



# **MANAGEMENT AGREEMENT**

## **WINTON SHOWGROUNDS**

**Winton Shire Council**

**(“Council”)**

**[TBA]**

**(“Contractor”)**

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Parties  
**Winton Shire Council**

(“**Council**”)

[TBA]

(“**Contractor**”)

## **BACKGROUND**

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- A. Council owns the Showgrounds and Council Equipment.
- B. Council sought expressions of interest from parties interested in performing the Services at the Showgrounds.
- C. The Contractor is the successful applicant.
- D. Council requires the Contractor to provide the Services specified in this Agreement until the Expiry Date.
- E. Council and the Contractor agree to record the arrangement between them by this Agreement, and both parties agree to be bound by the terms of this Agreement.

## **OPERATIVE PROVISIONS**

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### **Part A Reference Schedule and Definitions**

#### **1. REFERENCE SCHEDULE**

<b>Item</b>	<b>Reference</b>	<b>Details</b>
<b>Item 1</b>	<b>Council</b> Address for Notices: Phone No.: Email Address:	<b>Winton Shire Council</b> 75 Vindex Street, Winton QLD 4735 (07) 4657 2666 info@winton.qld.gov.au
<b>Item 2</b>	<b>Contractor</b> Contact Person: Address for Notices: Phone No: Email Address:	<b>[TBA]</b>

Item	Reference	Details
<b>Item 3</b>	<b>Council Contact</b>  Address:  Phone No:  Email Address:	Brenton Hall (Acting Director of Works)  75 Vindex Street WINTON QLD 4735  (07) 46572666  BrentonH@winton.qld.gov.au
<b>Item 4</b>	<b>Term</b>  Commencement Date:  Expiry Date:	3 year fixed term with the option of extension of another 3 years.  TBA  TBA

## 2. DEFINITIONS

The following terms shall have the following meanings unless the context otherwise requires:

**Biosecurity Act** means the *Biosecurity Act 2014*, and, as the case requires, includes any regulations or other subordinate legislation made under that Act, and includes any versions of that Act or other Acts incorporating provisions of that Act which may be made after the Commencement Date.

**Commencement Date** means that date specified in the Reference Schedule.

**Contractor Fee** means the amount specified in Schedule B as the Contractor Fee, which is payable by the Council to the Contractor weekly in accordance with this Agreement.

**Confidential Information** means information and material (whether oral, in writing or electronic) relating to Council (and any entity connected with Council), that is not publicly available (other than by breach of this Agreement), including trade secrets; the Contractor Fee, the Fee; the terms and conditions of this Agreement; strategic, corporate and financial information; material and information relating to the methods of operation of the business; material and information relating to users of the Services and/or prospective users of the Services; sales and pricing information; marketing and business plans; software and hardware; programming information and data; Intellectual Property; and other information which is by its nature confidential.

**Council Contact** means the person specified in the Reference Schedule, or any other person nominated by Council from time to time.

**Council Equipment** means the plant and equipment which is the property of Council and as replaced and upgraded and includes new plant and equipment which may be purchased by Council during the Term and which is included in Schedule C, as amended from time to time. The Council Equipment shall at all times remain the property of Council.

**Expiry Date** means:

- (a) subject to subclause (b), the date specified in the Reference Schedule; or
- (b) if this Agreement is terminated in accordance with this Agreement on another date, that date.

**Facilities** means any, buildings, structures and machinery associated with the Showgrounds.

**GST** means the goods and services tax payable under the GST Legislation.

**GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and related legislation passed by the Federal Government.

**Land** means the Showgrounds Land.

**Residence** means the three-bedroom house and yard bounded by fencing that is situated at the Showgrounds.

**Services** means the Contractor's services, duties and responsibilities specified in Schedule A, any additional or ancillary services to the services specified in Schedule A and any other services agreed in writing between Council and the Contractor from time to time, to be provided by the Contractor pursuant to this Agreement.

**Showgrounds** means the facilities including the Showgrounds buildings and surrounds situated at the property located at Vindex Street, Winton that are situated on Winton Shire Council land.

**Showgrounds Land** means the area of land on lot 39 on AE87 and street entrances and surrounds situated on lot 118 on AE151 and lot 114 on G2499 designated as Winton Showgrounds and Winton Racecourse as shown in Schedule D as the Showgrounds Land, located at Winton, upon which the Showgrounds and Racecourse and entry / exists are located.

**Staff** means any employees, contractors, staff, sub-contractors, or agents of the Contractor who perform or assist in performing any of the Services.

**Term** means the period specified in the Reference Schedule.

2.2. In this Agreement, unless the contrary contention appears:

2.2.1. Reference to:

- (a) business day means a day that the local government is open for business in Winton;
- (b) one gender includes the other genders;
- (c) the singular includes the plural, and the plural includes the singular;
- (d) a person includes a partnership and a body corporate;
- (e) a party includes the party's successors and permitted assigns;

- (f) a clause, sub-clause, paragraph or schedule is to a clause, sub-clause, paragraph or schedule of this Deed;
  - (g) a statute, regulation or provision of a statute or regulation (“statutory provision”) includes a reference to:
    - (i) that statutory provision as amended or re-enacted from time to time; and
    - (ii) a statutory provision enacted in replacement of that statutory provision; and
  - (h) writing includes a reference to printing, typing and each other method of producing words in a visible form.
- 2.2.2. If a party consists of more than one person, this Agreement binds them jointly and each of them severally.
- 2.2.3. Headings are for convenience only and do not affect the interpretation of this Agreement.
- 2.2.4. Any party which is a trustee is bound in its capacity as a trustee and personally.

## **Part B**

### **Appointment, Term and Probation Period**

#### **3. APPOINTMENT AND TERM**

##### **3.1. Appointment**

Council appoints the Contractor to provide the Services on the terms and conditions in this Agreement and the Contractor accepts the appointment.

##### **3.2. Term**

This Agreement will start on the Commencement Date and will continue for the Term until the Expiry Date, unless terminated prior.

#### **4. Probationary Period**

4.1. As soon as possible (at Council's sole discretion) after the date that is three (3) months after the Commencement Date, Council will undertake a review of the Contractor's performance under this Agreement. Matters which will be reviewed will include:

- (a) levels of stakeholder satisfaction;
- (b) levels of patronage of the Facilities; and
- (c) maintenance standards.

4.2. The Council's review will be measured in accordance with the criteria in clause 5.2.

4.3. Council will provide the Contractor with feedback on the review.

4.4. If, after undertaking the review, Council believes that the Services being provided by or performed by the Contractor under this Agreement do not meet the standards identified in clause 5.2 to its absolute satisfaction, Council may issue a show cause notice allowing the Contractor no less than fourteen (14) days to show why this Agreement should not be terminated.

4.5. If the Contractor is unable to provide to Council, in Council's sole discretion acting reasonably sufficient reason as to why this Agreement should not be terminated, Council may terminate this Agreement by giving the Contractor no less than fourteen (14) days written notice.



## **Part C**

### **Obligation of the Parties**

#### **5. CONTRACTOR'S OBLIGATIONS - SHOWGROUNDS**

##### **5.1. Provision of Services**

- 5.1.1. The Contractor must do all things reasonably necessary to provide the Services, in accordance with this Agreement.
- 5.1.2. The Contractor will ensure that it works the hours necessary to achieve the efficient and effective performance of the Services.
- 5.1.3. The Contractor will ensure that it engages sufficient suitably qualified and accredited Staff to perform the Services.
- 5.1.4. The Contractor must not sub-contract the provision of the Services under this Agreement without the prior written consent of Council.
- 5.1.5. If for any reason the Contractor is unable to perform the Services for an extended period of time the Contractor must, with Council's prior written consent, make alternative arrangements and engage suitable Staff to carry out necessary duties in their absence.
- 5.1.6. The Contractor must ensure that, to the greatest extent possible, the Services are provided in such a way that Council's interests are protected, with safety of all parties being of paramount importance.

##### **5.2. Standard of Performance**

- 5.2.1. The Contractor warrants that the Contractor (including any Staff of the Contractor) has and will utilise the necessary skills, experience, and expertise to perform the Services in accordance with this Agreement.
- 5.2.2. The Contractor warrants that the Contractor (including any Staff of the Contractor) hold and will maintain for the term all relevant qualifications, permits, licences and other approvals that may be required in order to provide the Services at the Facilities (unless Council has expressly authorised in writing a qualification, permit, licence or other approval to lapse or be obtained at a later date).
- 5.2.3. The Contractor shall ensure that the Services are performed with due care, skill and diligence in a professional and ethical manner and to Council's reasonable satisfaction.

##### **5.3. Maintenance of Facilities and Land**

- 5.3.1. The Contractor acknowledges and agrees that,

- (a) at its cost unless otherwise specified it shall maintain the residence and land around the residence in a neat and tidy condition at all times throughout the Term; and
  - (b) it is responsible for whipper snipping and mowing in and around the Residence Facilities.
- 5.3.2. The Contractor shall be responsible for any costs associated with capital repairs to, and replacement of, infrastructure and Facilities, including mechanical infrastructure associated with the Facilities, where such repair, maintenance or replacement is required as a result of the Contractor's (or its Staff, subcontractors or invitees) negligent or wilful acts or omissions.
- 5.3.3. Where repairs including fair wear and tear and capital works, in the reasonable opinion of the Council, are required or necessary through no fault of the Contractor, Council will be responsible for repair and maintenance of the any infrastructure at the Facilities so that such infrastructure is able to be effectively used to undertake the Services.

#### **5.4. Instructions and Compliance**

- 5.4.1. The Contractor will liaise with and obtain instructions from the Council Contact, or any other person nominated by Council in relation to providing the Services.
- 5.4.2. The Contractor will comply with all reasonable guidelines, requirements and instructions provided by Council and its authorised officers concerning the provision of the Services.
- 5.4.3. The parties agree that it is the Contractor's obligation to determine how the work is performed, and the Contractor has full responsibility for the payment, supervision and daily direction and control of its Staff.
- 5.4.4. The Contractor must comply with all applicable laws concerning the provision of the Services and policies and procedures issued by Council, including but not limited to State and Federal laws and policies relating to:
- (a) workplace health and safety;
  - (b) discrimination and harassment;
  - (c) security;
  - (d) privacy, confidentiality; and
  - (e) the use of any Council Equipment, including computing and related systems.
- 5.4.5. The Contractor agrees that it will prepare a standard operating procedure to guide the delivery of the Services, which must be consistent with the Biosecurity Act (to the extent that it is applicable), any policies released by DAF and any industry standards that may apply to the delivery of the Services, and the Contractor shall in all respects and at all times adhere to the standard operating procedure in the performance of the Services.

- 5.4.6. The Contractor is required to familiarise itself with, and comply with, all of Council's Policies and Procedures when discharging their obligations under this Agreement, including but not limited to Council's Code of Conduct. The Contractor is responsible for familiarising itself with Council's Policies and Procedures.
- 5.4.7. For the avoidance of doubt, a decision by Council or the Council Contact to issue an instruction pursuant to this clause is not capable of being challenged, reviewed, or otherwise disputed, including pursuant to clause 22.

## 5.5. Responsibility for Staff

- 5.5.1. The Contractor acknowledges that the Contractor is:
- (a) responsible for ensuring the health, safety and welfare of its Staff while performing the Services, including providing all necessary training and safety equipment; and
  - (b) solely responsible for all remuneration, expenses, taxes, leave entitlements, superannuation, workers' compensation, and other insurances in respect of its Staff.
- 5.5.2. The Contractor indemnifies Council and keeps Council indemnified (on a full indemnity basis) against any loss, cost, expense, or damage suffered or incurred to any person or property and Council arising directly or indirectly from any claim by any Staff in relation to this clause.

## 5.6. Provision of Equipment

### 5.6.1. Council Equipment

- (a) The Contractor may use the Council Equipment in delivering the Services, but the Council Equipment shall at all times remain the property of Council, and the Contractor shall not be entitled to remove the Council Equipment from the Land or permit third parties (other than the Contractor or its Staff) to use the Council Equipment.
- (b) The Contractor shall be responsible for any loss or damage to the Council Equipment, save for fair wear and tear or breakdown that is not because of the Contractor's use, misuse, or failure to maintain the Council Equipment in accordance with this clause.

### 5.6.2. The Contractor must:

- (a) ensure that all the Council Equipment and the Contractor's equipment, machinery and tools are maintained in good working order and condition;
- (b) ensure pre-start vehicle checks are undertaken and documented as per Winton Shire Council process.

- 5.6.3. Council will include the maintenance of firefighting equipment (for example, fire extinguishers and hose reels) and defibrillators available at the Winton Showgrounds in its regular maintenance schedule.

## 5.7. Training obligations

The Contractor must at its cost, undertake training and obtain and maintain all necessary approvals and qualifications as reasonably required and at law to operate the Showgrounds on Council's behalf, and provide the Services. The Contractor must attend or participate in any training, instructional seminar or otherwise if reasonably requested by Council.

## 5.8. General Obligations

- 5.8.1. The Contractor must always carry out the Services and other duties and obligations under this Agreement to the satisfaction of Council.
- 5.8.2. The Contractor may accept outside work in respect to the Services provided it is not in conflict with the delivery of the Services required by this Agreement. The Contractor shall not have exclusive rights to carry out associated Services. For the avoidance of doubt, nothing in this clause permits the Contractor to use the Land or the Facilities for purposes other than those set out in this Agreement.
- 5.8.3. The Contractor is always responsible for the payment of all wages or remuneration to any Staff engaged by the Contractor to provide the Services, and any such Staff shall not at any time be deemed to be employees of Council.

## 5.9. Alterations and Improvements

- 5.9.1. The Contractor must not make any alterations or improvements ("**Works**") to the Land or the Facilities without Council's prior written consent, which (should it be forthcoming) will include the following conditions:
  - (a) the Contractor must provide detailed plans of the Works to Council who may, at the Contractor's cost, refer the plans to Council's architect or other consultants for its approval.
  - (b) the Contractor must obtain all relevant approvals to the Works before commencing the Works. If required by Council, the Contractor must construct the Works under the supervision of Council's architect or other consultants (with the cost of the supervision to be borne by the Contractor);
  - (c) the Works must be carried out in a proper and workmanlike manner, and at the cost of the Contractor, by contractors who have a current public liability insurance policy for at least \$20,000,000.00 and have previously been approved by Council; and
  - (d) the Contractor must indemnify and keep indemnified Council against all claims, expenses and losses incurred by Council relating to the construction of the Works.
- 5.9.2. For avoidance of doubt, any Works installed by the Contractor shall remain part of the Land upon termination of this Agreement and Council shall not be liable to pay any amount to the Contractor in compensation for the Works.

## 6. COUNCIL'S OBLIGATIONS AND POWER OF ENTRY

- 6.1. To enable the Contractor to provide the Services, Council will at its cost unless otherwise specified:
- 6.1.1. supply water and repair and maintain water reticulation and systems at the Showgrounds.
  - 6.1.2. supply electricity and repair and maintain electrical installations and equipment at the Showgrounds where reasonably able to do so.
  - 6.1.3. maintain and repair major damage to the Showgrounds and any capital repairs required at the Facilities as it sees fit and necessary and/or where such needs are reported to Council or the designated Council Contact and approved by Council;
  - 6.1.4. water by tanker truck, roads and other areas outside of but in the vicinity of the Facilities for dust suppression purposes at a time and frequency determined suitable and appropriate by Council;
  - 6.1.5. notify the Contractor promptly of any information received from other parties in relation to the operation of the Showgrounds;
  - 6.1.6. Supply all ancillary equipment and supplies necessary to deliver the Services, at its cost, including:
    - (a) all stationery including paper and printer cartridges; and
    - (b) all cleaning equipment and materials.
- 6.2. Council will register and maintain a Property Identification Number (PIC) for the Winton Showgrounds.
- 6.3. Council agrees to carry out its duties and obligations under this clause when required and in such a manner as to enable the Contractor to deliver the Services under this Agreement to the satisfaction of Council.
- 6.4. **Entry to Land**
- 6.4.1. Council may, at any time during the Term, enter the Land upon giving the Contractor no less than two (2) business days' written notice, to:
    - (a) form a view about the Contractor's compliance with this Agreement, including to investigate any possible breaches by the Contractor of this Agreement;
    - (b) exercise any of the obligations listed in the preceding subclause.
  - 6.4.2. In exercising its power of entry pursuant to the preceding subclause, Council agrees to take reasonable steps to minimise interference to the Contractor's operations.

## 7. THIRD PARTY DISPUTE RESOLUTION

- 7.1. In the event of any dispute between the Contractor and a third party that in any way relates to a provision of this Agreement, or generally relates to the Contractor's obligations under this Agreement, the Contractor must, as soon as practicable after becoming aware of the dispute, advise the Council of the existence of the dispute and attempt to resolve the dispute with the relevant third party.
- 7.2. The Council Contact may, in their discretion assist the Contractor to resolve the dispute, and when agreed, that determination shall be binding on the Contractor. Nothing in this clause places an obligation on Council to assist in the resolution of a dispute or to make a determination about a dispute.
- 7.3. The Contractor acknowledges and agrees that where the Council, acting reasonably, as a result of the request for assistance considers that an amendment to this Agreement is required in order to determine the dispute, and to avoid similar disputes from occurring, the Council may give notice to the Contractor of an amendment to this Agreement ("an Amendment Notice"), and the amendment to the Agreement identified in the Amendment Notice shall come into effect on and from the date of the Amendment Notice.
- 7.4. For the avoidance of doubt, neither a decision by Council to issue an Amendment Notice nor the contents of any Amendment Notice are decisions that the Contractor is capable of challenging, reviewing or otherwise disputing, including pursuant to clause 22.

## Part D Fees

### 8. CONTRACTOR FEE

- 8.1. Council shall pay the Contractor the Contractor Fee.
- 8.2. The Contractor Fee shall be paid monthly for the provision of the Services which will be paid by electronic funds transfer to the bank account nominated by the Contractor, on a day to be determined by Council on commencement of this Agreement.

### 9. ACCURACY AND ADEQUACY OF REPORTING

- 9.1. This clause relates to the report given by the Contractor to Council under clause 17 and to any supplementary or amended reports provided in discharge of the Contractor's obligations under clause 17 ("**a Report**").
- 9.2. If Council, acting reasonably, doubts the accuracy or adequacy of a Report, Council may take any one or more of the following steps:
- 9.2.1. request that a supplementary report be provided to address the identified inaccuracy or inadequacy;
  - 9.2.2. request that the Contractor provides further information to support the matters disclosed in the Report or any supplementary report;
  - 9.2.3. audit, either by itself or through a third party, so much of the Contractor's books and records as Council requires to satisfy itself of the matters disclosed in the Report or any supplementary report;
  - 9.2.4. interview any member of the Contractor's Staff in order to corroborate the matters disclosed in a Report;
  - 9.2.5. take any other step which Council considers reasonably necessary to verify the accuracy or improve the adequacy of a Report.
- 9.3. All costs associated with any step or combination of steps taken pursuant to clause 9.2 shall be borne by the Contractor. If Council incurs the cost, Council may, in its absolute discretion, invoice the Contractor for that cost as a liquidated debt, and the Contractor must pay the amount of that invoice as directed by Council.
- 9.4. If Council's enquiries reveal that Council has been underpaid its proportion of the Showgrounds Fee, Council may immediately invoice the Contractor for the outstanding proportion.
- 9.5. For the avoidance of doubt, Council's rights under this clause:
- 9.5.1. apply to any Report, regardless of whether or not an invoice has been rendered and paid in reliance upon the provisions of clause 9;

- 9.5.2. can be invoked even if Council has, by its express or implied conduct, previously accepted the contents of a Report;
- 9.5.3. survive the expiry of this Agreement.

## **10. TAXATION**

### **10.1. Payment of GST**

- 10.1.1. The fees, charges, taxes, and expenses payable under this Agreement include GST.
- 10.1.2. Where GST is payable on any supply made by a party under or in connection with this Agreement, the consideration provided (or to be provided) for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply (the "GST Amount").
- 10.1.3. The party making the supply must promptly provide a tax invoice or receipt, which is in an approved form for GST purposes, for any supply for which the party making the supply may recover GST.
- 10.1.4. If a party has incurred a cost on which GST is payable, that party may claim the cost-plus GST, unless the party is entitled to an Input tax credit in respect of such GST.

### **10.2. Registration and ABN**

- 10.1.1. Each party warrants that at the time any supply is made under this Agreement on which GST is payable that party is or will be registered under the GST Legislation.
- 10.1.2. The Contractor must provide Council with written evidence of registration and its Australian Business Number ("ABN") prior to the Commencement Date.
- 10.1.3. Council is entitled to withhold such amounts necessary to be withheld for Council to comply with its taxation obligations in respect of the Contractor until the Contractor provides its ABN.

### **10.2. Licencing**

- 10.2.1. The Contractor and any employees must obtain and always hold during the term of this Agreement a Responsible Service of Alcohol Certificate and any other certification required from time to time.
- 10.2.2. The Contractor is required to ensure all venue users have appropriate licencing (for example, a Food Licence).
- 10.2.3. Council will provide the Contractor and any employees with training (as necessary) throughout the term of the Agreement.



## **Part E**

# **Insurances, Indemnities and Warranties**

## **11. INSURANCES**

### **11.1. Required Insurances**

11.1.1. The Contractor must hold and keep current, at the Contractor's own cost, with a level of coverage specified by Council and with Council's interests noted where appropriate, the following insurances:

- (a) workers' compensation insurance to cover the performance of the duties to be carried out in accordance with the terms and conditions of this Agreement.
- (b) an insurance policy to the replacement value of the Contractor's property and fittings on the Land and at the Facilities.
- (c) any other insurances required by law, or reasonably required by Council, or regarded as sound commercial practice.

### **11.2. Evidence of Insurances**

11.2.1. The Contractor must, on request, provide satisfactory evidence to Council of the existence and currency of the insurance policies referred to in this clause prior to the Commencement Date and from time to time upon request.

11.2.2. Such evidence includes, but is not limited to, a certificate of currency.

## **12. INDEMNITY**

12.1. The Contractor indemnifies Council, and shall keep Council indemnified against, any loss, cost, expense or damage suffered or incurred by Council or any other person arising directly or indirectly from or related to the provision of the Services or from the Contractor's management or occupation of the Showgrounds Residence or the Land, including (but not limited to):

- 12.1.1. any breach or non-observance by the Contractor or its Staff of any provision of this Agreement or warranty given under this Agreement.
- 12.1.2. any breach of any law or statute by the Contractor or its Staff; and
- 12.1.3. any right or claim by any third party.

### **13. CONTRACTOR'S WARRANTIES**

13.1. The Contractor warrants and agrees that:

- 13.1.1. prior to entering into this Agreement, the Contractor was given a reasonable opportunity to obtain any advice (legal or otherwise) about this Agreement and the obligations and restraints contained in it;
- 13.1.2. the Contractor has had sufficient time to consider the terms of this Agreement, its implications and the advice given to them in respect of it;
- 13.1.3. the Contractor understands this Agreement and agree that its terms are fair and reasonable in the circumstances;
- 13.1.4. the Contractor has entered into this Agreement voluntarily of their own freewill without duress, coercion, undue influence or pressure from either Council or any other person;

13.2. Council is relying upon these warranties in executing this Agreement.

### **14. SHOWGROUNDS RESIDENCE**

- 14.1. The Contractor will be provided with a three-bedroom air-conditioned house located at the Showgrounds for the duration of this agreement. The residence is provided on an unfurnished basis.
- 14.2. The Contractor is responsible for the cost of any services that are not provided by Council, for example, Council is responsible for the costs of supplying water to the premises.
- 14.3. Council will pay for electricity supply costs associated with standard and reasonable usage of the Showgrounds residence, buildings and ancillary structures and services.
- 14.4. The Contractor is responsible for the costs of transporting their furniture and belongings to take up residence at commencement of this agreement and on termination of this agreement.
- 14.5. The Contractor will enter into a Tenancy Agreement with the Residential Tenancies Authority and provide a bond of \$600.00 from their own funds.
- 14.6. The Contractor is responsible for maintaining the land around the Residence including lawn maintenance and fencing.
- 14.7. Council is responsible for repairs and maintenance to the Residence and may from time to time, upgrade the facilities at its discretion.
- 14.8. The Contractor is responsible for those items ordinarily the responsibilities of a tenant, for example, lightbulbs.

## **Part F Termination**

### **15. TERMINATION**

#### **15.1. Termination if accreditations withdrawn or lapse**

If at any time during the Term any accreditations required to be held by the Contractor to perform the Services are withdrawn or lapse, Council may immediately terminate this Agreement by written notice to the Contractor.

#### **15.2. Termination on notice**

- 15.2.1. Subject to clauses 15.3 and 15.4, Council or the Contractor may terminate this Agreement at any time by giving three months' written notice of termination
- 15.2.2. In the event of termination by Council, Council may retain the Contractor for all or part of the notice period or make a payment or part payment in lieu of notice, calculated by reference Contractor Fee paid to the Contractor between the Commencement Date and the date of termination, plus the Contractor Fee for the number of weeks of the notice period. Council may also direct the Contractor not to perform the Services for the duration of the notice period.
- 15.2.3. In the event this Agreement is terminated pursuant to this clause, the Contractor agrees to cooperate with Council, in good faith and as reasonably required by Council, to ensure the uninterrupted delivery of Services for the rest of the Term, and upon the Contractor's departure. Without limiting the generality of this clause, the Contractor agrees:
  - (a) to train, where reasonably required by Council, Council contractors and staff in the delivery of the Services;
  - (b) to deliver the Services for the balance of the Term in conjunction with Council contractors and staff;
  - (c) that Council may enter the Land to examine and inspect the performance of the Services.

#### **15.3. Termination on default**

- 15.3.1. Notwithstanding clauses 15.1 and 15.4, the Council may immediately terminate this Agreement by written notice to the Contractor, if at any time:
  - (a) the Contractor or a member of its Staff commits a serious or persistent breach of any provision of this Agreement which is incapable of being remedied to Council's reasonable satisfaction.
  - (b) the Contractor fails to remedy, to Council's reasonable satisfaction, a breach of any provision of this Agreement within five days of receiving a notice from Council identifying the breach and requiring the breach to be remedied.

- (c) subject to Chapter 5 of the *Corporations Act 2001 (Cth)*, the Contractor becomes, or in the reasonable opinion of Council is in jeopardy of becoming, subject to any form of insolvency administration or bankruptcy (as the case may be);
- (d) the Contractor ceases business.
- (e) the Contractor, if a natural person, dies or becomes incapacitated by illness or injury from performing obligations under this Agreement.

#### **15.4. Termination on Expiry Date**

- 15.4.1. Subject to clauses 15.1 and 15.3, this Agreement will automatically come to an end on the Expiry Date.

#### **15.5. Renewal of Agreement**

- 15.5.1. The Contractor shall inform Council in writing of its intention to seek a renewal of this Agreement at least six (6) months prior to the Expiry Date.
- 15.5.2. Council, in its absolute discretion, will decide whether to renew this Agreement and shall issue written notice to the Contractor regarding the renewal terms at least four (4) months prior to the Expiry Date.
- 15.5.3. Subject to Council issuing a renewal offer under clause 15.5.2, the Contractor shall notify Council of its acceptance of Council's renewal offer at least two (2) months prior to the Expiry Date.
- 15.5.4. In the absence of a renewal in accordance with this clause, this Agreement shall terminate as outlined in clause with clause 15.4.

#### **15.6. Payments on termination**

- 15.6.1. If Council terminates this Agreement for a reason specified in clauses 15.3 or 15.4, Council is not obliged to make any further payments to the Contractor, apart from any outstanding Contractor Fee for work performed by the Contractor up to the Expiry Date.

#### **15.7. Return of property**

- 15.7.1. Upon expiry or termination of this Agreement for any reason, or at any other time at Council's request, the Contractor must immediately return to Council the following items in their possession or control:
  - (a) all Confidential Information of Council; and
  - (b) all property belonging to Council, including the Council Equipment, facsimile machine printer, all documents, records, papers, reports, disks, data, equipment and other material.
- 15.7.2. The Contractor must ensure that it has removed all of the Contractor's property from the Land on the Expiry Date. Any property that continues to be contained on the Land may, in Council's absolute discretion:
  - (a) become the property of Council, without any liability to pay compensation to the Contractor; or

- (b) be disposed of by Council, with all costs associated with such disposal wholly recoverable from the Contractor as a liquidated debt.

**15.8. Condition of Land and Facilities**

- 15.8.1. Upon expiry or termination of this Agreement, the Contractor must ensure the Land and Facilities are left in the condition the Land and Facilities were in at the Commencement Date, fair wear and tear excepted.
- 15.8.2. Without limiting the generality of the preceding subclause, the Contractor must ensure that:
  - (a) the Facilities are clean and tidy;
  - (b) the Facilities are capable of immediately being used for the purpose for which they have been installed on and from the Expiry Date.
- 15.8.3. If Council is required to undertake any repair or maintenance work on the Land or the Facilities because the Contractor has failed to comply with the preceding subclause, the cost of such work shall be recoverable from the Contractor as a liquidated debt.

## **Part G**

### **General Provisions**

#### **16. DAMAGE OR DESTRUCTION OF SHOWGROUNDS**

##### **16.1. Damage to Showgrounds**

This clause 15 will apply if:

- 16.1.1. the Showgrounds, or any part of the Showgrounds, is damaged or destroyed by an event of force majeure and
- 16.1.2. the damage was not caused (in whole or in part) by any act, omission, or default on the part of Council, its employees, agents, or invitees.

##### **16.2. Continuation of business**

During any period of reconstruction or repair of the Showgrounds, the Contractor shall continue the operation of the Services in the Showgrounds to the extent that it is reasonably practicable for the Contractor to do so, having regard to the nature and amount of the damage experienced.

##### **16.3. No obligation to restore**

- 16.3.1. Nothing contained or implied in this clause 16 obligates Council to restore or rebuild the Showgrounds or any portion thereof, or to restore or rebuild the Showgrounds in accordance with the original specifications.
- 16.3.2. If, in Council's absolute opinion, it is impractical or undesirable to repair the damage, then Council may terminate this Agreement by giving one month's notice to the Contractor.

##### **16.4. Abatement**

- 16.4.1. Council shall have the right to suspend payment of a fair proportion of the Contractor Fee, corresponding to the nature and extent of the damage sustained, for the duration in which the Showgrounds remains unfit for occupation and use.
- 16.4.2. The suspension of the Contractor Fee shall be in effect until the Showgrounds is either fully restored and suitable for use by air travellers.
- 16.4.3. If Council has valid insurance coverage for the Showgrounds, and such coverage is not invalidated or refused due to any actions or defaults on the part of the Contractor, the abatement amount shall be calculated based on the insurance proceeds received by Council for the property's damage.

##### **16.5. Contractor may terminate**

If the Showgrounds are destroyed or damaged by an event of force majeure and without any neglect or default on the part of the Contractor, to the extent that the Showgrounds is deemed unfit for the Contractor's occupation and use, and restoration of the Showgrounds has not substantially commenced within three (3)

months from the date of such destruction or damage, the Contractor may give written notice to Council of its intention to terminate this Agreement.

#### **16.6. Release**

Each party releases the other party from liability or loss arising from and costs incurred in connection with the termination of this Agreement under this clause 16 but not from any breach of this Agreement existing at the date of termination.

#### **16.7. Arbitration of disputes**

If a dispute arises between the parties in respect of this clause 16, the dispute must be submitted for arbitration to an independent arbitrator appointed by the president of the Queensland Law Society Incorporated, whose decision will be conclusive and binding on the parties. The submission will be deemed to be a submission to arbitration within the meaning of the *Commercial Arbitration Act 2013*. A determination from arbitration under this clause will be a condition precedent to the parties commencing legal proceedings relating to the dispute.

### **17. REPORTING**

17.1. The Contractor will provide to the Chief Executive Officer by the seventh (7th) day of each month a report disclosing specific information about the preceding month, presented in a format reasonably required by Council ("Monthly Report").

17.2. The Report must contain details regarding visitation, activities, and performance of users of the Showgrounds, generally any significant issue of maintenance, capital works, vandalism, or activity with respect to the Showgrounds and surrounds.

17.3. This clause 17 does not limit the Contractor's obligation to disclose information to Council under any other provision of this Agreement.

### **18. OTHER WORK**

During the Term and any holding over, the Contractor may undertake work for an entity other than Council provided that undertaking such additional work does not constitute a breach of their obligations imposed by this Agreement, nor interfere in any way with either party's ability to fulfil their obligations and perform the Services under this Agreement.

### **19. NATURE OF RELATIONSHIP**

19.1. The parties acknowledge and agree that the Contractor provides the Services to Council as an independent contractor.

19.2. Nothing in this Agreement creates an employment, agency, joint venture or partnership relationship between Council and the Contractor.

## **20. CONFIDENTIALITY AND PERSONAL INFORMATION**

### **20.1. Disclosure of Confidential Information**

20.1.1. The Contractor must not, during this Agreement and at all times after the Expiry Date, disclose to any third party any Confidential Information, either directly or indirectly, knowingly or inadvertently, except:

- (a) if such disclosure is required in the course of providing the Services and the person to whom the Confidential Information is disclosed warrants not to disclose the Confidential Information in accordance with this clause,
- (b) with the prior written consent of Council;
- (c) if that part of the Confidential Information which is to be disclosed is available in the public domain (other than as a result of a breach by the Contractor of this Agreement); or
- (d) if the disclosure is required by law.

### **20.2. Use of Confidential Information**

The Contractor must not, during this Agreement and at all times after the Expiry Date, use, for their own benefit or the benefit of any third party, any Confidential Information other than in the proper provision of the Services during this Agreement, without the prior written consent of Council.

### **20.3. Personal Information**

20.3.1. If the Contractor collects or has access to Personal Information in order to provide the Services under the Agreement, the Contractor must:

- (a) comply with the *Information Privacy Act 2009* in relation to the discharge of its obligations under this Agreement as if the Contractor was Council.
- (b) not use Personal Information other than for the purposes of the supply of the Service under the Agreement unless required or authorised by law.
- (c) not disclose Personal Information without the consent of Council, unless required or authorised by law.
- (d) not transfer Personal Information outside of Australia without the consent of Council.



- (e) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties.
- (f) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties.
- (g) ensure that any sub-Contractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause.
- (h) full co-operate with Council to enable Council 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 measures as Council reasonably advises the Contractor in writing from time to time.

#### **20.4. Notification**

The Contractor must immediately notify Council on becoming aware of any breach of this clause.

#### **20.5. Survival of clause**

This clause will survive the expiry or termination of this Agreement.

### **21. ASSIGNMENT**

The parties may not assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other party.

### **22. DISPUTE RESOLUTION**

- 22.1. This clause applies in the event of a dispute between Council and the Contractor involving the subject matter of this Agreement.
- 22.2. In the event of a dispute, either party may issue the other party with a notice particularising the details of the dispute (“Dispute Notice”).
- 22.3. Within fourteen (14) days of a Dispute Notice being served, the parties agree to take steps in good faith to attempt to resolve the dispute.
- 22.4. If the parties cannot resolve the dispute within fourteen (14) days, the dispute shall be referred to mediation, to be mediated by a mediator agreed by the parties. If the parties cannot agree on a mediator within seven (7) days, then either party may seek that the President of the Queensland Law Society nominate a mediator to mediate the dispute.
- 22.5. If the parties cannot resolve the dispute at mediation, then the parties may take whatever other steps are available to them to seek to resolve the dispute, including by instituting Court proceedings.
- 22.6. For the avoidance of doubt, nothing in this clause relieves the parties from performing their obligations under this Agreement, or otherwise stays an obligation under this Agreement, pending resolution of a dispute.

## **23. GENERAL PROVISIONS**

### **23.1. Jurisdiction**

This Agreement is governed by the laws of Queensland and the Commonwealth of Australia which are enforced in Queensland. The parties submit to the jurisdiction of the Courts of Queensland, relevant federal Courts and the Courts competent to hear appeals from them.

### **23.2. Notices**

23.2.1. All notices required under this Agreement to be given by a party to the other shall be in writing sent by facsimile or delivered personally or sent by pre-paid registered mail and in each case addressed to the party at that party's address set forth hereunder or as the case may be at such other address that the party may from time to time notify to the others.

23.2.2. The following shall constitute proof of receipt:

- (a) proof of posting by registered mail; or
- (b) an email transmission where there has been no evidence that the email was not successfully transmitted.

23.2.3. Receipt of a notice given under this Agreement will be deemed to occur:

- (a) in the case of a communication sent by pre-paid registered mail on the third business day after posting;
- (b) in the case of an email transmission, on the business day immediately following the day of dispatch.

23.2.4. The initial addresses for service for each party shall be as set out in the Reference Schedule.

### **23.3. Further Assurances**

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 this Agreement.

### **23.4. Waiver**

No waiver by a party of a provision of this Agreement is binding unless made in writing.

### **23.5. Severance**

If a provision of this Agreement is void or unenforceable it must be severed from this Agreement and the provisions that are not void or unenforceable are unaffected by the severance.

### **23.6. Cumulative Rights**

The rights and remedies of a party to this Agreement are in addition to the rights or

remedies conferred on the party at law or in equity.

**23.7. Liability of Parties**

If any party to this Agreement consists of more than one person then the liability of those persons in all respects under this Agreement is a joint liability of all those persons and a separate liability of each of those persons.

**23.8. Counterparts, Fax and Email**

This Agreement may be executed in any number of counterparts and when executed communication of the fact of execution to the other parties may be made by sending evidence of execution by fax or email.

**23.9. Costs**

Each party must bear their own costs of and incidental to the negotiation, preparation and execution of this Agreement.

**23.10. 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.

**23.11. Time of the Essence**

Time is in all cases and in every respect of the essence of this Agreement.

# Schedule A

## Services

The following comprise the Services, as defined in clause 2.1 of the Agreement, which the Contractor is required to provide under the Agreement.

### 1. Definitions

1.1. In this Schedule A, defined terms have the meaning ascribed to them in the Reference Schedule and clause 2 of the Agreement to which this schedule is attached.

### 2. General Duties – Showgrounds

2.1. The Contractor must:

- (a) Control and operate the electric power, flood lighting and lighting systems;
- (b) Keeping the buildings clean, serviceable, and tidy both internally and externally at all times and with an additional inspection and completion of respective work within six (6) hours prior to the hiring of any part of the Showgrounds where Council has provided a minimum of 48 hours' notice of the relevant hiring or use of the facilities. Work includes but is not limited to the following:
  - 1. Cleaning of carpets,
  - 2. Cleaning of toilets, and walls.
  - 3. Removal of cobwebs and any bugs.
  - 4. Cleaning of glass windows and door panelling etc.
  - 5. Emptying and cleaning of bins including bin liners.
  - 6. Cleaning of air conditioning filters.
  - 7. Maintenance and cleaning of commemorative plaques and signs.
  - 8. Placement of sufficient hand towels, soap, toilet paper, plastic cups etc.
  - 9. Placement of serviceable fire extinguishers.
  - 10. Placement of serviceable defibrillators and
  - 11. Hosing down of concrete surround and gutters.
- (c) It is the responsibility of Council to provide the equipment necessary to allow this cleaning to take place upon the request of the Contractor and to advise the Contractor of the hiring and usage of the facilities.
- (d) Maintain and improve the gardens, lawns and general landscape at the buildings, grounds, and surrounds; and the contractor's residence in accordance with the requirements as specified for the two zones referenced as A and B and demarcated on the Showgrounds plan. It is the responsibility of Council to provide the equipment and chemicals necessary to allow maintenance to take place upon the request of the Caretaker.

### **Zone A**

*Area extending in and around the main grandstand including from the entry gates and up to the racecourse rails, including stables, and the remainder of the area of the showgrounds, excluding the racecourse, rails and Zone B.*

Maintenance in this area includes but is not limited to the whipper snipping of all grassed areas along and abutting fences and sheds, and / or mowing of lawns and all grassed areas; weeding of garden beds and paved areas; fertilising and watering of lawns, trees, and gardens; trim, prune, hedge trees/ shrubs; repairs to irrigation devices; and removal of any rubbish.

### **Zone B**

*The internal area of the racecourse, including the Campdraft kitchen / function area, and the remainder of the area of the showgrounds, excluding the racecourse and Zone A.*

Maintenance in this area includes but is not limited to the whipper snipping of all grassed areas along and abutting fences and buildings, removal of weeds, removal of any rubbish and the slashing of the grassed areas to a level of 150mm or less and must be slashed prior to any grass / weed height exceeding 300mm

- (e) When the Showgrounds is used for camping, hired events and overflow parking, including both powered and unpowered camping and caravan sites, the Contractor is responsible for
  - (i) ensuring order is maintained including the use of cooking facilities and the lighting of fires by visitors and the control of any pets.
  - (ii) Ensuring payment receipts for camping fees are displayed and ensuring fees have been paid.
  - (iii) Assisting tourists by providing and cleaning all facilities once a day and providing friendly and professional services, including providing information regarding tourism opportunities.
  - (iv) When all other town caravan parks are fully booked the showgrounds is used as overflow parking and camping with Permits issued from the Waltzing Matilda Centre
- (f) Inspect the premises and all areas a minimum of once per week to ensure gates and fencing are not damaged.
- (g) Provision of monthly reports to the Chief Executive Officer with respect to usage of facilities and generally any significant issue of maintenance, capital works, vandalism, or activity with respect to all of the buildings and surrounds.

## 2.2. Livestock

- (a) control the admission to and delivery from the Showgrounds of all stock.
- (b) control the allocation of yards and movement of stock within the yards.

- (c) admit any stock or allocate any yards or stalls to stock as required by Council for actions taken under the *Local Government Act 2009* or Council Local Laws, Subordinate Local Laws;

### 3. Cleaning and Maintenance

- (a) properly disposing of all rubbish at the Land and the Facilities in the bins provided by the Council.
- 3.1. cleaning the following items at least once a month or more often as necessary
- (a) cleaning the filter screen on any air-conditioning unit.
  - (b) oil gates and hinges;

### 4. Biosecurity Plan

- 4.1. Within two (2) months of the Commencement Date, Council will update the Winton Showgrounds Biosecurity Plan (“the Biosecurity Plan”) in consultation with the Contractor.
- 4.2. The Biosecurity Plan will be referred to in the Standard Operating Procedures referred to in clause 5.4.5 and must address all of those matters set out in the Biosecurity Plan.

### 5. Workplace Health and Safety Obligations

- 5.1. In this clause, defined terms have the following meanings:
- (a) **Act** means *Work Health and Safety Act 2011 (Qld)*;
  - (b) **Policy** means Council’s Workplace Health and Safety Policy or policies (as the case may be), as amended by Council from time to time.
  - (c) **Regulation** means *Work Health and Safety Regulation 2011 (Qld)*.
- 5.2. The Contractor must provide all Staff with an induction and training in relation to the Act, Regulation and Policy. Proof of such inductions and training must be provided to Council upon demand.
- 5.3. The Contractor must ensure that the Contractor and its Staff comply with the requirements of the Policy, the Act and the Regulation, including but not limited to the requirements specified in Chapter 4 Division 3 of the Regulation.
- 5.4. The Contractor must ensure to the maximum extent permitted by law that the Contractor and its Staff do not do or fail to do anything which may result in Council being in breach of any obligation imposed on Council in respect of the Complex under Act.
- 5.5. The Contractor must at its own expense provide such necessary safety equipment and personal protective equipment and ensure that such equipment is used in accordance with the relevant standards.
- 5.6. All hazards, accidents, incidents or near misses at the Facilities must be identified and reported to Council immediately.

- 5.7. The Contractor must conduct inspections in conjunctions with Council's Safety Officer/s to identify and address potential hazards from time to time as directed by Council.



## Schedule B Fees

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### **Contractor Fee**

Payable to the contractor for the duration of the Term, payable monthly:

\$78,000.00 + GST per annum including:

- use of the paddock, and
- use of residence inclusive of electricity, and
- two parking bays in the covered shed.

## Schedule C Council Equipment

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Milwaukee Blower – model M18FBLG30  
Milwaukee Hedger – model M18FOPHHTA  
Milwaukee Multitool Power Head – model M18FOPH2LTKIT80  
Milwaukee Forge Kit – model 2F  
John Deere Mower – Model JDX 570 with collection system.

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## Schedule D Plan of Land and Facilities

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### Winton Showgrounds

Showgrounds – all areas



Lot 39 on Plan AE87



Lot 114 on Plan G2499



Lot 118 on Plan AE151



Zone A



Zone B

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# Winton Showgrounds Paddock

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## 1. Use of Paddock

- 1.1. The Council agrees to allow the Contractor to agist cattle at the Maximum Allowable Stocking Rate.
- 1.2. The Maximum Allowable Stocking Rate is:
  - 1.2.1. 4 head of cattle; and
  - 1.2.2. Calves no older than 6 months of age, provided that such calves are not weaned.
  - 1.2.3. 1 horse
  - 1.2.4. 9 head of Sheep
- 1.3. The Contractor and the Council acknowledge and agree that: -
  - 1.3.1. The Contractor may use the Paddock for the sole purpose of grazing the Contractor's livestock and for no other purposes whatsoever.
- 1.4. The Contractor acknowledges and agrees that:
  - 1.4.1. the interest in the Paddock is granted by Council on an "as is where is" basis.
  - 1.4.2. Council has no obligation to install infrastructure (including but not limited to cattle yards) or supply services to the Paddock, and any infrastructure or services required shall be supplied at the Contractor's sole cost and expense.
  - 1.4.3. If the Contractor wishes to install infrastructure or services to the Paddock, it must:
    - (a) first seek Council's consent, which may be given or withheld, or given subject to conditions, in Council's absolute discretion; and
    - (b) comply with any requirements or condition Council imposes on the installation; and
    - (c) remove any such infrastructure or services from the Paddock on or before the Expiry Date (unless otherwise agreed with Council).
- 1.5. **Water.**
  - 1.5.1. The Contractor will be liable to pay all water charges used at the Paddock during the term of the Agreement. The water meter shall be read annually shall be charged at a rate of \$0.63 per kilolitre for the first year of the term (and at such rate for subsequent years of the term as Council, in its discretion, decides).

**1.6. No interest in land**

The parties acknowledge and agree that nothing in this Agreement confers an interest in land on the Contractor, and this Agreement is merely a non-exclusive licence to use the Paddock strictly for the purposes outlined in this Agreement and no other purposes whatsoever.

**2. CONTRACTOR'S OBLIGATIONS**

- 2.1. The Contractor must, at the Contractor's sole cost and expense:
  - 2.1.1. maintain any fencing and gates, including any fencing and gates installed at the perimeter of the Paddock, in at least the condition such fencing, and gates were in at the Commencement Date, excluding fair wear and tear.
  - 2.1.2. generally, maintain the Paddock in a clean and tidy condition.
- 2.2. If the Contractor fails to comply with any of the obligations outlined in the preceding subclause, Council may enter the Paddock and do all things necessary to discharge the obligation, and Council's costs of doing so shall be recoverable from the Contractor as a liquidated debt.

**3. Entry by Council**

- 3.1. The Contractor acknowledges and agrees that Council may enter the Paddock at any time and for any reason, whether to discharge obligations under this Agreement or otherwise.
- 3.2. Council shall make all reasonable endeavours to minimise interference to the Contractor and any livestock located on the Paddock when exercising its rights under this clause.

**4. Risk and insurance**

- 4.1. At all times:-
  - 4.1.1. the Livestock are at the Contractor's risk; and
  - 4.1.2. the Contractor shall bear full responsibility for the wellbeing, livelihood, and husbandry of the Livestock.
- 4.2. The Contractor must insure the livestock and any progeny against all risks while they are upon the Paddock or being transported to and from the Paddock.
- 4.3. The Contractor acknowledges and agrees that the Council will not be responsible for the condition of any fencing, the livestock leaving the Paddock or persons or animals entering the Paddock or for any disease, accident, illness, death or injury howsoever caused or arising to the cattle whilst they are on the Paddock or being transported to or from the Paddock .
- 4.4. The Contractor will indemnify the Council against any loss or damage of any nature suffered by the Council (including any claim for loss or



damage brought against the Council) of any nature no matter how so arising out of or as a consequence of the terms of this Agreement.

- 4.5. In addition to clause 4.2, the Contractor will take out and hold at all times appropriate insurances of not less than \$10,000,000.00 to support the indemnity created by clause 5.5.2 and 11 of this Agreement. The Contractor will ensure that Council is noted as an interested party on any insurance policy taken out in accordance with this clause and shall supply the Contractor with a certificate of currency upon request.

## Paddock



