



CONTRACT

DRFA PROGRAM DRAINAGE RECONSTRUCTION WORKS 2023-2024
CONTRACT: 2324.18

FORMAL INSTRUMENT OF AGREEMENT

PARTIES

Banana Shire Council ABN 85 9461 166 46 of 62 Valentine Plains Road, Biloela in the State of Queensland
(*'the Principal'*)

ACN of , in the State of
(*'the Contractor'*)

RECITALS:

- A. The *Contractor* has submitted an offer to carry out and complete the *WUC* and has given the *Principal* warranties and made representations to the *Principal*.
- B. In reliance on the warranties given and representations made by the *Contractor*, the *Principal* has accepted the *Contractor's* offer.
- C. The parties wish to enter into this *Contract* to record the terms of their agreement.

THE PARTIES AGREE:

1. THE CONTRACT

1.1 The *Contract* shall comprise the following documents:

- (a) This Formal Instrument of Agreement;
- (b) Annexure Part A to AS4000-1997 General Conditions of Contract;
- (c) Annexure Part B to AS4000-1997 General Conditions of Contract;
- (d) Annexure Part C – Approved Form of Unconditional Undertaking (which forms a part of this Contract notwithstanding that a copy is not physically incorporated into this Contract);
- (e) AS4000-1997 General Conditions of Contract (which form a part of this Contract notwithstanding that a copy is not physically incorporated into this Contract);
- (f) Annexure Part D – Drawings;
- (g) Annexure Part E – Specification;
- (h) Annexure Part F – Methodology;
- (i) Annexure Part G – Price Schedule;
- (j) Annexure Part H – Variation Rates;
- (k) Annexure Part I – Contractor's Statutory Declaration; and
- (l) Annexure Part J – Other Documents.

1.2 The *Contract* constitutes the entire, final and concluded agreement between the parties. It supersedes all prior representations, agreements, statements and understandings between the *Contractor* and the *Principal* (whether oral or in writing).

1.3 If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1 of this *Formal Instrument of Agreement* then the ambiguity, inconsistency, conflict or discrepancy shall be resolved by giving precedence to the document which places the highest or more onerous requirement on the *Contractor*. If that does not resolve the issue, then the documents will take precedence in the order set out in clause 1.1 of this *Formal Instrument of Agreement*, with the *Formal Instrument of Agreement* being the highest in the order.

2. CONSIDERATION

2.1 In consideration of:

- (a) the *Principal* agreeing to pay the *Contractor* in accordance with the provisions of the *Contract*, the *Contractor* will perform the *WUC* in accordance with the provisions of the *Contract* and will otherwise comply with its obligations under the *Contract* at its expense;
- (b) the *Contractor* carrying out the *WUC* and complying with its obligations under the *Contract* at its expense, the *Principal* will pay the *Contractor* in accordance with the provisions of the *Contract* and will otherwise comply with its obligations under the *Contract*.

3. INTERPRETATION

- 3.1 Italicised terms used in this *Formal Instrument of Agreement* have the same meaning as defined in the documents listed in clauses 1.1(b) to 1.1(e) above.
- 3.2 The contra proferentem rule and other rules of construction will not apply to the *Contract* 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.
- 3.3 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.
- 3.4 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.
- 3.5 The rights and remedies of a party to the *Contract* are in addition to the rights or remedies conferred on the party elsewhere in the *Contract*, at law or in equity.
- 3.6 If a provision of the *Contract* is void or unenforceable it must be severed from this *Contract* and the provisions that are not void or unenforceable are unaffected by the severance.
- 3.7 In the *Contract* the words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.

4. STANDARDS AUSTRALIA COPYRIGHTED MATERIAL

- 4.1 This document contains Standards Australia Ltd copyrighted material which is reproduced by or distributed by Banana Shire Council (46 291 971 168) under licence by Standards Australia. The Standards Australia copyrighted material may have been modified by a licensed user and may not reflect AS 4000-1997. Standards Australia takes no responsibility for the content of this document. Should a user be interested in reproducing or distributing any content from AS 4000-1997, please contact Standards Australia via copyright@standards.org.au.
- 4.2 A copy of AS4000-1997 General Conditions of Contract and Annexures (as current at the *date of acceptance of tender*) forms part of this *Contract* notwithstanding that a copy is not physically included. A copy of the AS4000-1997 General Conditions of Contract can be obtained by contacting Standards Australia via copyright@standards.org.au.
- 4.3 In Annexure Part A, items or words which have been struck through are deleted from Annexure Part A and items or words which have been underlined have been added to Annexure Part A.

EXECUTED AS AN AGREEMENT

EXECUTION BY THE PRINCIPAL

SIGNED for and on behalf of
Banana Shire Council in
accordance with the Council's local
laws and in the presence of:

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

EXECUTION BY THE CONTRACTOR (WHERE CONTRACTOR IS A CORPORATION)

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

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

EXECUTION BY CONTRACTOR (WHERE CONTRACTOR IS NOT A CORPORATION)

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

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

ANNEXURE to the Australia Standard**General Conditions of Contract****AS4000-1997****PART A**

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

Item

1	<i>Principal</i> (clause 1)	Banana Shire Council ABN 85 9461 166 46
2	<i>Principal's address</i>	62 Valentine Plains Road, Biloela, Queensland, 4850
3	<i>Contractor</i> (clause 1)	ACN ABN
4	<i>Contractor's address</i>	
5	<i>Superintendent</i> (clause 1)	ACN
6	<i>Superintendent's address</i>	
7*	a) <i>Date for practical completion</i> (clause 1)	30 th of June 2024
	OR	
	b) <i>Period of time for practical completion</i> (clause 1)	
8	Governing law (page 5, clause 1(h))	Queensland If nothing stated, that of the jurisdiction where the <i>site</i> is located
9	a) Currency (page 5, clause 1(g))	AUD If nothing stated, that of the jurisdiction where the <i>site</i> is located
	b) Place for payments (page 5, clause 1(g))	Payments will be made by electronic transfer into the bank account last notified in writing by the <i>Contractor</i> to the <i>Principal</i> .

	c) Not used	
10	Not used	
10A	<u>Contract sum</u> (clause 1 and clause 2A)	<p>The Contract is a:</p> <p><input type="checkbox"/> <u>schedule of rates contract</u></p> <p><input checked="" type="checkbox"/> <u>lump sum contract</u></p> <p><u>If nothing stated, the Contract is a lump sum contract.</u></p>
11	Quantities in <i>schedule of rates</i> , limits of accuracy (subclause 2.5(b) 2A.4(b))	<p>No upper or lower limit</p> <p>Upper Limit</p> <p>Lower Limit</p> <p>If nothing stated, upper limit is 120%, lower limit is 80%</p>
12	<i>Provisional sum</i> , percentage for profit and attendance (clause 3)	No profit and attendance is payable.
13*	<i>Contractor's security</i>	
	a) Form (clause 5)	Two (2) x 2.5% unconditional bank guarantees in equal amounts to 5% of contract sum.
	b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	<p>5%</p> <p>If nothing stated, 5% of the <i>contract sum</i></p>
	c) If retention moneys, percentage of each <i>progress certificate</i> (clause 5 and subclause 37.2)	<p>Nil</p> <p>If nothing stated, 10% until the limit in <i>Item 13(b)</i></p>
	d) Time for provision (except for retention moneys) (clause 5)	<p>Within 10 <i>business days</i> after the <i>date of acceptance of tender</i></p> <p>If nothing stated, within 10 <i>business days</i> after <i>date of acceptance of tender</i></p>
	e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3)	<p>Not applicable</p> <p>\$</p>
	f) <i>Contractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4)	<p>50% of amount held</p> <p>If nothing stated, 50% of amount held</p>

14* *Principal's security*

- | | |
|--------------------------|----------------|
| a) Form
(clause 5) | Not applicable |
|--------------------------|----------------|

	b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	Not applicable If nothing stated, nil	
	c) Time for provision (clause 5)	Not applicable If nothing stated, within 20 <i>business days</i> after the <i>date of acceptance of tender</i>	
	d) <i>Principal's security upon certificate of practical completion</i> is reduced by (subclause 5.4)	Not applicable If nothing stated, 50% of amount held	
15	<i>Principal-supplied documents</i> (subclause 8.2)	Document Copy of Contract If nothing stated, 5 copies of the drawings, specification, <i>bill of quantities</i> or <i>schedule of rates</i> (if any)	No. of copies 1
16	Time for <i>Superintendent's direction</i> about documents (subclause 8.3)	If nothing stated, 10 <i>business days</i> Other: (list)	
17	Subcontract <i>work</i> requiring approval (subclause 9.2)	The whole or any part of <i>WUC</i>	
18	Novation (subclause 9.4)	Subcontractor Not applicable <i>Selected subcontractor</i>	Particular part of <i>WUC</i> Particular part of <i>WUC</i>
19	<i>Legislative requirements</i>		
	a) Those excepted (subclause 11.1)	None excepted	
	b) Identified <i>WUC</i>		

(subclause 11.2(a)(ii))

19A

Portable long service

The:

(subclause 11A.1)		<input checked="" type="checkbox"/> <u>Principal</u>																					
		<input type="checkbox"/> <u>Contractor</u>																					
		is to make payments and give notices under the <u>Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld)</u>																					
		If nothing selected the <u>Contractor</u> is to do so																					
<u>19B</u>	<u>Third party requirements that apply to this Contract:</u> (clause 1, subclause 11A.5)	<table border="0"> <tr> <td><u>Building Code 2016</u></td> <td><input checked="" type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><u>WHS Accreditation Scheme</u></td> <td><input type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><u>Queensland Code</u></td> <td><input checked="" type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><u>Queensland IPP</u></td> <td><input type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><u>Federal IPP</u></td> <td><input type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><u>Training Policy</u></td> <td><input type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><u>Funding Requirements</u></td> <td><input type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> </table>	<u>Building Code 2016</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>WHS Accreditation Scheme</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Queensland Code</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Queensland IPP</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Federal IPP</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Training Policy</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<u>Funding Requirements</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<u>Building Code 2016</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No																					
<u>WHS Accreditation Scheme</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No																					
<u>Queensland Code</u>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No																					
<u>Queensland IPP</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No																					
<u>Federal IPP</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No																					
<u>Training Policy</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No																					
<u>Funding Requirements</u>	<input type="checkbox"/> Yes	<input type="checkbox"/> No																					
		If not selected, the <u>third party requirement</u> does not apply																					
<u>19C</u>	<u>The Contractor's liability is limited to</u> (clauses 1 and 15A)	<p>_____</p> <p>If nothing stated, the <u>Contractor's liability</u> is not limited</p>																					
<u>19D</u>	<u>The Principal's liability is limited to</u> (clauses 1 and 15A)	<p>_____</p> <p>If nothing stated, the <u>Principal's liability</u> is limited to the <u>contract sum</u> as adjusted pursuant to the <u>Contract</u>.</p>																					
20	Insurance of the Works (clause 16)																						
	a) Alternative applying	Alternative 1 If nothing stated, Alternative 1 applies																					
	If Alternative 1 applies																						
	b) Provision for demolition and removal of debris	<p>\$</p> <p>OR</p> <p>10% of the <u>contract sum</u></p>																					
	c) Provision for consultants' fees	<p>\$</p> <p>OR</p> <p>10% of the <u>contract sum</u></p>																					
	d) Value of materials or things to be supplied by the <u>Principal</u>	Nil																					

	e) Additional amount or percentage	\$	
		OR	
		10% of the total of paragraphs (a) to (d) in clause 16	
21	Public liability insurance (clause 17)		
	a) Alternative applying	Alternative 1 If nothing stated, Alternative 1 applies	
	If Alternative 1 applies		
	b) Amount per occurrence shall be not less than	Twenty million dollars \$20,000,000 If nothing stated, then not less than \$20,000,000	
21A	<u>Key Personnel</u> (Clause 23A)	<u>Name</u>	<u>Role</u> <u>Period</u>
22	Time for giving possession (subclause 24.1)	Within 20 <i>business days</i> after the <i>date of acceptance of tender</i> If nothing stated, within 10 <i>working days</i> after the <i>date of acceptance of tender</i>	
22A	<u>Working days and working hours</u> (clause 31)	<u>Working days</u> <u>Monday to Friday</u> <u>Saturday</u> <u>but shall not include:</u> a) <u>a public holiday, special holiday or bank holiday at the site;</u> b) <u>22 December to 10 January in any year; or</u> <u>any other day which the Contract elsewhere provides is a day on which work cannot be carried out</u>	<u>Working hours</u> <u>7am to 6pm</u> <u>7am to 4pm</u>
23	<i>Qualifying causes of delay</i> Causes of delay for which EOTs will not be granted (clause 1 and subclause 34.3)		
24*	Liquidated damages, rate (subclause 34.7)	\$500 per day	
25*	Bonus for early <i>practical completion</i> (subclause 34.8)	Not applicable	
	a) Rate	per day	

	b) Limit	\$
		OR
		% of <i>contract sum</i>
		If nothing stated, there is no waiver
26*	Delay damages, costs , other <i>compensable causes</i> (page 1, clause 1 and subclause 34.9 34A)	No other <i>compensable causes</i>
26A	<u>Delay costs, limit per working day</u> (clause 34A)	<u>_____</u> If nothing stated, \$500 per working day
27	<i>Defects liability period</i> (clause 35)	12 months If nothing stated, 12 months
27A	<u>Variations, percentage for profit and overheads</u> (subclause 36.4)	<u>Profit</u> 5% If nothing stated 5% <u>Overheads</u> 5% If nothing stated 5%
28	Progress Claims (subclause 37.1)	
	a) Times for progress claims	21 st day of each month in which <i>WUC</i> is carried out up to and including the month in which <i>practical completion</i> is reached, for work done to the 21 st day of the month
	OR	
	b) Stages of <i>WUC</i> for progress claims	
29	Unfixed plant and materials for which payment claims may be made (subclause 37.3)	Nil
30	Interest rate on overdue payments (subclause 37.5)	7 % per annum If nothing stated, 18% per annum
31	Time for <i>Principal</i> to rectify inadequate possession (subclause 39.7)	25 <i>working days</i> If nothing stated, 25 <i>working days</i>
32	Not used	

*If applicable, delete and instead complete equivalent Item in the separable portions section of the Annexure Part A.

Part A

Separable Portions

Annexure to AS4000-1997

- This section should be completed only if the *Contract* provides for *separable* portions.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of *the Works* should also be a *separable portion*.

	<i>Separable portion</i> (clause 1)	No.
	Description of <i>separable portion</i> (clause 1)	
<i>Item</i>		
7	a) <i>Date for practical completion</i> (clause 1)	
	OR	
	b) <i>Period of time for practical completion</i> (clause 1)	
13	<i>Contractor's security</i>	
	a) <i>Form</i> (clause 5)	Two (2) unconditional bank guarantees in equal amounts.
	b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)	5% If nothing stated, 5% of the value of this <i>separable portion</i>
	c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)	Nil If nothing stated, 10% until the limit in <i>Item 13(b)</i>
	d) <i>Time for provision (except for retention moneys)</i> (clause 5)	Within 10 <i>business days</i> after the <i>date of acceptance of tender</i> If nothing stated, within 10 <i>business days</i> after <i>date of acceptance of tender</i>
	e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)	Not applicable \$

	f) Contractor's security upon certificate of practical completion is reduced by (subclause 5.4)	50% of amount held If nothing stated, 50% of amount held
14	Principal's security	
	a) Form (clause 5)	Not applicable
	b) Amount or maximum percentage value of this <i>separable portion</i> (clause 5)	Not applicable If nothing stated, nil
	c) Time for provision (clause 5)	Not applicable If nothing stated, within 20 business days after the date of acceptance of tender
	d) Principal's security upon certificate of practical completion is reduced by (subclause 5.4)	Not applicable If nothing stated, 50% of amount held
24	Liquidated damages, rate (subclause 34.7)	per day
25	Bonus for early practical completion (subclause 34.8)	Not applicable
	a) Rate	per day
	b) Limit	\$ OR % of value of this <i>separable portion</i> If nothing stated, there is no waiver
26	Delay damages , <u>costs</u> , other compensable causes (page 1, clause 1 and subclause 34.9 34A)	No other compensable causes
26A	<u>Delay costs, limit per working day (clause 34A)</u>	<u>_____</u> If nothing stated, \$500 per working day

Part B

Annexure to the
Australian Standard General Conditions of Contract
AS4000 – 1997

Deletions, amendments and additions

1. The following clauses have been deleted from the General Conditions of Contract

See below

2. The following clauses have been amended and differ from the corresponding clauses in AS4000-1997

See below

3. The following clauses have been added to those of AS4000-1997

See below

1. INTERPRETATION AND CONSTRUCTION OF CONTRACT

Delete the definition of '*bill of quantities*' and replace with:

'bill of quantities means a price schedule;'

Insert a new definition of '*building contract*':

'building contract has the same meaning as given to that term in section 67AAA of the Queensland Building and Construction Commission Act 1991 (Qld);'

Insert a new definition of '*business day*':

'business day means:

- (a) when used in the definition of *response period*, has the same meaning as in the *security of payments legislation*;
- (b) otherwise, means a day that is not:
 - (i) a Saturday or Sunday; or
 - (ii) a public holiday, special holiday or bank holiday at the *site*.'

Insert a new definition of '*claim*':

'claim includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including pursuant to a provision of the Contract (including any claim for a variation, an EOT or other adjustment of the contract sum), at law (including a breach 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 Contract, the Works or WUC;'

Insert a new definition of '*claimable amount*':

'claimable amount means:

- (a) the value of *work* carried out by the *Contractor* in the performance of the *Contract* which the *Contractor* is entitled to include in a progress claim; and
- (b) amounts otherwise due from the *Principal* to the *Contractor* pursuant to the *Contract*;

Insert a new definition of '*compensable direction*':

'compensable direction means a direction pursuant to subclause 8.1 that is necessitated solely because of an inconsistency, ambiguity, discrepancy or error which is in a document prepared by or on behalf of the Principal for the purpose of carrying out WUC and which could not have been identified by a competent contractor at the time of the Contractor's tender if that contractor had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;

- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds;

Insert a new definition of '*conflict of interest*':

'conflict of interest' means any actual, potential or perceived conflict between the interests of the *Contractor* and the *Contractor's* obligation under the *Contract*;

Delete the definition of '*contract sum*' and replace with:

'contract sum' means

- (a) where *Item 10A* states that the *Contract* is a *lump sum contract*, the sum of the lump sums contained in the *price schedule*; or
- (b) where *Item 10A* states that the *Contract* is a *schedule of rates contract*:
 - (i) the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *price schedule*; plus
 - (ii) any lump sums contained in the *price schedule*,
including *provisional sums* but excluding additions or deductions which may be required to be made under the *Contract*;

Insert a new definition of '*Councillor*'

'Councillor' has the meaning given to that term in the *Local Government Act 2009* (Qld);

Delete paragraph (a) of the definition of '*date of practical completion*' and replace with:

- (a) the date stated in a *certificate of practical completion* as the date on which *practical completion* was reached (which may be a date earlier than the date on which the *certificate of practical completion* is issued); or

Insert a new definition of '*Formal Instrument of Agreement*':

'Formal Instrument of Agreement' means the document of that name forming part of the *Contract*;

Insert a new definition of '*improper conduct*':

'improper conduct' means:

- (a) engaging in misleading or deceptive conduct;
- (b) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct;
- (c) canvassing, attempting to improperly influence, offering any inducement to, or accepting or inviting improper assistance from, the *Principal's Councillors* or other *personnel* (or former *personnel*);
- (d) using any information improperly obtained, or obtained in breach of any obligation of confidentiality;
- (e) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence;
- (f) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld);

Insert a new definition of '*informal variation direction*':

'informal variation direction' means a *direction* by the *Superintendent* for a *variation* which is not in writing or which does not expressly state that it is a *direction* for a *variation* pursuant to clause 36;

Insert a new definition of '*liability limit*':

'liability limit' means the sum of:

- (a) the amount specified in *Item 19C* or *Item 19D* as the case may be; and

- (b) the amount of any excess payable under a policy of insurance referred to in subclause 15A.2(d);'

Insert a new definition of '*lump sum contract*':

'*lump sum contract* means a contract to which subclause 2A.3 applies;'

Insert a new definition of '*payment period*':

'*payment period* means:

- (a) if the *Contract* is a *building contract*, 15 *business days*;

- (b) otherwise, 25 *business days*,

after the progress claim or *final payment claim* (as the case may be) is given to the *Principal*;

Insert a new definition of '*payment schedule*':

'*payment schedule* has the same meaning as in the *security of payments legislation*;'

Insert a new definition of '*personal information*':

'*personal information* has the same meaning as given to that term in the *Information Privacy Act 2009* (Qld);'

Insert a new definition of '*personnel*':

'*personnel* includes the officers, employees, agents, representatives, consultants and contractors (including, in respect of the *Contractor*, its subcontractors), of a party and any other person or entity for whom that party is vicariously liable and in respect of the *Principal* includes the *Councillors* of the *Principal* but does not include the *Contractor*;'

Insert a new subparagraph at the end of the definition of '*practical completion*'

- '(d) anything else which the *Contract* provides is to be done, provided or otherwise satisfied as a requirement of or prior to *practical completion* has been so done, provided or satisfied;'

Delete the definition of '*prescribed notice*' and insert:

'*prescribed notice* means a written notice which contains:

- (a) details of the basis of the *claim*; and

- (b) a detailed itemised breakdown of the quantum of the *claim*, or, where the quantum cannot be itemised at the time that the *prescribed notice* is given because the costs are not yet known, an itemised breakdown of the estimated quantum of the *claim*;'

Insert a new definition of '*price schedule*':

'*price schedule* means any schedule included in the *Contract* which provides a breakdown of the *contract sum* and which may include rates, lump sums, *provisional sums*, other sums, quantities and prices;'

Insert a new definition of '*Principal's policies*':

'*Principal's policies* means the *Principal's* plans, policies, procedures, codes, standards and guidelines to the extent that these are made available by the *Principal* (whether to the public at large or to the *Contractor*);'

Insert a new definition of '*procurement process*':

'*procurement process* means the process pursuant to which the parties entered into the *Contract*, and includes the process (if any) through which the *Principal* invited, and the *Contractor* submitted an offer to carry out the *WUC*;'

Insert a new definition of '*provisional work*':

'*provisional work* means:

- (a) any work or item to which a *provisional sum* relates; and

- (b) any other *work* or item which is identified in the *Contract* as 'provisional', 'if ordered', 'as directed' 'optional' or similar or which the *Contract* otherwise provides is not to be carried out or supplied by the *Contractor* unless the *Contractor* is given a *direction* to do so;

Delete the definition of '*qualifying cause of delay*' and insert:

'qualifying cause of delay means:

- (a) any of the following, which are beyond the control of the *Contractor* occurring on or before the *date for practical completion*:
- (i) industrial action not exclusively directed at the *Contractor*;
 - (ii) inclement weather and the effects at the *site* of inclement weather;
- (b) any of the following which are beyond the control of the *Contractor* whether occurring before, on or after the *date for practical completion*:
- (i) any act, default or omission of the *Superintendent*, the *Principal* or the *Principal's* consultants, agents or other contractors (not being employed by the *Contractor*);
 - (ii) *variations* (other than a *variation* for the convenience of the *Contractor*);
 - (iii) *latent conditions*;
 - (iv) a change in a *legislative requirement* which comes into effect after the 10th *business day* before the closing of tenders and which could not have been reasonably anticipated by a competent contractor;
 - (v) delays by municipal, public, or statutory authorities (including the *Principal* in its capacity as a local government authority);
 - (vi) claims referred to in subclause 15.1(e);
 - (vii) any breach of the *Contract* by the *Principal*,
- but does not include any cause of delay identified in *Item 23*;

Insert a new definition of '*required deductions*':

'required deductions means:

- (a) amounts paid previously under the *Contract*;
- (b) retention moneys to be deducted pursuant to *Item 13*;
- (c) other amounts due from the *Contractor* to the *Principal* in connection with the *Contract*;
- (d) amounts due from the *Contractor* to the *Principal* otherwise than in connection with the *Contract*;
- (e) to the extent that such *work* has not yet been carried out by the *Contractor* and the cost of such *work* has not yet been incurred by the *Principal*, the estimated cost to the *Principal* of having any *work* of removal, demolition, replacement, correction or rectification the subject of a *direction* pursuant to subclause 29.3 or clause 35 carried out by a third party;
- (f) amounts in respect of *work* which is required by the *Contract* to be tested and for which any of the following conditions have not been met:
- (i) all required *tests* have been completed;
 - (ii) the results of the *tests* do not reveal a failure of the *Contractor* to comply with the *Contract*; and
 - (iii) the *Contractor* has made good *WUC* and provided the results of the *tests* to the *Superintendent* and to the *Principal* in accordance with subclause 30.6.
- (g) amounts which the *Principal* bona fide claims are or will become due from the *Contractor* to the *Principal* in connection with the *Contract* (and where such an amount cannot be ascertained by the *Principal* at the time at which the amount is to be certified, the *Principal's* bona fide estimate of such an amount).'

Insert a new definition of '*response period*':

'response period for a progress claim or *final payment claim* (as the case may be) means 15 business days after the claim is given to the *Principal*;

Delete the definition of '*schedule of rates*' and insert:

'schedule of rates means a *price schedule*;

Insert a new definition of '*schedule of rates contract*':

'schedule of rates contract means a contract to which subclause 2A.4 applies;

Delete paragraphs c) and d) of the definition of '*security*';

Insert a new definition of '*security of payments legislation*':

'security of payments legislation means the *Building Industry Fairness (Security of Payments) Act 2017* (Qld) and any associated subordinate legislation;

Insert a new definition of '*specified loss*':

'specified loss means:

- (a) any loss, or loss of anticipated, profit, income, revenue, saving, production; business, good will, contract or opportunity (including access to markets); 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; damage to credit rating; any other financial or economic loss; and
- (b) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraph, howsoever arising;

Insert a new definition of '*third party requirements*':

'third party requirements means such of the following (as amended or replaced from time to time) as *Item 19B* states apply to this *Contract*:

- (a) Code for the Tendering and Performance of Building Work 2016 issued pursuant to the *Building and Construction Industry (Improving Productivity) Act 2016* (*Building Code 2016*);
- (b) Queensland Government's Code of Practice for the Building and Construction Industry (*Queensland Code*);
- (c) Australian Government building and construction industry Work Health and Safety Accreditation Scheme (the Scheme), established by the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act) (WHS Accreditation Scheme);
- (d) Queensland Government Indigenous Procurement Policy (*Queensland IPP*);
- (e) Federal Government Indigenous Procurement Policy (*Federal IPP*);
- (f) Queensland Government Building and Construction Industry Training Policy (Training Policy);
- (g) the requirements of any State, Federal or other body providing funding for *WUC*, as notified or otherwise made available to the *Contractor* from time to time by or on behalf of the *Principal*, whether or not specifically mentioned in the *Contract* (*Funding Requirements*); and
- (h) any other plans, policies, procedures, codes, standards and guidelines (other than the *Principal's policies*) which are identified in the *Contract* or which are otherwise applicable to *WUC*.

Insert a new definition of '*variation rates*':

'variation rates means the rates included in Annexure Part H;

Insert a new definition of '*wilful misconduct*':

'wilful misconduct means an intentional act or omission by or on behalf of a party committed with reckless disregard for its foreseeable and harmful consequences in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;

Insert a new definition of 'working day':

'working day means a day identified as such in in *Item 22A*;'

2. NATURE OF CONTRACT

Delete clause 2.

2.A PERFORMANCE AND PAYMENT

Insert a new clause 2A as follows:

'2A PERFORMANCE AND PAYMENT

2A.1 (**General**) The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and *directions* authorised by the *Contract*. Notwithstanding anything else in this clause, where the *price schedule* or the *Contract* elsewhere contains provisions for determining the *Contractor's* entitlement to payment for an item then the *Contractor's* entitlement to payment for that item shall be determined in accordance with such provisions.

2A.2 (**Price schedule**) Quantities in a *price schedule* are estimated quantities only. The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in a *price schedule*.

The *Principal* gives no warranty and makes no representation as to the completeness, accuracy or adequacy of a *price schedule*. If a *price schedule* omits an item which should have been included, the item shall be deemed to have been allowed for in other items.

2A.3 (**Lump sum contract**) This subclause 2A.3 only applies where *Item 10A* states that the *Contract* is a *lump sum contract*.

The *Principal* shall pay the *Contractor* the sum of the lump sums stated in the *price schedule*, adjusted by any additions or deductions made pursuant to the *Contract*. Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *price schedule* the *Contractor* shall carry out that greater or lesser quantity as if it were originally stated in the *Contract* and there shall be no adjustment to the *contract sum*.

The *price schedule* may be used by the *Superintendent* as a guide in the assessment of progress claims, *variations* and other adjustments to the *contract sum* permitted by the *Contract*, but for no other purpose.'

2A.4 (**Schedule of rates contract**) This subclause 2A.4 only applies where *Item 10A* states that the *Contract* is a *schedule of rates contract*.

The *Principal* shall pay the *Contractor* the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate provided in the *price schedule* for the section or item adjusted by any additions or deductions made pursuant to the *Contract*. Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in a *price schedule* and:

- (a) the *price schedule* contains a lump sum for the item, the difference shall be a deemed *variation*;
- (b) the *price schedule* contains a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *price schedule* are stated in *Item 11*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.'

2A.5 (Rise and fall) The *contract sum* is not subject to adjustment for variations in the cost of labour and materials unless, and then only to the extent that, the *Contract* expressly elsewhere provides that such an adjustment is to be made and states the formula by which that adjustment is to be calculated.

2A.6 (Inclusions) Except to the extent that the *Contract* expressly allows an adjustment, the *Contractor* warrants and represents that the *contract sum*, and all rates, sums and prices included in the *contract sum* allow for:

- (a) all of the risks, contingencies and other circumstances which could have an effect on the *Contractor's* ability to carry out and complete *the Works* for the *contract sum*, except to the extent that the *Contract* expressly allows an adjustment;
- (b) the provision of all materials, plant, labour and other services necessary for the proper completion of *the Works*, whether or not those items are expressly mentioned in the *Contract*; and
- (c) compliance with all of the *Contractor's* obligations under the *Contract*, including compliance with *directions* of the *Superintendent*.'

2B CONDUCT OF CONTRACTOR AND PERSONNEL

Insert a new clause 2B as follows:

'2B CONDUCT OF CONTRACTOR AND PERSONNEL

2B.1 (General) The *Contractor* must and must ensure that its *personnel* at all times whilst engaged in *WUC* act professionally and treat all of the *Principal's personnel*, other contractors and the general public respectfully and appropriately and comply with all of the *Principal's policies*.

2B.2 (Conflict of interest) The *Contractor* warrants and represents that as at the *date of acceptance of tender* the *Contractor* is not aware of any *conflict of interest*. The *Contractor* must not, and must ensure that its *personnel* do not, engage in any activity or obtain any interest which 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.

2B.3 (Improper Conduct) The *Contractor* warrants and represents that neither the *Contractor* nor any of its *personnel* engaged in any *improper conduct* in connection with the *procurement process*. The *Contractor* must not, and must ensure that its *personnel* do not engage in any *improper conduct* in connection with the *Contract*.

3 PROVISIONAL SUMS

Insert the following at the end of clause 3:

'The *Superintendent* shall not be obliged to give a *direction* that any *provisional work*, or any particular part or quantity of *provisional work*, be carried out or supplied by the *Contractor*. The *Principal* may carry out or supply the whole or any particular part or quantity of *provisional work* itself or engage a third party to do so on its behalf. The *Contractor* shall not be entitled to any monetary compensation (whether for costs incurred, lost profit, lost overheads or otherwise) in connection with any *provisional work* (or any particular part or quantity of *provisional work*) which it is not directed to carry out or supply. Unless the *Contract* elsewhere provides how particular *provisional work* is to be valued, it shall be valued in accordance with this clause 3 as if it were identified as a *provisional sum*.'

5 SECURITY

Insert the following at the end of subclause 5.1:

'Where, due to adjustments made pursuant to the *Contract*, the *contract sum* is increased by more than 10%, the *Superintendent* may direct the *Contractor* to provide additional *security*. Unless the parties agree otherwise, the additional *security* shall be:

- (a) in the form stated in *Item 13*;

- (b) in an amount no more than is necessary to ensure that the total security held by the *Principal* is equivalent to the percentage stated in *Item 13(b)* of the *contract sum* as adjusted at the time of the *direction*; and
- (c) provided within 10 *business days* of the *Superintendent's direction*.

Delete the existing text of subclause 5.3 and replace with:

'The *Contractor* may at any time request the *Principal's* consent to substitute retention moneys or cash security with another form of security. The *Principal* may, at its absolute discretion give or withhold consent or give consent subject to such conditions as the *Principal* sees fit. To the extent that another form of security is provided, the *Principal* shall not deduct, and shall promptly release and return, retention moneys and cash security.'

7 SERVICE OF NOTICES

Insert an additional subclause 7(b)(iv) (together with any consequential amendments) at the end of subclause 7(b) as follows:

- (iv) the time at which an email comprising or attaching the notice or other document becomes capable of being retrieved and read by the addressee at the addressee's email address.

Notwithstanding anything else in this clause 7, where the *Contract* elsewhere prescribes the manner in which a particular notice is to be given, then such a notice shall only be deemed to have been given and received if given in the prescribed manner.'

8 CONTRACT DOCUMENTS

Delete the last paragraph of subclause 8.1 and replace with:

'The *Principal* shall not be liable upon any *claim* for compliance with a *direction*, under this subclause 8.1 unless the *direction* is a *compensable direction* and either:

- (a) the *direction* expressly states that it is a *compensable direction* pursuant to this subclause 8.1; or
- (b) the *Contractor* gives the *Superintendent* a written notice which identifies the *direction* and states that the *Contractor* considers that the *direction* is a *compensable direction* within 5 *business days* after the *direction* is given to the *Contractor*.

The *Contractor* must promptly give the *Superintendent* such additional information as the *Superintendent* reasonably requires in relation to a notice given under paragraph (b).

Subject to the *Contractor's* compliance with this clause and clause 41 if compliance with a *compensable direction* causes the *Contractor* to incur more cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to the *contract sum*.

If compliance with any *direction* under this subclause 8.1 (including a *compensable direction*) causes the *Contractor* to incur less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, then the difference shall be assessed by the *Superintendent* and deducted from the *contract sum*.'

Insert the following at the end of subclause 8.6:

'The *Principal* may organise official media releases for publication in relation to the *Works*. The *Contractor* shall provide any assistance that may be reasonably requested by the *Principal* to facilitate the production of any such media releases.'

9 ASSIGNMENT AND SUBCONTRACTING

Insert the following at the end of subclause 9.2:

'For the purposes of this subclause 9.2, the subcontractors which the *Contractor* has nominated in its tender (as amended by post-tender negotiation) are approved by the *Superintendent*. In considering whether to approve a request by the *Contractor* to use alternative subcontractors, the *Superintendent* may, in addition to any other matter which the *Superintendent* is entitled to consider, also take into account whether the proposed subcontractor is:

- (a) a local supplier (as defined in the *Principal's* procurement policy as published at the *date of acceptance of tender*); or
- (b) at least 50% owned by Aboriginal or Torres Strait Islander persons,

and if not, whether such a supplier is available to undertake the *work* which is proposed to be subcontracted.'

11A SPECIFIC LEGISLATION AND OTHER REQUIREMENTS

Insert new clause 11A as follows:

'11A SPECIFIC LEGISLATION AND OTHER REQUIREMENTS

11A.1 (Portable Long Service Leave) The party identified in *Item 19A* shall pay any levy payable and give any relevant notices pursuant to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld) in relation to *WUC*.

11A.2 (Information Privacy) The *Contractor* must comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under the *Contract* as if the *Contractor* was the *Principal*. *Personal information* collected by the *Principal* in connection with the *Contract* is collected for the purposes of enabling the *Principal* to properly discharge its functions as a local government authority in connection with the *Contract* and may be accessible by and disclosed to *personnel* engaged to assist the *Principal* in doing so. *Personal information* will otherwise be dealt in accordance with the *Principal's* privacy policy. The *Principal* is authorised to collect *personal information* in accordance with the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) and related legislation.

11A.3 (Goods and Services Tax) If GST, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), is imposed on any supply made pursuant to this *Contract*, the amount payable for the supply is to be increased by the amount of that GST. The party seeking payment must provide a tax invoice in the form required by the Act. If the payment is a progress payment to be made by the *Principal* to the *Contractor*, then the tax invoice shall be in the amount of the *Superintendent's* *progress certificate* issued pursuant to subclause 37.2.

11A.4 (Local Government) Nothing in the *Contract* shall be taken to fetter the power, rights or authority of the *Principal* as a local government authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) or any other *legislative requirement*.

11A.5 (Compliance) The *Contractor* must, and must ensure that to the extent relevant to them its *personnel*, in carrying out the *Contractor's* obligations under the *Contract*:

- (a) hold, maintain and are compliant with all requirements of, all necessary competencies, licences, accreditations, certifications, permits, clearances and other authorisations which are required:
 - (i) under contract;
 - (ii) pursuant to a *legislative requirement*, *third party requirement* or the *Principal's* *policies*; or
 - (iii) otherwise at law,

for the *Contractor* to carry out its obligations under the *Contract*;

- (b) act consistently with, and do all things reasonably necessary to enable the *Principal* to comply with, applicable *legislative requirements*, the *third party requirements* and the *Principal's policies*;
- (c) not do, or permit to be done, anything which would cause the *Principal* to be in breach of any *legislative requirements*, the *third party requirements* or the *Principal's policies*;
- (d) notify the *Principal* immediately if it becomes aware of any breach of this subclause 11A.6; and
- (e) when directed to do so by the *Superintendent*, provide the *Superintendent* with such information and documentation evidence as the *Superintendent* reasonably requests to satisfy the *Superintendent* that the *Contractor* has complied with this subclause 11A.6.

11A.6 (Indemnity) The *Contractor* shall indemnify and keep indemnified the *Principal* against any *claim* which may be brought against the *Principal* and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the *Principal* in connection with:

- (a) the *Contractor's* failure to comply with this clause 11A or to satisfy a *legislative requirement* as required by subclause 11.1;
- (b) any breach by the *Contractor* of its obligations under any *legislative requirement*; and/or
- (c) any enforcement of obligations imposed on the *Contractor* under any *legislative requirement*,

but the indemnity will be reduced to the extent that the act or omission of the *Principal* caused or contributed to the *claim* or loss.

11A.7 (Interpretation) In the event of any inconsistency, ambiguity, discrepancy or conflict in or between any obligation of the *Contractor* under subclauses 11A.1 to 11A.5, the *Contractor* must promptly notify the *Superintendent* who shall direct the *Contractor* as to the interpretation to be followed. In the absence of such a *direction*, the *Contractor* shall adopt the interpretation which places the higher or more onerous obligation on the *Contractor*.

15A LIABILITY

Insert a new clause 15A as follows:

'15A LIABILITY

15A.1 (Limit and exclusion of liability) Subject to subclause 15A.2, to the extent permitted by law:

- (a) the total aggregate liability of each party to the other in connection with the *Contract* (including in respect of any *claims*) shall not exceed the *liability limit*; and
- (b) neither party shall be liable to the other upon any *claim* for any *specified loss* unless and then only to the extent that the *Contract* expressly provides for that liability.

15A.2 (Application of clauses) Subclause 15A.1 does not apply to:

- (a) liability of the *Principal* to pay the *contract sum* as adjusted pursuant to the *Contract*;
- (b) liability of either party in connection with personal injury or death or damage to property;
- (c) liability of either party arising under an indemnity given under the *Contract* or as a result of an infringement of confidentiality or *intellectual property rights*, a

deliberate breach or abandonment of the *Contract*, *wilful misconduct* or fraud or other criminal conduct; or

- (d) liability of either party to the extent that the party is entitled to be indemnified under a policy of insurance required to be effected under the *Contract* or would have been so entitled if this clause 15A did not form part of the *Contract*, the party had effected and maintained the insurance policy in accordance with the *Contract*, complied with its obligations under the *Contract* and the policy, lodged and diligently pursued a claim under the policy and the insurer had remained solvent;
- (e) liability of the *Contractor* to the extent that the *Contractor* is entitled to recover that liability from any other third party (including any subcontractor, consultant or supplier of the *Contractor*) or would have been entitled to recover that liability but for any act or omission of the *Contractor*,

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

16 INSURANCE OF THE WORKS

Delete 'The insurance cover shall be for an amount not less than the aggregate of the:' and insert:

'The insurance cover shall be for an amount per occurrence of not less than the aggregate of the:'

In the second last paragraph of Alternative 1, delete 'be in the joint names of the parties' and insert 'be in the name of the *Contractor* and shall note the *Principal* as an interested party'.

17 PUBLIC LIABILITY INSURANCE

In Alternative 1, delete the existing text of subclause 17(a) and replace with:

'(a) be in the name of the *Contractor* with the *Principal* noted as an interested party;'

20 SUPERINTENDENT

At the end of clause 20 insert:

'The *Contractor* acknowledges and accepts that the *Superintendent* and individuals appointed as *Superintendent's Representatives* under clause 21 may be employees of the *Principal* or may have a general commercial relationship with the *Principal* beyond the performance of the appointed roles under this *Contract*.'

23A KEY PERSONNEL

Insert a new clause 23A as follows:

'23A KEY PERSONNEL

Unless the *Superintendent* approves a change in key personnel in writing, the *Contractor* must provide the key personnel (if any) identified in *Item 21A* to perform the roles during the period or periods stated in *Item 21A* or where no period is stated, until the end of the last *defects liability period*.

24 SITE

Delete the first sentence of subclause 24.1 and insert:

'The *Principal* shall give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site* on the later of:

- (a) the expiry of the time in *Item 22*; and
- (b) 10 *business days* after the *Contractor* has:
 - (i) complied with subclause 19.1; and

- (ii) given the *Superintendent* all other information and documentation and done all other things which the *Contract* elsewhere requires to be given or done before possession of the *site* is given.

Possession of the *site* may be non-exclusive.'

25 LATENT CONDITIONS

Delete '28 days' from subclause 25.3 and insert '5 *business days*'.

29 QUALITY

Delete the existing text of subclause 29.4 and insert:

'Instead of a *direction* pursuant to subclause 29.3 or clause 35, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject work. Where the *Contract* elsewhere provides for an applicable reduced level of service for the subject work, then the *contract sum* shall be adjusted in accordance with such provisions. Otherwise, there shall be a deemed *variation*.'

31 WORKING HOURS

Delete the first sentence of clause 31 and replace with:

'The working hours and *workings days* for work on the *site* are stated in *Item 22A*.'

32 PROGRAMMING

Insert the following at the end of the fourth paragraph of clause 32:

'The *construction program* must comply with the requirements stated elsewhere in the *Contract*. An updated *construction program* must be provided to the *Superintendent* at the times stated elsewhere in the *Contract*.'

34 TIME AND PROGRESS

Delete '28 days' from paragraph (b) of subclause 34.3 and replace with '10 *business days*'.

Delete the first paragraph of subclause 34.4 and replace with:

'To the extent that delays caused by *qualifying causes of delay* overlap with delays caused by other causes of delay, the *Contractor* shall not be entitled to an *EOT*.'

Insert the following at the end of subclause 34.4:

'To avoid doubt, all *EOTs* shall be claimed and granted in *working days*.'

Delete the existing text of subclause 34.5 and replace with:

'Within 20 *business days* after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate*, in its absolute discretion and without any obligation to do so for the benefit of the *Contractor*, direct an *EOT*. The *Contractor* shall not be entitled to any monetary compensation (whether under clause 34A or otherwise) in connection with an *EOT* granted by the *Superintendent* pursuant to this paragraph.

Neither:

- (a) a delay caused by a *compensable cause*; nor
- (b) a failure by the *Superintendent* to grant a reasonable *EOT* or to do so within the time required under subclause 34.5,

will set the *date for practical completion* at large or render subclause 34.7 unenforceable and the legal principle known as the 'prevention principle' shall not apply to such a delay or failure. Nothing in subclause 34.5 shall affect the *Contractor's* right to damages for a breach of contract.'

Delete subclause 34.9.

34A DELAY COSTS

Insert a new clause 34A as follows:

'34A DELAY COSTS

For every *working day* the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay costs pursuant to subclause 41.1, the *Superintendent* shall, under subclause 41.3, certify as due and payable to the *Contractor*, such extra costs as are reasonably and necessarily incurred by the *Contractor* by reason of the delay up to a maximum per *working day* of the amount stated in *Item 26A*.

Nothing in this clause 34A shall oblige the *Principal* to pay extra costs for delay –

- (a) which has already been included in the value of a *variation* or any other payment under the *Contract*;
- (b) caused by inclement weather or its effects, even if that inclement weather or those effects would not have delayed the *Contractor* but for an earlier delay caused by a *compensable cause*;
- (c) to the extent that the *Contractor* has failed to take all reasonable steps to mitigate the delay or the extra costs incurred.'

36 VARIATIONS

At the end of subclause 36.1, insert:

'The *Principal* may itself perform or engage others to perform any *work* which is omitted pursuant to this subclause 36.1 without payment of monetary compensation to the *Contractor* for doing so. No *variation* shall invalidate or amount to a repudiation of the *Contract*.'

Delete the last sentence of subclause 36.2.

Delete the existing text of subclause 36.4 and replace with.

'The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) rates or prices in a *price schedule* to the extent that it is reasonable to use them;
- (c) *variation rates* (or where no applicable *variation rates* are included in the *Contract*, other applicable rates or prices in the *Contract*);
- (d) reasonable rates or prices, which shall include the percentage stated in *Item 27A* for profit, and if the *Superintendent* considers it reasonable to do so, the percentage stated in *Item 27A* for overheads,

and any deductions shall include the full value of the deducted *work* (including profit and overheads) unless the *Superintendent* considers it reasonable to exclude an amount for overheads, in which case the amount so excluded shall not exceed the percentage stated in *Item 27A* for overheads.

That price shall be added to or deducted from the *contract sum*.

For clarity, percentages for profit and overheads shall be calculated independently of each other, not cumulatively.

Notwithstanding anything else in this subclause 36.4 or elsewhere in the *Contract*, the *Principal* shall not be liable upon any *claim* in connection with an *informal variation direction* unless the *Contractor* gives the *Superintendent* a written notice which:

- (a) identifies the *informal variation direction*; and
- (b) states that the *Contractor* considers the *informal variation direction* is a *direction* for a *variation*, within 5 *business days* after the *informal variation direction* is first given to the *Contractor*.'

37 PAYMENT

Delete the second paragraph of subclause 37.1, and insert:

'With each progress claim, the *Contractor* must submit the statutory declaration included in Annexure Part I and any other documentation which the *Contract* elsewhere requires to be submitted with a progress claim.'

Delete the existing text of subclause 37.2 and insert

'The balance remaining after all *required deductions* are deducted from the *claimable amount* shall be due from the *Principal* to the *Contractor*, or the *Contractor* to the *Principal*, as the case may be. The *Superintendent* shall, before the end of the *response period*, issue to the *Principal* and to the *Contractor* a *progress certificate* evidencing the *Superintendent's* opinion of that balance and, if that balance is different to the amount claimed by the *Contractor*, the reason for that difference.

If the *Contractor* does not make a progress claim in accordance with *Item 28*, the *Superintendent* may nevertheless issue the *progress certificate*.

Unless the *Principal* itself issues a *payment schedule* which complies with the requirements of the *security of payments legislation* within the timeframes permitted under that legislation, the *Superintendent's progress certificate* or *final certificate* (as the case may be) shall be deemed to be the *Principal's payment schedule*, and to the extent that it is necessary for the *Principal* to do so, the *Principal* authorises the *Superintendent* to receive progress claims and issue *payment schedules* on its behalf.

Subject to the following paragraph, if the *progress certificate* shows that an amount is due to the *Contractor*, then the *Principal* shall pay the amount of the *progress certificate* before the end of the *payment period*. If the *progress certificate* shows that an amount is due to the *Principal*, the *Contractor* shall pay the *Principal* the amount of the *progress certificate* within 15 *business days* after receiving the *progress certificate*.

If the *Superintendent* fails to include a *required deduction* in a *progress certificate*, then the *Principal* may nevertheless deduct that *required deduction* from the amount shown in the certificate and pay the balance (if any) to the *Contractor*.

Neither a *progress certificate* nor a payment of monies shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be on account only.'

In the second paragraph of subclause 37.4, delete 'Within 42 days after the expiry of the last defects liability period' and insert 'Before the end of the *response period*'.

Delete the third paragraph of subclause 37.4 and replace with:

'If the *final certificate* shows that an amount is due to the *Contractor*, then the *Principal* shall pay the amount of the *final certificate* before the end of the *payment period*. Otherwise, the *Contractor* shall pay the *Principal* the amount of the *final certificate* within 15 *business days* after receiving the *final certificate*.'

39 DEFAULT OR INSOLVENCY

Delete the existing text of paragraph (e) of subclause 39.2 and insert:

- '(e) in respect of subclauses 37.1 and 38.1, failing to provide a statutory declaration or documentary evidence or providing a statutory declaration or documentary evidence which is false, misleading or deceptive in any material respect; and
- (f) failing to comply with an obligation under, warranty given or representation made in clause 2B;'

39A TERMINATION FOR CONVENIENCE

Insert a new clause 39A as follows:

'39A TERMINATION FOR CONVENIENCE

39A.1(Right to terminate) The *Principal* may at any time, and for any reason, in its absolute discretion, terminate this *Contract* by giving written notice to the *Contractor*.

39A.2(Obligations and rights after termination) If the *Principal* exercises its right under this clause 39A, then:

- (a) the *Contractor* must comply with all reasonable *directions* of the *Principal* in connection with the termination;
- (b) the *Principal* may complete the uncompleted part of *WUC* itself or have it completed by others;
- (c) the *Principal* may, without payment of compensation to the *Contractor*, take possession of and use any documents (including design documents) and any goods which have become the property of the *Principal* and the *Principal* shall have a right of access to any premises at which those things are held in order to recover possession of those things.

39A.3 (Payment on Termination) The *Superintendent* shall issue a certificate evidencing, and the *Principal* shall, subject to the *Contract*, pay the *Contractor*:

- (a) the same payments that would have been payable if the *Contract* was frustrated under clause 40 with references to 'frustrated' and 'frustration' in clause 40 being read as references to 'terminated' and 'termination' respectively; plus
- (b) an additional amount equal to 5% of the balance of the *contract sum* remaining after deducting all amounts paid or payable to the *Contractor* pursuant to the *Contract* (including under subclause 39A.3(a)),

except that the total amount payable to the *Contractor* under the *Contract* shall not exceed the amount which would have been payable had the *Contract* not been terminated and the *Contractor* completed *WUC* in accordance with the *Contract*. The *Principal* shall not be liable upon any other *claim* in connection with the termination.'

39B PRINCIPAL'S RIGHTS ON FAILURE OF CONTRACTOR TO CARRY OUT AN OBLIGATION

Insert new clause 39B as follows:

'39B PRINCIPAL'S RIGHTS ON FAILURE OF CONTRACTOR TO CARRY OUT AN OBLIGATION

Without limiting the *Principal's* other rights, where the *Contractor* fails to carry out any obligation under the *Contract* (including the obligation to comply with a *direction* of the *Superintendent*) the *Principal* may, after giving five *business days* notice (unless urgent action is required, in which case the *Principal* need not give notice) to the *Contractor*, carry out that obligation itself or have it carried out by others. If the *Principal* incurs more cost in carrying out the obligation itself, or having it carried out by others than it would have incurred if the *Contractor* had carried out the obligation, then those additional costs shall be a debt due and payable by the *Contractor* to the *Principal* and shall be certified as such by the *Superintendent*. The *Principal* shall be entitled to have access to the *site* and any other place where an obligation under the *Contract* is to be carried out in order to exercise the rights provided by this clause 39B.'

41 NOTIFICATION OF CLAIMS

Delete the first paragraph of subclause 41.1 and replace with:

'References in clause 41 to a 'claim' are to be taken as references to a '*claim*' whether or not the term is italicized.'

In subclause 41.2, delete 'a party' and replace with 'the *Principal*' and delete 'the other party' and replace with 'the *Contractor*'.

Insert the following at the end of subclause 41.2:

'Notwithstanding any other provision of the *Contract*, the *Principal* shall not be liable upon any *claim* by the *Contractor*:

- (a) which is required to be communicated in accordance with another provision of the *Contract* unless the *claim* has been communicated strictly in accordance with that provision;
- (b) to which subclause 41.1 applies unless the *Contractor* has given the *Principal* a *prescribed notice* within 45 *business days* after first becoming aware of the circumstances giving rise to the *claim*.'

Insert the following at the end of subclause 41.3:

'For clarity, within 49 days of receipt of a *prescribed notice*, the party receiving a *prescribed notice* may give the *Superintendent* and the other party submissions in respect of the *claim* and the *Superintendent* shall be entitled to consider those submissions in assessing the *claim*.'

42 DISPUTE RESOLUTION

In subclause 42.2:

Delete 'or to agree on methods of doing so' from the first paragraph.

Delete 'or methods' from the first paragraph.

Delete 'arbitration' from the second paragraph and insert:

'mediation which shall be conducted in accordance with the mediation rules published by the Resolution Institute current as at the *date of acceptance of tender*'.

Delete subclause 42.3.

Insert a new subclause 42.5 as follows:

'42.5 Disputing a direction of the Superintendent

Unless a notice of *dispute* disputing a *direction* of the *Superintendent* is given in accordance with subclause 42.1 within 25 *business days* after the *direction* is given:

- (a) the *Contractor* will be deemed to have irrevocably accepted the *direction* and shall be barred from disputing the *direction* under this *Contract* or otherwise; and
- (b) the *Principal* shall not be liable upon any *claim* that is inconsistent with the *direction*.'

Annexure Part D – Drawings

Annexure Part E – Specification

Refer to Document “DRFA PROGRAM *T2324.18* General Specification” as well as relevant Appendices stated within document including Appendix D – Technical Specification. Also refer to Contract Requirements as stated within Document “DRFA PROGRAM Drainage Tender Part 6 Response Schedules” & “DRFA PROGRAM Drainage Tender *and T2324.18* - Contract – Construct Only - Standard Risk”

Annexure Part G – Price Schedule

Refer to file attached “Appendix B- DRFA PROGRAM Drainage Tender and *T2324.18* - Pricing Schedule and Scope of Works”

Annexure Part I – Contractor's Statutory Declaration

Oaths Act 1867
STATUTORY DECLARATION

QUEENSLAND
TO WITNESS

I, _____ of _____ in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between Banana Shire Council and _____ (**Contractor**), for the _____ (**Contract**):

1. I hold the position of _____. Having made all reasonable inquiries, I am in a position to know the facts contained herein and am duly authorised by the Contractor to make this declaration on its behalf.

2. All subcontractors, suppliers, and consultants ('subcontractors') of the Contractor have been paid all that:

(a) _____ is due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted in respect of their part of the work under the Contract; and

(b) the subcontractors have claimed is due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted in respect of their part of the work under the Contract,

except as disclosed in paragraph 3.

3. The Contractor has not paid the following amounts which are due and payable to subcontractors or which subcontractors claim are due and payable to them:

Name of subcontractor	Date of claim	Amount claimed	Amount paid	Reason for not paying amount claimed

4. All the Contractor's employees who at any time have been engaged on work under the Contract by the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted (including, without limitation building industry superannuation and long service leave levies), except as disclosed in paragraph 5.

5. The Contractor has not paid the following amounts which are due and payable to workers:

Name of worker	Amount unpaid	Basis of payment (e.g. wages)	Reason for not paying amount claimed

6. All subcontracts and employee agreements are in accordance with applicable law and any specific requirements in the Contract.

7. The Contractor is not aware of any current or potential legal action against it which it has not previously disclosed to the Principal.

8. The Contractor remains able to pay its debts as and when they become due and payable. None of the events described in subclause 39.11(a), (b), (c) or (d) of the AS4000-1997 General Conditions of Contract (or any analogous event) has occurred in relation to the Contractor since the date on which the Contractor submitted its tender for the Contract to the Principal.

9. No non-conforming building products (as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld) or building products the subject of a warning statement issued by the Minister have been incorporated into the works.

10. All insurances which are required to be effected and maintained under the Contract remain in place.

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

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

☐ Solicitor ☐ Justice of the Peace
☐ Commissioner for declarations

Signature of Deponent

Annexure Part J – Other Documents

Refer to Appendix C, D, of the Contract Documents

