



STANDARD TERMS AND CONDITIONS:

GOODS AND SERVICES

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1. DEFINITIONS

- 1.1 In the Contract, unless inconsistent with the context or subject matter:
- (a) **Affected Party** has the meaning given in clause 30.1;
 - (b) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
 - (c) **Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality or any other person having jurisdiction over the project;
 - (d) **Background IP** of a Party means all Intellectual Property Rights which are made available by a Party in connection with the Contract which are in existence at the date of the Contract or brought into existence after the date of the Contract other than in connection with the Contract.
 - (e) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
 - (f) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of the Contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law (including without limitation any claim for an extension of time, Variation or other adjustment to the Price);
 - (g) **Commencement Time** means the time stated in the Engagement Documents by which the Supplier is required to commence performing its obligations under the Contract (or where no time is stated, promptly after the Supplier receives the Engagement Documents) as extended (if at all) pursuant to the Contract;
 - (h) **Completion** means the stage at which:
 - (i) each and every part of the Services has been carried out and completed in accordance with the Contract, except for minor omissions which do not reasonably affect the benefit to the Principal of the Services or prevent the Principal from using the Supplier Documents for the purpose or purposes stated in or to be reasonably inferred from the Contract;
 - (ii) all Supplier Documents have been updated and provided to the Principal in accordance with the Contract; and
 - (iii) other obligations of the Supplier which are stated in the Contract to be a requirement of Completion, or which are otherwise required to be undertaken prior to Completion have been completed;
 - (i) **Completion Time** means the time (if any) stated in the Engagement Documents by which the Supplier is required to achieve Completion as extended (if at all) pursuant to the Contract;
 - (j) **Confidential Information** means the Contract and all documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a Party in connection with the Contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public

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domain other than through a breach of clause 32 or are independently developed by the other Party;

- (k) **Contract** means the documents identified in clause 4.1;
- (l) **Delivered** means delivered to the Principal or made available for collection (as the case may be) at the Delivery Place along with all information and documentation required by the Contract;
- (m) **Delivery Place** means the place for delivery or collection of the Goods as stated in the Engagement Documents;
- (n) **Delivery Time** means the time by which Goods are to be Delivered as stated in the Engagement Documents as extended (if at all) pursuant to the Contract;
- (o) **Discloser and Disclosee** have the meanings given in clause 1.1(j);
- (p) **Engagement Documents** means, unless the Parties expressly agree otherwise:
 - (i) where a written request is issued, the written document(s) issued by the Principal to the Supplier which:
 - A. detail the Principal's requirements for the provision of Goods and/or Services by the Supplier; and
 - B. either request the Supplier to provide, or accept the Supplier's offer to provide, those Goods and/or Services to the Principal,including all documents attached to or incorporated by reference into those written documents and which may include a specification, product description, price list or other documents;
 - (ii) where a verbal request is made, means the information provided verbally, and the information contained in any documents to which the Supplier's attention is directed; and
 - (iii) where a request, whether verbal or written, is made pursuant to a Register of Pre-qualified Suppliers or Preferred Supplier Arrangement, also includes the Standard Scope;
- (q) **Exceptional Circumstances** means disclosure:
 - (i) for the purpose of complying with the Disclosee's obligations or exercising the Disclosee's rights in connection with the Contract;
 - (ii) with the Discloser's consent;
 - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to who it is necessary to disclose the information;
 - (iv) to any of its Personnel who are bound to keep the information confidential and to who it is necessary to disclose the information;
 - (v) to comply with the law or a requirement of an Authority (including a stock exchange);
 - (vi) to the extent necessary to enforce its rights or defend a Claim in connection with the Contract;

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- (vii) by the Principal for the purposes of enabling the Principal to properly discharge its functions as a local government authority;
- (viii) to the extent otherwise expressly permitted by the Contract;
- (r) **Force Majeure** means:
 - (i) an act of God, earthquake, lightning, cyclone, tsunami, fire emanating from outside the Site, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;
 - (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
 - (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
 - (iv) illness declared by the World Health Organisation to be a pandemic;
 - (v) embargo;
 - (vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the Supplier or otherwise caused by or contributed to by the Supplier and which affects an essential portion of the Supplier's obligations under the Contract;
- which:
 - A. is beyond the immediate or reasonable control of the Affected Party;
 - B. is not directly or indirectly caused or contributed to by the Affected Party or the Affected Party's Personnel;
 - C. cannot reasonably be avoided, remedied or overcome by the Affected Party by a standard of care and diligence expected of a prudent and competent local government or supplier (as the case may be) or the expenditure of a reasonable sum of money;
- (s) **Good Industry Practice** means those practices, methods, techniques and acts that, as at the date of this Contract are equal or superior to those utilised by other competent suppliers experienced in the provision of goods and services similar to the Goods and Services;
- (t) **Goods** means the goods to be provided by the Supplier as described in the Engagement Documents and any other goods not specifically mentioned in the Engagement Documents, but that are obviously and indispensably necessary for the supply of the goods that are mentioned;
- (u) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (v) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (w) **Improper Conduct** means:
 - (i) engaging in misleading or deceptive conduct in relation to the Procurement Process or the Contract;
 - (ii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the Procurement Process;

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- (iii) attempting to improperly influence any Personnel of the Principal, or violate any applicable law regarding the offering of inducements in connection with the Procurement Process or the Contract;
 - (iv) accepting or inviting improper assistance of employees or former employees of the Principal in preparing its tender or any Claim against the Principal in connection with the Contract;
 - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract;
 - (vi) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
 - (vii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).
- (x) **Insolvency Event** in respect of a Party, means the Party:
- (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
 - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966 (Cth)*, or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
 - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (y) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, project management, industrial, scientific, literary or artistic fields, whether foreign or domestic and includes Moral Rights;
- (z) **Key Personnel** means the Personnel (if any) nominated as key personnel in the Engagement Documents;
- (aa) **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
- (bb) **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- (cc) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;
- (dd) **Party or Parties** means one or both of the Principal and the Supplier as the context requires;
- (ee) **Payment Period** means:
- (i) if the Contract is a 'building contract' as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), the period ending 15 Business Days after receipt by the Principal of the claim;
 - (ii) otherwise, the period ending 25 Business Days after receipt by the Principal of the claim.

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- (ff) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, suppliers, contractors and subcontractors of a Party and any other person or entity for whom that Party is vicariously liable but in respect of the Principal, does not include the Supplier;
- (gg) **Preferred Supplier Arrangement** means a preferred supplier arrangement established pursuant to section 233 of the *Local Government Regulation 2012* (Qld);
- (hh) **Preferred Supplier** means a supplier that has been selected as a preferred supplier under a Preferred Supplier Arrangement;
- (ii) **Pre-qualified Supplier** means a supplier that has been included on a Register of Pre-qualified Suppliers;
- (jj) **Price** means the amount payable for the provision of Goods and Services as determined in accordance with the Contract;
- (kk) **Principal** means Douglas Shire Council;
- (ll) **Principal's Representative** means the person identified as such in the Engagement Documents or otherwise notified to the Supplier verbally or in writing from time to time;
- (mm) **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;
- (nn) **Project IP** means the Intellectual Property Rights in the Supplier Documents and all other goods, materials, documents or data created in the performance of the Supplier's obligations under the Contract;
- (oo) **Register of Pre-qualified Supplier** means a register of pre-qualified suppliers established pursuant to section 232 of the *Local Government Regulation 2012* (Qld);
- (pp) **Regulator** has the meaning given in the WHS Act and WHS Regulation;
- (qq) **Review Period** means the period stated in the Engagement Documents in which the performance of the Supplier against a Service Level is to be reviewed;
- (rr) **Service Level** means the service levels (if any) described as such in the Engagement Documents;
- (ss) **Services** means the services to be provided or the work to be carried out by the Supplier as described in the Engagement Documents and any services or work not specifically mentioned in the Engagement Documents, but that is obviously and indispensably necessary for the performance of the services or work that is mentioned;
- (tt) **Site** means the site or sites made available by the Principal to the Supplier for the purpose of the Supplier carrying out its obligations under the Contract;
- (uu) **Standard Scope** means any documents detailing the Principal's requirements for the provision of Goods and/or Services by the Supplier which were incorporated (whether physically or by reference) in to the written notice issued by the Principal to the Supplier notifying the Supplier that it had been appointed as a Prequalified Supplier or selected as a Preferred Supplier;
- (vv) **Standard Terms and Conditions** means these standard terms and conditions;
- (ww) **Substantial Breach** includes:
 - (i) a failure to remedy a breach of a warranty given or representation made within 10 Business Days after being given a written notice to do so;

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- (ii) a failure to remedy any breach of an obligation under the Contract within 10 Business Days after being given a written notice to do so;
- (iii) a breach that is incapable of remedy of an obligation under, or warranty given or representation made in, the Contract; or
- (iv) a breach of clause 21;
- (v) the Supplier failing to achieve or exceed:
 - A. the same Service Level for three consecutive Review Periods, even though the Supplier may have achieved or exceeded some or all of the other Service Levels for those same Review Periods; or
 - B. any two Service Levels for two consecutive Review Periods;
- (vi) if the defaulting Party is the Supplier, the consistent or repeated breach of the Contract by the Supplier, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the defaulting Party;
- (xx) **Supplier** means the person or entity identified to whom the Engagement Documents are issued;
- (yy) **Supplier Documents** means those records, reports, designs, specifications, certificates and other documents, whether electronic documents or hard copy format required by the Contract to be handed over to the Principal by the Supplier (and all information advice, designs, calculations and recommendations in those documents);
- (zz) **Variation** means any material increase, decrease or change to the Goods or Services or the Supplier's obligations under the Contract;
- (aaa) **Warranty Period** means the longer of:
 - (i) the period stated in the Engagement Documents or where no period is stated 12 months after the Goods are Delivered; and
 - (ii) such further period required under or implied by any applicable law,which period may continue after the Contract has come to an end;
- (bbb) **WHS** means work, health and safety;
- (ccc) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;
- (ddd) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;
- (eee) **Wilful Misconduct** means an intentional act or omission by or on behalf of a Party committed with reckless disregard for its foreseeable and harmful consequences in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;
- (fff) **Workplace** has the meaning given in the WHS Act and the WHS Regulation.

2. INTERPRETATION

- 2.1 (**Headings**) Headings are for reference purposes only and must not be used in interpretation;

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- 2.2 **(No limitation)** The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that the Principal 'may' do something the Principal is not obliged to do that thing and is not prevented from doing any other thing;
- 2.3 **(Grammatical forms)** Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.
- 2.4 **(Law)** A reference to 'law' includes all:
- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of a local government authority, the State of Queensland, the Commonwealth or other Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licenses, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,
- which are applicable to the Supplier or the Contract or which are otherwise in force at any place where an obligation under the Contract is carried out and a reference to a statute includes all regulations and subordinate legislation and amendments
- 2.5 **(Other references)** A reference to:
- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
 - (b) a clause is to a clause in the Contract unless expressly stated otherwise;
 - (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
 - (d) a monetary amount is a reference to an Australian currency amount.
- 2.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Contract expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day. A reference to a day, week or month means a calendar day, week or month;
- 2.7 **(Indemnities)** Each indemnity provided in the Contract is a continuing indemnity which survives the expiration or termination of the Contract. The Principal need not incur any expense or make any payment in order to rely on an indemnity.
- 2.8 **(Contra proferentem)** The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 2.9 **(Severance)** If a provision of the Contract is void or unenforceable it must be severed from the Contract and the provisions that are not void or unenforceable are unaffected by the severance.

3. GENERAL PROVISIONS

- 3.1 **(Joint and several obligations)** An obligation of two or more Parties binds them jointly and each of them severally. An obligation incurred in favour of two or more Parties is enforceable by them severally.
- 3.2 **(Governing law)** This Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of the

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Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.

- 3.3 **(Binding on successor)** This Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.
- 3.4 **(Further assurance)** The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under the Contract.
- 3.5 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the Engagement Documents or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:
- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
 - (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.
- 3.6 **(Waiver)** No waiver by a Party of a provision of the Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.
- 3.7 **(Consent)** Any consent of the Principal under the Contract may be given, withheld or given subject to conditions at the absolute discretion of the Principal.
- 3.8 **(Cumulative rights and obligations)** The rights and remedies of a Party provided in the Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of the Contract will not relieve the Supplier of any other obligation under the Contract, at law or in equity.
- 3.9 **(Counterparts)** This Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by fax or email.
- 3.10 **(Current versions)** Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Supplier must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or prices in the Contract shall be deemed to have allowed for compliance with that version.
- 3.11 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, clauses 9.1(h)(ii), 23, 24, 25.2, 28.5, 31.4, 31.6, 32, 33 and 35 survive the expiration or earlier termination of the Contract.

4. CONTRACT

- 4.1 **(Documents comprising Contract)** The Contract comprises:
- (a) the Engagement Documents;
 - (b) these Standard Terms and Conditions; and
 - (c) Schedule 1 – Completion Declaration.
- 4.2 **(Final agreement)** The Contract constitutes the entire, final and concluded agreement between the Parties as to its subject matter. It supersedes all prior representations, agreements,

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statements and understandings between the Supplier and the Principal (whether oral or in writing).

- 4.3 **(Order of precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 4.1, then the documents will take precedence in the order set out in clause 4.1 with the Engagement Documents being the highest in the order.

5. PERFORMANCE AND PAYMENT

- 5.1 **(Performance)** The Supplier must, at the Supplier's expense, provide the Goods and/or Services and otherwise comply with its other obligations under the Contract in accordance with the Contract.

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

6. NO EXCLUSIVITY

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

7. NATURE OF RELATIONSHIP

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

8. REPRESENTATIVES

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

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

9. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

- 9.1 **(Supplier Warranties)** The Supplier must ensure, and warrants and represents that:
- (a) **(Improper Conduct)** neither the Supplier nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Supplier must not, and must ensure that its Personnel do not, engage in any Improper Conduct in connection with the Contract;
 - (b) **(ability)** the Supplier and, to the extent applicable to them, its Personnel:

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

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

- (c) **(investigations)** the Supplier has carefully reviewed the Engagement Documents (including the scope and all other information contained or referenced in the Engagement Documents) and is satisfied that the scope and other information is appropriate and adequate to enable the Supplier to comply with its obligations under the Contract;
- (d) **(workmanship)** where the Services require the carrying out of work, that work shall:
 - (i) be free from defects;
 - (ii) comply in all respects with the Contract and any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian standards applicable to the materials and any applicable law;
 - (iii) be fit for the purpose stated in or to be reasonably inferred from the Contract or otherwise made known to the Supplier prior to the date of the Contract;
 - (iv) any design prepared by the Supplier in relation to the work shall be in accordance with the requirements of the Contract;
- (e) **(legal capacity)** the Supplier has the full power, authority and capacity to enter into the Contract and that the Supplier's obligations under the Contract are valid and binding on it, and enforceable against it;
- (f) **(standard)** the Supplier will, and to the extent applicable to them, will ensure that its Personnel:
 - (i) provide the Goods and Services and carry out its other obligations in connection with the Contract:
 - A. to the standard of skill, care and diligence expected of a skilled and competent supplier engaged in the business of providing goods, services or work similar to the Goods and Services or to such higher standard as the Supplier has represented in writing to the Principal in relation to the Contract;
 - B. in accordance with Good Industry Practice; and
 - C. in a manner which achieves or exceeds each of the Service Levels in every Review Period; and
 - (ii) ensure that any Goods or Services provided under the Contract is fit for the purpose or purposes stated in or to be reasonably inferred from the Contract;
- (g) **(Supplier Documents)** all Supplier Documents will:
 - (i) comply with the requirements of the Contract and applicable law;
 - (ii) be consistent with or exceed applicable industry standards;

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- (iii) be of a standard and quality expected of a skilled and competent supplier experienced in the preparation of documents similar to the Supplier Documents using Good Industry Practice; and
 - (iv) be fit for the purpose or purposes stated in or to be reasonably inferred from the Contract;
 - (h) **(condition of Goods)** the Goods shall:
 - (i) at the time at which they are Delivered:
 - A. comply with any applicable requirement, code, guideline, policy, drawing or specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian standards applicable to the Goods and any applicable law; and
 - B. where Goods are manufactured, be new; and
 - (ii) at the time at which they are Delivered and for the duration of any applicable Warranty Period:
 - A. be free from defects and of merchantable quality;
 - B. comply in all respects with the Contract including as to quality, quantity, performance, functionality and description;
 - C. conform to any sample goods approved by the Principal;
 - D. be fit for the purposes stated in or to be reasonably inferred from the Contract;
 - (i) **(intellectual property)** except to the extent that Goods or Supplier Documents are manufactured or prepared strictly in accordance with technical plans or drawings provided to the Supplier by the Principal:
 - (i) the Goods and Supplier Documents do not; and
 - (ii) the Principal's use of the Goods and Supplier Documents for a purpose stated in or to be reasonably inferred from the Contract will not, infringe Intellectual Property Rights;
 - (j) **(encumbrances)** when title passes, the Goods will not be subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a law that cannot be excluded by agreement;
 - (k) **(Price)** the rates and prices in the Contract include the supply, delivery, insurance and packaging of the Goods and compliance with all of the Supplier's other obligations under the Contract except, and then only to the extent, that the Contract provides otherwise;
- 9.2 **(Notice of breach)** The Supplier must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached a warranty given or representation made in clause 9.1.
- 9.3 **(Warranties unaffected)** The warranties, representations and acknowledgements in clause 9.1 remain unaffected notwithstanding:
- (a) that the Engagement Documents were prepared by the Principal or the Principal's Personnel;

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- (b) any inspection, test, receipt, review or comment on or of the Goods, Services or Supplier Documents by the Principal or the Principal's Personnel;
- (c) any Variation or other direction by the Principal or the Principal's Personnel; or
- (d) the adoption or incorporation into the Supplier Documents by the Supplier of any applicable industry standard or work carried out by others (including work carried out by or on behalf of the Principal),

except that clauses 9.3(c) and 9.3(d) do not apply to the extent that, the Supplier has given the Principal prior written notice expressly stating that the Variation, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

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

10. KEY PERSONNEL

- 10.1 **(Provision of Key Personnel)** The Supplier must ensure that only Key Personnel perform the roles identified in the Engagement Documents.
- 10.2 **(Change in Key Personnel)** The Supplier may seek the approval of the Principal to change the role of any Key Personnel or to engage additional persons as Key Personnel. The Supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal cannot unreasonably refuse to approve a replacement person that is of equal or greater skill, experience and competency to the person being replaced.

11. CONDUCT OF SUPPLIER AND PERSONNEL

- 11.1 **(General)** The Supplier must, and must ensure that to the extent applicable to them its Personnel involved in the performance of the Supplier's obligations under the Contract:
- (a) act professionally and courteously in all dealings with the Principal and the Principal's Personnel and the general public in connection with the Contract;
 - (b) comply with:
 - (i) any law, standards and codes of practice applicable to the Supplier, the Supplier's business or the Supplier's obligations under the Contract;
 - (ii) all directions of the Principal given pursuant to the Contract; and
 - (iii) any applicable policies, guidelines, procedures and codes of the Principal which are identified in the Engagement Documents or which are publicly available or otherwise made known to the Supplier from time to time; and
 - (c) do not either directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Services are to be carried out, or the Goods are to be Delivered, or to the public generally.
- 11.2 **(Local Government Worker)** The Supplier must ensure that when acting as a Local Government Worker, the Supplier's Personnel:

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- (a) have all appropriate qualifications, skills and training to exercise a power or perform a responsibility under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009* (Qld);
 - (b) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Personnel are authorised as Local Government Workers by the Principal; and
 - (c) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).
- 11.3 **(Conflict)** Where there is any conflict between any standard or obligation described in clause 11.1 or 11.2, the Supplier and its Personnel must adopt the higher standard or more onerous obligation unless directed otherwise by the Principal.
- 11.4 **(Removal)** The Principal may at any time direct the Supplier to remove any of the Supplier's Personnel from the performance of the whole or part of the Supplier's obligations under the Contract if the Principal reasonably believes that the Supplier is in breach of clause 11.1 or clause 11.2 or a warranty and representation given in clause 9.1(a) or clause 9.1(b) in respect of that person, or that the person is otherwise responsible for a breach of the Contract by the Supplier.
- 11.5 **(Industrial relations)** The Supplier remains solely responsible for the management of industrial relations relating to its Personnel. The Supplier must promptly inform, and keep informed, the Principal in relation to any potential or actual industrial relations issues which could affect the ability of the Supplier to comply with its obligations under the Contract.

12. SITE

- 12.1 **(Access)** The Principal will endeavour to give the Supplier sufficient, but non-exclusive, access to the Site to carry out the Supplier's obligations under the Contract.
- 12.2 **(Pre-conditions to access)** The Principal may refuse to give such access until the Supplier has given the Principal:
- (a) evidence of insurance required by clause 25.3;
 - (b) any other documents or information which the Engagement Documents require to be given to the Principal before access to the Site shall be given.
- 12.3 **(Cooperation with Principal's Personnel)** The Supplier must use all reasonable endeavours to cooperate, communicate and co-ordinate with the Principal's Personnel at the Site. The Principal and its Personnel shall be entitled to access the Site and any other place where any obligation of the Supplier under the Contract is or is to be carried out on the giving of reasonable written notice.
- 12.4 **(Site specific requirements)** The Supplier must comply with the reasonable requirements of the Principal in relation to the Supplier's access to or conduct on the Site, including those identified in the Engagement Documents.

13. SUBCONTRACTING, ASSIGNMENT AND NOVATION

- 13.1 **(By the Supplier)** The Supplier may subcontract, assign or novate the whole or any part of its obligations under the Contract but only with the prior written consent of the Principal (which may be given, withheld or given subject to conditions at the absolute discretion of the Principal). Subcontracting of the Supplier's obligations shall not relieve the Supplier from any liability or obligation under the Contract. As between the Principal and the Supplier, the Supplier shall be responsible and liable to the Principal for the acts or omissions of the Supplier's Personnel in connection with the Contract as if they were the acts or omissions of the Supplier.

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

14. MEETINGS

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

15. SUPPLIER DOCUMENTS

- 15.1 **(Provision of copies)** The Supplier must create and provide the Principal with copies of the Supplier Documents at the times required by the Engagement Documents or where no time is stated, promptly whenever requested by the Principal.
- 15.2 **(Updated Supplier Documents)** Where directed by the Principal to do so, as a requirement of Completion (or where the Contract is earlier terminated, no later than 10 Business Days after the notice of termination under clause 31 is given), the Supplier must provide the Principal with a complete updated copy of the Supplier Documents accompanied by a statutory declaration in the form contained in Schedule 1.

16. DELIVERY OF GOODS

- 16.1 **(Delivery)** The Supplier shall comply with all requirements relating to delivery which are stated in the Engagement Documents or which are otherwise reasonably directed by the Principal.
- 16.2 **(Change to delivery details)** The Principal may request the Supplier to vary the Delivery Time and/or the Delivery Place and the Supplier shall comply with the varied requirements at its expense unless it cannot reasonably do so. The Supplier shall not be entitled to any monetary compensation in connection with a change to the Delivery Time or the Delivery Place unless the Supplier notifies the Principal of such additional costs prior to taking any steps to comply with the request.
- 16.3 **(Delivery dockets)** The Supplier must provide a true and correct delivery docket to the Principal at the time at which the Goods are Delivered. The signing of a delivery docket by the Principal shall be evidence only that Goods have been received and not that those Goods comply with the Contract.

17. TITLE AND RISK IN GOODS

- 17.1 **(Title and risk)** Title to and property in the Goods shall pass immediately to the Principal upon payment. Risk in the Goods shall remain with the Supplier until the Goods are received by the Principal. If Goods are rejected pursuant to clause 28.2, the Goods shall be at the risk of the Supplier from the time that the Principal gives notice of the rejection by the Principal.
- 17.2 **(Security Interest)** The Supplier acknowledges that the Principal has a security interest in the Goods and the proceeds of the Goods for the purpose of the *Personal Property Securities Act 2009* (Cth) and agrees to provide all reasonable assistance to the Principal in order to perfect and enforce that security interest.
- 17.3 **(No acknowledgement)** Taking possession of Goods shall not constitute an admission by the Principal that those Goods comply with the Contract.

18. TIMING

- 18.1 **(Timing)** Subject to clause 18.2, the Supplier must commence performing its obligations under the Contract by the Commencement Time and must perform those obligations:
- (a) within any working hours described in the Engagement Documents;
 - (b) with due expedition and without delay;

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- (c) in accordance with any requirements of the Contract and any reasonable directions of the Principal as to the order and timing of the performance of those obligations (including any program included in the Engagement Documents or agreed between the Parties);
 - (d) so that all Services reach Completion by the applicable Completion Time and all Goods are Delivered by the applicable Delivery Time.
- 18.2 **(Delay)** The Supplier must promptly notify the Principal if the Supplier is or will be delayed in providing the Goods and/or Services. Where the Supplier is delayed in delivering the Goods by the Delivery Time or reaching Completion by the Completion Time because of an act or omission of the Principal or the Principal's Personnel or any other cause of delay identified in the Engagement Documents, the Principal shall grant a reasonable extension of the Delivery Time or the Completion Time as the case may be. The Principal may grant an extension of the Delivery Time or the Completion Time as the case may be for delay caused by any other cause of delay.
- 18.3 **(Prevention and Mitigation)** The Supplier shall take all reasonable steps to prevent the occurrence and to mitigate the effects of a delay.
- 18.4 **(No monetary compensation)** The Supplier shall not be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Supplier's obligations under the Contract however caused.

19. VARIATIONS

- 19.1 **(Direction for Variation)** The Principal may at any time and for any reason direct a Variation by giving written notice to the Supplier but cannot direct a Variation which is outside the general scope of the Contract. The Supplier cannot carry out a Variation without a written direction to do so from the Principal.
- 19.2 **(Adjustment of Price)** The Price shall be adjusted for each Variation directed by the Principal in accordance with clause 19.1 by the amount agreed by the Parties or failing agreement by a reasonable amount determined by the Principal. The Supplier shall not otherwise be entitled to any payment in connection with a Variation.
- 19.3 **(Omissions)** Where the Principal directs a Variation omitting or reducing any part of the Goods and/or Services, then the Principal may subsequently provide the omitted or reduced Goods and/or Services itself or engage others to do so on its behalf. The Supplier shall not be entitled to any monetary compensation in connection with an omission or reduction, and such omission or reduction shall not invalidate or constitute repudiation of the Contract.

20. INVOICES

- 20.1 **(Submission of invoices)** Subject to clause 20.8, the Supplier may submit invoices to the Principal for Goods and Services provided in accordance with the Contract at the times and for the Goods and Services stated in the Engagement Documents. The invoice must comply with the GST Law and be accompanied by any documentation which the Engagement Documents require to be provided with an invoice or which the Principal reasonably directs prior to the time for submission of the invoice. Unless otherwise directed, invoices should be submitted promptly and, in any event, no later than 5 Business Days of the later of Completion or the date on which Goods required under the Contract are Delivered.
- 20.2 **(Amount due)** The Principal may deduct any amount due and owing by the Supplier to the Principal and any amount which the Principal reasonably claims is or will become due and owing by the Supplier to the Principal (whether under the Contract or otherwise) from any amount claimed by the Supplier under or in connection with the Contract (including for a breach of the Contract). The balance remaining after such a deduction shall be due by the Principal to the Supplier or by the Supplier to the Principal as the case may be.

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- 20.3 **(Due date for payment)** Subject to the Contract, the Principal shall pay the amount due to the Supplier (if any) including any applicable GST before the end of the Payment Period. If an amount is due from the Supplier to the Principal, the Supplier must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from the Principal.
- 20.4 **(No admission)** Payments made by the Principal to the Supplier are made on account only and do not constitute an admission that the Supplier is entitled to the payment made or that the Goods, Services and/or Supplier Documents the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.
- 20.5 **(Sole entitlement)** Payment of the Price shall be the Supplier's only entitlement to monetary compensation for the provision of the Goods and Services and compliance with the Supplier's other obligations under the Contract.
- 20.6 **(Final invoice)** Where directed to do so by the Principal, as a pre-condition to entitlement to payment of its final invoice, the Supplier must provide to the Principal a statutory declaration in the form contained in Schedule 1, dated after all Goods, Services and Supplier Documents have been provided.
- 20.7 **(Liability for GST)** If GST is imposed on any supply made pursuant to the Contract, the amount payable for the supply is to be increased by the amount of that GST. .
- 20.8 **(Recipient created tax invoices)** Where the Principal is the recipient of a taxable supply under this Contract the Principal may issue recipient created tax invoices or recipient created adjustment notes in respect of these supplies in accordance with the GST Law and direct the Supplier not to issue tax invoices or adjustment notes in respect of the same supplies.

21. WORK HEALTH AND SAFETY

- 21.1 **(Relationship of obligations)** The obligations in this clause 21 are in addition to, and not in substitution for any other obligation of the Supplier:

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

Nothing in this clause 21 is intended to reduce or limit such other obligations and none of those other obligations shall be taken to reduce or limit the Supplier's obligations under this clause 21.

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

- (a) comply with all law (including the WHS Act and the WHS Regulation) and codes of practice relating to WHS that are in any way applicable to this Contract;
- (b) discharge the duties and comply with all relevant duties, obligations, standards and requirements under the WHS Act and WHS Regulation which are or may become applicable in connection with the Contract including any direction relating to WHS issued by the Regulator or any other Authority;
- (c) at all times identify and take all reasonably practicable steps to ensure health and safety of all persons who may be affected by the performance of the Supplier's obligations under the Contract;
- (d) consult with and co-operate with the Principal in relation to matters of WHS that the Principal considers the Supplier cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal to ensure any issues are resolved to that standard;

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- (e) except where the Supplier is the principal contractor for a Site under the WHS Regulation, (in which case this subclause 21.2(e) does not apply), comply with:
 - (i) the reasonable requirements of any third party appointed by the Principal as principal contractor for the Site; or
 - (ii) if no third party has been so appointed for the Site, the WHS policies and procedures of the Principal which are in any way applicable to this Contract for that Site.

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

- (a) promptly (and no more than 12 hours after the occurrence) notify the Principal of any accident, injury, property or environmental damage, which occurs during the carrying out of an obligation of the Supplier under the Contract;
- (b) report any Notifiable Incidents to the Regulator within the specified time frame as per the WHS Act and WHS Regulation; and
- (c) immediately notify the Principal of any lost time incident and within 3 Business Days of any such incident provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future.

21.4 **(Supplier's WHS systems and documentation)** The Supplier:

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

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

- (d) must, if the Principal at any time during the performance of the Supplier's obligations under the Contract requests the Supplier to review any of the WHS documentation, promptly and within the time required by the Principal, review any or all of the WHS documentation in accordance with the Principal's request and either:
 - (i) submit revised documentation to the Principal; or
 - (ii) provide written confirmation that the WHS documentation is appropriate to manage the risks associated with the Supplier's obligations under the Contract;
- (e) is not entitled to make any Claim (whether for additional costs or expense or extension of the Completion Time or a Delivery Time) in connection with its obligations under this clause.

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- 21.5 **(Site specific induction for construction sites)** If any Site is a construction site, then the Supplier must ensure that all Personnel of the Supplier working on that construction site receive a site-specific induction and that each person visiting the Supplier or its Personnel at that Site receives a site-specific induction or is accompanied by someone who has received such an induction.

22. PROTECTION OF PROPERTY AND THE ENVIRONMENT

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

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

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

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

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

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

23. INDEMNITY

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

- (a) loss of or damage to property of the Principal;
- (b) Claims by any person against the Principal in respect of personal injury or death, or loss of or damage to property of any party; and
- (c) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal in connection with:
 - (i) a breach of the Supplier's obligations under clauses 21 or 22.1 or 32.5;
 - (ii) the Supplier's failure to satisfy a law as required by the Contract;
 - (iii) any breach by the Supplier of its obligations under any law; and/or
 - (iv) any enforcement of obligations imposed on the Supplier under any law

arising out of or in connection with the performance of the Supplier's obligations under the Contract, but the indemnity will be reduced to the extent that the negligent act or omission or

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Wilful Misconduct of the Principal or the Principal's Personnel caused or contributed to the cost, expense, fine, penalty, loss, damage, injury or death and/or the Principal failed to act reasonably to mitigate the cost, expense, fine, penalty, loss or damage.

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

24. LIMITATION OF LIABILITY

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

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

- 24.3 **(Exceptions)** Clauses 24.1 and 24.2 do not apply to:

- (a) liability of the Principal to pay the Price;
- (b) liability of either Party in connection with personal injury, or death or damage to property;
- (c) liability of either Party arising under an indemnity given under the Contract or as a result of an infringement of confidentiality or Intellectual Property Rights, a deliberate breach or abandonment of the Contract, Wilful Misconduct, gross negligence or fraud or other criminal conduct;
- (d) liability of either Party to the extent that the Party is entitled to be indemnified under a policy of insurance required to be effected under the Contract or would have been so entitled if this clause 24 did not form part of the Contract, the Party had effected and maintained the insurance policy in accordance with the Contract, complied with its obligations under the Contract, lodged and diligently pursued a claim under the policy and complied with the terms of, and any other obligation or duty in connection with, the policy and the insurer had remained solvent;
- (e) liability of either Party incurred because of a breach of any law by the other Party;
- (f) liability of the Supplier to the extent that the Supplier is entitled to recover that liability from any other third party (including any subcontractor, consultant or supplier of the Supplier) or would have been entitled to recover that liability but for any act or omission of the Supplier,

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

25. INSURANCE

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

- (a) public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims;

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- (b) professional indemnity insurance in the amount of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims;
- (c) third party and comprehensive motor vehicle insurance for each vehicle used by the Supplier in performing its obligations under the Contract;
- (d) plant and equipment insurance for each item of plant for the full replacement value of the plant; and
- (e) workers' compensation insurance in respect of the Supplier's Personnel as required by law.

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

25.3 **(Evidence of insurance)** If requested by the Principal, the Supplier must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by the Principal. The Principal may suspend the Contract or withhold payment from the Supplier until such evidence is provided.

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

25.5 **(Notification)** The Supplier must immediately notify the Principal's Representative if any insurance policy required under the Contract is cancelled or the Principal's interest in respect of any of those policies is adversely affected.

26. SERVICE LEVELS

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

26.2 **(Review of Service Levels)** The representatives of the Parties may review the Service Levels from time to time and amend them in any way including by adding additional Service Levels, removing or amending Service Levels, amending the method of measuring performance or the consequence of achieving or failing to achieve a Service Level.

27. INSPECTIONS AND TESTS

27.1 **(Right to inspect and test)** The Principal's Representative shall be entitled to inspect and test all Goods, Services and Supplier Documents provided to ensure that the Goods, Services and Supplier Documents comply with the Contract, including all warranties given and representations made by the Supplier in the Contract. Inspections or tests carried out by the Principal or on behalf of the Principal shall not relieve the Supplier of any obligation or liability under the Contract nor limit or waive any right of the Principal.

27.2 **(Cost)** If an inspection or test undertaken by the Principal reveals a failure by the Supplier to comply with the Contract, then the costs reasonably incurred by the Principal in undertaking the inspection or test shall be a debt due and payable by the Supplier to the Principal.

28. NON-CONFORMANCE

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

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

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- (b) the Supplier fails to comply with any other obligation of the Supplier under the Contract, the Principal may, in addition to or as an alternative to exercising its rights under clause 31, exercise the rights provided in clause 28.2.
- 28.2 **(Principal's rights in respect of non-conformance or failure)** Where permitted by clause 28.1, the Principal may:
- (a) direct the Supplier to provide a detailed proposal as to how the Supplier proposes to rectify the non-conformance and the time within which such a proposal is to be provided;
 - (b) whether or not the Principal has given a direction under clause 28.2(a), direct the Supplier to:
 - (i) rectify the non-conformance or failure (including by performing or reperforming, removing, demolishing, repairing, replacing or reconstructing any non-conforming Goods or Services or replacing non-conforming Supplier Documents); and
 - (ii) make good any damage to any property or work to the extent caused by the non-conformance or the rectification,at the Supplier's expense and within the timeframes reasonably directed by the Principal;
 - (c) reject non-conforming Goods, in which case the Principal may:
 - (i) return the whole of the Goods Delivered (or, at its discretion, the non-conforming part of those Goods) to the Supplier or direct the Supplier to collect those Goods at the Supplier's expense and within the timeframes reasonably directed by the Principal;
 - (ii) direct the Supplier to either refund all monies paid for the returned Goods or to replace the returned Goods at the Supplier's expense at a time and place directed by the Principal;
 - (d) accept the non-conformance or failure, in which case the Price will be adjusted as if the Principal had directed a Variation for the non-conformance or failure; or
 - (e) where it is impractical to give the Supplier a direction pursuant to clause 28.2(a), take any of the steps contemplated by that clause itself, in which case the costs reasonably incurred by the Principal in doing so shall be a debt due and owing by the Supplier to the Principal.
- 28.3 **(Step-in rights)** If the Supplier fails to comply with a direction under clause 28.2, then the Principal may after giving at least 5 Business Days written notice to the Supplier (except in the case of emergency, in which case no notice is required) carry out that other obligation itself or have it carried out by others.
- 28.4 **(Costs)** The cost incurred by the Principal in connection with any action taken, or purportedly taken, pursuant to clause 28.2 or 28.3 so shall be a debt due and owing by the Supplier to the Principal.
- 28.5 **(Timing)** A direction under clause 28.2 may be given at any time up to 12 months after the Goods, Services or Supplier Documents were provided by the Supplier.
- 28.6 **(Application of clause)** For clarity, this clause 28 shall apply to all Goods, Services, Supplier Documents and provided or to be provided, under the Contract, including Goods, Services and Supplier Documents provided in compliance with a direction under clause 28.2(b) or 28.2(c)

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29. SUSPENSION

- 29.1 **(Right to suspend)** The Principal may direct the Supplier to suspend the performance of the whole or part of the Supplier's obligations under the Contract at any time and for any reason and may direct the Supplier to recommence performing those obligations by giving notice in writing to the Supplier. The Supplier must not suspend the performance of its obligations under the Contract without the prior written consent of the Principal.
- 29.2 **(Costs of suspension)** If the suspension is directed due to any act or omission of the Supplier or its Personnel (including a breach of the Contract by the Supplier) then the Supplier shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which the Supplier demonstrates it has reasonably, necessarily and not prematurely incurred by the Supplier by reason of the suspension and which the Supplier demonstrates it cannot reasonably mitigate.

30. FORCE MAJEURE

- 30.1 **(Notification of Force Majeure)** If either Party is rendered unable wholly or in part by Force Majeure to carry out any of its obligations under the Contract (other than an obligation to make a payment of monies), that Party ('the Affected Party'), shall give to the other Party prompt written notice of such Force Majeure detailing the particulars of the Force Majeure and to the extent that it is ascertainable at the time of giving the notice, the extent to which it will be unable to perform or be delayed in performing its obligations.
- 30.2 **(Suspension)** On the giving of a notice under clause 30.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.
- 30.3 **(Removal of Force Majeure)** The Affected Party shall use all reasonable diligence to remedy or remove such Force Majeure as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.
- 30.4 **(Industrial relations)** Clause 30.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on terms contrary to its wishes. The manner in which all such difficulties shall be handled shall be entirely within the discretion of the Affected Party.
- 30.5 **(Principal's rights)** Where the Supplier gives a notice under clause 30.1, the Principal may at its election:
- (a) itself perform, or engage others to perform the obligations which the Supplier is unable to perform and may continue to perform such obligations until the later of the time that the Principal is reasonably satisfied that the Supplier is able to resume performance of those obligations and the time at which any interim arrangements put in place by the Principal are able to be reasonably brought to an end;
 - (b) take such other action as the Principal, acting reasonably, considers appropriate.
- The cost incurred by the Principal in exercising these rights shall be borne by the Principal.
- 30.6 **(Termination)** If Force Majeure extends for a period of greater than 20 consecutive Business Days then the Principal may terminate the Contract immediately by giving written notice to the Supplier.

31. TERMINATION AND DEFAULT

- 31.1 **(Termination for convenience)** The Principal may at any time and for any reason in its absolute discretion terminate the Contract by giving 25 Business Days written notice to the Supplier.
- 31.2 **(Default by Supplier)** Where the Supplier has committed a Substantial Breach or is subject to an Insolvency Event, the Principal may by giving written notice to the Supplier immediately:

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

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

- 31.3 **(Default by Principal)** Where the Principal has committed a Substantial Breach, the Supplier may suspend the performance of its obligations under the Contract by giving written notice to this effect to the Principal. If the default has not been remedied within 20 Business Days after the notice of suspension is given to the Principal, the Supplier may terminate the Contract by giving written notice to this effect.
- 31.4 **(Payment on Termination)** If the Contract is terminated by either Party the Principal shall, subject to the Contract and its other rights at law, pay the Supplier:
- (a) the amount which the Supplier is entitled to be paid under the Contract for Goods and Services provided up to and including the date of termination; and
 - (b) if the termination is solely due to the act or omission of the Principal, without any fault on behalf of the Supplier, the amount of any other direct costs which the Supplier demonstrates it has reasonably, necessarily and not prematurely incurred prior to the termination in the expectation of completing its obligations under the Contract, and which the Supplier demonstrates it cannot reasonably mitigate.
- 31.5 **(Payment on take out)** On completion of the obligations of the Supplier which have been taken out of the hands of the Supplier, the Principal shall determine the cost incurred in completing those obligations and the amount which would have been paid to the Supplier had the Supplier completed those obligations (including any payment suspended under clause 31.2(a) and the difference shall be a debt due and payable by the Supplier to the Principal or by the Principal to the Supplier as the case may be.
- 31.6 **(No other compensation)** Except to the extent expressly provided in this clause 31, the Supplier shall not be entitled to any monetary compensation in respect of the termination of the Contract by either Party or the Principal taking obligations out of the hands of the Supplier pursuant to this clause 31.

32. HANDLING OF INFORMATION

- 32.1 **(Obligation of confidence)** A Party must not use the other Party's Confidential Information for any purpose other than complying with its obligations or exercising its rights in connection with the Contract ('Permitted Purpose'). A Party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.
- 32.2 **(Breach of Confidence)** If a Party becomes aware of a suspected or actual breach of clause 32.1, that Party must immediately notify the other Party and take reasonable steps required to prevent or stop the breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.
- 32.3 **(Return of Confidential Information)** The Disclosee of Confidential Information must return or destroy (at the Discloser's discretion) all Confidential Information and material containing Confidential Information when it is no longer required by the Disclosee for the Permitted Purpose or when otherwise directed by the Discloser, subject to any record keeping requirements at law.

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- 32.4 **(Personnel)** The Parties must make every reasonable effort to ensure that only its Personnel that have a need to know any Confidential Information for the Permitted Purpose are permitted to access and use the other Party's Confidential Information and its Personnel are aware of and comply with the obligations of confidentiality in this clause 32.
- 32.5 **(Information Privacy Act)** If the Supplier collects or has access to 'Personal Information' as that term is defined in the *Information Privacy Act 2009* (Qld) in order to carry out its obligations under the Contract, the Supplier must comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Contract as if the Supplier was the Principal. Personal information collected by the Principal in connection with the Contract is collected for the purposes of enabling the Principal to properly discharge its functions as a local government authority and may be accessible by and disclosed to Personnel engaged to assist the Principal in doing so. Personal information will otherwise be dealt in accordance with the Principal's privacy policy. The Principal is authorised to collect personal information in accordance with the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) and related legislation.
- 32.6 **(Media)** The Supplier must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether verbal or written, in connection with the Contract in any media without the prior approval of the Principal.

33. INTELLECTUAL PROPERTY

- 33.1 **(Background IP)** Background IP of a Party shall remain the exclusive property of that Party. The Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Principal's Background IP strictly for the purpose of complying with the Supplier's obligations under the Contract and for no other purpose. The Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Supplier's Background IP for any purpose for which the Goods and Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract. Each Party warrants and represents to the other that the use of the Party's Background IP will not infringe any Intellectual Property Rights of a third party.
- 33.2 **(Project IP)** Unless the Engagement Documents expressly provide otherwise, Project IP vests on creation in the Principal and is the exclusive property of the Principal, and the Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Supplier to comply with the Supplier's obligations under the Contract. If the Engagement Documents provide that Project IP vests in the Supplier on creation, then Project IP vests in the Supplier and the Supplier grants the Principal a royalty free, non-exclusive, non-transferable licence to use the Supplier's Project IP for any purpose for which the Goods and Services are provided.
- 33.3 **(Moral Rights consent)** If the Engagement Documents provide that a Moral Rights consent is required then:
- (a) the Principal may do anything which would, but for this clause, constitute an infringement of the Moral Rights of the Supplier or any of its Personnel in the Background IP or the Project IP; and
 - (b) the Supplier must procure, and on request by the Principal provide to the Principal a copy of, a written consent to this effect from each of its Personnel that is the author of any Supplier Documents.
- 33.4 **(Warranty and representation by Supplier)** The Supplier warrants and represents that
- (a) it has the necessary rights to exercise any Intellectual Property Rights that it uses to provide the Goods and/or Services, or to assign or license the Supplier's Background IP and Project IP in accordance with this clause 33;

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- (b) it has not infringed and will not infringe any Intellectual Property Rights of a third party in connection with the performance of its obligations under the Contract; and
- (c) except to the extent that the infringement is caused by the Supplier's incorporation of the Principal's Background IP, the Project IP will not infringe the Intellectual Property Rights of a third party.

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

34. DISPUTE RESOLUTION

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

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

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

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

35. CLAIMS

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

**Oaths Act 1867
STATUTORY DECLARATION**

QUEENSLAND
TO WIT

I, [insert name of person signing] of [insert address] in the State of Queensland, do solemnly and sincerely declare that, in relation to the contract between Douglas Shire Council and [insert Supplier's name] (**Supplier**), identified as contract no. [insert contract no.] (**Contract**) for the provision of [describe goods and services](**Goods and Services**):

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

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

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

-
- Solicitor Justice of the Peace
 Commissioner for declarations