



PART 1 - REQUEST FOR TENDER

**PRE-QUALIFIED SUPPLIER'S PANEL
Engineering & Cadastral Surveying 2023/24**

Contract No.: T2324.01

PART 1 - REQUEST FOR TENDER

PART 1 – PREAMBLE

Banana Shire Council invites tenders from suitably qualified tenderers for appointment as a pre-qualified supplier of Engineering and Cadastral Surveying 2023/24 financial year. More detail information described in Part 4 – General Requirements & Technical Specification. This tender will continue for a 12 month period and contract commencement date will be 1st of September 2023.

PART 1 – GENERAL INFORMATION

1.Contract details:	Pre-qualified Supplier Panel Engineering and Cadastral Surveying 2023/24 T2324.01			
2.Communications by Tenderers:	Communications regarding the Procurement Process must be submitted to enquiries@banana.qld.gov.au no later than 5 calendar days prior to the time stated in Item 4			
3.Briefing or site inspection:	Details	Maximum attendees	Mandatory	RSVP
	N/A	N/A	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	N/A
4.Submission of Tender:	Tenders must be submitted at tenders@banana.qld.gov.au by no later than 11.00 am on 18 th August 2023 Note// Adequate time must be allowed for the Tender and all supporting documents to be uploaded or received by this time.			
5.Evaluation Criteria:	Evaluation Criteria			Weighting (%) (Optional)
	Relevant Experience			20%
	Technical Skills			15%
	Resources / Availability			20%
	Local Content (Central Queensland)			10%
	Price			35%
6.Tenders to be valid for:	90 calendar days after the time stated in Item 4 (as extended if at all, pursuant to the Procurement Process Conditions)			
7.Complaints:	Complaints regarding Procurement Process to be directed to: enquiries@banana.qld.gov.au			

PART 2 – PROCUREMENT PROCESS

The Procurement Process is governed by, and this Request for Tender is to be read in conjunction with, the Procurement Process Conditions attached to or provided with this Request for Tender and identified as **Part 2 – Procurement Process**.

PART 1 - REQUEST FOR TENDER

PART 3 – CONTRACT

The contract shall be substantially in the form attached to or provided with this Request for Tender and identified as **Part 3 – Contract**.

PART 4 – GENERAL REQUIREMENTS AND TECHNICAL SPECIFICATIONS

The Scope is described in the document(s) attached to or provided with this Request for Tender and identified as **Part 4 – General Requirements and Technical Specifications**.

PART 5 – RESPONSE SCHEDULES

The Tender must be submitted in the form provided in the response schedules attached to or provided with this Request for Tender and identified as **Part 5 – Response Schedule**.

PART 6 – Pricing Table

The Tender must be submitted in the pricing table excel sheet provided with the document attached to or provided with this Request for Tender and identified as **Part 6 – Price Table**.



PART 2 – PROCUREMENT PROCESS

**PRE-QUALIFIED SUPPLIER'S PANEL
Engineering & Cadastral Surveying 2023/24**

Contract No.: T2324.01

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Part 2 - Procurement Process

1. GENERAL

- 1.1 **(Conduct of the Procurement Process)** The Principal will endeavour to conduct the Procurement Process in a manner which is consistent with these Procurement Process Conditions.
- 1.2 **(Rights of the Principal)** The Principal may do anything which it considers to be prudent or necessary for the proper conduct of the Procurement Process, including:
- (a) **(alteration of Procurement Documents)** amend, add to or delete any part of the Procurement Documents including:
 - (i) the procedures and timeframes provided in the Procurement Process Conditions;
 - (ii) the Evaluation Criteria (including weightings);
 - (iii) the Scope; and
 - (iv) where one is included in the Procurement Documents, the Contract;
 - (b) **(suspension or termination)** suspend or terminate the Procurement Process;
 - (c) **(attendances)** request any one or more Respondents to attend a briefing, site inspection or other meeting or to make a presentation of their Response in person at the Principal's office at no cost to the Principal;
 - (d) **(change or error in Procurement Documents)** request any one or more Respondents to change their Response to take account of a change in the Procurement Documents or any error in such documents;
 - (e) **(clarification or alteration)** request any one or more Respondents to clarify or alter any aspect of the Respondent's Response;
 - (f) **(additional information)** request additional information from one or more Respondents relating to a Response, the Procurement Process, the Respondent's compliance with the Procurement Process Conditions or any other matter which the Principal considers relevant to its assessment (including information that should have been, but was not, included in the Respondent's Response);
 - (g) **(negotiation)** negotiate amendments to any aspect of a Response with any one or more Respondents and suspend or terminate such negotiations at any time;
 - (h) **(revised Responses)** invite one or more Respondents to provide a revised Response or best and final offer; and/or
 - (i) **(shortlisting)** create a shortlist of one or more Respondents and exercise any of its rights only in respect of one or more of the shortlisted Respondents.
- 1.3 **(Conduct of Respondents)** The Respondent must not, and must ensure that its Personnel do not, engage in any Improper Conduct. The Respondent must immediately notify the Principal in the event that it becomes aware that it, or any of its Personnel, have engaged in Improper Conduct. Where appropriate, the Principal may report Improper Conduct by the Respondent to the appropriate Authority and provide that Authority with any relevant information related to that conduct.
- 1.4 **(Complaints in relation to the Procurement Process)** The Respondent must make any complaint in relation to the Procurement Process using the Communication Method immediately upon the cause of the complaint arising or upon the Respondent becoming aware of the cause. The complaint must be made in writing to the Complaints Manager and must contain adequate detail to allow the Complaints Manager to properly investigate the complaint.
- 1.5 **(No warranty)** The Principal gives no warranty and makes no representation that the Procurement Documents or any other information provided to the Respondent in connection with the Procurement Process is accurate, adequate or complete.
- 1.6 **(No liability)** Neither the Principal nor its Personnel shall be liable upon any Claim for any Specified Loss in connection with the Procurement Process.

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

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

3. COMMUNICATIONS DURING PROCUREMENT PROCESS

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

4. THE RESPONSE (RFT AND RFQ ONLY)

- 4.1 **(Application of clause)** This clause 4 only applies in respect of an RFT or an RFQ.
- 4.2 **(Acceptance of Contract and Scope)** If one has not been provided, the Respondent must obtain a copy of the Contract from the Principal by requesting a copy through the Communication Method. Except to the extent that the Respondent has detailed a proposed alternative, amendment, qualification or departure in a Response, the Respondent will be taken to have unconditionally accepted and agreed to:
 - (a) be bound by the terms and conditions of the Contract; and
 - (b) carry out and complete the whole of the obligations described in or to be reasonably inferred from the Procurement Documents.
- 4.3 **(Price)** The Price must be submitted exclusive of GST and in Australian dollars.

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- 4.4 **(Discrepancy in Price)** Where the Response Form requires the Respondent to provide a Price and there is a discrepancy between the amount stated in the Response Form as the Respondent's Price and the sum total of the items in any Price Schedule then:
- (a) if the Contract provides that it is a lump sum contract, then the sum total of the items in the Price Schedule shall be the Respondent's Price; or
 - (b) if the Contract provides that it is a schedule of rates contract or a part lump sum and part schedule of rates contract, then the rate, price or lump sum of each item will prevail over the total shown, and the total shall be adjusted accordingly.
- 4.5 **(Response Validity Period)** The Respondent's Response will remain valid and open for acceptance by the Principal until the end of the Response Validity Period and thereafter until it is withdrawn in writing by the Respondent or the Procurement Process is finalised. The Principal may consent to the Respondent withdrawing its Response before the end of the Response Validity Period. The Principal may request an extension of the Response Validity Period at any time by giving written notice to the Respondent. If the Respondent does not agree to the requested extension then the Principal may exclude the Respondent's Response from assessment or further assessment as the case may be.
- 4.6 **(Alternative Responses)** If the Respondent wishes to submit an Alternative Response, then the Respondent is encouraged to:
- (a) also submit a Conforming Response; and
 - (b) submit the Alternative Response on a separate Response Form to the Conforming Response, clearly marked, "ALTERNATIVE RESPONSE" accompanied by a clear summary of all points of difference between the Alternative Response and the Conforming Response.

5. RESPONDENT'S GENERAL WARRANTIES AND REPRESENTATIONS

- 5.1 **(Warranties and Representations)** By lodging a Response, the Respondent warrants and represents that:
- (a) **(conduct of Respondent)** neither the Respondent nor any of its employees or agents has engaged in any Improper Conduct;
 - (b) **(authority)** the Response has been signed and lodged by a person with authority to do so on behalf of the Respondent;
 - (c) **(basis of Response)** the Respondent:
 - (i) has received or obtained copies of all of the Procurement Documents and all information or documents referred to in the Procurement Documents; and
 - (ii) has not relied on the accuracy, adequacy or completeness of any documents or information provided or any representation made by or on behalf of the Principal in connection with the Procurement Process in preparing its Response;
 - (d) **(accuracy of Response)** all information provided in or with the Response is accurate;
 - (e) **(ability)** the Respondent and its relevant Personnel:
 - (i) hold (and are compliant with all requirements of) all necessary competencies, licences (including if necessary, a licence under the *Queensland Building and Construction Commission Act 1991* (Qld)), accreditations, certifications, permits, clearances and other authorisations which will be required for the Respondent to carry out the Scope if it is ultimately engaged to carry out that Scope; and
 - (ii) are not excluded from submitting a tender under any applicable Queensland or Federal Government scheme, code or policy;

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- (f) **(suitability etc. of works, goods or services)** where the Principal has stated in the Procurement Documents the purpose(s) for which the works, goods or services must be suitable, appropriate, adequate or fit, the works, goods or services shall be suitable, appropriate, adequate and fit for those purposes (but this warranty and representation will not apply to the extent (if any) that the Respondent has expressly excluded or limited it in the Respondent's Response);
- (g) **(Effect of implied warranties)** neither clause 5 nor clause 6 shall operate in any way to limit, exclude or otherwise restrict the operation of any warranty implied by law.

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

- 6.1 **(Application of clause)** This clause 6 only applies in respect of an RFT or an RFQ.
- 6.2 **(Warranties and Representations)** By lodging a Response, the Respondent warrants and represents that:
 - (a) **(investigations)** the Respondent has undertaken its own enquiries and investigations to satisfy itself of:
 - (i) the nature and extent of the Scope, its contractual obligations and all other risks, contingencies and other circumstances which could have an impact on its ability to carry out and complete the obligations it will have under the Contract if its Response is accepted for the Price; and
 - (ii) the suitability, appropriateness and adequacy of the Scope (including, in respect of contracts under which the successful Respondent is required to design works, any preliminary design included in the Scope) for the purposes stated in or to be reasonably inferred from the Scope;
 - (b) **(ability)** the Respondent and its relevant Personnel:
 - (i) have and will maintain the necessary experience, expertise and skill to perform its obligations under the Contract in accordance with the requirements of the Contract in the event that its Response is accepted; and
 - (ii) have and will maintain the resources necessary to comply with the timeframes for the performance of the Contract stated in the Procurement Documents (as amended if at all, pursuant to these Procurement Process Conditions);
 - (c) **(price)** the Price, and all rates, sums and prices included in the Response allow for:
 - (i) all of the risks, contingencies and other circumstances which could have an effect on the Respondent's ability to carry out and complete the obligations it will have under the Contract if its Response is accepted for the Price, except to the extent that the Contract expressly allows an adjustment;
 - (ii) the provision of all materials, plant, labour and other services necessary for the proper completion of the obligations it will have under the Contract if its Response is accepted, whether or not those items are expressly mentioned in the Contract; and
 - (iii) unless the Contract expressly allows an adjustment, rise and fall in costs;
 - (d) **(competitive neutrality)** if the Respondent is required by law to comply with principles of competitive neutrality, the Respondent has properly considered, assessed and complied with the applicable competitive neutrality principles in relation to the Procurement Process and the acceptance by the Principal of the Respondent's Response will not breach those principles;
 - (e) **(notice)** the Respondent has notified the Principal in its Response of any:
 - (i) ambiguity, inconsistency, uncertainty, error or omission which it has discovered in or from the Procurement Documents;
 - (ii) any assumptions that it has made in determining its Price;

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- (iii) further information or investigations which it considers that it requires to enable it to give the warranties and make the representations in this clause 6,

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

7. LODGEMENT AND OPENING OF RESPONSES

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

- (a) if the Tender Box is a website, by uploading it to the Tender Box;
- (b) if the Tender Box is an email address, by sending it as an attachment to an email to the Tender Box; or
- (c) if the Tender Box is a physical address, by delivering it to the Tender Box.

The Principal may direct or allow the Response to be lodged by an alternative method.

7.2 **(Time of lodgement)** A document forming part of a Response shall be deemed to have been lodged:

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

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

8. ASSESSMENT OF RESPONSES

8.1 **(Evaluation Criteria)** In determining which Response(s) are most advantageous to the Principal, each Response evaluated in accordance with these Procurement Process Conditions will be assessed, but not necessarily exclusively, against the Evaluation Criteria (if any).

8.2 **(Considerations)** In assessing Responses, the Principal may consider any information which the Principal reasonably considers to be relevant to its assessment (however obtained), including:

- (a) information contained in the Response or any amendment to or clarification of a Response;
- (b) information provided at a meeting with or presentation by the Respondent;
- (c) outcomes from discussions with a Respondent's referees (if any);
- (d) information obtained pursuant to clause 8.5;
- (e) the Respondent's past performance under other contracts with the Principal or third parties; and
- (f) the reasonably held subjective opinions of the persons appointed by the Principal to evaluate Responses or any advisor to such persons.

8.3 **(Uncertainties)** The Principal may ignore any part of a Response which is ambiguous, uncertain, unclear or illegible without seeking clarification from the Respondent and may assess the balance of the Response.

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- 8.4 **(Right to exclude)** The Principal may, but shall not be obliged to, reject or exclude from assessment any Response including:
- (a) a Non-Conforming Response, an Alternative Response or a Late Response;
 - (b) a Response, in respect of which the Principal reasonably believes that the Respondent has:
 - (i) failed to comply with these Procurement Process Conditions or any request made by or on behalf of the Principal pursuant to them within the time required; or
 - (ii) breached a warranty given or representation made pursuant to these Procurement Process Conditions or that a warranty, declaration or representation in the Respondent's Response is false or misleading in any material respect;
 - (c) a Response in respect of which the Principal reasonably believes that the Respondent cannot reasonably comply with the obligations which it will have under the Contract (in the event that its Response is successful) for the Price; or
 - (d) a Response which fails to achieve a satisfactory score against any of the Evaluation Criteria, even if the overall score of the Response is satisfactory;
- 8.5 **(Other information or assistance)** The Principal may undertake its own investigations, or engage third parties to do so on its behalf, in relation to any aspect of a Response (including verifying any warranty, representation or declaration made or given in the Response or pursuant to these Procurement Process Conditions) or any other matter which it considers relevant to the conduct of the Procurement Process. The Respondent must cooperate with such investigations and provide all information and assistance reasonably requested by or on behalf of the Principal in connection with the investigation.

9. SHORTLISTING (RFEOI ONLY)

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

10. ACCEPTANCE (RFT AND RFQ ONLY)

- 10.1 **(Application of clause)** This clause 10 only applies in respect of an RFT or an RFQ.
- 10.2 **(Ability to accept)** The Principal is not bound to accept the Response with the lowest Price or the Response with the highest score against the Evaluation Criteria, or any Response. The Principal will, if it accepts a Response, accept the Response(s) which it reasonably believes are the most advantageous to it having regard to the Sound Contracting Principles and the requirements of the *Local Government Regulation 2012* (Qld) to the extent that they are applicable and relevant to the Procurement Process.

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

11. DOCUMENTS AND INFORMATION

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

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

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Notwithstanding any other provision of the Procurement Documents or a Response, if a Response is accepted, the Principal may publish on a Queensland Government website or by any other means, contract information including:

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

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

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

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

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

12. DEFINITIONS

12.1 **(Definitions)** In these Procurement Process Conditions, unless the context otherwise requires:

- (a) **Addenda and Addendum** means any communication issued to Respondents in accordance with these Procurement Process Conditions which is identified as an Addendum;
- (b) **Alternative Response** means a Response which is otherwise a Conforming Response but which in the opinion of the Principal, contains significant alternatives, qualifications or amendments to or departures from the Contract or the Scope;

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- (c) **Authority** means a local government, the State of Queensland, the Commonwealth or other any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality having jurisdiction over the project;
- (d) **Business Day** means a day that is not a Saturday, Sunday or public holiday at Biloela;
- (e) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including at law (including a breach of an express or implied term of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law, pursuant to any other principle of law, in connection with the Procurement Process;
- (f) **Communication Closing Time** means the time identified in the General Information as the time by which communications by Respondents must be submitted;
- (g) **Communication Method** means submitting an enquiry through the website forum or sending an email to the email address nominated for communications by Respondents in the General Information;
- (h) **Complaints Manager** means the person identified in the General Information as the person to whom complaints regarding the Procurement Process should be directed;
- (i) **Confidential Information** means documents and information provided or made available by or on behalf of one party to the other party in connection with the Procurement Process which are of their nature confidential (including copies of such documents and information) but not including documents and information which are in the public domain other than through a breach of clause 11.4;
- (j) **Conforming Response** means a Response which, in the opinion of the Principal:
 - (i) is substantially in the form and contains substantially all of the documentation, information, acknowledgements, warranties, declarations and undertakings required by the Response Schedules;
 - (ii) contains no significant alternatives, qualifications or amendments to or departures from the Contract or the Scope; and
 - (iii) in respect of Tenders or EOIs only, does not substantially exceed the Maximum Page Limit (if any);
- (k) **Contract** means:
 - (i) a contract which may be entered into between the Principal and a Respondent pursuant to an RFT or RFQ and which will be in the form referenced in Part 4 – Contract of the RFT or RFQ, as amended (if at all) by the express written agreement of the Principal; and
 - (ii) where an RFT is for appointment as a Preferred Supplier or Pre-qualified Supplier, also includes a contract which may be entered into during the term of the appointment unless the context requires otherwise;
- (l) **Councillor** has the same meaning as in the *Local Government Act 2009* (Qld);
- (m) **EOI (Expression of Interest)** means a Response lodged by a Respondent in response to an RFEOI and includes all documents and information lodged with or as part of the expression of interest;
- (n) **Evaluation Criteria** means:
 - (i) for an RFT or an RFEOI, the evaluation criteria (if any) set out in the General Information; and
 - (ii) for an RFQ, the evaluation criteria (if any) set out in the RFQ;
- (o) **General Information** means Part 4 – General Information of the RFQ, RFT or RFEOI (as the case may be);
- (p) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

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- (q) **Improper Conduct** means:
- (i) engaging in any activity or obtaining any interest which results in or is likely to result in any actual, potential or perceived conflict between the interests of the Respondent and the Respondent's obligations to the Principal in connection with the Procurement Process;
 - (ii) engaging in misleading or deceptive conduct in connection with the Procurement Process;
 - (iii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other Respondent, or any other person in connection with the Procurement Process;
 - (iv) canvassing, attempting to improperly influence, offering any inducement to or accepting or inviting improper assistance from any Councillor or other Personnel (or former Personnel) of the Principal in connection with the Procurement Process;
 - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the Respondent's Response;
 - (vi) breaching any law in connection with the Procurement Process;
 - (vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
 - (viii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld);
- (r) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- (s) **Late Response** means any Response that is not received in the Tender Box (or otherwise received by the Principal by an alternative method permitted under the Procurement Process Conditions) by the Response Closing Time;
- (t) **Local Government** has the same meaning as in the *Local Government Act 2009* (Qld);
- (u) **Local Government Meeting** has the same meaning as in the *Local Government Act 2009* (Qld);
- (v) **Local Supplier:**
- (i) where the Principal's procurement policy provides a meaning of local supplier, has the meaning given in the Principal's procurement policy, a copy of which can be obtained from the Principal upon request; or
 - (ii) where the Principal does not have a procurement policy, or the procurement policy does not provide a meaning of local supplier, means a supplier that:
 - A. is beneficially owned and operated by persons who are residents or ratepayers of the local government area of the Principal as determined under the *Local Government Regulation 2012* (Qld); or
 - B. has its principal place of business within that local government area; or
 - C. otherwise has a place of business within that local government area that solely or primarily employs persons who are residents or ratepayers of that local government area;
- (w) **Maximum Page Limit** means the number of pages which may be lodged as, with or in relation to the Response (including, unless otherwise indicated, all attachments, annexures, supplements, parts, schedules or appendices), which the General Information states a Response should not be longer than;
- (x) **Non-Conforming Response** means a Response which is not a Conforming Response or an Alternative Response;

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- (y) **Non-Local Supplier** means a supplier (including a Respondent) that is not a Local Supplier;
- (z) **Personnel** includes the officers, employees, agents, representatives, contractors and consultants of a party and any other person or entity for whom that party is vicariously liable;
- (aa) **Preamble** means Part 1 – Preamble of the RFEOI, RFT or RFQ (as the case may be);
- (bb) **Preferred Supplier** means a supplier that has been selected as a preferred supplier pursuant to section 233 of the *Local Government Regulation 2012* (Qld);
- (cc) **Pre-qualified Supplier** means a supplier that has been selected as a pre-qualified supplier pursuant to section 232 of the *Local Government Regulation 2012* (Qld);
- (dd) **Price** means:
 - (i) where the Procurement Process is for appointment as a Preferred Supplier or Pre-qualified Supplier, the rates, sums or prices stated in the Response;
 - (ii) otherwise, subject to clause 4.4, the total price stated in the Response;
- (ee) **Price Schedule** means a Response Schedule which provides a breakdown of the Price, and which may include rates, lump sums, prices, provisional sums, estimated quantities and other information;
- (ff) **Principal or Purchaser** means Banana Shire Council;
- (gg) **Procurement Documents** means:
 - (i) the RFEOI, RFT or RFQ (as the case may be); and
 - (ii) any Addenda issued pursuant to these Procurement Process Conditions,and includes all documents included in or incorporated by reference into these documents;
- (hh) **Procurement Process** means the process by which the Principal intends to, or does, invite, assess and where applicable, accept or reject Responses in respect of the Scope;
- (ii) **Procurement Process Conditions** means these procurement process conditions;
- (jj) **Quotation** means a Response lodged by a Respondent in response to an RFQ and includes all documents and information lodged with or as part of the quotation;
- (kk) **Related Local Government** means a local government that has entered into an arrangement with the Principal, as contemplated in section 235(f) of the *Local Government Regulation 2012* (Qld), to the effect that the local government may make a contract with a supplier that has been selected by the Principal to be a Preferred Supplier or Pre-qualified Supplier of goods and/or services, as if that local government had itself selected the Respondent to be a Preferred Supplier or Pre-qualified Supplier of those goods and/or services.
- (ll) **Respondent** means:
 - (i) any person who lodges a Response; and
 - (ii) to the extent to which the term can apply to any other person who obtains a copy of any of the Procurement Documents during the Procurement Process, also includes such other persons,and includes a Tenderer;
- (mm) **Response** means, where these Procurement Process Conditions are incorporated into an:
 - (i) RFEOI, an EOI;
 - (ii) RFT, a Tender; or
 - (iii) RFQ, a Quotation;

Part 2 - Procurement Process

- (nn) **Response Closing Time** means the time identified in the General Information as the time by which Responses must be submitted as varied (if at all) pursuant to these Procurement Process Conditions;
- (oo) **Response Form** means in respect of an:
 - (i) RFEOI, the document identified as the EOI form in the Response Schedules;
 - (ii) RFT or RFQ:
 - A. the document identified as the tender form or the quotation form (as the case may be) in the Response Schedules; or
 - B. otherwise where there is no document identified as the tender form or quotation form, any document (other than a Price Schedule) which states the total price offered by the Respondent in the Response;
- (pp) **Response Schedules** means the schedules identified in Part 5 – Response Schedules of the RFEOI or Part 5 – Response Schedules of the RFT or RFQ (as the case may be);
- (qq) **Response Validity Period** means the period stated in the General Information as the time for which Responses are to be valid as extended (if at all) pursuant to clause 4.5;
- (rr) **RFEOI (or Request for Expressions of Interest)** means the request for expressions of interest issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions and the Scope);
- (ss) **RFQ (or Request for Quotation)** means the request for quotations issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions, the Contract and the Scope);
- (tt) **RFT (or Request for Tender)** means the request for tenders issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions, the Contract and the Scope);
- (uu) **Scope** means the scope described in Part 4 – General requirements & technical specifications of the RFEOI or Part 4 – General requirements & technical specifications of the RFT or RFQ (as the case may be) and all documents incorporated into it (whether physically or by reference), and includes any amendments provided for in an Addendum;
- (vv) **Sound Contracting Principles** has the meaning given in section 104(3) of the *Local Government Act 2009* (Qld);
- (ww) **Specified Loss** means:
 - (i) any loss of, or loss of anticipated, profit, income, revenue, saving, production; business, contract or opportunity; increase in financing or operating costs; liability for loss or damage suffered by third parties; legal costs (on a solicitor and client basis); fines levied; loss of reputation or embarrassment and the cost of abating or reducing such; any other financial or economic loss; and
 - (ii) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraph, howsoever arising;
- (xx) **Tender** means a Response lodged by a Tenderer in response to an RFT and includes all documents and information lodged with or as part of the tender;
- (yy) **Tender Box** means the website, email address or physical location at which the General Information states that Responses are to be submitted;
- (zz) **Tenderer** means:
 - (i) any person who lodges a Tender; and
 - (ii) to the extent to which the term can apply to any other person who obtains a copy of any of the Procurement Documents during the Procurement Process, also includes such other persons,

Part 2 - Procurement Process

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

13. GENERAL PROVISIONS

- 13.1 **(Interpretation of Procurement Documents)** The Procurement Documents must be read and construed together and are intended to be mutually explanatory.
- 13.2 **(Joint and several obligations)** An obligation of two or more parties binds them jointly and each of them severally and an obligation incurred in favour of two or more parties is enforceable by them severally.
- 13.3 **(Headings)** Clause headings are for reference purposes only and must not be used in interpretation.
- 13.4 **(No limitation)** The words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.
- 13.5 **(Grammatical Forms)** Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.
- 13.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Procurement Documents expires on a day which is not a Business Day, the period will expire at the end of the next Business Day.
- 13.7 **(Discretion)** Unless expressly provided otherwise:
- (a) any right of the Principal pursuant to these Procurement Process Conditions may be exercised; and
 - (b) any consent of the Principal required under these Procurement Process Conditions may be given, withheld or given subject to conditions,
- in the absolute discretion of the Principal without giving reasons and without reference to the Respondent unless, and then only to the extent that the Procurement Process Conditions provide otherwise.
- 13.8 **(Law)** A reference to 'law' includes:
- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licences, accreditations, clearances, authorisations, approvals, consents, and permits and any related fees and charges,
- which are applicable to the Procurement Documents, the Procurement Process or the Contract or which are otherwise in force at any place where an obligation under the Contract is to be carried out.
- 13.9 **(Governing Law)** The Procurement Process is governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland. The Principal and the Respondent submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 13.10 **(Contra proferentem)** The *contra proferentem* rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 13.11 **(Rights Cumulative)** The rights and remedies of the Principal and the Respondent provided in the Procurement Process Conditions are cumulative on each other and on any rights or remedies conferred at law or in equity.
- 13.12 **(Severance)** If a provision of the Procurement Process Conditions is void or unenforceable it must be severed and the provisions that are not void or unenforceable are unaffected by the severance.

Part 2 - Procurement Process

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

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

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



PART 3 - CONTRACT

**PRE-QUALIFIED SUPPLIER'S PANEL
Engineering & Cadastral Surveying 2023/24**

Contract No.: T2324.01

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EXECUTION

Item		Details		
1.	Term (Clause 4)			
	(a) Term Start Date:	1 September 2023		
	(b) Term End Date:	31 August 2024		
	(c) Extension Periods:	1 x 12 months (negoitable)		
2.	Exclusivity (Clause 7)	The Contract is: <input type="checkbox"/> Exclusive <input checked="" type="checkbox"/> Not exclusive <i>If nothing selected, the Contract is not exclusive</i>		
3.	Principal's Representative (Clause 10)			
	(a) Name:	Nathan Garvey		
	(b) Address:	62 Valentine Plains Road, Biloela. QLD. 4715		
	(c) Telephone:	(07) 4992 9500		
	(d) Email:	nathan.garvey@banana.qld.gov.au		
4.	Pre-qualified supplier's Representative (Clause 11)			
	(a) Name:			
	(b) Address:			
	(c) Telephone:			
	(d) Email:			
5.	Key Personnel (Clause 13.2)	Name	Role	Period <i>(If nothing stated, for the duration of the Term)</i>
6.	Time for Meetings (Clause 16)			
7.		<i>If nothing stated, as reasonably required by the Principal.</i>		
8.	Invoices: (Clause 19)			
	(a) Invoices may be submitted on:	[Insert date on which invoices may be submitted] for [Insert the Services for which payment may be claimed] <i>If nothing stated, on the 21st day of each month for Services provided up to the 21st of that month.</i>		

Item		Details
	(b) Invoices should be emailed to:	infrastructure.finance@banana.qld.gov.au
	(c) Other requirements for invoices:	A valid purchase order number <u>must</u> be recorded on all purchase orders submitted to the Principal for payment.
9.	Applicable policies, guidelines, procedures and codes of the Principal (Clause 20.1)	<ul style="list-style-type: none"> • Workplace Health & Safety QLD • Code of Conduct • Conflict of Interest • QLD Local Govt. Act & assoc. regulatory legislation. • All statutory legislation and policies applicable to QLD – in particular, the Professional Engineers Act of QLD 2002.
10.	Liability Limit (Clause 24)	
	(a) The Principal's liability is limited to:	<p>An amount equal to the Price paid by the Principal to the Supplier in the 12 months preceding the relevant Claim.</p> <p><i>If nothing stated, the Principal's liability is limited to an amount equal to the Price paid in the 12 months preceding the relevant Claim.</i></p>
	(b) The Pre-qualified supplier's liability is limited to:	<p><i>If nothing stated, the Pre-qualified supplier's liability is not limited.</i></p>
11.	The Pre-qualified supplier must affect the following insurances: (Clause 25)	<p><input checked="" type="checkbox"/> Public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims</p> <p><input checked="" type="checkbox"/> Professional indemnity insurance in the amount of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims</p> <p><input checked="" type="checkbox"/> Third party and comprehensive motor vehicle insurance for each vehicle used by the Pre-qualified supplier in performing its obligations under the Contract</p> <p><input checked="" type="checkbox"/> Plant and equipment insurance for each item of plant for the full replacement value of the plant</p> <p><input checked="" type="checkbox"/> Workers' compensation insurance in respect of the Pre-qualified supplier's Personnel as required by law</p> <p><i>If not selected, the Pre-qualified supplier is not required to effect the insurance.</i></p>
12.	Intellectual Property (Clause 28)	
	(a) Project IP, the alternative applying:	<p><input checked="" type="checkbox"/> Alternative 1 – Project IP vests in the Principal</p> <p><input type="checkbox"/> Alternative 2 – Project IP vests in the Pre-qualified supplier</p> <p><i>If nothing stated, Alternative 1 applies.</i></p>
	(b) Moral Rights consent	<p><input type="checkbox"/> Moral Rights consent is required</p> <p><input checked="" type="checkbox"/> Moral Rights consent is not required</p> <p><i>If nothing selected, a Moral Rights consent is required.</i></p>

Contract



Parties:

Banana Shire Council of 62 Valentine Plains Road Biloela in the State of Queensland
(Principal)

[Insert Pre-qualified supplier's Name] of [Insert Pre-qualified supplier's address].
(Pre-qualified supplier)

Background:

- A. The pre-qualified supplier has offered to provide the services to the Principal and has made the representations and given the warranties stated in this contract to the Principal in connection with its offer.
- B. In reliance on those representations and warranties, the Principal has accepted the pre-qualified supplier's offer.
- C. The parties wish to enter into the contract to record the terms on which the pre-qualified supplier will provide the services to the Principal during the term.

The Parties agree:

1. DEFINITIONS

In the Contract, unless inconsistent with the context or subject matter:

- (a) **Affected Party** has the meaning given in clause 31.1;
- (b) **Applicable Standards** means the standards, plans, requirements, codes, guidelines, policies, standard drawings or standard specifications included or incorporated by reference into the contract or a project brief, or, if none is included or incorporated, any Australian standards applicable to the goods, as current at the time for project brief commencement;
- (c) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
- (d) **Authority** means a local government, the State of Queensland, the Commonwealth or any other Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality (including a stock exchange) having jurisdiction over the contract or the obligations to be performed under the contract;
- (e) **Background IP** of a party means all Intellectual property rights which are made available by a party for the purpose of the provision of the services 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;
- (f) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made in connection with the contract;
- (g) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the contract, at law (including a breach of 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 by the pre-qualified supplier for an extension of time, variation or other adjustment to the price);

- (h) **Confidential Information** means the contract and all documents and information provided or made available by one party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a party in connection with the contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public domain other than through a breach of clause 27;
 - (i) **Conflict of Interest** means any actual, potential or perceived conflict between the interests of the pre-qualified supplier and the pre-qualified supplier's obligations under the Contract;
 - (j) **Contract** means the documents identified in clause 2.1;
 - (k) **Discloser and Disclosee** have the meanings given in clause 1(h);1(h);
 - (l) **Exceptional Circumstances** means disclosure:
 - (i) for the purpose of complying with the Disclosee's obligations or exercising the Disclosee's rights in connection with the contract;
 - (ii) with the Discloser's prior consent;
 - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to whom it is necessary to disclose the information;
 - (iv) to the extent necessary to comply with the Disclosee's reasonable corporate governance or insurance requirements;
 - (v) to any of its personnel who are bound to keep the information confidential and to whom it is necessary to disclose the information;
 - (vi) to comply with the law or a requirement of an Authority;
 - (vii) to the extent necessary to enforce its rights or defend a claim in connection with the contract;
 - (viii) by the Principal for the purposes of enabling the Principal to properly discharge its functions as a local government authority; and
 - (ix) to the extent otherwise expressly permitted by the contract;
 - (m) **Force majeure** means:
 - (i) an act of God, earthquake, lightning, cyclone, tsunami, flooding, fire emanating from outside the site, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;
 - (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
 - (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
 - (iv) embargo;
 - (v) illness declared by the World Health Organisation to be a pandemic;
 - (vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the pre-qualified supplier or otherwise caused by or contributed to by the pre-qualified supplier and which affects an essential portion of the pre-qualified 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 pre-qualified supplier (as the case may be) or the expenditure of a reasonable sum of money;

- (n) **General Conditions** means these general conditions of contract;
- (o) **Good Industry Practice** means:
 - (i) the standard of skill, care and diligence; and
 - (ii) practices, methods, techniques and acts, of a skilled and competent pre-qualified supplier engaged in the business of providing goods, services or work similar to the services;
- (p) **GST Law** refers to the Australian consumption tax system (*Goods and Services Tax*) Act 1999 (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (q) **GST** means that term defined in GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (r) **Improper Conduct** means:
 - (i) engaging in misleading or deceptive conduct in relation to the procurement process or the contract;
 - (ii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the procurement process;
 - (iii) failing to disclose a conflict of interest in breach of clause 9.3;
 - (iv) attempting to improperly influence any personnel of the Principal, or violate any applicable law regarding the offering of inducements in connection with the procurement process or the contract;
 - (v) accepting or inviting improper assistance of employees or former employees of the Principal in preparing its tender or any claim against the Principal in connection with the contract;
 - (vi) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the procurement process or the contract;
 - (vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
 - (viii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).
- (s) **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;
- (t) **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;
- (u) **Key Personnel** means the personnel (if any) nominated as key personnel in the Reference Schedule;

- (v) **Liability Limit** means:
 - (i) in respect of the Principal, the sum of:
 - A. the amount specified in item 10(a) of the Reference Schedule; and
 - B. the amount of any excess payable under a policy of insurance required to be affected and maintained by the Principal under the contract;
 - (ii) in respect of the pre-qualified supplier, the sum of:
 - A. the amount specified in item 10(b) of the Reference Schedule; and
 - B. the amount of any excess payable under a policy of insurance required to be affected and maintained by the pre-qualified supplier under the contract;
- (w) **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
- (x) **Modern slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth);
- (y) **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- (z) **National Police Certificate** means a hard copy or digital national police certificate issued by the Queensland Police Service;
- (aa) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;
- (bb) **Party or Parties** means one or both of the Principal and the pre-qualified supplier as the context requires;
- (cc) **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.
- (dd) **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld);
- (ee) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, pre-qualified 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 pre-qualified supplier;
- (ff) **Price** means the amount payable for the provision of services as determined in accordance with Part 4 – General Requirements & Technical Specifications and the relevant project brief;
- (gg) **Principal** means the entity identified as the Principal on page 5 of the contract;
- (hh) **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the pre-qualified supplier pursuant to clause 10.1 and includes, except where the context requires otherwise, a person authorised as a delegate of the Principal's Representative pursuant to clause 10.3;
- (ii) **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the parties have entered into the contract;

- (jj) **Project IP** means the intellectual property rights in the pre-qualified supplier documents and all other materials, documents or data created in the performance of the pre-qualified supplier's obligations under the contract;
- (kk) **Qualifying Cause of Delay** means:
 - (i) an act or omission of the Principal or the Principal's personnel;
 - (ii) Force majeure; or
 - (iii) any other cause of delay identified elsewhere in the contract or project brief as entitling the pre-qualified supplier to an extension of the time for project brief completion;
- (ll) **Reference Schedule** means the schedule of that name included in the contract;
- (mm) **Regulator** has the meaning given in the WHS Act and WHS Regulation;
- (nn) **Scope** means the documents describing the Principal's requirements for the services, goods or works which are provided at Part 4 – General Requirements & Technical Specifications and also provided with or as part of, or are identified in the project brief;
- (oo) **Services** means the services to be provided or the work to be carried out by the pre-qualified supplier as described in Part 4 – General Requirements & Technical Specifications (including the provision of pre-qualified supplier documents) and any services or work not specifically mentioned in Part 4 – General Requirements & Technical Specifications but that is obviously and indispensably necessary for the performance of the services or work that is mentioned;
- (pp) **Site** means the site or sites made available by the Principal to the pre-qualified supplier for the purpose of the pre-qualified supplier carrying out its obligations under the contract;
- (qq) **Substantial Breach** includes:
 - (i) in respect of the pre-qualified supplier:
 - A. a material breach of the contract including:
 - I a material breach of clause 12.1;
 - II the pre-qualified supplier or any of the pre-qualified supplier's Personnel engaging in:
 - (1) any improper conduct in connection with the contract; or
 - (2) otherwise engaging in any improper conduct (whether or not in connection with the contract) in a manner which, in the Principal's opinion, causes harm to the Principal's reputation;
 - III failing to make a payment to the Principal within 20 business days after the due date for the making of the payment in clause 19.6;
 - IV failing to effect and maintain the insurance policies required under clause 25;
 - V failing to comply with a direction given or purportedly given under clause 29;

- VI a warranty given or representation made in or pursuant to this contract is found to be incorrect, false or misleading in any material respect;
- VII a material breach of a law in connection with the contract;
- B. the consistent or repeated breach of the contract by the pre-qualified 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;
- C. anything else which the contract elsewhere provides is a substantial breach of the contract;
- (ii) in respect of the Principal:
 - A. failing to make payment to the pre-qualified supplier within 20 business days after the due date for the making of the payment in clause 19.6 or 19.7 as the case may be;
 - B. otherwise committing a material breach of the contract; or
 - C. anything else which the contract elsewhere provides is a substantial breach of the contract;
- (rr) Pre-qualified supplier means the person or entity identified as the provider to the Principal of the required services as outlined in this RFT and the project brief;
- (ss) **Pre-qualified supplier documents** means those records, reports, designs, specifications, certificates, plans and other documents, whether electronic documents or hard copy format, required by the contract to be handed over to the Principal by the pre-qualified supplier (including any WHS documentation and management plans required by the contract) and all information advice, procedures, undertakings designs, calculations and recommendations in those documents;
- (tt) **Pre-qualified supplier's representative** means the person identified as the pre-qualified supplier's representative in the Reference Schedule or as otherwise approved by the Principal pursuant to clause 11.2;
- (uu) **Term** means the period determined pursuant to clause 4.1;
- (vv) **Term End Date** means the date described as such in the Reference Schedule as extended (if at all) pursuant to the contract;
- (ww) **Term Start Date** means the time stated in the Reference Schedule by which the pre-qualified supplier is required to commence performing its obligations under the contract (or where no time is stated, promptly after the date of the contract);
- (xx) **Time for Project Brief Commencement** means the time stated in a project brief by which the pre-qualified supplier is required to commence performing its obligations under the project brief (or where no time is stated, as directed by the Principal) as extended (if at all) by agreement between the parties;
- (yy) **Time for Project Brief Completion** means the time (if any) stated in a project brief by which the pre-qualified supplier is required to achieve project brief completion as extended (if at all) pursuant to the contract;
- (zz) **Variation** means any material increase, decrease or change to the services described in a project brief or the pre-qualified supplier's obligations under the contract;
- (aaa) **WHS** means work, health and safety;

- (bbb) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;
- (ccc) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;
- (ddd) **Wilful misconduct** means an intentional act or omission by or on behalf of a party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where the breaching party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;
- (eee) **Project brief** means, unless the parties expressly agree otherwise:
 - (i) where a written request or order for services is issued by the Principal, the written document(s) issued by the Principal to the pre-qualified supplier which:
 - A. detail the Principal's requirements for the provision of Services by the pre-qualified supplier for a specific project site; and
 - B. either requests the pre-qualified supplier to provide, or accept the pre-qualified supplier's offer to provide those services to the Principal,including all documents attached to or incorporated by reference into those written documents and which may include a request for quotation, quotation, scope, specifications, drawings, product description, price list or other documents; and
 - (ii) where an oral request or order for services is made by the Principal, means the information provided by the Principal orally, and the information contained in any documents to which the pre-qualified supplier's attention is directed by the Principal;
- (fff) **Project brief completion** means that stage in the performance of the pre-qualified supplier's obligations under the contract at which:
 - (i) each and every part of the services has been carried out and completed in accordance with the contract and the relevant project brief, except for minor omissions which do not reasonably affect the benefit to the Principal of the services or prevent the Principal from using the pre-qualified supplier documents for the purpose or purposes stated in or to be reasonably inferred from the contract or the project brief;
 - (ii) all pre-qualified supplier documents have been updated and provided to the Principal in accordance with the contract and the relevant project brief;
 - (iii) other obligations of the pre-qualified supplier which are stated in the contract or the relevant project brief to be a requirement of project brief completion, or which are otherwise required to be undertaken prior to project brief completion have been completed;
 - (iv) where the pre-qualified supplier has been directed to do so, a properly executed statutory declaration in the form in Schedule 2; and
- (ggg) **Workplace** has the meaning given in the WHS Act and the WHS Regulation.

Contract

2. CONTRACT

2.1 (Documents comprising Contract) The Contract comprises:

- (a) the Reference Schedule;
- (b) these General Conditions of Contract;
- (c) Part 4 – General Requirements & Technical Specifications; and
- (d) Part 6 – Pricing Table.

2.2 (Final agreement) The contract constitutes the entire, final and concluded agreement between the parties as to its subject matter. It supersedes all prior representations, agreements, statements and understandings between the pre-qualified supplier and the Principal (whether oral or in writing).

2.3 (Order of precedence) If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 2.1, then the documents will take precedence in the order set out in clause 2.1 with the document described in clause 2.1(a) being the highest in the order.

2.4 (Early Services) Where any obligation described in the contract has been carried out by the Principal or the pre-qualified supplier prior to the date on which the contract is executed, that obligation shall be taken to have been carried out pursuant to, and the carrying out of that obligation shall be governed by, the contract as if the obligation had been carried out after the contract was executed.

3. PERFORMANCE AND PAYMENT

3.1 (Performance) Subject to clause 6.1, the pre-qualified supplier must, at the pre-qualified supplier's expense:

- (a) provide any services described in the project brief issued during the term; and
- (b) perform the pre-qualified supplier's other obligations under the contract and all project brief requirements issued pursuant to it,

in accordance with the contract and all directions of the Principal issued pursuant to it.

3.2 (Payment) Subject to the contract, the Principal must pay the pre-qualified supplier the price for services provided in accordance with the contract and the project brief issued pursuant to it.

4. TERM

4.1 (Term) Subject to clause Item 1 in the Reference Schedule, the Term shall commence on the term start date and end on the term end date, unless the contract is earlier terminated. (Extension of term) The Principal may, in its absolute discretion, extend the term end date by the periods stated in the Reference Schedule on the same terms as the contract, by giving written notice to this effect to the pre-qualified supplier at any time prior to the term end date. For clarity:

- (a) the Principal may extend by a period shorter than that provided in the Reference Schedule; and
- (b) the parties may agree to extend for further periods in addition to those contemplated in the Reference Schedule.

4.2 (Continuation of obligations) The Contract shall remain in force until the later of the expiration of the term and the time at which all obligations of the parties pursuant to it have been satisfied, unless the contract is earlier terminated.

5. APPOINTMENT AS PRE-QUALIFIED SUPPLIER OR PRE-QUALIFIED SUPPLIER

- 5.1 **(Effect of appointment)** The supplier's appointment as a pre-qualified supplier or pre-qualified supplier pursuant to the *Local Government Regulation 2012* (Qld) entitles the Principal to engage the pre-qualified supplier during the term of that appointment without first seeking quotes or tenders but does not give rise to any obligation on the Principal to do so.
- 5.2 **(No exclusivity)** The pre-qualified supplier is not the exclusive supplier to the Principal of the services, or of services of the same or a similar type to the services, during the term. The Principal shall not be liable upon any claim by the pre-qualified supplier in connection with the Principal ordering a greater or lesser quantity or value of services from the pre-qualified supplier than the pre-qualified supplier may have anticipated or desired, or for the Principal engaging other suppliers to supply similar or the same services.
- 5.3 **(Refresh)** The Principal may, during the Term, select other pre-qualified suppliers to become a pre-qualified supplier or a pre-qualified supplier of the same or similar services to the services pursuant to the *Local Government Regulation 2012* (Qld).

6. ENGAGEMENT OF PRE-QUALIFIED SUPPLIER

- 6.1 **(Engagement by Project Brief and purchase order)** At any time during the term, the Principal may but shall not be obliged to, issue a project brief to the pre-qualified supplier for the provision of services. The pre-qualified supplier must promptly after receiving the project brief, notify the Principal as to whether or not it accepts the project brief. The pre-qualified supplier must accept a project brief which is consistent with the contract unless it cannot reasonably comply with the project brief. The Principal may withdraw a project brief at any time prior to the pre-qualified supplier notifying the Principal in writing that the project brief is accepted.
- 6.2 Once a project brief from the pre-qualified supplier is accepted by the Principal – a purchase order from the Principal will be issued to the successful supplier. No work is to commence without a purchase order being issued by the Principal.
- 6.3 **(No separate contract)** The Principal's acceptance of a project brief and the issue of a purchase order under clause 6.1 does not create a separate contract. Subject to clause 6.4, any services of the same or a similar type to the services provided by the pre-qualified supplier to the Principal during the term shall be taken to have been provided pursuant to this contract.
- 6.4 **(Alternative terms and conditions)** Nothing in this contract shall be taken to prevent the parties from entering one or more separate contracts, on different terms to the contract, for the provision by the pre-qualified supplier of services of the same or a similar type to the services during the term.

7. EXCLUSIVITY

- 7.1 **(Alternative 1 – Not exclusive)** If the Reference Schedule provides that the contract is not exclusive, the pre-qualified supplier is not the exclusive supplier of the services, or of services of the same or a similar type to the services, during the term. The Principal may engage other suppliers to provide services of the same or a similar type to the services during the term.
- 7.2 **(Alternative 2 – Exclusive)** If the Reference Schedule provides that the contract is exclusive, then subject to this clause 7.2, the supplier is the exclusive supplier of the services at the Site during the term. During the term, the Principal may:
- (a) itself provide, or engage other contractors to provide, the services or services of the same or a similar type to the services:
 - (i) during any period for which the Principal acting reasonably determines that the supplier is, for any reason, unable or unwilling to properly perform the services in accordance with the contract; and
 - (ii) otherwise, where expressly or implicitly permitted by the contract; and
 - (b) undertake any procurement process or other activities necessary or prudent for the appointment of a supplier to supply similar or the same services as the services after the expiry or termination of the contract.
- 7.3 **(No liability)** The Principal shall not be liable upon any claim by the pre-qualified supplier in connection with the Principal engaging other suppliers to supply similar or the same services as the services consistently with this clause 7.

Contract

8. DATA SOVEREIGNTY

- 8.1 The council requires all data relating to projects as part of this tender arrangement to be kept on Queensland servers or the IT infrastructure hosted in Queensland. A declaration may be required from the supplier to that effect. Council could ask the supplier to provide evidence of data sovereignty at any time during the contract. Failure to provide evidence could lead to the cancellation of the contract.
- 8.2 Council requires prior approval from the Director of Infrastructure (DIS) for any sub-contracting individuals and / or organisations to be located outside of Queensland. If a pre-qualified supplier has inter-state or overseas offices and would like the work to be done from the inter-state or overseas office, then prior approval is needed from Council's DIS.

9. RELATIONSHIP OF THE PARTIES

- 9.1 **(Relationship)** The pre-qualified supplier is an independent contractor of the Principal. The contract does not create any partnership, joint venture or employment relationship. The pre-qualified 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 pre-qualified supplier must provide such materials, equipment, knowledge and personnel as the pre-qualified supplier deems necessary to comply with its obligations and under the contract.
- 9.2 **(Representations)** The pre-qualified supplier must not represent itself or allow anyone else to represent that the pre-qualified supplier is a partner, joint venturer, officer or employee of the Principal. Except to the extent expressly contemplated in the contract, the pre-qualified supplier must not represent itself or allow anyone else to represent that the pre-qualified supplier is an agent of the Principal.
- 9.3 **(Conflict of interest)** The pre-qualified supplier warrants and represents that as at the date of the contract, the pre-qualified supplier is not aware of any conflict of interest. The pre-qualified supplier must not, and must ensure that its personnel do not, engage in any activity or obtain any interest which does, or is likely to, result in a conflict of interest during the contract and must immediately notify the Principal in the event that a conflict of interest that has not previously been disclosed arises or is likely to arise.

10. PRINCIPAL'S REPRESENTATIVE

- 10.1 **(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.
- 10.2 **(Rights and powers of the Principal's Representative)** The Principal's Representative may exercise any rights and powers granted to the Principal under this contract. The Principal's Representative may give a direction in respect of any matter relating to this contract, including the protection of people, property and the environment and the pre-qualified supplier's performance of the services.
- 10.3 **(Authorised delegates)** The Principal's Representative may, by giving written notice to the pre-qualified supplier setting out the rights and powers which may be exercised, authorise another person to exercise all or some of the rights and powers under clause 10.2. Subject to clause 10.5, no other person is permitted to exercise any right or function of the Principal. The pre-qualified supplier must notify the Principal immediately if it receives a purported direction in connection with the contract from any other person. The Principal shall not be liable upon any claim relating to a direction given to the pre-qualified supplier by any other person.
- 10.4 **(Compliance)** The pre-qualified supplier must, and must ensure that its personnel, comply with all directions given by the Principal's Representative, within the time specified in the direction, or where no time is stated, as soon as is reasonably practicable.
- 10.5 **(Change)** The Principal may notify the pre-qualified supplier of a change in the Principal's Representative at any time.

11. PRE-QUALIFIED SUPPLIER'S REPRESENTATIVE

- 11.1 **(Supplier's Representative)** The Supplier's Representative is appointed by the pre-qualified supplier to manage the pre-qualified supplier's performance of the contract. Matters which are in the knowledge of the pre-qualified supplier's Representative are deemed to be within the knowledge of the pre-qualified supplier.
- 11.2 **(Change)** The pre-qualified supplier may seek the approval of the Principal to change the pre-qualified supplier's Representative. The pre-qualified supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal may refuse to approve a replacement person if the Principal reasonably believes that the person is inappropriate to take the role of pre-qualified supplier's Representative or is of lesser skill, experience and competency to the person being replaced. If the Principal reasonably objects to the nominated representative, the pre-qualified supplier shall promptly nominate another representative.

12. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

- 12.1 **(Obligations, warranties, and representations)** The pre-qualified supplier:
- (a) **(ability)** must ensure, and warrants and represents that the pre-qualified supplier and, to the extent applicable to them, its personnel:
 - (i) have the experience, skills, expertise, resources and judgement;
 - (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

which are required for the pre-qualified 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 pre-qualified supplier's obligations under the contract are at an end;
 - (b) **(Standard of Services)** must, and to the extent applicable to them must ensure that its personnel, provide the Services and carry out the pre-qualified supplier's other obligations in connection with the contract in accordance with good industry practice and so that the services are fit for the purpose or purposes stated in the contract;
 - (c) **(Supplier documents)** must ensure that where the supplier provides documents under the contract:
 - (i) those supplier documents:
 - A. comply with the requirements of the contract, the relevant project brief and applicable law;
 - B. Pre-qualified supplier are of a standard and quality reasonably expected of a skilled and competent pre-qualified supplier using good industry practice;
 - C. are fit for the purpose for which they are provided; and
 - (ii) except to the extent that they are prepared strictly in accordance with technical plans or drawings provided to the pre-qualified supplier by the Principal:
 - A. the pre-qualified supplier documents; and
 - B. the Principal's use of the pre-qualified supplier documents for a purpose stated in or to be reasonably inferred from the contract or the relevant project brief,

will not infringe Intellectual property rights;
 - (d) **(investigations)** warrants and represents that the pre-qualified supplier has carefully reviewed the contract and will carefully review each project brief (including the Scope and all other information contained or referenced in the project brief) prior to acceptance of it to satisfy itself that the scope and other information is appropriate and adequate to enable the pre-qualified supplier to comply with its obligations under the contract;

Contract

- (e) **Pre-qualified supplier (legal capacity)** must ensure, and warrants and represents that the pre-qualified supplier has the full power, authority and capacity to enter into the contract and that the pre-qualified supplier's obligations under the contract are valid and binding on it, and enforceable against it;
- (f) **(Price)** warrants and represents that the rates and prices in the contract include compliance with all of the pre-qualified supplier's other obligations under the contract except, and then only to the extent, that the contract provides otherwise.
- 12.2 **(Improper Conduct)** The pre-qualified supplier warrants and represents that neither the pre-qualified supplier nor any of its personnel engaged in any improper conduct in connection with the procurement process. The pre-qualified supplier must not engage in any improper conduct in connection with the contract.
- 12.3 **(Notice of breach)** The pre-qualified 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 pre-qualified supplier has breached a warranty given, representation made or obligation provided for, in clause 12.1 or 12.2.
- 12.4 **(Obligations, warranties and representations not affected)** The obligations, warranties and representations in clause 12.1 remain unaffected notwithstanding:
 - (a) that the Scope was prepared by the Principal or the Principal's personnel;
 - (b) any inspection, test, receipt, review, permission, approval or comment on, of or in relation to the services by the Principal or the Principal's personnel;
 - (c) any variation or other direction by the Principal or the Principal's personnel; or
 - (d) the adoption or incorporation into the pre-qualified supplier documents by the supplier of any industry standard or work carried out by others (including work carried out by or on behalf of the Principal),

except that clauses 12.4(c) and 12.4(d) do not apply to the extent that the pre-qualified supplier has, prior to acting or omitting to act in reliance on the direction or the affected supplier documents, given the Principal written notice expressly stating that the variation, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

13. PRE-QUALIFIED SUPPLIER'S PERSONNEL

- 13.1 **(General)** The pre-qualified supplier must ensure that its personnel involved in the performance of the pre-qualified supplier's obligations under the contract:
 - (a) act professionally and courteously in all dealings with the Principal, the Principal's personnel and the general public in connection with the contract;
 - (b) do not engage in any improper conduct;
 - (c) do not directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the services are to be carried out or to the public generally;
 - (d) are familiar with and properly trained for their allocated role;
 - (e) perform their allocated role competently, safely and in accordance with good industry practice and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations; and
 - (f) are not affected by alcohol or drugs whilst performing any part of the pre-qualified supplier's obligations under the contract (other than prescription medication which does not affect the ability of the person to perform the relevant obligations under the contract).
- 13.2 **(Key Personnel)** The pre-qualified supplier must ensure that only key personnel perform the roles identified in the Reference Schedule & that the nominated key personnel perform those roles for the period identified in the Reference Schedule. The pre-qualified supplier may seek the approval of the Principal to change the identity or role of any key personnel or to engage additional persons as key personnel. The pre-qualified supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal cannot unreasonably refuse to approve a replacement or additional person that is of equal or greater skill, experience and competency to the person nominated in the contract as the key person for that role.

Contract

- 13.3 **(Local Government worker)** The pre-qualified supplier must ensure that when acting and working on a Local Government project, the pre-qualified supplier's personnel:
- (a) have all appropriate qualifications, skills and training to exercise a power or perform a responsibility under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009* (Qld);
 - (b) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the personnel are authorised as Local Government workers by the Principal; and
 - (c) comply with all obligations of a Local Government worker imposed under the *Local Government Act 2009* (Qld).
- 13.4 **(Police checks)** If the Principal directs the pre-qualified supplier to obtain a National Police Certificate in respect of any of the pre-qualified supplier's personnel then the pre-qualified supplier must not permit those personnel to perform any part of the services or to have access to any confidential information of the Principal or the site unless and until 5 business days after the pre-qualified supplier has given the Principal a written copy of the National Police Certificate for those personnel. If the National Police Certificate contains any entries, the Principal may, in its absolute discretion, notify the pre-qualified supplier that the person is not permitted to perform the services or may otherwise place conditions upon that person's role in performing the services. The pre-qualified supplier must use its best endeavours to provide any additional information which the Principal may reasonably request in relation to a National Police Certificate.
- 13.5 **(Industrial relations)** The pre-qualified supplier remains solely responsible for the management of industrial relations relating to its personnel. The pre-qualified 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 pre-qualified supplier to comply with its obligations under the Contract.
- 13.6 **(Modern slavery)** The pre-qualified supplier:
- (a) must not engage in modern slavery and warrants and represents that it has not engaged in any modern slavery;
 - (b) must take, and warrants and represents that it has taken, all reasonable steps to identify and eliminate modern slavery in the business and operations of its subcontractors, pre-qualified suppliers and consultants;
 - (c) immediately notify the Principal in writing if it becomes aware of any modern slavery in the pre-qualified supplier's business or operations or the business or operations of its subcontractors, suppliers or consultants.
- 13.7 **(Labour Hire)** The pre-qualified supplier must not provide or utilise any labour for any part of the services, unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld)
- 13.8 **(Removal)** The Principal may at any time direct the pre-qualified supplier to remove any of the pre-qualified supplier's personnel from the performance of the whole or part of the pre-qualified supplier's obligations under the contract if the Principal reasonably believes that the pre-qualified supplier is in breach of any clauses 12.1(a), 12.2, 13.1, 13.3, 13.6 or 13.7 or if a National Police Certificate contains any entries in respect of that person, or that the person is otherwise responsible for a breach of the contract by the pre-qualified supplier.

14. SUBCONTRACTING, ASSIGNMENT AND NOVATION

- 14.1 **(By the supplier)** The pre-qualified supplier must not subcontract, assign or novate the whole or any part of its rights and/or obligations under the contract unless it has first obtained the written consent of the Principal. Subcontracting of the pre-qualified supplier's obligations shall not relieve the pre-qualified supplier from any liability or obligation under the contract. As between the Principal and the pre-qualified supplier, the pre-qualified supplier shall be responsible, and liable to the Principal, for the acts and omissions of the pre-qualified supplier's personnel in connection with the contract as if they were the acts or omissions of the pre-qualified supplier.
- 14.2 **(By the Principal)** The Principal may contract, assign or novate the whole or any part of its rights and/or obligations under the contract in its absolute discretion and without obtaining the consent of the pre-qualified supplier.

Contract

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

14.4 **(Subcontracts)** The pre-qualified supplier must ensure that any subcontracts, into which it enters, place the same obligations, responsibilities and liabilities on the subcontractor that this contract places on the pre-qualified supplier to the extent that they relevant to the services provided by the subcontractor.

15. SITE

15.1 **(Access for Supplier)** The Principal will give the pre-qualified supplier sufficient, but non-exclusive, access to the site to carry out the pre-qualified supplier's obligations under the contract. The Principal may refuse to give such access until the pre-qualified supplier has given the Principal:

- (a) evidence of insurance required by clause 25.3;
- (b) copies of all competencies, licences, accreditations, qualifications, permits, clearances or other authorisations which are required for the pre-qualified supplier to comply with its obligations under the contract;
- (c) any other documents or information which the contract requires to be given to the Principal before access to the site shall be given, including those identified in the project brief or elsewhere in the contract; and
- (d) evidence that the pre-qualified supplier has done all other things which the contract requires to be done before access to the site shall be given, including those identified in the project brief or elsewhere in the contract.

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

15.3 **(Site specific requirements)** The supplier must comply with the reasonable requirements of the Principal in relation to the pre-qualified supplier's access to or conduct on the Site.

16. MEETINGS

16.1 The pre-qualified supplier must, at the times required by the contract or the project brief & when otherwise reasonably required by the Principal, meet & discuss the performance of the pre-qualified supplier &/or any other matter concerning the Principal in connection with the contract.

17. TIMING

- (a) **(Project Brief)** The pre-qualified supplier must commence performing its obligations described in a project brief upon receipt of the Principal's purchase order or where no time is stated, promptly after the pre-qualified supplier receives the purchase order.
- (b) with due expedition and without delay;
- (c) in accordance with any requirements of the contract and the project brief and any reasonable directions of the Principal as to the order and timing of the performance of those obligations (including any program or schedule included in a project brief or agreed between the Parties); and
- (d) so that all services reach completion by the applicable time nominated in the project brief.

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

Contract

17.3 **(Extension of time)** If the pre-qualified supplier:

- (a) is delayed in reaching the required project brief completion date because of a qualifying cause of delay; and
- (b) the pre-qualified supplier gives the Principal a written claim for an extension of time for project brief completion within 10 business days of the delay first occurring,

then the Principal shall grant a reasonable extension of the time for the project brief completion. The Principal may at its absolute discretion, grant an extension of the time for project brief completion for delay caused by any other cause of delay. The pre-qualified supplier must provide the Principal with all information reasonably directed by the Principal's Representative in connection with the delay.

17.4 **(Monetary compensation)** If the pre-qualified supplier:

- (a) is entitled to an extension of the time for project brief completion under clause 17.3 because of a delay caused by the Principal or the Principal's personnel; and
- (b) submits a written claim for delay costs within 10 business days of the cessation of the delay,

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

18. **VARIATIONS**

18.1 **(Direction for variation)** The Principal may, in respect of any project brief, at any time prior to the nominated time for project completion and for any reason, direct a variation by giving written notice to the pre-qualified supplier. The Principal cannot direct a variation which is outside the general scope of the contract. The pre-qualified supplier cannot carry out a variation without a written direction to do so from the Principal.

18.2 **(Variation proposal)** The Principal may direct the pre-qualified supplier to provide an estimate or quotation for a variation and/or a statement as to the impact of a variation on the services (including the cost and timing of the services). The Principal may direct the pre-qualified supplier to support the estimate, quotation or statement with documentary evidence and may direct the time within which the estimate, quotation or statement is to be provided. The pre-qualified supplier must comply with such a direction at its own expense.

18.3 **(Adjustment of price)** Subject to clause 18.4, the effect of a variation on the pre-qualified supplier's entitlement to payment shall be determined using the following order of priority:

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

18.4 **(No entitlement)** The Principal shall not be liable upon any claim in connection with a direction for a variation, unless:

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

18.5 **(Variations requested by the supplier)** The Principal may approve a request for a variation by the pre-qualified supplier. Unless the Principal agrees otherwise in writing, a variation approved under this clause 18.5 shall have no effect on the pre-qualified supplier's entitlement to payment, timing of the pre-qualified supplier's obligations or any other obligation of the pre-qualified supplier under the contract.

Contract

- 18.6 **(Omissions)** Where the Principal directs a variation omitting or reducing any part of the services described in a project brief, then the Principal may subsequently provide the omitted or reduced services itself or engage others to do so on its behalf. The pre-qualified 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.

19. INVOICES AND PAYMENT

- 19.1 **(Timing of invoices)** Subject to clause 19.11, the pre-qualified supplier may submit invoices to the Principal for services provided in accordance with the contract and the relevant project brief at the times and for the services stated in the project brief. Unless otherwise directed, invoices should be submitted promptly and, in any event, no later than 5 business days after the agreed scope of work is complete.

- 19.2 **(Requirements of invoices)** Each invoice must comply with the GST Law and all other requirements:

- (a) stated in the Contract or the relevant Project Brief; or
- (b) which the Principal reasonably directs prior to the time for submission of the invoice.

In addition – the pre-qualified supplier is to clearly nominate the purchase order number issued by the Principal at the commencement of each project.

- 19.3 **(Further supporting documentation)** The Principal may, acting reasonably, direct the pre-qualified supplier to provide documentary evidence supporting the pre-qualified supplier's entitlement to payment of the whole or part of the amount claimed. Until such evidence is provided the Principal may assess the claim on the basis that the supporting documentation does not exist.

- 19.4 **(Entitlement to payment)** The supplier shall only be entitled to payment for services which are provided in accordance with the requirements of the contract (including the warranties given and representations made in the contract).

- 19.5 **(Amount due)** The Principal may deduct from any amount claimed by the pre-qualified supplier under or in connection with the contract (including for a breach of the contract):

- (a) any amount which the Contract entitles the Principal to deduct;
- (b) any other amount due and owing by the pre-qualified supplier to the Principal; and
- (c) any amount which the Principal reasonably claims is or will become due and owing by the pre-qualified supplier to the Principal (whether under the contract or otherwise).

The balance remaining after such deductions shall be due by the Principal to the pre-qualified supplier or by the supplier to the Principal as the case may be and shall be certified as such by the Principal within 15 business days after the invoice is received.

- 19.6 **(Due date for payment)** Subject to the contract, the Principal shall pay the amount due to the pre-qualified 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.

- 19.7 **(Disputed invoice)** If the Principal disputes an invoice issued by the pre-qualified supplier:

- (a) the Principal will pay the undisputed portion of the relevant invoice (if any) less any deductions provided for under clause 19.5 and dispute the balance; and
- (b) if the resolution of the dispute determines that the Principal must pay an amount to the pre-qualified supplier, the Principal will pay that amount upon resolution of that dispute.

- 19.8 **(No admission)** Payments made by the Principal to the pre-qualified supplier are made on account only and do not constitute an admission that the pre-qualified supplier is entitled to the payment made or that the services and/or the pre-qualified supplier documents that are the subject of the payment, or any other obligation, has been carried out, in accordance with the contract.

- 19.9 **(Sole entitlement)** Except to the extent expressly provided otherwise in the contract payment of the price shall be the pre-qualified supplier's only entitlement to monetary compensation for the provision of the services and compliance with the pre-qualified supplier's other obligations under the contract and any project brief issued pursuant to it.

Contract

- 19.10 **(Liability for GST)** If GST is imposed on any supply made pursuant to the contract, the amount payable for the supply is to be increased by the amount of that GST. Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this contract.
- 19.11 **(Recipient created tax invoices)** Where the Principal is the recipient of a taxable supply under this contract, the Principal may issue a recipient created tax invoice or recipient created adjustment note 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.

20. LAW AND POLICIES

- 20.1 **(Compliance)** The pre-qualified supplier must, and must ensure that its personnel involved in the performance of the services, comply with:
- (a) all law, standards and codes of practice applicable to the pre-qualified supplier, the pre-qualified supplier's business or the pre-qualified supplier's obligations under the contract; and
 - (b) any applicable policies, guidelines, procedures and codes of the Principal which are identified in the contract or the relevant project brief or which are publicly available or otherwise made known to the pre-qualified supplier from time to time.
- 20.2 **(Change in law)** If a law:
- (a) necessitates:
 - (i) a change to the services;
 - (ii) a change in a fee or charge; or
 - (iii) the payment of a new fee or charge;
 - (b) comes into effect after the date of the purchase order issue and could not reasonably then have been anticipated by a competent contractor; and
 - (c) causes the pre-qualified supplier to incur cost than otherwise would have been incurred,
- then the pre-qualified supplier may notify the Principal in writing of the law and the effect of it on the pre-qualified supplier. After the notice is given, the parties shall attempt to agree on a change to either the services and/or the price. If the parties have not reached agreement within 45 business days after the notice is given, then either party may give a notice of dispute pursuant to clause 34. Unless otherwise directed by the Principal, but notwithstanding the giving of a notice of dispute, the pre-qualified supplier must continue to comply with its obligations under the contract, including the making any payments or doing any tasks required to comply with the law.

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 pre-qualified supplier:
- (a) under the Queensland WHS Act and WHS Regulation; or
 - (b) elsewhere in this contract, including a project brief 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 pre-qualified 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 pre-qualified supplier's obligations under the contract:
- (a) comply with all law (including the QLD 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;

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- (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 pre-qualified supplier's obligations under the Contract;
- (d) consult with and co-operate with the Principal in relation to matters of WHS that the Principal (acting reasonably) considers the pre-qualified supplier cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal to ensure any issues are resolved to that standard;
- (e) except where the supplier is the principal contractor for a site under the WHS Regulation, (in which case this clause 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 and other WHS requirements of the Principal which are in any way applicable to this contract for that Site.

21.3 **(Incident notification)** The pre-qualified supplier must:

- (a) report any notifiable incidents to the regulator within the specified time frame as per the WHS Act and WHS Regulation;
- (b) if any of the pre-qualified supplier's personnel are involved in an accident or other health and safety incident or otherwise suffer an injury in connection with the performance of the services:
 - (i) immediately notify the Principal of the accident, incident or injury; and
 - (ii) within 3 business days of the accident, incident or injury (or such longer period as the Principal may agree) provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future; and
- (c) cooperate and assist (and procure its personnel to cooperate and assist) the Principal with any investigation by the Principal into any accident, injury or other health and safety incident in connection with the contract.

21.4 **(Supplier's WHS systems)** The pre-qualified supplier:

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

and must update such documentation as required from time to time to ensure that it complies with clause 21.4(c);
- (d) must, where directed to do so by the Principal:
 - (i) prior to commencing the services, submit the pre-qualified supplier's WHS documentation (including the documentation required elsewhere under the contract) to the Principal for review; and
 - (ii) within the time directed by the Principal submit to the Principal for review any other WHS documentation that the Principal directs it to prepare,

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

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- (e) must, if the Principal at any time during the performance of the pre-qualified supplier's obligations under the contract requests the pre-qualified 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 pre-qualified supplier's obligations under the contract;
 - (f) is not entitled to make any claim (whether for additional costs or expense) in connection with its obligations under this clause.
- 21.5 **(Site specific induction)** Unless otherwise directed by the Principal, the pre-qualified supplier must ensure that each of its personnel working at the site receives a site-specific induction and that each person visiting the pre-qualified 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 pre-qualified supplier must and must ensure that to the extent applicable to them, its personnel:
- (a) perform the pre-qualified supplier's obligations under the contract safely and in a manner that will prevent pollution, contamination or damage to property or the environment; and
 - (b) take all measures necessary to protect property and the environment in the performance of its obligations under the Contract.
- 22.2 **(Rectification of damage)** The pre-qualified supplier must promptly rectify:
- (a) any damage to any property which is caused by the pre-qualified supplier or the pre-qualified supplier's personnel in connection with the performance of its obligations under the contract;
 - (b) any damage to any property, which occurs whilst the pre-qualified supplier is responsible for its care (whether due to any act or omission of the pre-qualified supplier).

The pre-qualified 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.

23. INDEMNITY

- 23.1 **(Indemnity)** To the extent permitted by law, the pre-qualified supplier shall indemnify and keep indemnified the Principal & the Principal's officers, employees & related bodies corporate against:
- (a) any of the following:
 - (i) loss of or damage to property of the Principal (including any of the pre-qualified supplier documents);
 - (ii) Claims by any person against the Principal in respect of personal injury or death, or loss of or damage to property of any party; and
 - (iii) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal,

to the extent caused or contributed to by the negligence or wilful misconduct of the pre-qualified supplier or its personnel and/or the breach of contract by the pre-qualified supplier; and
 - (b) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal resulting from an infringement or alleged infringement of Intellectual property rights in connection with the services by the pre-qualified supplier or its personnel,

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but the indemnity will be reduced to the extent that the act or omission of the Principal or the Principal's personnel caused or contributed to the cost, expense, fine, penalty, loss, damage, injury or death and/or the Principal failed to act reasonably to mitigate the cost, expense, fine, penalty, loss or damage.

- 23.2 **(Acceptance of benefit)** The Principal has informed its officers, employees and related bodies corporate and communicates acceptance on their behalf, of the pre-qualified supplier's undertaking to indemnify under clause 23.1.

24. LIMITATION OF LIABILITY

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

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

- 24.2 **(Exceptions)** Clause 24.1 does not apply to:

- (a) liability of the Principal to pay the price;
- (b) liability of either party in connection with personal injury, or death or damage to property;
- (c) liability of a party arising as a result of:
 - (i) an infringement of confidentiality or intellectual property rights;
 - (ii) a deliberate breach or abandonment of the contract;
 - (iii) Wilful misconduct;
 - (iv) a breach of any law; or
 - (v) fraud or other criminal conduct,
 by that party; or
- (d) liability of the pre-qualified supplier which the pre-qualified supplier:
 - (i) is entitled to recover under any insurance policy required to be affected under the contract (up to the monetary limits for that insurance stated in the contract) unless and then only to the extent that the pre-qualified supplier uses all reasonable endeavours to, but does not actually, recover that liability; or
 - (ii) would have been entitled to recover under any insurance policy required to be affected under the contract (up to the monetary limits for that insurance stated in the contract) but for any act or omission of the pre-qualified supplier or the existence of this clause 24,

and amounts referred to in subclauses (a), (b), (c) and (d) shall not be included in calculating whether the relevant party's liability Limit in clause 24.1(a) has been reached.

25. INSURANCE

- 25.1 **(Insurances to be affected and maintained)** The Supplier must affect the insurances stated in the reference schedule and any other insurance which the pre-qualified supplier considers is necessary to protect its interests or which is required by law.

- 25.2 **(Period of insurance)** The insurance policies required under clause 25.2 must be maintained at all times from the term start date:

- (a) until 5 pm on the later of:
 - (i) the term end date; and
 - (ii) the date on which the pre-qualified supplier's obligations under the contract are complete; and
- (b) in respect of professional indemnity insurance only, for a period of 7 years after the date in clause 25.2(a).

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- 25.3 **(Subcontractors)** The pre-qualified supplier must ensure that any subcontractor, supplier or consultant of the pre-qualified supplier has equivalent insurances to the extent that they are applicable to the part of the Services to be carried out by the subcontractor, supplier or consultant.
- 25.4 **(Evidence of insurance)** If requested by the Principal, the pre-qualified supplier must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by the Principal of the pre-qualified supplier's compliance with this clause 25. The Principal may suspend the contract or any project brief issued pursuant to it until such evidence is provided.
- 25.5 **(No implied limitation)** Nothing in this clause, nor the pre-qualified supplier's compliance or non-compliance with it, shall be taken to limit or reduce the pre-qualified supplier's liability under the contract or at law.
- 25.6 **(Notification)** The re-qualified supplier must:
- (a) if any insurance policy required under the Contract is cancelled or the Principal's interest in respect of any of those policies is adversely affected, immediately notify the Principal's representative of this;
 - (b) if any event occurs which may give rise to a claim involving the Principal under any policy of insurance to be effected by the pre-qualified supplier under this clause 25:
 - (i) notify the Principal within 10 business days of that event; and
 - (ii) ensure the Principal is kept fully informed of any subsequent actions and developments concerning the relevant claim.

26. INSPECTIONS AND TESTS

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

27. HANDLING OF INFORMATION

- 27.1 **(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 party's must take reasonable steps to prevent the unauthorised disclosure or use by any other person, firm or company of the confidential information.
- 27.2 **(Breach of Confidence)** If a party becomes aware of a suspected or actual breach of clause 27.1, that party must immediately notify the other party and take reasonable steps required to prevent, stop or mitigate the extent of the breach. The parties acknowledge that damages will not be an adequate remedy for such a breach.
- 27.3 **(Return of Confidential Information)** Subject to this clause 27, the Disclosee of confidential information must return or destroy (at the Discloser's discretion) all confidential information and material containing confidential information when it is no longer required by the Disclosee for the permitted purpose or when otherwise directed by the Discloser. The Disclosee may, subject to its continuing obligation to comply with this clause 27, keep such copies as are required to comply with any law or to comply with its reasonable corporate governance requirements for so long as is necessary to satisfy those requirements.
- 27.4 **(Personnel)** The party's 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 27.

Contract

- 27.5 **(Collection of information by the pre-qualified supplier)** If the pre-qualified 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 pre-qualified supplier must comply with Parts 1 and 3 of Chapter 2 of that act in relation to the discharge of its obligations under this contract as if the pre-qualified supplier was the Principal. Where the Principal consents to the pre-qualified supplier subcontracting the whole or part of the pre-qualified supplier's obligations under this contract, the pre-qualified supplier must ensure that any subcontract with a subcontractor that will collect or have access to personal information contains a clause requiring the subcontractor to acknowledge and agree that it is a 'bound contracted service provider' as that term is defined in the *Information Privacy Act 2009* (Qld).
- 27.6 **(Collection of information by the Principal)** The Principal collects personal information and other information in connection with the contract so that it can properly administer the contract and otherwise carry out its functions as a local government authority. The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information will be accessible by personnel of the Principal engaged to assist the Principal in connection with the Contract or otherwise carrying out the functions of the Principal. Information may also be disclosed as otherwise permitted under the contract or at law, including under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld).
- 27.7 **(Right to Information)** The Pre-qualified supplier acknowledges that:
- (a) the *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including the Principal);
 - (b) the Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest; and
 - (c) information provided by the pre-qualified supplier in connection with the Contract is potentially subject to disclosure to third parties, including information marked as confidential.
- The Principal will assess any application for disclosure in accordance with the terms of the *Right to Information Act 2009* (Qld).
- 27.8 **(Media)** The pre-qualified supplier must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether oral or written, in connection with the Contract in any media without the prior approval of the Principal.

28. INTELLECTUAL PROPERTY

- 28.1 **(Background IP)** Background IP of a party shall remain the exclusive property of that party. The Principal grants the pre-qualified 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 pre-qualified supplier's obligations under the contract and for no other purpose. The pre-qualified supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy reproduce, modify and adapt the pre-qualified supplier's background IP for any purpose for which the 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.
- 28.2 **(Project IP - Alternative 1)** If the Reference Schedule provides that project IP vests in the Principal, then:
- (a) Project IP vests on creation in and is the exclusive property of the Principal;
 - (b) to the extent (if any) that clause 28.2(a) does not vest project IP in the Principal, the pre-qualified supplier assigns all right, title and interest in the project IP to the Principal; and
 - (c) the Principal grants the pre-qualified supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Pre-qualified supplier to comply with the pre-qualified supplier's obligations under the Contract and for no other purpose.

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- 28.3 **(Project IP - Alternative 2)** If the Reference Schedule provides that Project IP vests in the pre-qualified supplier, project IP vests in the pre-qualified supplier on creation and the pre-qualified supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the project IP for any purpose for which the 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.
- 28.4 **(Moral Rights consent)** If the Reference Schedule provides that a Moral Rights consent is required then:
- (a) the Principal may do anything which would, but for this clause, constitute an infringement of the Moral Rights of the Pre-qualified supplier or any of its personnel in the background IP or the project IP; and
 - (b) the pre-qualified 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 pre-qualified supplier documents.
- 28.5 **(Warranty and representation by pre-qualified supplier)** The pre-qualified supplier warrants and represents that:
- (a) it has the necessary rights to exercise any Intellectual property rights that it uses to provide the services, or to assign or license the pre-qualified supplier's background IP and project IP in accordance with this clause 28;
 - (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 pre-qualified supplier's incorporation of the Principal's background IP, the project IP and the Principal's use of the project IP for a purpose stated in or to be reasonably inferred from the contract will not infringe the intellectual property rights of a third party.
- 29. NON-CONFORMANCE**
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- 29.1 **(Non-conformance)** Where any of part of the services provided by the pre-qualified supplier does not conform strictly to the requirements of the contract or the pre-qualified supplier fails to comply with any other obligation of the pre-qualified supplier under the contract, the Principal may, in addition to or as an alternative to exercising its rights under clause 32 and 33, exercise the rights provided in clause 29.2.
- 29.2 **(Principal's rights)** Where permitted by clause 29.2, the Principal may:
- (a) direct the pre-qualified supplier to provide a detailed proposal as to how the pre-qualified supplier proposes to rectify the non-conformance and the time within which such a proposal is to be provided; or
 - (b) whether or not the Principal has given a direction under clause 29.2(a), direct the pre-qualified supplier to rectify the non-conformance or failure, including by:
 - (i) performing or reperforming any non-conforming services; or
 - (ii) replacing non-conforming pre-qualified supplier documents; and
 at the pre-qualified supplier's expense and within the timeframes reasonably directed by the Principal.
- 29.3 **(Step-in rights)** Where the pre-qualified supplier fails to comply with a direction under clause 29.2(a) or 29.2(b), the Principal may:
- (a) after giving at least 5 business days written notice to the pre-qualified supplier (except in the case of emergency, in which case no notice is required), take any of the steps contemplated by clause 29.2(b) itself or engage a third party to do so; or
 - (b) accept the non-conformance or failure and adjust the price as if the Principal had directed a variation for the non-conformance or failure.
- 29.4 **(Costs)** The cost reasonably incurred by the Principal in connection with any action taken pursuant to clause 29.2 or 29.3 shall be a debt due and owing by the pre-qualified supplier to the Principal.

Contract

- 29.5 **(Timing)** The rights given to the Principal under clauses 29.2 or 29.3 may be exercised at any time up to 12 months after the later of:
- (a) the date on which the services or supplier documents were provided by the supplier; and
 - (b) the Term End date.

- 29.6 **(Application of clause)** For clarity, this clause 29 shall apply to all services and supplier documents provided or to be provided, under the contract, including services and supplier documents provided in compliance with a direction under clause 29.2(b).

30. SUSPENSION

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

31. FORCE MAJEURE

- 31.1 **(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.
- 31.2 **(Suspension)** On the giving of a notice under clause 31.1, the obligations of the affected party detailed in the notice shall be suspended for the duration of the force majeure.
- 31.3 **(Mitigation)** The Affected Party shall use all reasonable diligence to mitigate the effect of the force majeure on its obligations as quickly as possible. The affected party must notify the other party as soon as it is no longer affected by such force majeure.
- 31.4 **(Industrial relations)** Clause 31.3 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.
- 31.5 **(Principal's rights)** Where the pre-qualified supplier gives a notice under clause 31.1, the Principal may at its election:
- (a) itself perform, or engage others to perform the obligations which the pre-qualified 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 pre-qualified 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.

- 31.6 **(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 pre-qualified supplier.

32. CANCELLATION OF PURCHASE ORDER

- 32.1 **(Cancellation of a Purchase Order)** The Principal may cancel any project purchase order at any time, for any reason, at its convenience. Any project purchase order which are at the time at which the contract is terminated by either party pursuant to clause 33 shall be deemed to be immediately cancelled pursuant to this clause 32.1, unless the parties expressly agree otherwise.

Contract

32.2 **(Consequences of cancellation)** If a project purchase order is cancelled, then:

- (a) unless otherwise directed by the Principal, the pre-qualified supplier must secure the site in a safe and proper manner and remove all of its personnel, plant and equipment from the site within 5 business days of the date of cancellation of the relevant project purchase order;
- (b) the Principal may carry out any obligation of the pre-qualified supplier which has not been carried out and completed as at the date of cancellation itself or engage others to do so on the Principal's behalf; and
- (c) the Principal shall, subject to the contract, pay the pre-qualified supplier:
 - (i) the amount which the pre-qualified supplier is entitled to be paid under the contract for services provided by the pre-qualified supplier in accordance with the contract up to and including the date of cancellation; and
 - (ii) if the cancellation is solely due to the act or omission of the Principal, without any fault on behalf of the pre-qualified supplier, the amount of any other direct costs which the pre-qualified supplier cannot reasonably mitigate and which the pre-qualified supplier has reasonably, necessarily and not prematurely incurred:
 - A. prior to the cancellation in the expectation of completing its obligations under the contract or the relevant project brief; or
 - B. as a direct consequence of cancellation,

except that the total amount payable to the pre-qualified supplier in respect of the approved project brief shall not under any circumstances exceed the amount to which the pre-qualified supplier would have become entitled to be paid had the project purchase order not been cancelled and the pre-qualified supplier had completed its obligations under the Project Brief.

33. TERMINATION, DEFAULT AND INSOLVENCY

33.1 **(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 pre-qualified supplier.

33.2 **(Notice to show cause)** If a party ("the defaulting party") commits a substantial breach of the contract, then the other party may give the defaulting party a notice to show cause. The notice to show cause must state:

- (a) that it is a notice to show cause under clause 33.2;
- (b) the alleged substantial breach;
- (c) that the defaulting party is required to show cause in writing why the other party should not exercise a right referred to in clause 33.3 or clause 33.4 (as the case may be);
- (d) the date and time by which the defaulting party must show cause (which must be a reasonable period taking into account the nature of the breach); and
- (e) where applicable, the place at which cause must be shown.

33.3 **(Principal's rights)** If:

- (a) The pre-qualified supplier is subject to an insolvency event;
- (b) The pre-qualified supplier commits a substantial breach which is incapable of remedy; or
- (c) by the time specified in the notice to show cause given by the Principal to the pre-qualified supplier under clause 33.2, the pre-qualified supplier fails to show reasonable cause why the Principal should not exercise a right under this clause 33.3,

the Principal may by giving written notice to the pre-qualified supplier:

- (i) cancel any project purchase order pursuant to clause 32.1;
- (ii) to the extent permitted by law, immediately terminate this Contract; or

- (iii) permanently or temporarily take the whole or any part of the obligations of the pre-qualified supplier remaining to be completed pursuant to any project brief (including the obligation to remedy the default) out of the hands of the pre-qualified supplier and may itself perform those obligations or engage a third party to do so on the Principal's behalf, in which case:
 - A. the pre-qualified supplier shall not be entitled to any further payment in respect of the obligations taken out of pre-qualified supplier's hands;
 - B. the pre-qualified supplier must continue to perform any obligations under the contract and the relevant project brief that were not taken out of the pre-qualified supplier's hands;
 - C. the Principal or the third party so engaged may enter the site and any relevant premises of the pre-qualified supplier and use all of the pre-qualified supplier's plant, equipment and materials as may be necessary to perform the obligation;
 - D. the Principal may, on the giving of reasonable notice, require the pre-qualified supplier to resume the performance of the obligations of the pre-qualified supplier under the contract and the relevant project brief which were taken out of the hands of the pre-qualified supplier if the pre-qualified supplier ceases to be subject to an insolvency event or the Principal is otherwise of the view that the pre-qualified supplier is capable of continuing to perform its obligations under the contract and the relevant project brief in accordance with the contract; and
 - E. if the costs incurred by the Principal in performing the obligations or engaging a third party to do so are greater than the costs which would have been incurred had the pre-qualified supplier performed the obligation then the difference shall be a debt due and owing by the pre-qualified supplier to the Principal and may be deducted from payments otherwise owing to the pre-qualified supplier. Until such costs are incurred, the Principal may deduct the estimated costs from payments to the Pre-qualified supplier.

33.4 **Pre-qualified (supplier's rights) If:**

- (a) the Principal commits a substantial breach which is incapable of remedy; or
- (b) by the time specified in a notice to show cause given by the pre-qualified supplier to the Principal under clause 33.2, the Principal fails to show reasonable cause why the pre-qualified supplier should not exercise a right under this clause 33.4,

the pre-qualified supplier may at its election:

- (i) suspend the whole or part of the services (but only after ensuring that the site is left in a secure and safe condition); or
- (ii) if the breach is not capable of remedy, terminate the contract by giving written notice to the Principal.

If the pre-qualified supplier suspends the whole or part of the services under this clause 33.4, the pre-qualified supplier shall lift the suspension if the Principal remedies the breach but if, within 45 business days after the suspension, the breach is not remedied and the Principal fails to make other arrangements to the reasonable satisfaction of the pre-qualified supplier, then the pre-qualified supplier may terminate the contract by giving written notice to the Principal.

33.5 **(Effect on other rights)** To the extent permitted by law, the pre-qualified supplier shall not be entitled to any monetary compensation in respect of:

- (a) the termination of the contract by either party;
- (b) the cancellation of a project purchase order; or
- (c) the Principal taking obligations out of the hands of the pre-qualified supplier,

other than as expressly provided in clause 32. Nothing in clauses 32 or 33 shall prejudice the Principal's right to claim and recover damages for breach of contract by the pre-qualified supplier.

Contract

34. DISPUTE RESOLUTION

- 34.1 **(Mandatory process)** Unless otherwise stated in this contract, any dispute between the party's must be resolved in accordance with this clause 34.
- 34.2 **(Notice of dispute)** If a party considers that a dispute has arisen between the party's in connection with this contract, then the party must give written notice to the other, setting out the particulars of the dispute and stating that the notice is given under this clause 34. Unless the party's otherwise agree in writing, the notice shall be delivered by hand or registered post.
- 34.3 **(Initial conference)** If a party gives written notice to the other of a dispute under the contract, representatives of the party's shall promptly confer to attempt to resolve the dispute.
- 34.4 **(Mediation)** If the dispute is not resolved within 10 business days after the giving of the notice (or such longer period as may be agreed by the party's) 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 party's 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.
- 34.5 **(Legal proceedings)** If the dispute is not resolved within 20 business days after the appointment of the mediator any party may take legal proceedings to resolve the dispute.
- 34.6 **(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.
- 34.7 **(Obligation to continue)** Notwithstanding the existence of a dispute, the parties shall, subject to clauses 30, 31, 32 and 33 continue to perform the contract.

35. CLAIMS

- 35.1 **(Claims pursuant to the Contract)** The Principal shall not be liable upon any claim by the pre-qualified supplier for an extension of time, an adjustment to the price (including due to a variation) or other monetary compensation pursuant to the contract unless the pre-qualified supplier has complied with the requirements in the contract for notifying the Principal of and making such a claim.
- 35.2 **(Other Claims)** The Principal shall not be liable upon any other claim by the pre-qualified supplier in connection with the contract unless the pre-qualified supplier has given the Principal written notice of its intention to make the claim within 6 calendar months after the direction or other event on which the claim is based was given or occurred.

36. INTERPRETATION

- 36.1 **(Headings)** Headings are for reference purposes only and must not be used in interpretation;
- 36.2 **(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;
- 36.3 **(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.
- 36.4 **(Law)** A reference to 'law' includes all:
- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licences, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,

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

Contract

- 36.5 **(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.
- 36.6 **(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 or the relevant project brief 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.
- 36.7 **(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.
- 36.8 **(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.
- 36.9 **(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.

37. GENERAL PROVISIONS

- 37.1 **(Costs)** Each party must pay its own costs and expenses incurred in negotiating, executing, stamping, registering and performance of the contract.
- 37.2 **(Joint and several obligations)** To the extent permitted by law, if either party consists of two or more persons the contract binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally, and any obligation incurred in favour of that party may be enforceable by each person comprising that party severally;
- 37.3 **(Governing law)** the contract is governed by the law of Queensland and the law of the commonwealth of Australia in force in Queensland. the parties submit to the jurisdiction of the courts of Queensland, relevant federal courts and courts competent to hear appeals from them.
- 37.4 **(Binding on successor)** the contract shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.
- 37.5 **(Further assurance)** the parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under the contract.
- 37.6 **(Service of notices)** a notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a party's representative at the address or email address stated in the reference schedule or as last notified in writing by the receiving party, but a notice or communication sent only by email shall not be deemed to have been given and received if:
- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
 - (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.
- 37.7 **(Waiver)** no waiver by a party of a provision of the contract is binding unless made in writing. any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.
- 37.8 **(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.
- 37.9 **(Discrepancy or inconsistency)** where there is a discrepancy or inconsistency between any obligation of the pre-qualified supplier under the contract, the pre-qualified supplier must notify the Principal in writing of the discrepancy or inconsistency, if the discrepancy or issue cannot be resolved using the order of precedence under clause 2.3 then unless otherwise directed by the Principal, the pre-qualified supplier must comply with the highest or most onerous requirement.

Contract

- 37.10 **(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 pre-qualified supplier of any other obligation under the contract, at law or in equity. the exercise by the Principal of a right provided in the contract shall not invalidate or constitute a repudiation of the contract.
- 37.11 **(Electronic execution)** the contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other party may be made by sending evidence of execution by email. for clarity, the party's consent to the contract being executed electronically using "DocuSign" or an equivalent electronic method to identify the parties.
- 37.12 **(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 pre-qualified 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.
- 37.13 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, clauses 23, 24, 25.2(b), 27, 28, 32.2, 33.5 and 35 survive the expiration or earlier termination of the Contract.



PART 4 – GENERAL REQUIREMENTS AND TECHNICAL SPECIFICATIONS

**PRE-QUALIFIED SUPPLIER'S PANEL
Engineering & Cadastral Surveying 2023/24**

Contract No.: T2324.01

GENERAL REQUIREMENTS

1. APPROVALS AND OTHER LAW

1.1 Identifying, obtaining and maintaining Approvals

The Supplier must identify and notify the Principal of all Approvals which are necessary for the proper performance of the Services (other than Approvals which the Principal has advised the Supplier it has already obtained). The Supplier must obtain and maintain all such Approvals until all the Supplier's other obligations under the Contract are complete. The cost of obtaining and maintaining all such Approvals shall be borne by the Supplier.

1.2 Compliance

The Supplier must and must ensure that its Personnel comply with all Approvals and other law which are in anyway applicable to the Services, including, unless the Contract expressly provides otherwise, by paying all fees, royalties, levies, charges, costs, expenses, taxes or duties.

1.3 Obtaining or granting of Approvals by Principal

The Principal gives no warranty and makes no representation that:

- (a) it will be able to obtain, or obtain within any particular time; or
- (b) where the Principal is the relevant Authority, that it will grant,
- (c) any Approval required for the Supplier to perform the Services.

1.4 No fetter

Nothing in the Contract shall be taken to fetter the power, rights or authority of the Principal as an Authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) or any other law.

1.5 Obligation to report breach

The Supplier must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached an obligation under clauses 1.1, 1.2 or 1.3. Unless otherwise directed by the Principal, the Supplier must take immediate steps to remedy such a breach at its expense.

2. BIOSECURITY MANAGEMENT

2.1 Definitions

In this clause:

- (a) a **biosecurity risk** is the risk that exists when dealing with:
 - (i) any pest, disease, or contaminant (including plants, seeds, spores, eggs, vertebrate and invertebrate pest); or
 - (ii) something that could carry a pest, disease or contaminant (e.g. animals, plants, soil, equipment and water—known as 'carriers').
- (b) a **potential biosecurity risk** is a biosecurity risk that does not currently occur at the Site but which has the capacity to occur at the Site. It may be present but not visible or may be introduced during the performance of the Supplier's obligations. It includes risks associated with carriers and the movement and sourcing of materials, vehicles, and machinery; and the disturbance, import or export of soils.

GENERAL REQUIREMENTS AND TECHNICAL SPECIFICATIONS

- (c) a **known biosecurity risk** is a biosecurity risk that is currently recorded within the footprint or proximity of the Site which is:
 - (i) identified within biosecurity plans or programs active for the area;
 - (ii) identified during the performance of the Supplier's obligations; or
 - (iii) otherwise identified by the Principal.

2.2 Preparation of plan

If directed to do so by the Principal, the Supplier shall prepare a biosecurity risk management plan (**BRMP**) to ensure reasonable and practical steps are taken to address biosecurity risks and that the Supplier meets its general biosecurity obligation (as that term is used in the *Biosecurity Act 2014* (Qld)). The primary purpose of the BRMP is to address both potential biosecurity risks and known biosecurity risks.

2.3 Training

The Supplier shall ensure that all relevant Personnel are trained to be aware of biosecurity risks.

2.4 Notice of breach or risk

If at any time during the performance of the Supplier's obligations a breach of the BRMP or a significant biosecurity risk is identified, then the Supplier must immediately contact the Principal for direction.

3. PRINCIPAL SUPPLIED INFORMATION AND OTHER INVESTIGATIONS

3.1 Definitions

In this clause "**Principal Supplied Information**" means any information relating to the Contract which does not form part of the Contract but which is or has been provided or made available by or on behalf of the Principal to the Supplier in any form, whether such information is made available before or after the date of the Contract.

3.2 Acknowledgement and agreement by Supplier

The Supplier acknowledges and agrees that:

- (a) the Principal gives no warranty and makes no representation in respect of this Contract. Without limiting this, the Principal gives no warranty and makes no representation:
 - (i) that the Principal Supplied Information is accurate, adequate or complete; and
 - (ii) as to the physical condition, suitability or other characteristics of the Site;
- (b) the Supplier has not relied and will not rely on the Principal Supplied Information unless and until the Supplier has independently verified the adequacy, accuracy and completeness of that information;

- (c) the supplier:
 - (i) has carefully, thoroughly and critically reviewed, examined, investigated, inspected and checked the Principal supplied information and the site; and
 - (ii) undertaken all other necessary enquiries and investigations to satisfy itself of the suitability of the site to enable the supplier to comply with its obligations under this contract and of any other logistical considerations, risks, contingencies and other circumstances which could have an effect on the cost of carrying out and completing services or compliance with the supplier's other obligations under the contract;
- (d) the supplier has made its own interpretations, deductions and conclusions from such enquiries and investigations and accepts full responsibility for those interpretations, deductions and conclusions; and
- (e) the supplier, having undertaken those enquiries and investigations, accepts the risk of any inadequacy, inefficiency, deficiency or fault in the site and that it can and will carry out and complete the services in accordance with the contract and comply with its other obligations under the contract for the price (as adjusted pursuant to the contract); and

3.3 No liability

The Principal shall not be liable upon any claim by the supplier in connection with the Principal supplied Information or the physical condition, suitability or other characteristics of the site.

4. SUPPLIER'S PERSONNEL

4.1 Further requirements on Personnel

In addition to any other requirement in the contract, the supplier must ensure that its personnel:

- (a) are familiar with and properly trained for their allocated role;
- (b) perform their allocated role competently and safely and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations;
- (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 (including personnel of the Principal) or to the public generally;
- (d) are not affected by alcohol or drugs whilst performing any part of the supplier's obligations under the contract (other than prescription medication which does not affect the ability of the person to perform the relevant obligations under the contract).

4.2 Police checks

If the Principal directs the supplier to obtain police checks on particular personnel of the supplier ("Nominated persons") then the supplier must not permit a nominated person to perform any part of the services or to have access to any part of the site unless and until 5 business days after the supplier has given the Principal a written copy of a criminal history check produced by the Queensland Police Service for that nominated person. If the criminal history check contains any entries, the Principal may, in its absolute discretion, notify the supplier that the nominated person is not permitted to perform the services or may otherwise place conditions upon that person's role in performing the services.

5. MEETINGS

5.1 Site Inspection

If required by a Project Brief, the Supplier must undertake an inspection of the project site

5.2 Meetings

When reasonably required by the Principal, meet and in good faith discuss any constraints, delays and/or any other matter concerning the Principal in connection with the Contract including:

- (a) timely delivery of the Services;
- (b) the promotion of safer and quieter work practices;
- (c) improvements to efficiency of the Supplier's obligations under the Contract.
- (d) any complaint or criticism raised by the community or any stakeholder.

5.3 Recommendations or directions

The Supplier must comply with any reasonable recommendations or directions given by the Principal in relation to the performance of the Supplier's obligations under the Contract. Such compliance will not release or discharge the Supplier from any liability or obligation under the Contract.

TECHNICAL SPECIFICATIONS

6. BACKGROUND- PRINCIPALS'S CAPITAL WORKS INFRASTRUCTURE PROGRAME

The Principal is undertaking an expansive Capital and Funded Works Infrastructure program throughout the 2023/24 financial year. The proposed works entail a variety of civil engineering projects including:

- (a) Road pavement rehabilitation works.
- (b) Intersection upgrades.
- (c) Stormwater drainage improvement works.
- (d) Floodway crossing replacement works.
- (e) Kerb & channel construction.
- (f) Land Development.
- (g) Heavy Vehicle Route Assessments.
- (h) Rural road gravel re-sheeting works.
- (i) Various road safety improvements.
- (j) Bridge and culvert replacement surveys.
- (k) Parklands and open public space improvements.

Typically, survey data of varying detail will be required by the Principal to ably inform the development of these project designs. Accordingly, the Principal seeks to engage a panel of suitably qualified surveyors to assist in the undertaking of these projects & to support the Principal in the delivery of these crucial infrastructure works.

7. SURVEY SERVICES

The Services entail delivery of survey services across various project sites anywhere within the Banana Shire Council local government area. The types of services being requested by the Principal may include (but not limited to) the following types of surveys:

- (a) Project management of the surveying services commissioned by Council.
- (b) Detail engineering or topographical surveys.
- (c) Cadastral Surveying.
- (d) Drone topographical (3d data) and/or aerial surveys.
- (e) Services and Public Utility investigations.
- (f) Pre-construction engineering set out.
- (g) As-Constructed surveys - post construction.
- (h) Verification/validation surveys
- (i) Volume and quantity assessment surveys – eg. gravel stockpiles etc.

8. LIASION WITH AUTHORITIES AND OTHER CONSULTANTS

The Supplier must, if required, from time to time, to liaise with other Authorities and/or consultants – such as the DTMR, geotechnical engineers, environmental specialist, utility providers and/or traffic controllers etc. - that may have been engaged by the Principal on a particular project. The Supplier must interact with these other providers in collaborative and professional manner.

9. SUBMISSIONS FOR SPECIFIC ENGAGEMENTS

The Principal may invite submissions from one, more or all pre-qualified suppliers on the Register for any specific engagement, or may choose not to invite submissions from any pre-qualified supplier. In assessing the suppliers from which it will invite submissions, the Principal may consider, amongst other things, the skills, type of survey and past performance of suppliers. The Principal may choose not to invite a particular suppliers or only invite a sub-set of the approved panel to tender on any one engagement.

10. SUB-CONTRACTOR SERVICES

Further to clause 13 of Part 3 - Contract:

- (a) the Supplier must not subcontract any surveying services to a third party without express approval written from the Principal's Director of Infrastructure.
- (b) if some or all of the Services are subcontracted to a third-party surveying firm (if approved) – this does not negate the Tenderer's responsibilities or obligations under the Contract in any way;
- (c) the quality and scheduling of all survey works, work safe liabilities and duty of care obligations undertaken by any approved subconsultant lie with the Supplier and not with the Principal.

11. REGISTER OF PRE-QUALIFIED SUPPLIERS

11.1 Term

The initial term of the Register of Pre-qualified Suppliers will be 12 months. The Principal may conduct a "refresh" of the Register (which will allow other suppliers to be selected on as pre-qualified suppliers) during the term.

11.2 Sale or transfer of business

If the Tenderer's business is sold or transferred to another entity, a Supplier's status as a pre-qualifies supplier cannot be transferred with the sale or transfer.

11.3 Effect of selection

Please note that selection as a pre-qualified supplier:

- (a) entitles the Principal to engage a supplier during the term without first seeking quotes or tenders but does not give rise to any obligation on the Principal to do so;
- (b) does not guarantee that you will be engaged to provide any, or any minimum quantity or value of, services.

All pre-qualified suppliers firms will be subject to the Principal's current Procurement Policy and direction from the Principal's Director of Infrastructure.

11.4 Engagements

Once the Register is established the Principal will seek a fixed price submissions for particular engagements in accordance with the Contract.

The Principal may invite submissions from one, more or all pre-qualified suppliers on the Register for any specific engagement, or may choose not to invite submissions from any pre-qualified supplier. In assessing the suppliers from which it will invite submissions, the Principal may consider, amongst other things, the skills, type of survey and past performance of suppliers. The Principal may choose not to invite a particular supplier or only invite a sub-set of the approved panel to tender on any one project.

12. EVALUATION CRITERIA

Tenders will be assessed against the below evaluation criteria. To assist Respondents, the Principal provides the following information in relation to the criteria.

12.1 Relevant Experience

The Principal will be assessing each Tenderer to this Panel for prior involvement and experience in surveying of public infrastructure projects – particularly within the local government sector. Prior involvement and demonstrated proficiencies in delivering public infrastructure projects will be a critical measure in assessing the suitability of each tenderer to the Panel. Prior involvement in the provision of surveying services for Queensland Regional Councils would also be highly regarded.

12.2 Technical Skills

Each Tenderer will be assessed based on the available skill sets offered within that Firm, to undertake survey work on the Principal's projects. The type of skills that are being sought for each job from the Tenderer, may include:

- (a) Project Coordinator and Client Contact.
- (b) Registered Surveyor.
- (c) Skilled drone operator.
- (d) Competent and skilled engineering surveyor.
- (e) Capable Drafter and CAD operator.
- (f) Access to qualified cable and/or service locator.
- (g) Proficient WHS champion.

Tenderers are advised that all personnel working on the Principal's projects are to be suitably qualified and in compliance with appropriate regulations and legislation.

12.3 Resources / Availability

The Tenderer is to clearly nominate, in their submission, the resources that they propose to utilize throughout the duration of the Panel Agreement. These resources are to include both people and asset resources. A short resume of critical personnel is to be provided in the Tenderers submission. The resume is to include qualifications, professional registrations and accreditations, experience and capabilities.

It is a critical requirement that **the Principal** has the necessary Surveying resources available as and when required to ensure project construction is not delayed or unduly inhibited. This particularly concerns survey set-out of proposed engineering works, As-Constructed survey works as well as aerial and drone capabilities.

The Principal does not expect each Tenderer to have a dedicated survey team available “on-call” to immediately undertake surveys as and when required by the Principal. However, the Principal expects that the necessary surveying services would be available within a realistic timeframe, pending sufficient notice being given by the Principal.

The Tenderer is to clearly nominate, in their submission, the minimum amount of notice that they would require to mobilise a survey team to site once notice is provided. This will also be a measure that the Principal will use in assessing each Tenderers suitability for inclusion on the Panel.

12.4 Local Content

For the purposes of this Tender, a local supplier is deemed to be operating a survey practice within the confines of Central Queensland. The Principal will provide an incentive to those Tenderers working within that area.

13. LAPSING OF OFFER

Offers for Preferred Supplier – Surveying 2023/24 shall remain valid for a period of one month (30 calendar days) after the closing time and date and may be accepted by Council at any time before the expiry of that period unless otherwise notified, in writing, by Council.

14. INSURANCE

All nominated survey Preferred Suppliers must produce appropriate Certificates of Currency for the following insurances – details to be provided in **Part 3 – Contract** of these tender documents:

- (a) Professional Indemnity Insurance.
- (b) Public Liability Insurance.
- (c) Workers Compensation Insurance for all personnel involved in the proposed survey works.
- (d) Insurance for all motor vehicles, plant and equipment that will be involved in the proposed survey works.

15. DELIVERABLES

All surveys are to be submitted to the Principal electronically. All survey data is to be presented as follows:

- (a) PDF plan on Council Title block.
- (b) 3-dimensional DXF format or 12d Model (.12daz) file. File must include a 3-dimensional triangulation layer or model.

The Supplier is to ensure that a minimum of 2 coordinated (X, Y & Z) construction bench marks are to be established on each project that are placed clear of any possible infrastructure works or the potential of being damaged.

16. STANDARDS AND SPECIFICATIONS

All survey work must be undertaken in accordance with the requirements of the *Surveyors Act 2003* (Qld). Measurements and levels must be within industry standard tolerances and guidelines.

Where no reference is made to a specific survey specification - Transport and Main Roads (TMR) Queensland Standard Specifications are to apply. Copies of TMR Specifications are not included in this document.

All coding names must be logical and easily interpreted. All line features must be suitably strung and sequentially connected.

17. REPORTING AND COMMUNICATION

The Supplier must comply with all reporting and communication requirements described in a Work Order. The Supplier is to liaise directly with the Principal's MTS on the scope of work, progress, delays, variations and invoicing.

18. HOLD POINTS

A Hold Point is defined as a position in the progress of the project's activities, beyond which further work shall not proceed without mandatory verification by the Principal's MTS.

If a Hold Point is identified in a Work Order or reasonably directed by the Principal's MTS and the Supplier proceeds beyond this point without the Hold Point being verified, the Principal's MTS may refuse payment for any survey works beyond the specified hold point.

19. WORKPLACE, HEALTH AND SAFETY

Without limiting clause 20 of Part 3 - Contract, the Supplier must conform to all of the Principal's WHS requirements – with particular attention to the following requirements:

- (a) the Principal's online induction process must be undertaken by all personnel that will be involved in the survey work. A hyperlink to the online induction site will be forwarded to each survey participant prior to any work being undertaken.
- (b) a risk assessment for the proposed survey work must be developed and approved by the Principal's WHS personnel before any survey works on site can commence.
- (c) a duly signed Safe Work Method Statement (SWMS) must be signed by all personnel working on the survey site. The signed SWMS must be approved by the Principal's WHS personnel before any works on site can commence.
- (d) the Principal has a mandatory policy of not allowing less than two (2) personnel within a survey field party. This particularly relates to survey sites that are remote and without mobile phone reception. Exception to this rule can be granted by the Principal's Director of Infrastructure on a project-by-project basis for any survey works to be undertaken within towns or built-up areas.
- (e) the Supplier must provide evidence of the Supplier's Safety Management System – outlining policies, procedures, and risk management processes.

All on site traffic control must be managed through a Traffic Management Plan (TMP) approved by the Principal that has been prepared by a suitably qualified person and is in accordance with the current edition of the "Queensland Guide to Temporary Traffic Management" (QGTMM) - harmonised.

PAYMENT

20. NOMINATED PRICES/RATES

All prices/rates in the Contract are GST exclusive.

All prices/rates included in a proposal provided pursuant to the Contract must be quoted as GST excl. and cover all costs associated with the supply of the Services.

Prices/Rates are to be fixed and guaranteed for the duration of the contract.

21. DISBURSEMENTS GENERALLY

If the Supplier will incur disbursements whilst undertaking the agreed scope for a particular engagement, these disbursement costs must be quoted in the Supplier's proposal for that engagement. Approval by the Principal's Manager of Technical Services must be sought prior to the Supplier incurring any unplanned costs or expenses eg. Accommodation, flights, car hire etc.

22. TRAVEL

Travel costs will be accommodated by the Principal at the agreed rate state in Part 6 – Pricing Schedule. However, travel expenses will be capped to a maximum amount of \$600 per engagement unless otherwise expressly agreed in writing.

23. MEAL ALLOWANCES

Meal allowances will be paid by the Principal at the agreed rate nominated in Part 6 – Pricing Schedule. However, meal allowances will be capped to a maximum amount of \$100 per day per person.

24. ACCOMMODATION

Accommodation expenses will be paid by the Principal. However, they will be capped to a maximum amount of \$180 per room / day.

25. NO PRE-PAYMENT

Payment for Services will only be paid to the Supplier. Payment of invoices will be paid monthly or on completion of the agreed scope of services. The Principal will only allow payment for Services on a retrospective basis. Pre-payment to the Survey Preferred Supplier for any agreed services will not be approved.

All invoices due for payment for the services of an approved subconsultant are to be initially paid by the Supplier prior to the Supplier claiming payment from the Principal.