services (or any part of the Services) in such a way as to endanger the workplace health and safety of the Contractor's employees, the relevant Council's employees or the general public;
- the Council may direct the Contractor to promptly remedy the breach of workplace health and safety or may direct the Contractor to suspend the Services (or any part of the Services) until such time as the Contractor satisfies the relevant Council that the Services will be resumed in a safe manner (quality assurance and forms for non-compliance would apply).
- 45.8 If the Contractor fails to rectify any breaches of workplace health and safety for which work has been suspended, or if the Contractor's performance has involved recurring breaches of workplace health and safety, the Council may notify Workplace Health and Safety Queensland and request that an inspector visit the workplace or may terminate the Order forthwith, depending of the severity of the issue.
- 45.9 Records of any performance issues both positive and negative may be placed on the Contractor's file and referred to when reviewing the Contractor or considering future work.

46. PORTABLE LONG SERVICE LEAVE

- 46.1 In this Clause 46, the expressions "approved form", "authority", "building and construction work" and "levy" have the meaning given in the Building and Construction Industry (Portable Long Service Leave) Act 1991 ("the BCI (PLSL) Act") unless the context indicates otherwise.
- 46.2 If building and construction work is carried out under the Order:
- (a) an approved form will be filed by the Council with the authority or its agent; and
 - (b) the Council will pay the authority or its agent the amount of levy at or before the time for its payment,
- in accordance with the requirements of Part 8 of the *BCI (PLSL) Act*.

47. DISTURBANCE

- 47.1 The Site may be occupied during the currency of the Order. The Contractor must ensure minimal inconvenience and disturbance to the occupants of the Site, the public in general and any adjacent properties and their inhabitants.



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48. WORK NOT INCLUDED

- 48.1 The Order may exclude certain work from the Services which is to be carried out concurrently (or otherwise) by others.
- 48.2 Where any work is excluded pursuant to Clause 48.1 by the Council, the Contractor shall co-operate in good faith with any other contractor(s).

49. DOCUMENTS GENERALLY, DRAWINGS AND SPECIFICATION

- 49.1 Where the Contractor requires copies of documents in addition to its entitlement as allocated by the Council, such additional copies of the documents will be available to the Contractor at the charge current at the time of request.
- 49.2 The drawings comprise the detail drawings (including drawing numbers and titles) set out in the Order and any additional drawings supplied to the Contractor during the progress of the Services.

50. ENVIRONMENTAL PROTECTION

- 50.1 The Contractor must, at all times, take adequate measures to control noise on the Site.
- 50.2 The Contractor must comply with all statutory requirements relating to the control of noise levels on the Site and take all necessary precautions to minimise nuisance from noise and vibration and ensure that all sub-contractors observe similar care.
- 50.3 The Contractor must arrange its operations and provide silencing equipment to its plant, at its own expense, to whatever extent is necessary to satisfy the applicable statutory requirements in relation to the sound level arising from the Contractor's operations near the boundaries of the Site.
- 50.4 The Contractor must at all times:
- (a) comply with the requirements imposed by the Authorised Officer relating to the storage of materials, the routing of construction traffic, the interruption of existing services and facilities and any other statutory requirements applicable to the Site; and
 - (b) comply with all statutes, regulations and local laws relating to the protection of the environment; and
 - (c) obtain the prior written approval of the Authorised Officer for the formation of any temporary roads, the erection of temporary structures or any Site clearing not specifically documented; and
 - (d) ensure that no trees or shrubs are removed or destroyed without the prior written approval of the Authorised Officer; and
 - (e) ensure that no fire is lit without the prior written approval of the Authorised Officer; and
 - (f) store flammable or explosive products in accordance with the relevant statutes and to the approval of the Authorised Officer.
- 50.5 The Contractor must take all proper precautions to prevent soil erosion from any land used or occupied by the Contractor in the execution of the Services under the Order.
- 50.6 The Contractor must prevent any nuisance occurring through the discharge of dust dirt, water, fumes and the like onto persons or property.



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- 50.7 All debris, spoil, rubbish and materials must be suitably contained and covered in vehicles during transportation to or from the Site to prevent spillage or contamination of adjoining and other areas or property.
- 50.8 The Contractor must maintain vehicles, wheels and tracks in a suitable clean condition to prevent transfer of mud onto adjacent streets or other areas.
- 50.9 All Site refuse (including foodstuffs) must be handled and disposed of in accordance with the requirements of relevant statutes and to the approval of the Authorised Officer or Site Supervisor.

51. CONTRACTOR'S REPRESENTATIVE

- 51.1 The Contractor's representative must have sufficient command of the English language and of Australian construction and technical terminology, to be able to read, converse and receive instructions in English.

52. EXISTING IMPROVEMENTS

- 52.1 Where, within the Site, there are a range of existing improvements, roads, drainage and other services, the Contractor must protect and maintain the same throughout the execution of the Services under the Order.
- 52.2 The Contractor must implement traffic control measures so as to maintain all roads on the Site in a safe trafficable condition.

53. WORKERS' AMENITIES

- 53.1 The Council must provide all statutory and necessary amenities and sanitary facilities for workers and other persons lawfully upon the Site and remove them on Practical Completion of the Services.
- 53.2 Occupation of any part of the Services and Site for the provision of workers' amenities shall not be permitted without the prior written approval of the Authorised Officer.

54. TRADE NAMES

- 54.1 Where a trade name, brand or catalogue number is referred to in the Order, the Contractor may substitute equivalent material or equipment provided that in the opinion of the Authorised Officer the characteristics of type, quality, finish, appearance, method of construction and performance are not less than that specified and are approved by the Authorised Officer.
- 54.2 The approval of the Authorised Officer must not be anticipated because the Authorised Officer has given a similar approval previously.

55. SAFETY MANAGEMENT PLAN

- 55.1 The Contractor must, throughout the execution of the Services, abide by Council's "Safety Management Plan".
- 55.2 The Contractor must review the Council's Safety Management Plan in conjunction with a person suitably experienced and qualified in safety matters.



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55.3 Prior to the commencement of the Services, the Contractor must confirm their agreeance with and understanding of Council's Safety Management Plan to the Authorised Officer in writing.

56. INDUCTION TRAINING

56.1 Employees of the Contractor and its sub-contractors and employees of sub-contractors must not commence work until they have undertaken a Council general safety induction.

56.2 Prior to the commencement of work on the Site the Contractor, it's employees, sub-contractors or employees of sub-contractors, must undertake a Site-specific induction with regard to all significant hazards associated with their particular activity and area of employment on the Site and, where relevant, must include the use of powered plant, tools and equipment.

57. PRE-JOB PLANNING

57.1 Where legislation or codes of practice identify particularly hazardous activities including but not limited to work in confined spaces, asbestos removal, demolition work, excavation work, working near power lines and live conductors and working at heights, the Contractor must abide by Council's Safe Work Procedure (SWP). Contractors, their employees, sub-contractors and employees of sub-contractors must obtain and read the SWP prior to commencing such activity or type of work on the Site.

57.2 Where the works being undertaken pursuant to Clause 57.1 is not usually done by Council, then it is the Contractor's responsibility to supply to Council's Authorised Officer a Safe Work Procedure (SWP).

57.3 In conjunction with Council, the Contractor must induct its employees and its sub-contractors and employees of its sub-contractors with regard to the SWP and must complete "Training Session Attendance" sheets signed by each attendee verifying that such induction has occurred.

58. SITE AND PUBLIC SECURITY

58.1 Notwithstanding the Council's obligations to Site and public security as stated elsewhere in this Order, the Council must monitor and control wherever practical, the access of all persons to the Site. The Contractor, its employees, sub-contractors and employees of sub-contractors, are required to abide to Council's Site and public security conditions and assist Council if required.

58.2 The Contractor, employees of the Contractor and its sub-contractors and employees of sub-contractors must ensure that no persons, including without limitation friends and relatives (particularly children) of employees and the representatives of organisations unrelated to the Contractor, enter the Site without the express permission of the Council's Authorised Officer or Site Supervisor.

59. OCCUPIED SITES

59.1 In the event of the Site being a partially occupied Site, the Contractor must liaise with Council's Authorised Officer or Site Supervisor regarding safety and health requirements.

59.2 The Council's Authorised Officer will arrange a safety co-ordination meeting with the occupiers and the Contractor. The occupiers will provide to the Council and the Contractor their occupation requirements on and/or adjacent to the Site to assist the Council and the Contractor in the development of a Site-specific Safety Management Plan addressing the Council's, its Contractors and occupiers operational interface



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requirements. The Safety Management Plan must incorporate the Contractor's own operations and interface with the occupiers' operations.

- 59.3 The Council shall be responsible for the implementation of the safety and health standards on the occupied Site for the duration of the Order and must co-ordinate and integrate the Services. Contractors are required to abide by these standards and assist Council where required.

60. MATERIALS TO BE SUPPLIED BY THE COUNCIL

- 60.1 If required, any materials stated in the Specification to be supplied by the Council will be supplied free of charge to the Contractor for use only in the execution of the Services under the Order. The Contractor shall take delivery of the materials under the conditions set out in the Order.

61. SERVICES INSTALLATION & PROTECTION OF UTILITIES

- 61.1 The mechanical, electrical, plumbing, and similar service installations, equipment and their associated services must be installed in an order that will ensure that they are located as shown on the drawings and that all essential components and parts are accessible for the purposes of maintenance and replacement.
- 61.2 The Contractor shall be responsible for co-ordination between the various service installers in attaining the required locations and tolerances.
- 61.3 Where relevant to the Services being performed, before commencing work, the Contractor shall ascertain the location of underground services likely to be affected by its operations using the Dial Before You Dig service (www.dialbeforeyoudig.com.au) and from the relevant authorities. The Contractor must notify the relevant authority immediately its operations cause (or are reasonably likely to cause) any damage to the particular service.
- 61.4 The Contractor shall meet the cost of damage to public utilities.
- 61.5 Where public utility services such as Telstra conduits are above excavation level, the Contractor shall notify the Council's representative immediately and the Contractor shall arrange for the alteration of such services.
- 61.6 The Contractor in carrying out the Services shall co-operate at all times with the various services authorities.
- 61.7 The Contractor shall notify the Authorised Officer as soon as the Services are sufficiently complete for service authorities to inspect and/or commence alteration where necessary.
- 61.8 The Contractor shall fully indemnify the Council for any breach by the Contractor, its sub-contractors or agents of this Clause 0.

62. WORKING DAYS AND HOURS

- 62.1 Unless otherwise advised by the Council's Authorised Officer, working days and hours shall be taken as Monday to Friday inclusive between the hours of 6:00 am and 6:00 pm (excluding public holidays). These shall be the "Standard Days and Hours" for the purposes of the Order. No work shall occur on Christmas Day, Boxing Day, New Year's Day or Good Friday.



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- 62.2 Unless provided for elsewhere in the Order or approved by the Authorised Officer no Services shall be executed outside of the Standard Days and Hours except in emergency circumstances or where a particular construction activity dictates that Services is necessary outside the Standard Days and Hours. Where Services are executed outside of the Standard Days and Hours by reason of necessity, the Contractor must obtain the written approval of the Authorised Officer prior to executing the Services.
- 62.3 The Authorised Officer may approve the execution of Services outside the Standard Days and Hours if they consider that it will not cause undue interference, disturbance or other nuisance to residents in the vicinity of the Site.
- 62.4 The Council may recover all costs properly incurred by the Council in respect of providing any necessary supervision of construction operations undertaken outside the Standard Days and Hours as a debt due from the Contractor. However, no such cost shall be recoverable from the Contractor where:
- (a) working outside the Standard Days and Hours is specifically provided for elsewhere in the Order; or
 - (b) working outside the Standard Days and Hours (for the relevant Services) has been approved by the Authorised Officer prior to commencement of the relevant Services; or
 - (c) the relevant Services is of an emergent nature, for safety of the public or protection of the Services, resulting from an event beyond the control of the Contractor.

63. SCHEDULE OF WARRANTIES

- 63.1 The Contractor must obtain and ensure that the Council will have the benefit of all warranties specified in the Order.

64. BRANDS OF MATERIAL SCHEDULES

- 64.1 The Contractor must, within 14 days of the Order Commencement Date, notify the Authorised Officer of the brand or make of materials it intends to use for which the Contractor has a choice of brand or make, and which can affect the colour selections such as paint, fabrics, vinyl sheets and tiles, ceramic tiles, laminated plastics and like materials.
- 64.2 The Contractor must not depart from the brands or makes nominated in its advice to the Authorised Officer unless authorised by the Authorised Officer to do so.
- 64.3 If the Contractor fails to notify the Authorised Officer within the specified time of the brand or make of materials he intends to use, the Authorised Officer may nominate the brand or make of materials to be used and the Contractor must then use the brand or make nominated by the Authorised Officer and must add no claim for any extra costs incurred.

65. ADVERTISEMENTS AND PROMOTIONS ON SITE

- 65.1 The Contractor may erect on the Site, or permit to be erected on the Site, only those signs:
- (a) required by law; or
 - (b) specified in the Order.
- 65.2 The Contractor must not erect on the Site, or permit to be erected on the Site, any other sign, advertisement, promotion or other display without the prior written approval of the Authorised Officer.



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66. TRAFFIC MANAGEMENT

- 66.1 Unless otherwise set out in the Order or agreed with Council, Council is responsible for establishing and implementing a site-specific Traffic and Pedestrian Management Plan to which Contractors, their employees, sub-contractors and employees of sub-contractors, are required to abide by.
- 66.2 If required by Council or set out in the Order, a site-specific Traffic and Pedestrian Management Plan must be submitted to Council by the Contractor within two weeks of acceptance of an Order (or such other timeframe as may be agreed in writing with Council) and at least one week prior to commencement of the Services. This plan shall comply with the Manual of Uniform Traffic Control Devices and be appropriate to the location and usage requirements. The Contractor shall make such provision that the traffic flow will be interfered with as little as possible during the progress of the Services and that pedestrian safety is maintained at all times.
- 66.3 If Clause 66.2 applies, any changes to the Traffic and Pedestrian Management Plan must be approved by the Council's Authorised Officer.
- 66.4 If Clause 66.2 applies, the Contractor shall provide and maintain all necessary warning signs and lights as specified in Part 3 of the Queensland Manual of Uniform Traffic Control Devices (MUTCD), or amendments and addenda thereto. Should any such sign and/or lights become inadequate in the opinion of the Council, the Council will have the right to replace and/or add to those signs and/or lights placed by the Contractor, and the costs thus incurred shall be deducted by the Council from monies due, or which may become due to the Contractor.
- 66.5 The Council is to arrange for any necessary permits.

67. INSPECTION OF THE WORKS

- 67.1 The Council will carry out inspections of the Services/Deliverables from time-to-time.
- 67.2 Any defects, non-compliances or breaches noted at an inspection pursuant to Clause 67.1 are to be rectified by the Contractor within 14 Business Days. The Contractor is to notify the Council immediately after the defects have been rectified. Notwithstanding, if the defects are deemed unsafe defects are to be made safe and rectified immediately.