



## REQUEST FOR TENDER

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Main Switchboard Replacement at Rainbow Street Sports  
Club Complex Biloela

CONTRACT NO: T2324.42

# Request for Tender



PART 1 – PREAMBLE				
Banana Shire Council invites tender from suitably qualified tenderers for main switchboard replacement & associated trenching and cabling works at Rainbow Street Sports Club, Biloela as described in detail in Part-5 Scope. All WUC are to be completed by 30 August 2024				
PART 2 – GENERAL INFORMATION				
1. Contract details:	<b>T2324.42 Main Switchboard Replacement at Rainbow Street Sports Club Biloela</b>			
2. Communications by Tenderers:	Communications regarding the Procurement Process must be submitted to <a href="mailto:enquiries@banana.qld.gov.au">enquiries@banana.qld.gov.au</a> no later than five (5) calendar days prior to the time stated in Item 4			
3. Briefing or site inspection:	Details	Maximum attendees	Mandatory	RSVP
	Site inspections can be arranged by contacting the Senior Land and Lease Management Coordinator on 07 4992	N/A	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
4. Submission of Tender:	Tenders must be submitted electronically only at <a href="mailto:tenders@banana.qld.gov.au">tenders@banana.qld.gov.au</a> by no later than 11:00am on 29 <sup>th</sup> of May 2024. <i>Note// Adequate time must be allowed for the Tender and all supporting documents to be uploaded or received by this time.</i>			
5. Evaluation Criteria:	Evaluation Criteria			Weighting (%) (Optional)
	Price			40%
	Ability to complete project within required timeframe			25%
	Previous Experience			15%
	Quality, Environmental, Safety and Other Management Processes			15%
	Local Content			5%
6. Tenders should not be longer than:	N/A			
7. 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)			
8. Complaints:	Complaints regarding Procurement Process to be directed to: <a href="mailto:enquiries@banana.qld.gov.au">enquiries@banana.qld.gov.au</a>			
PART 3 – PROCUREMENT PROCESS CONDITIONS				
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 <b>T2324.42 Main Switchboard Replacement at Rainbow Street Sports Club Biloela – Procurement Process Condition.</b>				
PART 4 – CONTRACT				
The contract shall be substantially in the form attached to or provided with this Request for Tender and identified as <b>T2324.42 Main Switchboard Replacement at Rainbow Street Sports Club Biloela - Contract.</b>				
PART 5 – SCOPE				
The Scope is described in the document(s) attached to or provided with this Request for Tender and identified as <b>A) Electrical Service – Technical Specifications Scope from Andersons Electrical Engineers.</b>				

- B) Electrical Services Maps & Design (23165RE001\_A) from Andersons Engineers.
- C) Single Line Diagram & Switchboard Design from Andersons Engineers.

## **PART 6 – 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 **T2324.42 Main Switchboard Replacement at Rainbow Street Sports Club Biloela Response Schedule**.



## GENERAL SPECIFICATION (STANDARD RISK)

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Main Switchboard Replacement at Rainbow Street  
Sports Club Complex Biloela

CONTRACT NO: T2324.42

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## 1. THE SPECIFICATION

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- 1.1 **(Documents comprising the specification)** The specification comprises the following documents:
- (a) this General Specification;
  - (b) other documents to the extent that they are incorporated (whether physically or by reference) into the specification, namely:
    - (i) relevant Australian Standards;
    - (ii) Principal's Policies and Procedures;
    - (iii) AS/NZS 3000:2018 Electrical installations (the Wiring Rules)
    - (iv) AS/NZS 3012:2019 Electrical Installations – Construction and demolition sites
    - (v) AS/NZS 3017:2007 Electrical installations – Verification guidelines
    - (vi) AS/NZS 3760:2010 In-service safety inspection and testing of electrical equipment AS/NZS 4836:2011 Safe working on low-voltage electrical installations and equipment.
- 1.2 **(Precedence of documents comprising specification)** The documents comprising the specification shall be taken to be mutually explanatory. If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1 then the documents will take precedence in the order set out in clause 1.1, with the document listed at 1.1(a) being the highest in the order.
- 1.3 **(Documents incorporated by reference into specification)** The Contractor is deemed to have obtained copies of, read, understood, and allowed for compliance with the Specification (including any documents which are incorporated into it by reference only).

## 2. DEFINITIONS

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- 2.1 **(Definitions)** Capitalised terms used in the General Specification have the meanings assigned to them in the General Conditions of Contract (if any) unless the context otherwise requires. Terms which are separately defined in a specific clause have the meanings assigned in those clauses. Otherwise, in the General Specification:
- (a) **Administrator** means, when used in or by reference to Department of Transport and Main Roads documents, the Superintendent;
  - (b) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations, and permissions from any Authority and any related fees and charges;
  - (c) **Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality, or any other person having jurisdiction over the project;
  - (d) **General Conditions of Contract** means the General Conditions of Contract referred to in the formal instrument of agreement to which this General Specification is attached;
  - (e) **General Specification** means this document and all attachments to it which forms part of the Contract;
  - (f) **Good Industry Practice** means:

- (i) the standard of skill, care, and diligence; and
- (ii) the practices, methods, techniques, and acts,  
of a skilled, competent, and experienced contractor engaged in the business of carrying out Work similar to the WUC;
- (g) **Principal** has the same meaning as given to the term “Principal” or “Purchaser” in the General Conditions of Contract (as the case may be);
- (h) **Principal’s Policies and Procedures** means the policies, procedures, codes, plans, guidelines, and the like provided or made available by or on behalf of the Principal to the Contractor from time to time, including those published on the Principal’s website which are in any way applicable to this Contract;
- (i) **Program** has the same meaning as given to the term “construction program” or “program” in the General Conditions of Contract (as the case may be);

### **3. CONTRACTOR’S GENERAL OBLIGATIONS, WARRANTIES AND REPRESENTATIONS**

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- 3.1 **(Ability)** The Contractor must ensure, and warrants and represents that the Contractor and, to the extent applicable to them, its Personnel:
- (a) have the experience, skills, expertise, and resources;
  - (b) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances, or other authorisations,
- which are required for the Contractor 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 Contractor has completed its obligations under the Contract.
- 3.2 **(Standard)** The Contractor must, and warrants and represents that it will, and to the extent applicable to them will ensure that its Personnel, carry out WUC and Contractor’s other obligations in connection with the Contract in accordance with Good Industry Practice.
- 3.3 **(Methodology)** The Contractor:
- (a) warrants and represents that the methodology for carrying out and completing WUC stated in the Contract is suitable, appropriate and adequate; and
  - (b) must, and warrants and represents that it will, carry out and complete WUC in accordance with that methodology (if any) unless otherwise directed by the Superintendent or permitted or required under the Contract.
- 3.4 **(Goods)** The Contractor warrants and represents that all plant, equipment, materials, parts, consumables or other goods (‘Goods’) supplied, used or installed as part of WUC shall:
- (a) at the time that they are supplied, used, or installed, be new;
  - (b) be free from defects and of merchantable quality;
  - (c) comply in all respects with the Contract including as to quality, quantity, performance, functionality and description;
  - (d) conform to any sample goods approved by the Principal or Superintendent;
  - (e) comply with any applicable requirement, code, guideline, policy, drawing, or specification included or incorporated by reference into the Contract or, if none is

included or incorporated, any Australian Standards applicable to the Goods and any applicable Legislative Requirements; and

- (f) be suitable and adequate for the purposes for which they are supplied, used or installed.

**3.5 (Equipment)** The Contractor warrants and represents that:

- (a) the Equipment and all materials comprising the Equipment shall, at the time at which the Equipment is Delivered:
  - (i) be new, free from defects, and of merchantable quality;
  - (ii) comply in all respects with the Contract including as to quality, quantity, performance, functionality, and description;
  - (iii) conform to any sample goods approved by the Principal or Superintendent;
  - (iv) comply with any applicable requirement, code, guideline, policy, drawing, or specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian standards applicable to the Equipment and any applicable Legislative Requirements; and
  - (v) be suitable and adequate for the purposes for which the Equipment is supplied.
- (b) all other plant, equipment, materials, parts, consumables or other goods ('Goods') supplied, used or installed as part of WUC shall:
  - (i) at the time that they are supplied, used, or installed, be new;
  - (ii) be free from defects and of merchantable quality;
  - (iii) comply in all respects with the Contract including as to quality, quantity, performance, functionality and description;
  - (iv) conform to any sample goods approved by the Principal or Superintendent;
  - (v) comply with any applicable requirement, code, guideline, policy, drawing, or specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian Standards applicable to the Goods and any applicable Legislative Requirements; and
  - (vi) be suitable and adequate for the purposes for which they are supplied, used or installed.

**3.6 (Investigations)** The Contractor warrants and represents that the Contractor has:

- (a) carefully reviewed the Contract and all other information provided by the Principal to the Contractor for the purpose of WUC, and is satisfied that the Contract and other information is appropriate and adequate to enable the Contractor to comply with its obligations under the Contract;
- (b) inspected the Site;
- (c) familiarised itself with factors that could affect the ability of the Contractor to carry out WUC for the Contract Sum, including weather conditions and the availability of temporary access, temporary lighting, power, telephone services, water supply, waste disposal facilities and local labour.

**3.7 (Construction Plant)** The Contractor warrants and represents that all Construction Plant utilised in carrying out WUC shall be in good working condition, suitable and appropriate for the Work



for which it is used, and compliant with all applicable Legislative Requirements.

3.8 **(Contractor Documents)** The Contractor warrants and represents that all Contractor Documents will:

- (a) comply with the requirements of the Contract and applicable law;
- (b) be consistent with or exceed applicable industry standards;
- (c) be of a standard and quality expected of a contractor using Good Industry Practice;
- (d) be suitable and adequate for the purpose for which they are provided.

In this clause, **Contractor Documents** means:

- (i) those records, reports, designs, specifications, certificates, plans (including management plans), procedures, manuals and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Contractor; and
- (ii) all information advice, designs, calculations and recommendations in those documents;

but does not include those that are incomplete at the time at which the Principal exercises its rights under subclause 39.4 of the General Conditions of Contract or the Contractor exercises its rights under subclause 39.9 of the General Conditions of Contract);

## 4. CONTRACT MANAGEMENT

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4.1 **(Contractor's Superintendence)** The Contractor shall provide all superintendence necessary for the proper fulfilment of the Contractor's obligations under the Contract, including, unless the Superintendent directs otherwise, a competent site manager and site foreman approved by the Superintendent (with such approval not to be unreasonably withheld). Unless otherwise agreed by the Superintendent, the site manager shall be the Contractor's representative under clause 22 of the General Conditions of Contract.

4.2 **(Requests for review and information)** The Superintendent will endeavor to provide a response and/or Direction in relation to a written request for information from the Contractor within 5 Business Days of receipt of such request. The response time will be dependent on the complex nature and or quantity of clarifications per information request submitted. The Contractor is encouraged to make recommendations and or suggestions for the Superintendent's consideration when submitting such requests.

4.3 **(Shop drawings)** The Contractor is deemed to have allowed for the time permitted by subclause 8.3 of the General Conditions for examination of workshop drawings in the Program. The Contractor must review and incorporate any comments received from the Principal or the Principal's nominated Personnel in relation to the workshop drawings. Unless otherwise directed, the Contractor is not required to (and must not) resubmit revised workshop drawings to the Principal or its Personnel.

Final structural steel shop drawings 'Issued For Fabrication' (IFF) must be submitted to the Superintendent for information/filing purposes only. The Contractor, as part of its own quality management procedures, must ensure that all previous comments have been incorporated. The Contractor is encouraged to submit the completed 3D model / CAD file along with the 2D PDF files to assist the Superintendent in the initial shop drawing review.

4.4 **(Direction by Principal or Superintendent)** The Principal shall not be bound by any verbal advice given or information furnished by any Personnel of the Principal or Superintendent in respect of the Contract. The Contractor must not accept instructions from any person other than the Superintendent and/or the Superintendent's Representative. The Contractor acknowledges

and agrees that its obligations and liabilities in connection with the Contract are not affected by any:

- (a) receipt or review of, or comment or Direction on, a document submitted by the Contractor;
- (b) failure by the Principal or Superintendent to review, comment on, or give a Direction on any document submitted by the Contractor; or
- (c) failure by the Superintendent to give its approval pursuant to clause 8.3.

Before relying on the receipt, review, or comment by the Superintendent, or Principal, or complying with a Direction in relation to a document, the Contractor must notify the Superintendent in writing, if doing so will affect a warranty, representation or obligation of the Contractor under the Contract.

4.5 **(Code of Conduct)** In this clause, 'Code of Conduct' means the Principal's code of conduct which is available on the Principal's website. The Code of Conduct identifies the standards and behaviours expected from all workers, including contractors, in delivering services to the local community. The Contractor must:

- (a) communicate the Code of Conduct to all of the Contractor's Personnel;
- (b) comply with, and ensure that its Personnel comply with, all requirements of the Code of Conduct, including all standards contained within the Code of Conduct; and
- (c) if directed to do so by the Superintendent, obtain and provide to the Superintendent a signed form from all Personnel engaged by the Contractor to perform any part of WUC which states that the person has read, understood and agrees to comply with the Code of Conduct.

## 5. DESIGN WORK

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5.1 **(Application)** This clause 5 only applies where a part of The Works is to be designed by the Contractor.

5.2 **(References)** In:

- (a) this clause:
  - (i) **Design Documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the Contract to be created by the Contractor for the construction of The Works and includes any design, materials, documents and methods of working provided by the Contractor;
  - (ii) **Contractor's Design Obligations** means all tasks necessary to design, engineer and specify The Works which are required by the Contract to be carried out by the Contractor, including preparation of the Design Documents;
  - (iii) **Existing Design** means any design contemplated in clause 5.3(a), including any drawings, specifications and other information, samples, models, patterns and the like which have been prepared by or on behalf of the Contractor prior to the Date Of Acceptance Of Tender and which are incorporated into the Contract;
- (b) the General Conditions of Contract:
  - (i) **'Subcontractor'** includes a consultant;

- (ii) **“Subcontract”** or **“Subcontracting”** includes, unless the context requires otherwise, engaging a consultant;
- (c) subclause 29.3(c) of the General Conditions of Contract a reference to **‘correct’** includes ‘redesign’;
- (d) subclause 36.1 of the General Conditions of Contract, the Superintendent’s right to direct the Contractor to vary WUC includes a right to vary the Design Documents.

## 5.3 **(Primary obligation)** Where any part of The Works:

- (a) has been designed by the Contractor prior to the Date Of Acceptance Of Tender, the Contractor must ensure, and warrants and represents, that such part of The Works has been designed and will be constructed in accordance with the requirements of the Contract and applicable Legislative Requirements so that this part of The Works, when completed, is suitable and adequate for the purpose stated in or to be reasonably inferred from the Contract;
- (b) is to be designed by the Contractor, the Contractor must:
  - (i) ensure that the Personnel engaged by the Contractor in connection with the Contractor’s Design Obligations are suitably qualified and experienced;
  - (ii) exercise, and ensure that its Personnel exercise, due skill, care and diligence in carrying out and completing the Contractor’s Design Obligations; and
  - (iii) design and construct this part of The Works in accordance with the requirements of the Contract and applicable Legislative Requirements, so that this part of The Works, when completed, is suitable and adequate for the purpose stated in or to be reasonably inferred from the Contract

A breach of this clause 5.3 shall be a substantial breach of the Contract.

## 5.4 **(Obligations, warranties and representations not affected)**

The obligations, warranties and representations in clause 5.3 remain unaffected notwithstanding:

- (a) that design work has been carried out by or on behalf of the Principal;
- (b) any receipt or review of, or comment or Direction on, the Design Documents by the Superintendent; or
- (c) any Variation, except to the extent that, before complying with a Direction for a Variation, the Contractor has expressly notified the Principal in writing that so complying would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

## 5.5 **(No amendments to Existing Design)** The Contractor must ensure that the Design Documents are entirely consistent with the Existing Design (if any), save and except for minor changes which do not:

- (a) adversely affect the quality, standard, functionality, performance or other characteristics of The Works;
- (b) adversely impact on the costs of operation or maintenance of The Works;
- (c) adversely impact on the scope, duration or extent of manufacturers’ warranties able to be provided;

- (d) compromise any other warranty given or representation made in the Contract or in the Contractor's tender;
- (e) otherwise result in any non-compliance by the Contractor with an obligation under this Contract.

When submitting Design Documents for review by the Superintendent, the Contractor must identify any aspects of the Design Documents which differ from the Existing Design and must provide the Superintendent with all information reasonably requested in respect of such differences, including the reason for the changes and evidence that the changes comply with this clause 5.5.

The Contractor must not commence any Work in relation to Design Documents until they are approved by the Superintendent.

- 5.6 **(Discrepancies)** Notwithstanding clause 8.1 of the General Conditions of Contract, the Contractor shall not be entitled to an adjustment of the Contract Sum for any inconsistency, ambiguity or discrepancy in any document prepared by or on behalf of the Contractor for the purpose of carrying out WUC (including any of the Design Documents and any documents included in the Contract pursuant to clause 5.3(a)) or between such a document and any other document prepared for the purpose of carrying out WUC.
- 5.7 **(Access)** Subject to clause 24 of the General Conditions of Contract, the Principal shall by (from the awarded date), give the Contractor access to the Site sufficient to enable the Contractor to commence and carry out the Contractor's Design Obligations in accordance with the Contract. The Principal shall notify the Contractor in writing of the date when access will be available.
- 5.8 **(Professional indemnity insurance)** In addition to the insurances required elsewhere in the Contract, the Contractor must before commencing WUC, effect and maintain professional indemnity insurance with levels of cover not less than \$20 million. The Contractor shall ensure that every design consultant engaged by the Contractor in connection with WUC, effects and maintains professional indemnity insurance with equivalent levels of cover. The insurance shall be maintained by the Contractor and the Contractor's consultants until the Final Certificate is issued and thereafter for a period of 6 years.
- 5.9 **(Intellectual property rights in design)** The Contractor warrants that the Existing Design does not, and the Design Documents shall not, infringe any patent, registered design, trademark or name, copyright or other protected right and indemnifies the Principal against such respective infringements. The Contractor grants to the Principal an irrevocable licence to take possession of, use and copy the Design Documents for WUC. Such licence shall also include:
  - (a) any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, The Works; and
  - (b) the carrying out and completion of work (including WUC or any part of it) by the Principal or another party on behalf of the Principal where the Contract has been:
    - (i) terminated by either the Principal or the Contractor or otherwise ended at law prior to the issue of the Final Certificate; or
    - (ii) the Principal has taken Work out of the hands of the Contractor pursuant to clause 39.5 of the General Conditions of Contract.
- 5.10 **(Standard of Design Documents)** The Design Documents must, unless the Superintendent otherwise directs, comply with AS 1100.101-1992: Technical Drawing – General as amended or replaced from time to time.

## 6. WORK BY OTHERS

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- 6.1 **(Work by others)** The Work identified in Appendix A will be undertaken by others.

- 6.2 **(Obligation to cooperate)** The Contractor and its Personnel shall liaise, cooperate, and coordinate WUC with the Principal and any other Personnel of the Principal performing Work or services at the Site (including the Work identified in clause 6.1) so that, to the extent that it is within the control of the Contractor, WUC is coordinated and integrated with the Work and services performed by the Principal's Personnel. The Contractor must use all reasonable endeavours to avoid interference with, or disruption to, or delay to WUC, to the Work identified in clause 6.1, and to any other Work or services undertaken by the Principal's Personnel at the Site. The Contractor must keep the Superintendent informed on all matters involving such coordination.
- 6.3 **(No claim by Contractor)** Notwithstanding anything else in the Contract, the Principal shall not be liable upon any Claim (including a claim for delay costs under the General Conditions of Contract) arising as a consequence of any interference with, or disruption or delay to, WUC or any of the Contractor's obligations under this Contract, caused or contributed to by a contractor carrying out the Work identified in clause 6.1.

## 7. PRINCIPAL SUPPLIED MATERIALS

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- 7.1 **(Definitions)** In this clause, 'Principal Supplied Materials' means materials identified in Appendix B which the Principal is required under the Contract to supply, or which the Principal otherwise agrees in writing to supply, to the Contractor free of charge for use in WUC.
- 7.2 **(Principal's obligation to provide)** The Principal must:
- (a) deliver Principal Supplied Materials to the Site; or
  - (b) make the Principal Supplied Materials available at the location (if any) stated in the Contract,
- at the time at which the Program required the materials to be provided or made available, or such other time as the Principal agrees in writing.
- 7.3 **(Inspection by Contractor)** Upon any Principal Supplied Materials being delivered or made available, the Contractor must immediately inspect the materials and ensure that the specified quantity has been delivered and that the materials are in a condition which complies with the requirements of the Contract.
- 7.4 **(Notice of deficiencies)** If, within 5 Business Days of the materials being delivered or made available, the Contractor does not notify the Superintendent in writing of any deficiencies, then it shall be deemed that the specified quantity of Principal Supplied Materials has been delivered or made available to the Contractor in a condition that complies with the Contract.
- 7.5 **(Risk)** Any Principal Supplied Materials which, after it is delivered or made available to the Contractor, is lost, destroyed, contaminated, or altered in any way such that the materials no longer comply with the Contract, shall be immediately removed, disposed of, and replaced by the Contractor, at the Contractor's expense, with materials that comply with the Contract, unless the Superintendent expressly directs otherwise. The Contractor must notify the Superintendent in writing of any lost, destroyed, contaminated, or altered materials within 5 Business Days of becoming aware of such events.
- 7.6 **(Excess)** Unless otherwise directed by the Superintendent, the Contractor must return any excess Principal Supplied Materials to the Principal at the place required by the Superintendent.
- 7.7 **(Ownership)** Principal Supplied Materials, other than destroyed, contaminated or altered material which is disposed of by the Contractor pursuant to clause 7.5 shall, notwithstanding anything else in this clause 7, remain the property of the Principal at all times.

## 8. APPROVALS AND OTHER LAW

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- 8.1 **(Approvals obtained by the Principal)** NIL.

- 8.2 **(Identifying, obtaining and maintaining Approvals)** The Contractor must identify and notify the Principal of all Approvals which are necessary for the proper performance of WUC (other than Approvals which the Principal has advised the Contractor it has already obtained). The Contractor must obtain and maintain all such Approvals until the end of the last Defects Liability Period to expire. The cost of obtaining and maintaining all such Approvals shall be borne by the Contractor.
- 8.3 **(Final certificates)** The Contractor must:
- (a) obtain all required approvals prior to beginning works,
  - (b) obtain all final certificates; and
  - (c) provide a list of all inspections and forms required for the final certificate before commencing any WUC.
- 8.4 **(Compliance)** The Contractor must ensure that its Personnel comply with all Approvals and other laws which are in anyway applicable to WUC, including, unless the Contract expressly provides otherwise, by paying all fees, royalties, levies, charges, costs, expenses, taxes, or duties.
- 8.5 **(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,
- any Approvals required for the Contractor to perform WUC.
- 8.6 **(Timing)** The Contractor is deemed to have allowed a reasonable time in the Program for all required Approvals to be applied for and obtained.
- 8.7 **(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.

## 9. SITE

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- 9.1 **(Location)** The Site is identified in separate documents named: electrical service maps and design **(23165R\_E001\_A & 23165R\_E002\_A)**.
- 9.2 **(Requirements of access or possession)** The Contractor's attention is drawn to clause 24 of the General Conditions of Contract. The Contractor must provide the following documentation and information to the Superintendent. The documentation and information must be provided:
- (a) in a form that complies with the requirements of the Contract;
  - (b) as a requirement of the Principal giving access to or possession of the Site; and
  - (c) within the earlier of:
    - (i) 20 Business Days after the Date Of Acceptance Of Tender; and
    - (ii) 5 Business Days prior to any scheduled pre-start meeting.
- 9.3 **(Site specific induction)** The Contractor must ensure that:
- (a) each of the Contractor's Personnel working on Site receives a site-specific induction;



- (b) every visitor to the Site either receives a site-specific induction or is accompanied at all times at the Site by someone who has received a site-specific induction for that Site (or, where the Site comprises more than one location, the particular part of the Site).
- 9.4 **(Site specific requirements)** The Contractor must comply with the following site requirements, and any reasonable requirements of the Principal in relation to the Contractor's access to or conduct on the Site:
  - (a) Induction requires before the job started for every staff member.
  - (b) Project managers organise the specific site induction.
- 9.5 **(Locations within Site)** The Contractor must ensure that all plant, equipment, materials, temporary workshops, stores, and offices are kept within the confines of the Site at locations approved by the Superintendent.
- 9.6 **(Unauthorised entry to site)** The Contractor must use all reasonable endeavours to prevent any unauthorised entry to the Site.
- 9.7 **(Security fencing)** The Contractor must supply, install, maintain, repair, and remove security fencing around the Site. The security fencing must:
  - (a) clearly identify the extents of the Site to the public;
  - (b) be covered with opaque screening/printed fence wrap to limit viewing into the Site and include any graphic design provided by the Principal; and
  - (c) be kept in good condition.
- 9.8 **(Signage)** No signage is to be placed on the Site or the perimeter (other than safety signage) without the prior written consent of the Superintendent.
- 9.9 **(Deliveries)** The Contractor is responsible for delivery and unloading of all goods, equipment and other materials used in WUC (including any such materials used by subcontractors), providing space for the storage of the materials, handling the materials, and checking that the materials comply with the requirements of the Contract.
- 9.10 **(Setting out)** The Contractor's attention is drawn to clause 26 of the General Conditions of Contract. The Contractor must:
  - (a) set out The Works from the information shown on the drawings;
  - (b) check all dimensions on Site before proceeding with WUC; and
  - (c) notify the Superintendent of any omissions or discrepancies within the drawings or General Specification.
- 9.11 **(Interference)** The Contractor must use all reasonable endeavours to minimise interference with existing amenities, whether natural or man-made, and the amount of noise caused by the carrying out of WUC.
- 9.12 **(Services)** Except to the extent that the Contract expressly provides otherwise, the Contractor must, at its expense, connect and otherwise provide all required services, including water, sewerage, drainage, electricity, and communications, and obtain all required Approvals for connection or use of services.
- 9.13 **(Public utilities and other assets)** Without limiting the Contractor's obligations under clause 15 of the General Conditions of Contract, the Contractor must use all reasonable endeavours to identify, locate, and prevent damage to overhead public utility lines, surface drainage works,

underground pipes, conduits, and cables in the vicinity of The Works. If the Contractor or any of its Personnel damage any such assets, then:

- (a) the Contractor must immediately report such damage to the owner of the asset and the Superintendent; and
- (b) comply with the requirements of the owner of the asset (including by paying for any required repairs or renewals).

The Contractor must notify the Superintendent immediately if the Contractor considers that it is necessary to alter the location or level of any existing assets to conform with the requirements of the Contract. If directed to do so by the Superintendent, the Contractor must arrange for the relocation Work to be carried out by the appropriate Authority. Subject to clause 25 of the General Conditions of Contract, the Contractor shall bear the cost of such relocation.

**9.14 (Other property)** The Contractor must:

- (a) arrange for any other land (in addition to land made available by the Principal) required by the Contractor to carry out WUC, whether for the storage of materials, plant, or equipment, or for any other purposes;
- (b) obtain the Principal's permission in writing to enter any private property (as that term is defined in the *Local Government Act 2009* (Qld) ('Private Property')) before entering the Private Property for the purpose of carrying out WUC or fulfilling any other obligation of the Contractor under the Contract;
- (c) comply with all Legislative Requirements, including the *Local Government Act 2009* (Qld) in relation to entering Private Property;
- (d) not unreasonably obstruct, destroy, or damage any Private Property, other land or other property, and ensure that all roadways, drains, watercourses, buildings, fences, gardens, walls, concrete surfaces and paths, grass and trees, and other property are left in a condition equivalent or better than that in which the property was found, unless the Contractor provides written evidence that the owner of the property agrees otherwise;
- (e) take over control of any approval, permit, or license that the Principal has in place, in relation to the Site or other land made available by the Principal, prior to commencing any WUC on the Site or using or occupying the other land.

**9.15 (Private property)** The Contractor must ensure that all Personnel of the Contractor that enter Private Property in connection with WUC:

- (i) 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);
- (ii) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Contractor's Personnel are authorised as local government workers (as that term is defined in the *Local Government Act 2009* (Qld)) ('Local Government Worker') by the Principal; and
- (iii) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).

## **10. PROGRAM**

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**10.1 (Format and details)** The Program shall:



- (a) be prepared utilising native format Microsoft Project software, or alternative software as approved in writing by the Superintendent;
  - (b) be submitted in electronic format with copies in both PDF format and native Microsoft Project file format; and
  - (c) detail the Contract milestone dates, the commencement and completion dates of each trade, and/or sub-contract;
  - (d) work activity, procurement activities and supply contract activity, with activities linked in a logical progression through a 'critical path' and identify any float based on a continuous cycle of WUC.
- 10.2 **(Allowances in program)** The Contractor must allow, and is deemed to have allowed, in the program for:
- (a) the time permitted under the General Conditions of Contract for the Superintendent to review documents for which the Contract requires the Contractor to obtain the Superintendent's Direction about such documents; and
  - (b) other timeframes under the Contract within which the Superintendent and the Principal are permitted to act.
- 10.3 **(Approval of Program)** The approval of, or permission to adopt, a Program by the Superintendent will not relieve the Contractor of any of its obligations under the Contract, including the obligation to not, without reasonable cause, depart from an earlier approved Program.
- 10.4 **(Improving progress)** If, in the opinion of the Superintendent, the Contractor falls behind an approved Program, the Contractor must, unless otherwise directed by the Superintendent:
- (a) take such steps as are necessary to improve progress (including the use of additional resources);
  - (b) promptly, and within the time directed by the Superintendent, submit a revised Program, identifying the steps taken or to be taken.

The Principal shall not be liable upon any Claim in connection with the Contractor's compliance with this clause.

## 11. STAKEHOLDER MANAGEMENT

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- 11.1 **(Workshop and plan)** The Contractor shall:
- (a) convene a workshop with the Principal, Superintendent, and the Contractor to identify all stakeholders on the project and to agree protocols for communications between stakeholders and the various parties of the Contract;
  - (b) develop a stakeholder management plan based on the outcome of the workshop and the requirements of this clause; and
  - (c) obtain and comply with the Superintendent's Direction regarding the plan pursuant to subclause 8.3 of the General Conditions of Contract.
- 11.2 **(Notice to Superintendent)** With respect to notification, the *Contractor* shall give the Superintendent a minimum of 15 business days' written notice of changes in traffic movements or any Work impacting individual property owners or businesses. The notice shall be clearly titled 'Notice of Changes in Traffic Movements' or 'Notice of Any Works Impacting Individual Property Owners or Businesses' and contain the following information:

- (a) title of notice;
  - (b) start and finish dates of Work;
  - (c) purpose of communications;
  - (d) type and length of interruption;
  - (e) affected locations (chainages, streets, property accesses, etc);
  - (f) whether the works subject to weather;
  - (g) who is carrying out the works (i.e. contractor or subcontractor); and
  - (h) Contractor details.
- 11.3 **(Notice to stakeholders)** The Principal shall be responsible for undertaking public notification distributing through their normal channels. The Contractor shall be responsible for hand delivering written notices prepared by the Principal to individuals impacted and must do so not later than 5 Business Days prior to commencing the Works. The Contractor shall also send a copy of the written notice via registered post 5 Business Days prior to commencing The Works with a covering letter confirming the dates and times the written notice was hand delivered.
- 11.4 **(Sign board)** The Contractor must provide a sign board comprising the following information, at the entrance to the Site or as required:
- (a) Contractor's name;
  - (b) Contractor's postal address; and
  - (c) Site supervisor's name and 24-hour contact number.
- 11.5 **(Complaints)** With respect to complaints, the Contractor shall:
- (a) maintain a record of any complaints received from any stakeholder or the public, including documentary evidence that complaints have been addressed and attended to, to the satisfaction of the Superintendent; and
  - (b) discuss all complaints with the Superintendent promptly after being made aware of it and follow any directions of the Superintendent in relation to the complaint.

## 12. QUALITY MANAGEMENT SYSTEM

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- 12.1 **(General)** The Contractor must:
- (a) prior to commencing WUC at the Site, implement a quality management system which accords with the requirements of ISO 9001 or with any alternative standard approved by the Superintendent (acting reasonably);
  - (b) provide a copy of the ISO9001 certification (or other documentary evidence suitable to the Superintendent, acting reasonably) of the Contractor's system;
  - (c) comply with, and ensure that all of the Contractor's Personnel comply with the system;
  - (d) appoint a suitably qualified quality management representative, who shall have such authority to effectively manage and control the implemented quality system.
- 12.2 **(Quality management plan)** The Contractor's quality management system must include a quality management plan which contains at least the following information:

- (a) a project organisation chart clearly showing the lines of authority, responsibility, and communication that will be in effect;
- (b) details of the qualifications and experience of all project management and supervision staff;
- (c) a lot plan;
- (d) details of project specific procedures, including those related to the following to the extent that they are applicable to WUC:
  - (i) all shop drawing formation and coordination;
  - (ii) management of all services subcontractor/trades;
  - (iii) management of all services/operational commissioning;
- (e) applicable inspection and test plans;
- (f) a register of all proposed quality records; and
- (g) a copy of the NATA terms of registration for the Contractor's compliance testing laboratory.

The Contractor must obtain and comply with the Superintendent's Direction regarding the plan pursuant to subclause 8.3 of the General Conditions of Contract.

12.3 **(Inspection and test plan)** The Contractor must, as part of the Contractor's quality management system, prepare and obtain the Superintendent's Direction regarding an inspection and test plan. The inspection and test plan must, at a minimum, detail:

- (a) the items of Work to be inspected or tested;
- (b) the party who will carry out the inspection or test;
- (c) the stages at which Work is to be inspected and tested or the frequency of inspections and tests;
- (d) the testing procedures and methodologies;
- (e) acceptance criteria;
- (f) non-conformance management and corrective processes;
- (g) Work which shall not be covered up or made inaccessible without the prior approval of the Superintendent;
- (h) witness points for Work for which a Superintendent's Representative must be present;
- (i) hold points beyond which Work cannot proceed without approval of the Superintendent;
- (j) relevant standards; and
- (k) the records to be maintained by the Contractor.

The Contractor must obtain and comply with the Superintendent's Direction regarding the plan pursuant to subclause 8.3 of the General Conditions of Contract.

12.4 **(Reporting)** The Contractor must provide the Superintendent with all documents and information:

- (a) reasonably requested to support or evidence the Contractor's quality management system;
- (b) which are produced by the Contractor in compliance with the quality management system.

12.5 **(Inspections)** The Principal and the Superintendent may carry out inspections of the Site at any time. During inspections, the Contractor shall provide the Principal and the Superintendent with all documents, access and assistance reasonably requested by either. The Contractor shall provide a sufficient and safe access for all inspections at the Site. Unless otherwise specified, the Contractor must give the Superintendent no less than 2 Business Days' notice of its intention to commence each stage of the following Work:

- (a) The Principle will give you the list of work inspection

If the Contractor does not provide the required notification for an inspection, particularly in the event that an urgent after-hours inspection is required to ensure WUC is not delayed, the Superintendent may deduct the cost of the inspection as a Required Deduction pursuant to clause 37.2 of the General Conditions of Contract.

## 13. REPORTS, MEETINGS AND RECORD KEEPING

13.1 **(Progress reports)** The Contractor must:

- (a) keep the Principal fully informed of the progress and performance of WUC;
- (b) at the times stated in the Contract and when otherwise reasonably required by the Principal, meet and discuss the performance of the Contractor and/or any other matter concerning the Principal in connection with the Contract; and
- (c) comply with any recommendations or directions given by the Principal in relation to the performance of the Contractor's obligations under the Contract (but such compliance will not release or discharge the Contractor from any liability or obligation under the Contract).

13.2 **(Meetings)** The Contractor must, at the times reasonably required by the Principal, meet and discuss the performance of the Contractor and/or any other matter concerning the Principal in connection with the Contract. The Contractor shall provide a sufficient and safe access for all meetings at the Site.

Without limiting the preceding paragraph, the Contractor must attend and ensure that the Personnel noted below attend the following meetings:

Item	Meeting description	Topics for discussion	Time for meetings	Required attendees
(a)	Pre-start meeting	WHS Risk Assessment & Safety Inductions	Prior to commencement of WUC at the Site	Contractor & Council representative

13.3 **(Record of compliance)** The Contractor must:

- (a) create and maintain complete and accurate records, reports and other documents demonstrating the Contractor's compliance with the Contract, including:
  - (i) Contractor needs to record the list of electrical equipment
  - (ii) Contractor needs to record the report and other information.

and any other records, reports or documents reasonably required by the Principal in connection with the Contract; and

- (b) create any document required to be prepared under any management plan prepared under the Contract.

13.4 **(Audit)** The Principal may at any time up to the expiry of the last Defects Liability Period to expire (or where the Contract is earlier terminated, up to 12 months after the date on which the termination takes effect), on the giving of reasonable notice, audit the Contractor's compliance with the Contract or any obligation under it. The Contractor shall facilitate the audit by:

- (a) allowing the auditors to undertake any inspections;
- (b) providing such assistance, information and access to the Site, systems and equipment and other cooperation;
- (c) providing the auditor with copies of, and facilitating the copying by the auditor of, all the other records, information, and documentation required to be created under clause 13,

as reasonably required by the auditor. If the audit reveals any non-compliance by the Contractor with its obligations under the Contract, then the costs reasonably and necessarily incurred by the Principal in conducting the audit shall be a debt due and payable by the Contractor. Otherwise, the Principal shall bear the cost of the audit. For clarity, the Contractor is not required to provide to the Principal under this clause, any documents to the extent that they contain material which is subject to legal professional privilege.

13.5 **(Photographic evidence)** The Contractor must provide to the Superintendent a progressive photographic record of the progress of WUC at the following stages and as otherwise reasonably required by the Superintendent:

Item	Stages at which photographic record to be made
(a)	On the giving of possession of the Site
(b)	At the end of each calendar month prior to the month in which Practical Completion is achieved; and
(c)	At Practical Completion.

Photographs shall be in high-definition digital format and shall be dated and labelled to describe the photograph's content.

13.6 **(Dilapidation survey)** The Contractor must, prior to the commencement of WUC, undertake a dilapidation survey including a photographic record clearly indicating the date and time of photos taken, of all areas identified as forming part of the Site and the following areas:

- (a) Only project site

The dilapidation survey shall be replicated prior to and as a requirement of Practical Completion. The purpose of this survey is to confirm the pre and post-construction condition of the Site. The dilapidation survey shall be completed by the Contractor in the company of the Superintendent.

## 14. PAYMENT CLAIMS

14.1 **(Additional documentation)** In addition to the requirements stated in the General Conditions of Contract, the Contractor must provide the following documentation with each claim for payment submitted under the Contract:

- (a) Completion of job, or email confirmation, delivery docket, invoice.
- (b) Photo of internal switchboard wirings and labels
- (c) Completion stage photos

**14.2 (Particular items in Price Schedule)** Further to clause 3 of the General Conditions of Contract where an item is identified in the Price Schedule as:

- (a) a prime cost item, then the relevant sum(s) included in the Price Schedule shall in themselves not be payable, but where that item of Work is to be supplied or carried out:
  - (i) the Contractor must, if directed to do so by the Superintendent:
    - (A) use its best endeavours to obtain 3 quotes for the prime cost item from suppliers which the Contractor considers are capable of carrying out the relevant Work and that are reasonably available to do so; and
    - (B) provide a complete written copy of each quote received to the Superintendent;
  - (ii) the Superintendent may (but shall not be obliged to) within 5 Business Days after receiving the quotation(s) direct the Contractor as to which supplier to engage and the Contractor must comply with that Direction. If the Superintendent does not give a Direction within this time, then the Contractor may engage any one of the suppliers that provided a quotation;
  - (iii) the Contractor shall be entitled to payment of the actual direct cost paid by the Contractor to the supplier for the supply of that item (excluding any damages payable to the supplier or vice versa) and without any payment for the Contractor's profit and overheads; and
  - (iv) the costs for labour, installation, and for all other costs required to incorporate the goods into The Works shall be deemed to have been included in the Price Schedule generally;
- (b) a provisional quantity, provisional item, if ordered, as directed, optional or similar term (other than provisional sum), then where that item of Work is supplied or carried out in accordance with a Direction of the Superintendent:
  - (i) the relevant sum(s) included in the Price Schedule shall in themselves not be payable;
  - (ii) where there is a rate for the item in the Price Schedule, the Contractor shall be entitled to payment for the item at the rate provided in the Price Schedule for the measured quantity of the item so supplied or carried out; or
  - (iii) where there is a lump sum for the item in the Price Schedule, the Contractor shall be entitled to payment of that lump sum,

A Direction to carry out or supply such an item, or the absence of a direction to carry out or supply such an item, shall be deemed to be within the general scope of the Contract.

## **15. PRINCIPAL SUPPLIED INFORMATION**

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**15.1 (Definitions)** In this clause, **Principal Supplied Information** means:

- (a) the following information or documents:
  - (i) Contract information, design and maps, policy, and procedures.

- (ii) Councils and tender related other information
- (b) any other information relating to the Contract which either:
  - (i) 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 Contractor; or
  - (ii) does form part of the Contract, but which is expressly identified as Principal Supplied Information or otherwise as information on which the Contractor should not or must not rely,

and includes information in any form and information which is made available before or after the Date Of Acceptance Of Tender.

15.2 **(No warranty or representation by Principal)** The Principal gives no warranty and makes no representation that the Principal Supplied Information is accurate, adequate, or complete.

15.3 **(No reliance)** The Contractor:

- (a) Acknowledges and agrees that the Contractor has not relied on the Principal Supplied Information in entering into the Contract; and
- (b) must not rely on the Principal Supplied Information unless and until the Contractor has independently verified the adequacy, accuracy, and completeness of that information.

## 16. CONFIDENTIAL INFORMATION

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16.1 **(Specific confidential information)** Without limiting subclause 8.5 of the General Conditions of Contract, the Contractor must, and must ensure that its Personnel, keep confidential the following documents and any other information obtained in the course of performing the Contract which is, of its nature, confidential:

- (a) the Contract;
- (b) maps and design
- (c) communications

## 17. SAFETY

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17.1 **(Relationship to General Conditions of Contract)** The Contractor's attention is drawn to clause 12A of the General Conditions of Contract. Nothing in clause 17 shall be taken to limit or exclude any obligation or liability of the Contractor under the General Conditions of Contract or at law in relation to work, health and safety.

17.2 **(Safety in design assessment)** A project specific safety in design risk assessment ('SiD Assessment') has been included as part of the request for tender documentation for the Contract. The SiD Assessment:

- (a) contains information which the Principal and the Principal's design consultant have in relation to the hazards and risks at or in the vicinity of the Site and who is best placed to mitigate those potential risks; and
- (b) has been prepared by a third party, and the Principal gives no warranty and makes no representation as to the accuracy, adequacy, or completeness of the SiD Assessment.

The Contractor must review the SiD Assessment, seek clarification on any areas of concern and take account of the SiD Assessment when discharging its duties and obligations under the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld).



## 17.3 (Storage) The Contractor must:

- (a) appropriately store and secure any poisonous, flammable, or injurious substances for the duration of WUC;
- (b) provide all necessary fully charged fire extinguishers in accessible locations at the Site as are necessary for the care and safety of WUC to the satisfaction of the Superintendent and the Queensland Fire and Emergency Services, or other relevant Authority;
- (c) provide adequate first aid facilities appropriate to the size and composition of his/her staff and labour force and the nature of WUC;
- (d) if the Principal has appointed a third party as principal contractor for the Site under the *Work Health and Safety Regulation 2011* (Qld), comply with the reasonable requirements of that third party in its capacity as principal contractor; and
- (e) if the Principal has not appointed a third party as principal contractor for the Site:
  - (i) comply with the Principal's Policies and Procedures relating to work, health and safety;
  - (ii) inform the Principal of all its work health safety policies, procedures or measures implemented for the individual project sites established for performance of its obligations under this Contract.

## 17.4 (Electrical Safety) The Contractor must:

- (a) comply with all provisions of the *Electrical Safety Act 2002* (Qld) and all related Legislative Requirements; and
- (b) ensure that:
  - (i) all electrical work conducted, including work performed by subcontractors, is fully documented and recorded on a 'Certificate of Electrical Safety';
  - (ii) all required 'AS3000 Test Results' are documented and recorded by the Contractor; and
- (c) provide:
  - (i) certificates of testing and safety pursuant to the *Electrical Safety Regulation 2013* (Qld) for all electrical work carried out as part of WUC (whether by the Contractor or by subcontractors); and
  - (ii) records of all test results in accordance with AS3000:2007 for all electrical installation works on property owned by the Principal.

## 18. ENVIRONMENTAL PROTECTION

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### 18.1 (Environmental protection) The Contractor must, and must ensure that its Personnel, perform the Contractor's obligations in accordance with:

- (a) best practice environmental management (as that term is defined in Section 21 of the *Environmental Protection Act 1994* (Qld));
- (b) the requirements of all other Legislative Requirements relating to the protection of the Environment; and
- (c) the Principal's policies and procedures relating to the protection of the Environment.



- 18.2 **(Environmental Management System)** The Contractor must provide a copy of its environmental risk assessments and relevant control strategies for WUC for the Superintendent's review prior as a requirement of possession of the Site and prior to any pre-start meeting. The level of detail in the risk assessments shall be adequate to provide the Superintendent with a clear understanding of the required Work.
- 18.3 **(Erosion and sediment control plan)** The Contractor must prepare and obtain the Superintendent's Direction regarding an erosion and sedimentation control plan ('ESCP') pursuant to subclause 8.3 of the General Conditions of Contract. The ESCP must describe the Contractor's process and procedures for the prevention or minimisation of harm caused by erosion and sediment in connection with WUC, including by control of overland flows, minimisation of flow path lengths, and the use of trapping devices to capture sediment. The Contractor must undertake the installation, inspection, repair, and maintenance of all environmental control measures required by the ESCP. The Contractor must inspect all environmental control measures at least:
- (a) once each week;
  - (b) immediately after any major rainfall event; and
  - (c) as otherwise directed by the Superintendent.
- 18.4 **(Protection of Fauna)** The Contractor must:
- (a) use all reasonable endeavours to minimise disruption to any fauna at or in the vicinity of the Site;
  - (b) ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site:
    - (i) is appropriately trained in relation to the protection of fauna prior to carrying out any part of WUC;
    - (ii) aware of the potential for impacts on fauna and the need to minimise these impacts,prior to that person carrying out any WUC; and
  - (c) use all reasonable endeavours to ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site minimises disruption to any fauna in the vicinity of the Site; and
  - (d) at the Contractor's expense, comply with any Directions issued by the Superintendent to address any excessive or avoidable adverse impact on fauna at or in the vicinity of the Site.
- 18.5 **(Protection of Flora)** The Contractor must:
- (a) use all reasonable endeavours to minimise disruption to any flora at or in the vicinity of the Site;
  - (b) ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site is appropriately trained in relation to the protection of flora prior to that person carrying out any part of WUC;
  - (c) use all reasonable endeavours to ensure that that each of the Contractor's Personnel and every other person carrying out WUC at the Site minimises disruption to existing flora at or in the vicinity of the Site;

- (d) make good any damage to flora caused by the Contractor or its Personnel, other than damage which is the unavoidable consequence of carrying out WUC; and
- (e) at the Contractor's expense, comply with any Directions issued by the Superintendent to address any excessive or avoidable adverse impact on flora at or in the vicinity of the Site.

## 19. WASTE MANAGEMENT

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- 19.1 **(Definitions)** In this clause 'Levyable Waste Disposal Site', 'Levyable Waste', 'Waste', 'Waste Disposal Site' and 'Waste Levy' have the meanings given to those terms in the *Waste Reduction and Recycling Act 2011* (Qld).
- 19.2 **(Contractor's obligation)** The Contractor must:
- (a) ensure that all Waste from the Site is placed in appropriate containers and removed from the Site to a legal Waste Disposal Site in accordance with the *Waste Reduction and Recycling Act 2011* (Qld) and any other applicable Legislative Requirements;
  - (b) otherwise, ensure that all Waste arising from WUC is disposed of in accordance with the requirements of the *Waste Reduction and Recycling Act 2011* (Qld) and any other applicable Legislative Requirements relating to the disposal of Waste; and
  - (c) pay all royalties, levies, fees, charges, costs, expenses, taxes, or duties in connection with the disposal of Waste.
- 19.3 **(Evidence of payment)** With or in each progress claim submitted by the Contractor under the Contract, the Contractor must provide a separate breakdown of the amount of any Waste Levy which the Contractor is aware has been passed on to, and paid by, the Contractor in connection with the disposal of Levyable Waste arising from WUC.
- 19.4 **(Energy Use)** The Contractor shall ensure that the use of energy for WUC is minimised by undertaking regular maintenance of all machinery to ensure energy efficiency and by utilising minimum sized machinery to undertake tasks.

## 20. BIOSECURITY MANAGEMENT

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- 20.1 **(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 WUC. It includes risks associated with carriers and the movement and sourcing of materials, vehicles, and machinery; and the disturbance, import, or export of soils;
  - (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 WUC; or

- (iii) otherwise identified by the Principal;
  - (d) **BRMP** means a Biosecurity Risk management plan;
  - (e) **General Biosecurity Obligation** has the meaning given to that term in the *Biosecurity Act 2014* (Qld).
- 20.2 **(Biosecurity Risk management plan)** The Contractor must prepare and obtain the Superintendent's Direction regarding a BRMP pursuant to subclause 8.3 of the General Conditions of Contract. The BRMP must:
- (a) describe the processes and procedures for the management of Biosecurity Risks in connection with WUC;
  - (b) outline reasonable and practical steps to address Biosecurity Risks;
  - (c) describe how the Contractor will meet its General Biosecurity Obligation;
  - (d) address both Potential Biosecurity Risks and Known Biosecurity Risks.
- The Contractor must comply with and ensure that all of the Contractor's Personnel comply with the BRMP.
- 20.3 **(Training)** The Contractor must ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site is appropriately trained to be aware of Biosecurity Risks prior to that person carrying out any part of WUC. If at any time during WUC a breach of the BRMP or a significant Biosecurity Risk is identified, then the Contractor must immediately contact the Superintendent for Direction.

## 21. ASBESTOS

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- 21.1 **(General)** The removal, transportation, and disposal of asbestos products must be undertaken in accordance with:
- (a) all Legislative Requirements;
  - (b) relevant standards and codes of practice including "How to Safely Remove Asbestos 2021" as amended or replaced from time to time; and
  - (c) to the extent not inconsistent with paragraphs (a) and (b), any management plan prepared under the Contract.
- 21.2 **(Work to be done by certified removalist)** Such Work must be undertaken by a certified asbestos removalist.
- 21.3 **(Monitoring)** The Contractor must arrange for daily air monitoring and reporting during the asbestos removal process by an independent air monitoring consultant/hygienist.
- 21.4 **(Certification)** At the completion of the asbestos removal process, the Contractor must provide certification that all asbestos has been safely removed from the Site and disposed of in accordance with this clause.

## 22. CULTURAL HERITAGE

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- 22.1 **(Compliance)** Without limiting any other obligation of the Contractor under the Contract or any law, the Contractor's attention is drawn to, and the Contractor must comply, and must use all reasonable endeavours to ensure that its Personnel comply with the requirements of, the *Aboriginal Cultural Heritage Act 2003* (Qld), *Torres Strait Islander Cultural Heritage Act 2003* (Qld) and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

## 23. TRAFFIC MANAGEMENT

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23.1 **(Traffic management plan)** The Contractor must, within the time required by clause 9.2, prepare and provide to the Superintendent for review a traffic management plan for WUC, detailing how the Contractor will manage traffic in accordance with the requirements of the Contract. The Contractor must obtain and comply with the Superintendent's Direction regarding the plan pursuant to subclause 8.3 of the General Conditions of Contract. The Contractor must comply, and ensure that all of the Contractor's Personnel comply, with the traffic management plan at all times until the expiration of the last Defects liability Period to expire.

23.2 **(General)** The Contractor:

- (a) is responsible for the safety of all pedestrians and vehicular traffic at, or adjacent to the Site, or in any way affected by the execution of WUC;
- (b) must provide all necessary lights, barriers, notices and signs, and other traffic control devices required for the safe and appropriate management of traffic.
- (c) must comply with and ensure that all traffic control devices conform to:
  - (i) the current Manual of Uniform Traffic Control Devices published by the Department of Transport and Main Roads;
  - (ii) Queensland Guide to Temporary Traffic Management;
  - (iii) AS1742 Manual of Uniform Traffic Control Devices;
  - (iv) Austroads Australian Guide to Temporary Traffic Management;
  - (v) Queensland Guide to Road Safety;
  - (vi) Guideline – Traffic Management at Works on Roads,

as amended or replaced from time to time. In the event of any inconsistency, ambiguity, discrepancy, or conflict between any requirement or standard in the documents listed above, the Contractor shall comply with the more onerous requirement or higher standard unless otherwise directed by the Superintendent.

23.3 **(No obstruction)** The Contractor must:

- (a) provide for the continuous operation of normal traffic along all roads, and pedestrian and vehicular access to properties included in the Contract or intersected by WUC;
- (b) where necessary, provide side-tracks which must be appropriately constructed, signposted, lit, and maintained; and
- (c) use all reasonable endeavours to avoid obstructing any side road, branch track, drain, or watercourse and to the extent that such obstructions cannot be avoided, remove such obstructions as soon as possible.

## 24. PERSONAL PROPERTY SECURITIES

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24.1 **(Interpretation)** In this clause, 'PPS Act' means the *Personal Property Securities Act 2009* (Cth). Terms used in this clause which are defined in the PPS Act which are not separately defined in the Contract have the meaning attributed to them in the PPS Act.

24.2 **(Disclosure)** If this Contract contains a security interest, then each party agrees to the purposes of section 275(6) of the PPS Act that it will not disclose information of the type referred to in

section 275(1) of the PPS Act, where a request is made under section 275(1) of the PPS Act in relation to this Contract or any part of it, except in circumstances where the party is compelled by law (other than section 275(1) of the PPS Act) to make that disclosure.

- 24.3 **(Contractor's obligations)** If the Principal determines that any clause of this Contract, or a transaction contemplated by this Contract or in connection with the performance of WUC, constitutes, or is likely to give rise to a security interest in respect of which the Principal is the security holder, then the Contractor:
- (a) must, within the time required by the Principal, provide all assistance and cooperation requested by the Principal that the Principal determines is reasonably required to;
    - (i) register and maintain the registration of its security interest on the personal property securities register within any applicable time limits relevant to the effectiveness of the security interest;
    - (ii) ensure that the Principal's security interest is enforceable against third parties, perfected, or otherwise effective;
    - (iii) ensure that the security interest has the appropriate priority required by the Principal (including where applicable, as a purchase money security interest);
    - (iv) ensure that any security interest granted temporary perfection under the PPS Act is perfected by registration or other appropriate means prior to any applicable expiry of that temporary perfection;
    - (v) enable the Principal to register financing statements or financing change statements under the PPS Act, with respect to any such security interest;
  - (b) waives the right to receive notice of a verification statement in relation to the registration of that security interest;
  - (c) must not register or permit to be registered any other security interest in respect of the personal property that comprises the collateral in respect of that security interest, other than one that has been consented to or granted by the Principal;
  - (d) must not cause or allow any of the Contractor's personal property to become an accession to the Principal's personal property or cause or allow the Principal's personal property to become an accession to the Contractor's personal property without the prior consent of the Principal; and
  - (e) must immediately notify the Principal if any other person claims or attempts to enforce a security interest:
    - (i) in the Principal's personal property; or
    - (ii) in the Contractor's personal property to the extent that that purported enforcement affects or has the potential to affect the Contractor's ability to carry out WUC in accordance with the terms of the Contract.

## 25. HEAVY VEHICLE NATIONAL LAW

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- 25.1 **(Meaning of terms)** Terms used in this clause which are defined in the Heavy Vehicle National Law (Queensland) (the 'National Law') have the same meaning as in that law.
- 25.2 **(General obligations)** The Contractor must ensure, so far as is reasonably practicable, the safety of the Contractor's transport activities. Without limiting this, the Contractor must, so far as is reasonably practicable:

- (a) eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, minimise the public risks; and
- (b) ensure the party's conduct does not directly or indirectly cause or encourage:
  - (i) the driver of the heavy vehicle to contravene the National Law; or
  - (ii) the driver of the heavy vehicle to exceed a speed limit applying to the driver; or
  - (iii) another person, including another party in the chain of responsibility, to contravene the National Law.

25.3 **(Notice)** The Contractor must immediately:

- (a) notify the Superintendent if the Contractor considers that anything in this Contract, or any act or omission of the Principal or its respective officers, employees, agents or representatives, has or is likely to, directly or indirectly, cause or encourage the Contractor or any Personnel of the Contractor:
  - (i) being the driver of a heavy vehicle to contravene the National Law; or
  - (ii) being the driver of a heavy vehicle to exceed a speed limit applying to the driver; or
  - (iii) being another person, including another party in the chain of responsibility, to contravene the National Law; and
- (b) notify the Principal and the Superintendent in writing in the event that it, or any Personnel, is issued with any warning, request for information or production of documents, notice or fine in respect of any breach of chain of responsibility law in respect of WUC. The Contractor undertakes to provide the Principal and the Superintendent with a copy of any such warning, request, notice or fine, and any response or submissions made by it in relation to the same.

25.4 **(Chain of Responsibility)** In addition to its obligations under the chain of responsibility law, the Contractor must comply with the following chain of responsibility compliance assurance conditions, that:

- (a) the Principal has a policy of compliance for its chain of responsibility obligations under the National Law. The Contractor agrees that it complies with its obligations under the chain of responsibility laws, and has a policy of training and compliance that is subject to periodic review and assessment. The Contractor will require its subcontractors and agents to comply with chain of responsibility obligations in any supply chain arrangement or any arrangement whatsoever in connection with WUC;
- (b) the Principal is committed to taking all reasonable steps to ensure that any carriage of goods by road performed as part of WUC is performed safely and in accordance with the National Law and the chain of responsibility provisions it contains. The Principal will not comply with any instruction or requirement of the Contractor that might have the effect of contributing to a breach of the National Law, or preventing the Principal from taking all steps that it considers necessary to prevent any breach of the National Law;
- (c) upon becoming aware of any breach of mass, dimension, load restraint, fatigue, speed, or maintenance requirement, the Principal may report the breach to the relevant Authority and retain records of the breach; and
- (d) as a requirement of access to the Site, the Contractor must provide copies of any/all:
  - (i) chain of responsibility policy;

- (ii) mass, dimension, or load restraint policy;
- (iii) speed management policy;
- (iv) fatigue management policy; and
- (v) maintenance management policy,

that is in place in respect of its business.

## 26. LABOUR HIRE

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The Contractor must not provide or utilise any labour for any WUC, unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld).

## 27. NON-CONFORMING BUILDING PRODUCTS

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27.1 **(Definitions)** In this clause, the terms ‘person in the chain of responsibility’, ‘building product’, ‘Minister’, ‘non-conforming building product’ and ‘required information’ each have the respective meanings given to those terms in the *Queensland Building and Construction Commission Act 1991* (Qld) (‘QBCC Act’).

27.2 **(General)** The Contractor:

- (a) acknowledges that, to the extent that the Contractor is a person in the chain of responsibility, it has obligations under Part 6AA of the QBCC Act in relation to non-conforming building products;
- (b) warrants and represents that no building products incorporated into The Works are non-conforming building products, or the subject of a warning statement issued by the Minister;
- (c) must ensure that it, and its subcontractors, suppliers, and consultants provide all required information for a building product incorporated into The Works to the Principal upon installation of the building product into The Works; and
- (d) must provide all required information and any other information relevant to a building product to the Principal within the timeframes requested by the Principal.

27.3 **(Failure to comply)** If the Contractor installs, or incorporates into The Works, a building product without the required information, the Principal will be entitled to do either of the following in its sole and absolute discretion:

- (a) request the required information from the Contractor, in which case the Contractor will provide the required information as soon as reasonably practicable, or
- (b) direct the Contractor to remove the building product from The Works and replace with a building product that is not non-conforming pursuant to subclause 29.3 of the General Conditions of Contract or clause 35 of the General Conditions of Contract.

27.4 **(Requirement of Practical Completion)** The Contractor shall, as a requirement of practical completion, provide to the Principal a signed statutory declaration confirming that all required information has been obtained and provided to the Principal, and that no non-conforming building products have been installed or incorporated into The Works.

27.5 **(Indemnity)** Without limiting clause 11A.6 of the General Conditions of Contract, 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 to the extent caused or contributed to any



breach of the Contractor's obligations under this clause 27, or by any failure of the Contractor to comply with its obligations under the QBCC Act in relation to building products.

## 28. WORK HEALTH AND SAFETY ACCREDITATION SCHEME

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- 28.1 **(Accreditation)** The Contractor must maintain accreditation under the Australian Government Work Health and Safety Accreditation Scheme ('the Scheme'), established by the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), while building work (as defined in section 6 of the Act) is carried out.
- 28.2 **(Compliance)** The Contractor must comply with all conditions of the Scheme accreditation and the National Construction Code performance requirements in relation to building materials.

## 29. QUEENSLAND CODE

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- 29.1 **(The Queensland Code)** If applicable, in addition to the terms defined in this document, terms used in this clause 29 have the same meaning as is attributed to them in the Queensland Government's *Queensland Code of Practice for the Building and Construction Industry* (the 'Queensland Code').
- 29.2 **(Primary Obligations)** The Contractor must:
- (a) comply with, and meet any obligations imposed by, the Queensland Code;
  - (b) notify the Australian Building and Construction Commission ('ABCC') (or nominee) and the Principal, of any alleged breaches of the Queensland Code and of voluntary remedial action taken within 24 hours of becoming aware of the alleged breach;
  - (c) where the Contractor is authorised to engage a subcontractor and it does so, ensure that any secondary contract imposes on the subcontractor equivalent obligations to those in this clause 29, including that the subcontractor shall comply with, and meet any obligations imposed by, the Queensland Code; and
  - (d) not appoint or engage another party in relation to WUC, where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code.
- 29.3 **(Information)** The Contractor must maintain adequate records of compliance with the Queensland Code by it, its subcontractors, and related entities.
- 29.4 **(Access)** The Contractor must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of the ABCC) to:
- (a) enter and have access to sites and premises controlled by the Contractor, including any Site at which WUC is being carried out;
  - (b) inspect any work, material, machinery, appliance, article, or facility;
  - (c) access information and documents;
  - (d) inspect and copy any records relevant to WUC;
  - (e) have access to personnel; and
  - (f) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code by the Contractor, its subcontractors, and related entities.



- 29.5 **(Production of documents)** The Contractor, and its related entities, shall agree to, and comply with, a request from Queensland Government authorised personnel (including personnel of the ABCC) for the production of specified documents by a certain date, whether in person, by post, or electronic means.
- 29.6 **(Sanctions)** The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code that would have precluded it from tendering for work to which the Queensland Code applies. If the Contractor does not comply with, or fails to meet any obligation imposed by the Queensland Code, a sanction may be imposed against it in connection with the *Queensland Code*. Where a sanction is imposed:
- (a) it is without prejudice to any rights that would otherwise accrue to the parties;
  - (b) the State of Queensland (through its agencies, Ministers and the ABCC) is entitled to:
    - (i) record and disclose details of non-compliance with the Queensland Code and the sanction; and
    - (ii) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Contractor, or its related entities, in respect of work to which the Queensland Code applies.
- 29.7 **(Cost)** The cost of ensuring the Contractor's compliance with the Queensland Code shall be borne by the Contractor. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of Queensland for such costs.
- 29.8 **(No relief)** Compliance with the Queensland Code does not relieve the Contractor from responsibility to perform WUC and any other obligation under the Contract, or from liability for any defect in The Works, or from any other legal liability, whether or not arising from its compliance with the Queensland Code.
- 29.9 **(Change)** Where a change in the Contract or WUC is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
- (a) the circumstances of the proposed change;
  - (b) the extent to which compliance with the Queensland Code will, or is likely to be, affected by the change; and
  - (c) what steps the Contractor proposes to take to mitigate any adverse impact of the change,

and the Principal will direct the Contractor as to the course it must adopt within 5 Business Days of receiving notice.

### **30. QUEENSLAND GOVERNMENT QUEENSLAND CHARTER FOR LOCAL CONTENT**

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- 30.1 **(Definitions)** Terms used in this clause 30 which are not separately defined in this Contract have the same meaning as is attributed to them in the Charter for Local Content.
- 30.2 **(Contractor's obligation)** The Contractor must, and must ensure its subcontractors, in carrying out WUC:
- (a) comply with the principles of the Charter for Local Content and any related requirements under the Contract;
  - (b) comply with any Statement of Intent or equivalent local content statement under the Contract;

- (c) complete and submit a Charter for Local Content – Project Outcome Report (available from State Government website) to the Principal at, and as a requirement of, Practical Completion and at such other times as reasonably requested by the Principal, with a copy to [gclc@dsd.qld.gov.au](mailto:gclc@dsd.qld.gov.au).

## 31. TRAINING POLICY

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- 31.1 **(Application)** The Queensland Government Building and Construction Training Policy ('Training Policy') applies to this project.
- 31.2 **(Contractor's obligation)** The Contractor must act consistently with and do all things reasonably necessary to enable the Principal to comply with the Training Policy. Without limiting this, when directed to do so by the Superintendent, the Contractor must provide the Superintendent with sufficient details of the Contractor's employees, and the employees of its subcontractors, to enable the Principal to comply with the Principal's reporting obligations under the Training Policy.
- 31.3 **(Privacy Statement)** The Contractor is referred to the Privacy Statement in Appendix D in relation to the treatment of this information.

## 32. AS CONSTRUCTED DRAWINGS

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- 32.1 **(Requirements for as constructed drawings)** Unless the Superintendent otherwise directs, as constructed drawings must:
  - (a) comply with AS 1100.101-1992: Technical Drawing – General as amended or replaced from time to time;
  - (b) clearly detail the finished line, level, arrangements, layouts, and the like of The Works as completed, including the pickup of any existing in-ground services encountered in the execution of WUC;
  - (c) be prepared utilising the latest issued version of the construction drawings and must be prepared using AutoCAD format, or an alternative software package/format approved by the Superintendent; and
  - (d) must be clearly identified as 'as constructed drawings', be appropriately titled, and must be dated and signed by the Contractor.
- 32.2 **(Draft as constructed drawings)** No later than two weeks before the Date For Practical Completion the Contractor must give to the Superintendent, two advanced 'draft' copies of the as constructed drawings of The Works.
- 32.3 **(Final as constructed drawings)** The Contractor must give to the Superintendent, as a requirement of Practical Completion, as constructed drawings of The Works as follows:
  - (a) 3 complete copies of as constructed drawings in A3 hardcopy format;
  - (b) 1 complete electronic copy of as constructed drawings in PDF; and
  - (c) 1 complete copy in the electronic format in which the drawings were created (native format).

## 33. OPERATION AND MAINTENANCE MANUALS

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- 33.1 **(Requirements for operation and maintenance manuals)** Unless the Superintendent otherwise directs, the operation and maintenance manuals must include:
  - (a) Contractor's name, address, facsimile number, telephone number and email address;

- (b) maintenance schedule (in tabular form);
  - (c) technical description of the equipment supplied, with diagrams and illustrations where appropriate;
  - (d) detailed description of each item of maintenance;
  - (e) detailed description of each item of operation;
  - (f) procedures for dismantling and reassembling;
  - (g) details and descriptions of maintenance and operations, equipment and tools, with instructions for their use;
  - (h) supplier/material quality certificates for each product;
  - (i) supplier/material specification and data sheets for each product;
  - (j) Material Safety Data Sheets (MSDS) for all products directly or indirectly involved in all aspects of operation and maintenance of the works; and
  - (k) complete spares list.
- 33.2 **(Draft as operation and maintenance manuals)** No later than two weeks before the Date For Practical Completion the Contractor must give to the Superintendent, two advanced 'draft' copies of the operation and maintenance manuals for The Works.
- 33.3 **(Final operation and maintenance manuals)** The Contractor must give to the Superintendent, as a requirement of Practical Completion, 1 complete electronic copy in PDF of the operation and maintenance manuals for The Works.

## **34. PRACTICAL COMPLETION**

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- 34.1 **(Requirements of achieving practical completion)** The Contractor acknowledges that the Contract may elsewhere include additional obligations which must be satisfied as a requirement of Practical Completion. In addition to any such obligations, the Contract must, as a requirement of Practical Completion:
- (a) satisfy all requirements of the Contract in relation to commissioning and operator training;
  - (b) provide to the Superintendent one (1) bound and one (1) PDF copy of an end-of-job report which shall contain the following as a minimum:
    - (i) material test results;
    - (ii) as constructed drawings which comply with clause 32;
    - (iii) completed warranties for all fittings and fixtures including major supply information;
    - (iv) operations & maintenance manuals;
    - (v) building surveyor inspection certificates where applicable;
    - (vi) plumbing inspection certificates;
    - (vii) electrical inspection certificates; and
    - (viii) Electrical Contractor Licences

## General Specification



- (ix) All QBCC licences
- (x) final inspection certificates from an approved registered certifier;

## Appendix A – Privacy Statement – The Queensland Government Building and Construction Training Policy (Clause **Error! Reference source not found.**)

This Privacy Statement is to be provided to each participant on an eligible Queensland Government funded Building and Civil Construction project to comply with the *Information Privacy Act 2009* (Qld).

The Queensland Government Building and Construction Training Policy (the Training Policy) requires that a minimum of 10 per cent of the total labour hours on eligible Queensland Government Building or Civil Construction projects be undertaken by apprentices and/or trainees, and through other workforce training. The Contractor is required to provide evidence of compliance with the Training Policy, and this information will ultimately be considered in any review of their eligibility to tender for future government work.

The Department of Employment, Small Business and Training ('DESBT') requires that contracted organisations collect personal information from participants including:

<b>Apprentice or Trainee</b>	<ul style="list-style-type: none"><li>• Registration id</li><li>• Name</li><li>• Engaged as Apprentice or Trainee</li><li>• Employer</li><li>• Indigenous status</li><li>• Total hours</li></ul>
<b>Cadet</b> <b>Undergraduate</b> <b>Employee</b> <b>Student</b> <b>Indigenous Employee</b>	<ul style="list-style-type: none"><li>• First &amp; surname name</li><li>• Engaged as Cadet/Undergraduate/ Tradesperson/Non-Tradesperson/Prevocational Student (SWL)</li><li>• Indigenous status</li><li>• Total Hours</li></ul>

Contracted organisations must provide this information to Construction Skills Queensland ('CSQ'), as CSQ administers contractor compliance data on behalf of the Queensland Government, through the Training Policy Administration System (TPAS).

CSQ will consider the information and determine if there is non-compliance with the Training Policy by the contracted organisation. If CSQ determines that there is non-compliance with the Training Policy, personal information may be provided to DESBT, the State Government agency procuring the project or the designated Principal Contractor.

Annual performance reports regarding a contractor's compliance with the policy will be provided by the DESBT to the Director-General of each Queensland Government agency.

Records collected will be treated as a public record and will be retained as required by the *Public Records Act 2002* (Qld). For the term that the record is maintained, CSQ will only use this information to administer the Training Policy on the Queensland Government's behalf.

Only authorised officers will have access to this information, and personal information will not be disclosed to any other third party without consent unless authorised or required under law.

A person may apply to access their personal information stored. Should a person have any queries regarding the information held about themselves, including if they think that the personal information held is incorrect in any way, or is out of date, please CSQ at [info@csq.org.au](mailto:info@csq.org.au) or on 1800 798 488



## CONTRACT

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Main Switchboard Replacement at Rainbow Street Sports  
Club Complex Biloela

CONTRACT NO: T2324.42

# Formal Instrument of Agreement

## PARTIES

Banana Shire Council ABN 85 946 116 646 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

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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) AS4000-1997 General Conditions of Contract (which form a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);
- (e) Annexure Part E – Specification;
- (f) 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*);
- (g) Annexure Part D – Drawings;
- (h) Annexure Part F – Methodology;
- (i) Annexure Part G – Price Schedule;
- (j) Annexure Part H – Variation Rates; and
- (k) Annexure Part I – Contractor's Statutory Declaration.

- 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 Subject to subclause 8.1, 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.
- 1.4 Where any obligation described in the *Contract* has been carried out by the *Principal* or the *Contractor* 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.

## **2. INTERPRETATION**

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- 2.1 Italicised terms used in this *Formal Instrument of Agreement* have the same meaning as defined in the documents listed in clauses 1.1(c) to 1.1(d) above.
- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 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.
- 2.6 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.
- 2.7 In the *Contract* the words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.
- 2.8 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 parties consent to the *Contract* being executed electronically using DocuSign or an equivalent electronic method to identify the parties.
- 2.9 A reference to a *legislative requirement* means a reference to that *legislative requirement* as amended or replaced from time to time.
- 2.10 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 by its duly authorised  
representative in the presence of:

.....  
Signature of witness

.....  
Name of witness (block letters)

.....  
Date

)

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.....  
Signature of authorised representative

.....  
Name of authorised representative

.....  
Date

### EXECUTION BY THE CONTRACTOR (WHERE SIGNATORY IS A CORPORATION)

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

.....  
Director

.....  
Name (block letters)

.....  
Date

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.....  
Director/Secretary

.....  
Name (block letters)

.....  
Date

### EXECUTION BY CONTRACTOR (WHERE SIGNATORY IS NOT A CORPORATION)

**SIGNED** for and on behalf of the  
*Contractor* by its authorised  
representative (who warrants and  
represents that it has the power to  
execute this *Contract* on behalf of the  
*Contractor*) in the presence of:

.....  
Signature of witness

.....  
Name of witness (block letters)

.....  
Date

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.....  
Signature

.....  
Name of authorised representative

.....  
Date

## Annexure Part A to AS4000 – 1997

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 85 946 116 646
2	<i>Principal's address</i>	62 Valentine Plains Road Biloela QLD 4715
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)  OR  (b) <i>Period of time for practical completion</i> (clause 1)	90 days
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))  (b) Place for payments (page 5, clause 1(g))  (c) Not used	AUD  If nothing stated, that of the jurisdiction where the <i>site</i> is located  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> .

## Annexure Part A to AS4000 – 1997

10	Not used	
10A	<u>Contract sum</u> (clause 1 and clause 2A)	<p>The <u>Contract</u> 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 ( <del>subclause 2.5(b)</del> <u>2A.4(b)</u> )	<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) unconditional bank guarantees in equal amounts.
	(b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	<p>10%</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>10%</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*	<i>Principal's security</i>	
	(a) Form (clause 5)	Not applicable
	(b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	<p>Not applicable</p> <p>If nothing stated, nil</p>

## Annexure Part A to AS4000 – 1997

	(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</i> upon <i>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	No. of copies
		Copy of Contract	1
		If nothing stated, 5 copies of the drawings, specification, <i>bill of quantities</i> or <i>schedule of rates</i> (if any)	
16	Time for <i>Superintendent's direction</i> about documents (subclause 8.3)	If nothing stated, 10 <i>business days</i>	
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	Particular part of <i>WUC</i>
		Not applicable	
		<i>Selected subcontractor</i>	Particular part of <i>WUC</i>
		Not applicable	
19	<i>Legislative requirements</i>  (a) Those excepted (subclause 11.1)  (b) Identified <i>WUC</i> (subclause 11.2(a)(ii))	None excepted	
19A	<u>Portable long service</u> (subclause 11A.1)	<u>The:</u> <input checked="" type="checkbox"/> <u>Principal</u> <input type="checkbox"/> <u>Contractor</u> <u>is to make payments and give notices under the</u> <u><i>Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld)</i></u> <u>If nothing selected the Contractor is to do so</u>	

## Annexure Part A to AS4000 – 1997

19B	<u>Work, health and safety</u> <u>(Clause 12A)</u> <u>Engagement as principal contractor</u>	<u>The Contractor:</u> <input checked="" type="checkbox"/> <u>is engaged</u> <input type="checkbox"/> <u>is not engaged</u> <u>as principal contractor under the <i>Work Health and Safety Regulation 2011 (Qld)</i>.</u> <u>If nothing selected, the Contractor is not appointed as principal contractor.</u>
19C	<u>The <i>Contractor's</i> liability is limited to</u> <u>(clauses 1 and 15A)</u>	<u>Value of the Contract</u> <u>If nothing stated, the <i>Contractor's</i> liability is not limited</u>
19D	<u>The <i>Principal's</i> liability is limited to</u> <u>(clauses 1 and 15A)</u>	<u>NIL</u> <u>If nothing stated, the <i>Principal's</i> liability is limited to the amount of <i>contract sum</i> as adjusted pursuant to the <i>Contract</i>.</u>
20	<u>Insurance of <i>the Works</i></u> <u>(clause 16)</u>  (a) <u>Alternative applying</u>  <u>If Alternative 1 applies</u>  (b) <u>Provision for demolition and</u> <u>removal of debris</u>   (c) <u>Provision for consultants' fees</u>    (d) <u>Value of materials or things to</u> <u>be supplied by the <i>Principal</i></u>  (e) <u>Additional amount or</u> <u>percentage</u>	<u>Alternative 1</u> <u>If nothing stated, Alternative 1 applies</u>     \$  OR 10% of the <i>contract sum</i>    \$  OR 10% of the <i>contract sum</i>    Nil    \$  OR 10% of the total of paragraphs (a) to (d) in clause 16
21	<u>Public liability insurance</u> <u>(clause 17)</u> (a) <u>Alternative applying</u>  <u>If Alternative 1 applies</u>  (b) <u>Amount per occurrence shall</u> <u>be not less than</u>	<u>Alternative 1</u> <u>If nothing stated, Alternative 1 applies</u>   Twenty million dollars \$20,000,000 <u>If nothing stated, then not less than \$20,000,000</u>

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<u>21A</u>	<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>		
<u>22A</u>	<u>Working days and working hours</u> (clause 31)	<u>Working days</u>	<u>Working hours</u>	
		<u>Monday to Friday</u>	<u>7am to 6pm</u>	
		<u>Saturday</u>	<u>7am to 4pm</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>		
		c) <u>any other day which the Contract elsewhere provides is a day on which work cannot be carried out</u>		
23	<i>Qualifying causes of delay, causes of delay for which EOTs will not be granted</i> ( <del>page 3, paragraph (b)(iii) of clause 1</del> and subclause 34.3)			
24*	Liquidated damages, rate (subclause 34.7)	0.05% per week		
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 <del>damages, costs,</del> other <i>compensable causes</i> (page 1, clause 1 and subclause 34.9)	No other <i>compensable causes</i>		

## Annexure Part A to AS4000 – 1997

<u>26A*</u>	<u>Delay costs, limit per working day</u> <u>(subclause 34.9)</u>	<u>0</u> <u>If nothing stated, \$500 per working day</u>	
27	<i>Defects liability period</i> (clause 35)	12 months If nothing stated, 12 months	
<u>27A</u>	<u>Variations, percentage for profit and overheads</u> <u>(subclause 36.4)</u>	<u>Profit</u>  <u>Overheads</u>	<u>5%</u> <u>If nothing stated 5%</u>  <u>5%</u> <u>If nothing stated 5%</u>
28	Progress Claims (subclause 37.1)  (a) Times for progress claims  OR  (b) Stages of <i>WUC</i> for progress claims	Per Submitted Payment Schedule.  Deposit Stage Final Completion Stage  Deposit Stage Final Completion Stage	
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)	If nothing stated, 25 working days	
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>	Not applicable \$



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	(subclauses 5.4 and 37.3)	
	(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)	50% of amount held  If nothing stated, 50% of amount held
14	<i>Principal's security</i>	
	(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 <i>business days</i> after the <i>date of acceptance of tender</i>
	(d) <i>Principal's security upon certificate of practical completion is reduced by</i> (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 <i>practical completion</i> (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 <del>damages</del> , costs, other <i>compensable causes</i> (page 1, clause 1 and subclause 34.9)	No other <i>compensable causes</i>
26A	<u>Delay costs, limit per working day</u> (subclause 34.9)	<u>_____</u> If nothing stated, \$500 per <i>working day</i>

# Part B

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

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## 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

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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 *payment period*, has the same meaning as given to that term in section 67W of the *Queensland Building and Construction Commission Act 1991* (Qld);
- (b) otherwise, has the same meaning as in the *security of payment legislation*;

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*;

## Annexure Part A to AS4000 – 1997

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* obligations under the *Contract*;

Delete the definition of '*Contract*' and replace with:

**'Contract** has the meaning in clause 1.1 of the *Formal Instrument of Agreement*;

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 the definition of '*date of acceptance of tender*' and insert:

## Annexure Part A to AS4000 – 1997

**'date of acceptance of tender'** means the date which appears on the written notice from the *Principal* to the *Contractor* advising that the *Contractor's* tender or quotation (as the case may be) is successful or, where no such notice is issued means the date on which the *Contract* is executed by the last party to do so;'

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) failing to declare a *conflict of interest* in breach of subclause 2B.2;
- (d) 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*);
- (e) using any information improperly obtained, or obtained in breach of any obligation of confidentiality;
- (f) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
- (g) 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 either:

- (a) not in writing; or
- (b) in writing but 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:

- (a) in respect of the *Contractor*, the sum of:
  - (i) the amount specified in *Item 19C*; and

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- (ii) the amount of any excess payable under a policy of insurance required to be effected and maintained by the *Contractor* under the *Contract*; and
- (b) in respect of the *Principal*, the sum of:
  - (i) the amount specified in *Item 19D*; and
  - (ii) the amount of any excess payable under a policy of insurance required to be effected and maintained by the *Principal* under the *Contract*;

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 *Superintendent*;

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

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

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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** the documents incorporated into Annexure Part G;

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*) from time to time;

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 to the extent that they delay activities on the critical path of the *construction program*:

- (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) actual quantities of *work* being greater than the quantities in the *price schedule* or the quantities determined by reference to the upper limit of accuracy stated in *Item 11* (otherwise than by reason of a *variation* directed under clause 36);
  - (iii) *variations* (other than a *variation* for the convenience of the *Contractor*);
  - (iv) *latent conditions*;
  - (v) 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;

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- (vi) delays by municipal, public, or statutory authorities (including the *Principal* in its capacity as a local government authority);
- (vii) claims referred to in subclause 15.1(e);
- (viii) 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) amounts which the *Superintendent* is required to certify pursuant to subclause 5.1A;
- (d) other amounts due from the *Contractor* to the *Principal* in connection with the *Contract*;
- (e) amounts due from the *Contractor* to the *Principal* otherwise than in connection with the *Contract*;
- (f) 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, reconstruction, replacement, correction or rectification the subject of a *direction* pursuant to subclause 29.3 or clause 35 carried out by a third party;
- (g) 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;
- (h) other amounts which the *Contract* expressly provides are *required deductions* or which the *Contract* expressly entitles the *Principal* or the *Superintendent* to deduct from payments to the *Contractor*;

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*':

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**'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 payment legislation':

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

Insert a new definition of 'specified loss':

**'specified loss'** means:

- (a) any loss of, 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 '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 a party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where that 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 *Item 22A*;

## **2 NATURE OF CONTRACT**

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Delete clause 2.

## **2A PERFORMANCE AND PAYMENT**

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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* and shall otherwise comply with its obligations under the *Contract* at its expense.

The *Principal* shall pay the *Contractor*.



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- (a) for *work* described in the *price schedule* as a 'rate only' item, 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 accepted by the *Principal* for the section or item; and
- (b) for all other *work*, (including *work* for which the *price schedule* provides a lump sum), the lump sum identified in the *price schedule*,

adjusted by any additions or deductions made pursuant to 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 **(Adjustment for actual quantities – lump sum contract)** This subclause 2A.3 only applies where *Item 10A* states that the *Contract* is a *lump sum 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* and:

- (a) the *price schedule* expressly describes the item as a 'rate only' 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 12*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*; and
- (b) otherwise (including where the *price schedule* expressly provides a lump sum for the item) 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*.

- 2A.4 **(Adjustment for actual quantities – schedule of rates contract)** This subclause 2A.4 only applies where *Item 10A* states that the *Contract* is a *schedule of rates 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*,

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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*;
  - (c) payment of all royalties, levies, fees, charges, costs, expenses, taxes or duties in connection with *WUC*; and
  - (d) 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 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 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.
- 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 pursuant to which the parties entered into the *Contract*. 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:

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'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*.'

Insert a new subclause 5.1A as follows:

#### **5.1A Failure to provide security**

Without limiting the *Principal's* other rights, unless and until the *Contractor* provides *security* (other than retention moneys) in accordance with subclause 5.1:

- (a) the *Superintendent* shall certify, as a *required deduction*, an amount equal to the value of the *security* which has not been provided; and
- (b) the *Principal* shall be entitled to hold that amount as *security*.

The *Principal* shall release and return any amounts held under this subclause 5.1A within 10 *business days* after *Contractor* provides the *security* in accordance with subclause 5.1.'

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*.'

Delete the existing text of subclause 5.4 and replace with:

'To the extent permitted by law, upon the later of:

- (a) the issue of the *certificate of practical completion*; and

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- (b) in respect of *security* under *Item 13* only, the rectification of all *defects* in respect of which the *Superintendent* has given the *Contractor* written notice either in, or prior to the issue of, the *certificate of practical completion*,

a party's entitlement to *security* (other than in *Item 13(e)*) shall be reduced by the percentage or amount in *Item 13(f)* or *14(d)* as applicable, and the reduction shall be released and returned within 10 *business days* to the other party.

The *Principal's* entitlement to *security* in *Item 13(e)* shall cease 10 *business days* after incorporation into *the Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 10 *business days* after the last of the following to occur:

- (i) the issue of the *final certificate*;
- (ii) in respect of *security* under *Item 13* only, compliance by the *Contractor* with all *directions* given under subclause 29.3 or clause 35 (other than *directions* which have been the subject of a *notice of dispute*); and
- (iii) the resolution (whether pursuant to clause 42 or otherwise) of any *dispute* the subject of a *notice of dispute* referred to in subclause 37.4(d).'

### 6 EVIDENCE OF CONTRACT

---

Delete the existing text of clause 6 and replace with:

'Within the time reasonably required by the *Principal* (or where the *Principal* does not prescribe a time, 10 *business days*) after receiving a copy of a *Formal Instrument of Agreement* for execution ('*execution copy*'), the *Contractor* shall either:

- (a) properly execute the number of copies provided and return them; or
- (b) provide the *Principal* with written notice of any aspect of the *execution copy* which the *Contractor* considers is in error or which does not reflect the agreement between the *Principal* and the *Contractor*.

If the *Contractor*:

- (i) does not give the *Superintendent* the written notice required by subclause 6(b) within the time required by that subclause; or
- (ii) the *Contractor* commences *work* after receiving the *execution copy* and before giving the *Principal* the written notice required by subclause 6(b),

then the *Contractor* shall be deemed to have accepted and agreed to, and shall be legally bound by, the terms of the contract as evidenced by the *execution copy*.

Otherwise, until a *Formal Instrument of Agreement* is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*.

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Within 25 *business days* after receiving executed copies of the *Formal Instrument of Agreement* from the *Contractor*, the *Principal* shall execute both copies and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.'

### 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 existing text of subclause 8.1 and replace with:

'Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in or between any document prepared for the purpose of carrying out *WUC* (including the documents incorporated into Annexure Parts D, E and F), that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

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*.'

Delete the existing text of subclause 8.5 and insert:

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'The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential or which are, of their nature, confidential.

If required in writing by the *Principal*, the *Contractor* shall enter into a separate agreement not to disclose to anyone else any confidential matter even after issue of the *final certificate* or earlier termination of the *Contract*.

Notwithstanding anything else in this subclause 8.5 or elsewhere in the *Contract*, documents and information provided on behalf of a party to the other party in connection with the *Contract* may be used, copied, modified or disclosed as required or permitted by any *legislative requirement* or other law and otherwise:

- (a) by the *Principal*, as the *Principal* considers to be reasonably necessary to:
  - (i) carry out its obligations and exercise its rights under the *Contract*;
  - (ii) obtain legal, accounting or other professional advice in connection with the *Contract*; and/or
  - (iii) otherwise properly carry out its functions as a local government authority;
- (b) by the *Contractor*, as is reasonably necessary to enable the *Contractor* to:
  - (i) carry out its obligations and exercise its rights under the *Contract*;
  - (ii) obtain legal, accounting or other professional advice in connection with the *Contract*; and
  - (iii) comply with the *Contractor's* corporate governance requirements.

If the *Contractor* is required by law to disclose confidential information of the *Principal*, the *Contractor* 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.

If the *Contractor* collects or has access to *personal information* in order to carry out its obligations under the *Contract*, 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 this *Contract* as if the *Contractor* was the *Principal*. Where the *Principal* consents to the *Contractor* subcontracting the whole or part of the *Contractor's* obligations under this *Contract*, the *Contractor* 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).

The *Principal* collects *personal information* and non-personal 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 employees of the *Principal* and third-party personnel 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).'

Insert the following at the end of subclause 8.6:

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'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

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Insert the following at the end of subclause 9.2:

'For the purposes of this subclause 9.2, the subcontractors which the *Contractor* 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 other 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 (**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.
- 11A.3 (**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.4 (**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 qualifications, competencies, licences, accreditations, certifications, permits, clearances and other authorisations which are required:
    - (i) under contract;
    - (ii) pursuant to a *legislative requirement* or the *Principal's policies*; or
    - (iii) otherwise at law,

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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* 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* or the *Principal's policies*;
- (d) notify the *Principal* immediately if it becomes aware of any breach of this subclause 11A.4; 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.4.

11A.5 (**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* or the *Superintendent* caused or contributed to the *claim* or the cost, expense, fine, penalty, damages or loss.

11A.6 (**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.4, 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*.'

## 12A WORK HEALTH AND SAFETY

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Insert new clause 12A as follows:

### '12A WORK HEALTH AND SAFETY

12A.1 (**Interpretation**) In this clause:

- (a) 'Act' means the *Work Health and Safety Act 2011* (Qld);
- (b) 'WHS authority' means any government authority having jurisdiction under the *WHS Laws*;



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- (c) '*Regulation*' means the *Work Health and Safety Regulation 2011* (Qld);
- (d) '*inspector*', '*notifiable incident*', '*regulator*' '*structure*' and '*workplace*' have the same meanings as in the *Act*;
- (e) '*principal contractor*' has the same meaning as in the *Regulation*;
- (f) '*statutory notice*' means any:
  - (i) infringement notice, prohibition notice, improvement notice or non-disturbance notice; and
  - (ii) any electrical safety protection notice or unsafe equipment notice,issued by an *authority* pursuant to the *WHS Laws*;
- (g) '*WHS*' means work, health and safety;
- (h) '*WHS Laws*' means the *Act*, the *Regulation*, *Electrical Safety Act 2002* (Qld) and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards.

12A.2 (**Appointment as principal contractor**) Where *Item 19B* states that the *Contractor* is appointed as *principal contractor*, then from the *date of acceptance of tender*:

- (a) the *Principal* engages the *Contractor* to be the *principal contractor* under the *Regulation* in relation to *WUC* and authorises the *Contractor* to:
  - (i) have management and control of the *site* and any other *workplace* at which *WUC* is carried out; and
  - (ii) discharge the duties as person conducting a business or undertaking and the additional duties of the *principal contractor* imposed under the *Regulation*;
- (b) the *Contractor* accepts the engagement as *principal contractor* from the *Principal* and agrees to fulfil all requirements and give effect to that engagement prior to the commencing any *WUC*; and
- (c) the *Contractor* will comply with and discharge all obligations imposed on the *Contractor*, as *principal contractor*, by the *WHS Laws*.

If *Item 19B* states that the *Contractor* is not engaged as *principal contractor*, the *Contractor* must comply with all *directions* of the *Superintendent* relating to *WHS*.

12A.3 (**Contractor's primary obligations**) From the *date of acceptance of tender*, the *Contractor* must:

- (a) comply with and discharge all obligations imposed on the *Contractor* as a person who conducts a business or undertaking and otherwise, by the *WHS Laws*;

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- (b) consult with the *Principal* and consult with the designers of the whole or any part of a structure to be constructed under the *Contract*, about how to ensure that risks to health and safety arising from the design are eliminated during construction of *WUC* or, if it is not reasonably practicable to eliminate the risks, minimise, so far as is reasonably practicable;
- (c) in performing its obligations under the *Contract*, take into account and take appropriate action having regard to any information given to the *Contractor* by the *Principal* or any other person, about hazards and risks at or in the vicinity of the *workplace* where *WUC* is being carried out,
- (d) comply with any direction on *WHS* issued by a *WHS Authority* issued in relation to the *WUC*;
- (e) consult, co-operate and co-ordinate *work* with the *Principal* in relation to any health and safety matter arising out of or in connection with *WUC*, *the Contract* or duties held by either the *Principal* or the *Contractor* under *WHS Law*; and
- (f) without limiting paragraph 12A.2(c) ensure its officers, workers and agents, subcontractors and its subcontractors' officers, workers and agents, discharge their respective duties under the *WHS Laws* in connection with *WUC*.

### 12A.4 (**Contractor's WHS systems and documentation**) The *Contractor*:

- (a) must ensure, and warrants and represents, it has made its own enquiries in connection with compliance with *WHS Laws*, including in relation to hazards or risks on the *site*, and has not relied on any representations, warranty or information that has been provided by the *Principal*;
- (b) must ensure, and 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;
- (c) must inform the *Principal* of all its *WHS* policies, procedures or measures implemented for the performance of its obligations under the *Contract*;
- (d) must prepare and adopt a *WHS* plan and other documentation which:
  - (i) addresses all the specific *WHS* hazards and issues relevant to the *Contractor's* obligations under the *Contract* which can be reasonably anticipated or ascertained from time to time during the performance of the *Contractor's* obligations under the *Contract*;
  - (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 this subclause 12A.4(c) at all times during the performance of its obligations under the *Contract*;

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(e) must:

- (i) unless otherwise directed by the *Principal*, prior to commencing *WUC*, submit the *Contractor's WHS plan* and other 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 *Contractor* that all or part of the *WHS* documentation is not suitable, at its cost amend and resubmit the relevant *WHS* documentation;

(f) must, if the *Principal* at any time during the performance of the *Contractor's* obligations under the *Contract* requests the *Contractor* 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 *Contractor's* obligations under the *Contract*;

12A.5 **(Notices and reports)** The *Contractor* must:

- (a) if a *notifiable incident* occurs at the *workplace* at which *WUC* is being undertaken:
  - (i) immediately notify the *regulator* and the *Superintendent* of the *notifiable incident*; and
  - (ii) take all reasonably practicable steps to secure the *site* where the *notifiable incident* occurred until an *inspector* arrives at the *site* or any earlier time that an *inspector* directs;
- (b) provide a copy of every *statutory notice* received from an *authority* in connection with *WUC* to the *Principal* and the *Superintendent* within 1 *business day* after the notice is received;
- (c) if any of the *Contractor's personnel* are involved in an accident or other health and safety incident or otherwise suffer an injury in connection with the performance of *WUC*:
  - (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
  - (iii) cooperate and assist (and procure its *personnel* to cooperate and assist) the *Principal* with any investigation by the *Principal*

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into any accident, injury or other health and safety incident in connection with the *Contract*;

- (d) within the time directed by the *Superintendent* make available to the *Superintendent* and the *Principal* all project *site* accident data which must include injuries and damage resulting from accidents or any incidents involving harm to a third party, particularly where legal action may be taken against them or the *Principal*.

12A.6 **(Site specific induction)** The *Contractor* must ensure that all *personnel* of the *Contractor* working at the *site* receive a site-specific induction and that each person visiting the *Contractor* or its *personnel* at that *site* receives a site-specific induction or is accompanied by someone who has received such an induction.

12A.7 **(Safety compliance)** If during the performance of *WUC* the *Superintendent* informs the *Contractor* that it is of the opinion the *Contractor* is:

- (a) not conducting *WUC* in compliance with the *Act*, *Regulation*, codes of practice or relevant policies and procedures; or
- (b) conducting *WUC* in such a way as to endanger the health and safety of the *Contractor's personnel*, the *Principal's personnel* or the general public,

the *Superintendent* may direct the *Contractor* to promptly remedy the breach or take any other action permitted by the *Contract*, including suspending the whole or part of *WUC* pursuant to clause 33 until such time as the *Contractor* satisfies the *Superintendent* that *WUC* can be resumed in a safe manner.

12A.8 **(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 breach by the *Contractor* of its obligations under this clause 12A but the indemnity will be reduced to the extent that the act or omission of the *Principal* or the *Superintendent* caused or contributed to the *claim* or loss.'

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### 15 DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC

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Delete the existing text of paragraph (d) in the third paragraph of subclause 15.1 and insert “not used”.

Delete clause 15.2.

### 15A LIABILITY

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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 that party's *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 the *Contractor* for liquidated damages pursuant to subclause 34.7;
- (c) liability of either party in connection with personal injury or death or damage to property;
- (d) liability of a party arising as a result of:
  - (i) a breach of any *legislative requirement*;
  - (ii) an infringement of confidentiality or *intellectual property rights*;
  - (iii) a deliberate breach or abandonment of the *Contract*;
  - (iv) *wilful misconduct*; or
  - (v) fraud or other criminal conduct,by that party;
- (e) liability of the *Contractor* which the *Contractor*:
  - (i) is entitled to recover under any insurance policy required to be effected under the *Contract* (up to the monetary limits for that insurance stated in the *Contract*) unless, and then only to the extent that, the *Contractor* uses all reasonable endeavours to, but does not actually, recover that liability; or

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- (ii) would have been entitled to recover under any insurance policy required to be effected under the *Contract* (up to the monetary limits for that insurance stated in the *Contract*) but for any act or omission of the *Contractor*,

and amounts referred to in paragraphs (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

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In the third paragraph of Alternative 1, 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

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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;'

### 19 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

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Delete subclauses 19.3 and 19.6.

### 20 SUPERINTENDENT

---

Delete the first paragraph of clause 20 and insert:

'The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent*, when acting as certifier, valuer or assessor, fulfils all aspects of the role and functions honestly, fairly, independently, and in accordance with the *Contract*. 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*. The *Contractor* may seek the approval of the *Superintendent* to change the role of any key *personnel* or to engage additional persons as key *personnel*.

The *Contractor* must promptly arrange a replacement approved by the *Superintendent* to replace any key *personnel*. The *Contractor* must provide any

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information reasonably required by the *Superintendent* in connection with the replacement. The *Superintendent* cannot unreasonably refuse to approve a replacement person that is of equal or greater skill, experience and competency to the person being replaced.'

### 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 first paragraph of subclause 29.3 and insert:

'If the *Superintendent* becomes aware of work done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):'

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

---

In the fifth paragraph, delete 'It shall be deemed a *Contract* document'.

### 34 TIME AND PROGRESS

---

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

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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 subclause 34.9 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. Nothing in subclause 34.5 shall affect the *Contractor's* right to damages for a breach of contract.'

Delete subclause 34.9 and replace with:

### **'34.9 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 subclause 34.9 shall oblige the *Principal* to pay extra costs for delay –

- (a) which have 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*, (except to the extent, if any, that *Item 26* provides otherwise);
- (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*, as the case may be.

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

Notwithstanding anything else 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.'

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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 payment 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*.

The party entitled to receive payment must provide a tax invoice in the form required by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). 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* and must be provided to the *Principal* within 5 *business days* of receipt of such *progress certificate*.

To the extent permitted by law, 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*.'

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Delete subclause 37.6.

### **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 (including where a warranty given or representation made is found to be false).'

### **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 5 *business days* 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; and
  - (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

## Annexure Part A to AS4000 – 1997

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**

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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*) within the time required by the *Contract* or reasonably directed by the *Superintendent* for performance of such an obligation, the *Principal* may, after giving 5 *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 italicised.'

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* or a notice of *dispute* under subclause 42.1 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 42 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

---

Delete the last paragraph of subclause 42.1 and insert:

'Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39, 39A, 40 and subclause 42.4, continue to perform the *Contract*.'

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 the existing text of subclause 42.3 and insert 'Not used'.

In subclause 42.4 delete 'herein' and insert 'in subclauses 42.1 and 42.2'.

Insert a new subclause 42.5 as follows:

#### **'42.5 Disputing a direction of the Superintendent**

Notwithstanding anything else in this clause or elsewhere in the *Contract*, 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*.'

### 42 WAGES

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**(Wages)** The wages of the contractor's employees are not less than the equivalent of a Council employee's rate of pay. For the rate of wages for council employees, please refer to the Banana Shire Certified agreement on the Queensland Industrial relation Commission website or contact the procurement department for a copy.

### 43 USES BY OTHER LOCAL GOVERNMENTS

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43.1 A Local Government in Queensland other than Council (an "Other Local Government") may access the contract subject to mutual agreement in writing of Council, the Contractor and the other Local Government in Queensland.

43.2 Responsibilities for establishing and managing any contract between the contractor and the Other Local Government in Queensland rests with the Other Local Government.

# Annexure Part I – Contractor's Statutory Declaration

## **Oaths Act 1867 STATUTORY DECLARATION**

QUEENSLAND  
TO WIT

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	Date work the subject of the claim carried out	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 and all required information has been obtained and provided to the Principal or the Superintendent (where 'building product', 'Minister', 'non-conforming building product' and 'required information' each have the respective meanings given to those terms in the *Queensland Building*

and Construction Commission Act 1991 (Qld)). .

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*.

I declare that the contents of this statutory declaration are true and correct. Where the contents of this declaration are based on information and belief, the contents are true to the best of my knowledge and I have stated the source of that information and grounds for the belief.

I understand that it is a criminal offence to provide a false matter in a declaration, for example, the offence of perjury under section 123 of the *Criminal Code Act 1899* (Qld).

I state that:

- A. This declaration was made in the form of an electronic document.\*
- B. This declaration was electronically signed.\*
- C. This declaration was made, signed and witnessed under part 6A of the *Oaths Act 1867*.\*

(\*delete whichever statements are not applicable)

**DECLARED** by

..... )  
[insert full name of declarant] )

at ..... )  
[insert place where declarant is located] )

In the presence of:

..... )  
[insert full name of witness] )

..... )  
[insert type of witness] )

..... )  
[insert name of law practice / witness's  
place of employment]\* )  
\*delete if not applicable )

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**For special witnesses to complete – Tick as applicable**

- ☐ I am a special witness under the Oaths Act 1867. (see section 12 of the Oaths Act 1867)
- ☐ This document was made in the form of an electronic document.
- ☐ I electronically signed this document.
- ☐ This statutory declaration was made, signed and witnessed under part 6A of the Oaths Act 1867 – I understand the requirements for witnessing a document by audio visual link and have complied with those requirements.



## SCOPE

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Main Switchboard Replacement at Rainbow Street  
Sports Club Complex Biloela

CONTRACT NO: T2324.42



## 1. INTERPRETATION AND DEFINITIONS

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- 1.1 (Documents comprising this Scope) The Scope comprises the following documents:
- a. **Electrical Service – Technical Specifications Scope from Andersons Electrical Engineers.**
  - b. **Electrical Services Maps & Design (23165RE001\_A) from Andersons Engineers.**
  - c. **Single Line Diagram & Switchboard Design from Andersons Engineers.**
- 1.2 (**Precedence**) If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1, then the document which contains the higher standard or more onerous obligation will prevail. If that does not resolve the ambiguity, inconsistency, conflict or discrepancy then the documents will take precedence in the order set out in clause 1.1 with the document listed at **Error! Reference source not found.** being the highest in the order.

## 2. APPROVALS AND OTHER LAW

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- 2.1 (**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 of 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.
- 2.2 (**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.
- 2.3 (**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,
- any Approval required for the Supplier to perform the Services.
- 2.4 (**No fetter**) Nothing in the Contract shall be taken to fetter the power, rights or authority of the Principal as the sublessor under the *Land Act 1994* (Qld) or an Authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) or any other law.
- 2.5 (**Provision of the Services**) The Supplier must, and warrants and represents that it will, perform the Services so that the Site, at all times during the Term, complies with all Approvals and other applicable law.
- 2.6 (**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 2.1, 2.2 or 2.3. Unless otherwise directed by the Principal, the Supplier must take immediate steps to remedy such a breach at its expense.

## 3. SERVICE LEVELS

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- 3.1 In this clause:

## Scope of Work

- (a) **Review Period** means the period stated in clause 3.2 below in which the performance of the Supplier against a Service Level is to be reviewed;
- (b) **Service Levels** means the service level(s) or key performance indicator(s) (if any) described as such in clause 3.2 below.
- 3.2 **(Guarantee)** The Supplier must, and guarantees that it will, in providing the Services and carrying out its other obligations under the Contract, achieve or exceed all Service Levels in every Review Period.
- 3.3 **(Measuring performance)** The Principal will review the performance of the Supplier against the Service Levels at the times in clause 3.2 below, and otherwise on the giving of reasonable notice. The Principal may direct the Supplier to provide a written explanation for its performance against any Service Level.
- 3.4 **(Performance liquidated damages)** If the Supplier has failed to meet any Service Level, the Supplier shall be indebted to the Principal for performance liquidated damages calculated in accordance with clause 3.2.
- 3.5 **(Recovery of liquidated damages)** The Principal may deduct such performance liquidated damages from moneys otherwise owing to the Supplier to recover the performance liquidated damages. The Parties agree that the performance liquidated damages are an agreed genuine pre-estimate of the Principal's loss if the Supplier breaches its obligations under the Contract.
- 3.6 **(General damages)** If, for any reason, the Principal's entitlement to performance liquidated damages is found to be void, voidable or otherwise unenforceable (in whole or part), or the Principal is otherwise unable to recover the whole of the performance liquidated damages from the Supplier, the Supplier shall be liable to the Principal for any loss, damage, cost or expense suffered or incurred by the Principal as a result of the Supplier failing to achieve the Service Levels.
- 3.7 **(Review of Service Levels)** The representatives of the Parties may review the Service Levels from time to time and amend them in any way including by adding additional Service Levels, removing or amending Service Levels, amending the method of measuring performance or the consequence of achieving or failing to achieve a Service Level.
- 3.1 **(Substantial breach)** Failing to achieve or exceed:
- (a) the same Service Level for three consecutive Review Periods, even though the Supplier may have achieved or exceeded some or all of the other Service Levels for those same Review Periods; or
- (b) any two Service Levels for two consecutive Review Periods,
- shall constitute a substantial breach of the Contract.
- 3.2 **(Service Levels)** The Service Levels are:

Service Levels			
Service Level	Requirement	Review Period	Performance Liquidated Damages
Completion of Work Scope	Full completion of the Scope at Section 1.1 by the 30 <sup>th</sup> August 2024	30 <sup>th</sup> August 2024	.05% of total value of project per week

## 4. PROCUREMENT SERVICES

- 4.1 Where the Services require the Supplier to manage, conduct or otherwise participate in a Procurement Process for the engagement of a contractor or other supplier by the Principal, then

## Scope of Work

the Supplier must, and must ensure that its Personnel, to the extent that it is within the control of the Supplier or its Personnel ensure that the procurement process is conducted consistently with:

- (a) the Principal's procurement policy;
- (b) the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld);
- (c) the requirements of the request for tender or request for quotation documentation issued to tenderers;
- (d) any probity plan or evaluation plan implemented for the Procurement Process;
- (e) principles of probity; and
- (f) Good Industry Practice,

with a view to ensuring that the selected contractor or supplier is the most advantageous to the Principal having regard to the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld).

## 5. SUPERINTENDENT SERVICES

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5.1 **(Primary obligations)** Where the Services require the Supplier or any of its Personnel to fulfil the role and functions of the Superintendent or similar under a Construction Contract, the Supplier must, and must ensure that its Personnel, in doing so:

- (a) comply with and act consistently with any requirements of the Construction Contract as to the manner in which those roles and functions are to be fulfilled including (where applicable) by:
  - (i) giving any directions, documents or notices required or permitted to be given by the superintendent under the Construction Contract; and
  - (ii) assessing all claims made under the Construction Contract,

in accordance with the requirements of the Construction Contract for the giving of such directions, documents and notices and the making of such assessments;
- (b) use its or their reasonable endeavours to ensure that the Construction Contractor complies with the Construction Contract, including by exercising the available rights and powers of the superintendent under the Contract;
- (c) keep the Principal fully informed of all relevant matters under the Construction Contract;
- (d) unless and then only to the extent (if any) that to do so would be inconsistent with the Construction Contract:
  - (i) act as the Principal's agent;
  - (ii) act in the best interests of the Principal;
  - (iii) seek and act in accordance with the instructions of the Principal; and
  - (iv) do all other things necessary to protect the Principal's rights and interests under the Construction Contract.

5.2 **(No waiver or limitation)** The Supplier must not, and must ensure that its Personnel do not, do or omit to do anything where that act or omission could operate so as to waive or limit the rights of the Principal under or in connection with the Construction Contract or otherwise prevent the Principal from exercising any right under or in connection with the Construction Contract.

## Scope of Work

### 5.3 (Security of payments) The Supplier:

- (a) is authorised to prepare and issue payment schedules in response to any payment claims made by the Construction Contractor pursuant to the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) in relation to the Construction Contract;
- (b) must take all reasonable steps to identify all documents which may constitute such payment claims and immediately provide a copy of such documents to the Principal;
- (c) if requested by the Principal, promptly give to the Principal a copy of the payment claim and any other information or documentation required by the Principal in connection with the payment claim;
- (d) must provide such other assistance as the Principal may reasonably require in connection with the payment claim and any related proceedings whether under the Act or otherwise.

### 5.4 (Definitions) In this clause:

- (a) **Construction Contract** means a construction contract between the Principal and the Construction Contractor for the construction of any works the subject of the Services, and includes any construction contract specifically identified in the Contract;
- (b) **Construction Contractor** means the contractor engaged by the Principal under the Construction Contract;
- (c) **Superintendent** means the person appointed to fulfil the role and functions of the superintendent pursuant to a Construction Contract, and includes a superintendent's representative.

## 6. DESIGN SERVICES

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6.1 **(Design services)** In addition to the warranties and representations contained in the General Conditions, where the Services include Design Work, the Supplier warrants and represents that the works the subject of the Design Work are neither over-designed nor under-designed and that to the extent to which it is within the control of the Supplier, any works constructed in accordance with the Design Documents will:

- (a) meet or exceed the minimum performance characteristics and standards identified in the Contract;
- (b) be fit for the purpose or purposes stated in or to be reasonably inferred from the Contract and any other purpose for which such works are commonly provided or which has been made known by the Principal to the Supplier; and
- (c) be capable of achieving the Design Life.

6.2 **(Use of Design Documents)** In addition to the rights provided under clause 31 of the General Conditions, the Supplier consents to the Principal using, copying, reproducing, modifying and adapting the Design Documents for any purpose in connection with the construction, use, maintenance, operation, modification or replication of the Works or works similar to the Works.

### 6.3 (Definitions) In this clause:

- (a) **Design Documents** means the drawings, specifications and other information, samples, models, patterns and the like (if any) required by the Contract and created (including by the Supplier) as part of the Services;
- (b) **Design Life** means the design life stated in or to be reasonably inferred from the Scope;

- (c) **Design Work** means the preparation, review, modification or certification of any documentation describing the design and/or specification requirements of any work or item;
- (d) **Works** means the works the subject of the Design Documents.

## 7. BIOSECURITY MANAGEMENT

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### 7.1 (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.
- (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.

7.2 **(Preparation of plan)** 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.

7.3 **(Training)** The Supplier shall ensure that all relevant Personnel are trained to be aware of biosecurity risks.

7.4 **(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.

## 8. QLEAVE

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8.1 **(QLeave)** The Supplier must comply with obligations under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* (Qld) including by paying all levies payable pursuant to that Act and registering with QLeave.

## 9. PRINCIPAL SUPPLIED INFORMATION AND OTHER INVESTIGATIONS

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9.1 **(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.

9.2 **(Acknowledgement and agreement by Supplier)** The Supplier acknowledges and agrees that:

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- (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 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;
  - (ii) 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
  - (iii) 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

9.3 **(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.

## 10. SUPPLIER'S PERSONNEL

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10.1 **(Minimum Personnel levels)** The Supplier must ensure that at all times during the Term, the minimum number of each type of Personnel identified in the Contract perform the roles identified in the Contract for the periods indicated in the Contract (**Minimum Personnel Levels**). The Minimum Personnel Levels must be maintained notwithstanding any planned or unplanned absences, personal breaks, attendance at training or performance of other duties by any Personnel. Provision of the Minimum Personnel Levels does not relieve the Supplier of any obligation under the Contract. If further Personnel are required in addition to the Minimum Personnel Levels for the Supplier to comply with its obligations under the Contract, then the Supplier must provide such additional Personnel at its expense.

10.2 **(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.

## 11. MANAGEMENT PLAN

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11.1 **(Preparation)** The Supplier must, prior to commencing the Services, prepare and obtain the Principal's approval of a management plan or plans which addresses the following matters:

## Scope of Work

- (a) Contractor submit the plan schedule to the project manager

If the Principal notifies the Supplier that all or part of the plan(s) is not suitable, the Supplier must at its cost amend and resubmit the relevant plan(s).

- 11.2 **(Updating)** The management plan must be updated as often as required to:

- (a) ensure that the Supplier continues to comply with the warranties and representations as to Supplier Documents given in the Contract;
- (b) address any deficiencies in the systems described in the plan of which the Supplier becomes aware; and
- (c) take into account any Variations or improvements in the Services.

A copy of a revised management plan must be submitted to the Principal for approval prior to implementation of it.

- 11.3 **(Compliance)** The Supplier must comply with the management plan at all times during the Term. Such compliance will not release or discharge the Supplier from any liability or obligation under the Contract.

## 12. MEETINGS

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- 12.1 **(Meetings)** The Supplier must, at the following times:

- (a) Meeting schedule send to the the project manager in advance

and when otherwise reasonably required by the Principal, meet and in good faith discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract including:

- (b) the Supplier's performance of its obligations under this Contract, including the Service Level(s) (if any) identified in the Contract;
- (c) to promote safer and quieter work practices; and
- (d) improvements to efficiency of the Supplier's obligations under the Contract.

- 12.2 **(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.

## 13. SERVICE RECORDS AND AUDITING

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- 13.1 **(Creation)** The Supplier must:

- (a) create and maintain the following:
  - (i) list of all equipment and it service date
- (b) create and maintain the records, reports and other documents required by the Contract and any other records, reports or documents reasonably required by the Principal in connection with the Contract; and
- (c) create any document required to be prepared under the Supplier's management plan prepared under the Contract,

**(‘Service Records’).**



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13.2 **(Audit)** The Principal may at any time during the Term, on the giving of reasonable notice, audit the Supplier's compliance with the Contract or any obligation under it. The Supplier shall facilitate the audit by:

- (a) allowing the auditors to undertake any inspections or tests;
- (b) providing such assistance, information and access to the Site, systems and equipment and other cooperation;
- (c) providing to the auditor with copies of, facilitating the copying by the auditor of, the Services Records and all other records, information and documentation,

reasonably required by the auditor.

If the audit reveals any non-compliance by the Supplier with its obligations under the Contract, then the costs reasonably and necessarily incurred by the Principal in conducting the audit shall be a debt due and payable by the Supplier. Otherwise, the Principal shall bear the cost of the audit.

## 14. TRANSITION OUT

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14.1 **(Definitions)** In this clause:

- (a) **Transition Out Period** means a period of up to agreed (12 or 24) months after the expiry of the Term or termination of the Contract;
- (b) **Transition Out Plan** means that plan the Supplier is required to prepare in accordance with clause 14.2; and
- (c) **Transition Out Services** means, acting in good faith, doing all things reasonably required to facilitate the transition of the Supplier's obligations under the Contract from the Supplier to another contractor or the Principal and may include:
  - (i) conducting a walk-through of each part of the Sites with potential new contractors and the Principal;
  - (ii) doing all things reasonable and necessary to facilitate the Supplier's subcontractors utilised in the provision of the Services to enter into contracts with the Principal or another contractor engaged by the Principal on terms and conditions no less favourable than those offered to the Supplier;
  - (iii) providing to the Principal copies of up-to-date Service Records (if any) and programs of all Services;
  - (iv) otherwise complying with all directions and doing all things reasonably requested by the Principal (including providing advice, assistance, information, training, access to systems and equipment, executing deeds, documents and instruments) to ensure the completion and continuance of the Supplier's obligations under this Contract;

14.2 **(Transition Out Plan)** Unless otherwise directed by the Principal, no later than three calendar months prior to the end of the Term, the Supplier must prepare, and submit to the Principal for approval, a plan for the performance of the Transition Out Services. The Transition Out Plan must detail how the Supplier will perform the Transition Out Services and must contain such other detail as may be reasonably required by the Principal.

14.3 **(Transition Out Services)** The Supplier must perform the Transition Out Services in accordance with the approved Transition Out Plan and the reasonable directions of the Principal.

14.4 **(Transition Out Period)** If directed by the Principal, the Supplier must continue to perform the Supplier's obligations under the Contract for the Transition Out Period.



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- 14.5 **(Charges)** The Supplier may claim payment for the Transition Out Services in accordance with the price specified for those Services under the Contract. Where no price is specified in this Contract, the Supplier shall be entitled to claim its reasonable costs of carrying out the Transition Out Services as a Variation.
- 14.6 **(Costs)** Any costs, loss or expense suffered or incurred by the Principal because of a breach of this clause 14 will be a debt due and owing by the Supplier to the Principal.

## 15. PERSONAL PROPERTY SECURITIES

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- 15.1 **(Definitions)** In this clause, PPS Act means the *Personal Property Securities Act 2009* (Cth). Terms used in this clause which are defined in the PPS Act have the meanings given in that Act.
- 15.2 **(Disclosure)** If this Contract contains a security interest, then each Party agrees for the purposes of section 275(6) of the PPS Act that it will not disclose information of the type referred to in section 275(1) of the PPS Act where a request is made under section 275(1) of the PPS Act in relation to this Contract or any part of it, except in circumstances where the Party is compelled by law (other than section 275(1) of the PPS Act) to make that disclosure.
- 15.3 **(Supplier's obligations)** If the Principal determines that any clause of this Contract, or a transaction contemplated by this Contract or in connection with the performance of its obligations under this Contract constitutes, or is likely to give rise to a security interest in respect of which the Principal is the security holder, then:
- (a) the Supplier must, within the time required by the Principal, provide all assistance and cooperation requested by the Principal that the Principal determines is reasonably required to:
    - (i) register and maintain the registration of its security interest on the personal property securities register within any applicable time limits relevant to the effectiveness of the security interest;
    - (ii) ensure that the Principal's security interest is enforceable against third parties, perfected or otherwise effective;
    - (iii) ensure that the security interest has the appropriate priority required by the Principal (including where applicable as a purchase money security interest);
    - (iv) ensure that any security interest granted temporary perfection under the PPS Act is perfected by registration or other appropriate means prior to any applicable expiry of that temporary perfection; and
    - (v) enable the Principal to register financing statements or financing change statements under the PPS Act with respect to any such security interest;
    - (vi) the Supplier waives the right to receive notice of a verification statement in relation to the registration of that security interest;
    - (vii) the Supplier shall not register or permit to be registered any other security interest in respect of the personal property that comprises the collateral in respect of that security interest other than one that has been consented to or granted by the Principal
    - (viii) the Supplier shall not cause or allow any of the Supplier's personal property to become an accession to the Principal's personal property or cause or allow the Principal's personal property to become an Accession to the Supplier's personal property without the prior consent of the Principal, and
    - (ix) the Supplier must immediately notify the Principal if any other person claims or attempts to enforce a security interest:

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- (A) in the Principal's personal property, or
- (B) in the Supplier's personal property to the extent that that purported enforcement affects or has the potential to affect the Supplier's ability to carry out its obligations in accordance with the terms of the Contract.