



PART 1 & 2: REQUEST FOR TENDER

MANAGEMENT AND OPERATION OF MOURA
AQUATIC FACILITY

CONTRACT NO: T2526.27

PART 1 – PREAMBLE				
<p>BANANA SHIRE COUNCIL invites tenders from suitably qualified tenderers for the provision of management and operation of Moura Aquatic Facility, as described in more detail in the document called 'Management and Operation of Moura Aquatic Facility - Scope'.</p> <p>Commencement date of the contract will be 1st of July 2026, and the contract will be 4 years, with two optional extensions of 3 years each at council sole discretion.</p>				
PART 2 – GENERAL INFORMATION				
1. Contract details:	T2526.27 Management and Operation of Moura Aquatic Facilities			
2. Communications by Tenderers:	Communications regarding the Procurement Process must be submitted to tenders@banana.qld.gov.au 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
	Onsite inspections may be available every Wednesday throughout the Tender process.	NA	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	See Section 3 in the Scope / Tender Specification
4. Submission of Tender:	<p>Tenders must be submitted at tenders@banana.qld.gov.au or VendorPanel by no later than 11.00 am on 13th of February 2026.</p> <p>Note// Adequate time must be allowed for the Tender and all supporting documents to be uploaded or received by this time.</p>			
5. Evaluation Criteria:	Evaluation Criteria			Weighting (%) (Optional)
	Price			40%
	Evidence of sufficient licensing			10%
	Previous Experience			25%
	Evidence of ability to provide minimum services			25%
	Local Business / Knowledge			10%
6. Tenders should not be longer than:	No maximum Length is specified for this Tender (including all attachments, annexures, supplements, parts, schedules or appendices)			
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: tenders@banana.qld.gov.au			
PART 3 – PROCUREMENT PROCESS CONDITIONS				
<p>The Procurement Process is governed by the Local Government Act (2009), Local Government Regulation (2012) and the current Council's Procurement Policy.</p> <p>The 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 T252.27 Management and Operation of Moura Aquatic Facility – Procurement Process Conditions.</p>				
PART 4 – CONTRACT				
<p>The contract shall be substantially in the form attached to or provided with this Request for Tender and identified as T2526.27 Management and Operation of Moura Aquatic Facility – Contract.</p> <p>Tenderer must look at any departures to contract standard terms and include it in the Response Schedule (Schedule L: Statement of Departure).</p> <p>Also, Local Buy Arrangement can be used at the Council's sole discretion.</p>				
PART 5 – SCOPE				

The Scope is described in the document(s) attached to or provided with this Request for Tender and identified as **T2324.36 Management and Operation of Aquatic Facilities – Biloela and Moura – Scope.**

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 **T2526.27 Management and Operation of Moura Aquatic Facility – Response Schedule.**



Part – 3: Procurement Process Conditions

Management and Operation of Moura Aquatic Facility

CONTRACT NO: T2526.27

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Procurement Process Conditions

1. GENERAL

- 1.1 **(Conduct of the Procurement Process)** The Principal will endeavour to conduct the Procurement Process in a manner which is consistent with these Procurement Process Conditions.
- 1.2 **(Rights of the Principal)** The Principal may do anything which it considers to be prudent or necessary for the proper conduct of the Procurement Process, including:
- (a) **(alteration of Procurement Documents)** amend, add to or delete any part of the Procurement Documents including:
 - (i) the procedures and timeframes provided in the Procurement Process Conditions;
 - (ii) the Evaluation Criteria (including weightings);
 - (iii) the Scope; and
 - (iv) where one is included in the Procurement Documents, the Contract;
 - (b) **(suspension or termination)** suspend or terminate the Procurement Process;
 - (c) **(attendances)** request any one or more Respondents to attend a briefing, site inspection or other meeting or to make a presentation of their Response in person at the Principal's office at no cost to the Principal;
 - (d) **(change or error in Procurement Documents)** request any one or more Respondents to change their Response to take account of a change in the Procurement Documents or any error in such documents;
 - (e) **(clarification or alteration)** request any one or more Respondents to clarify or alter any aspect of the Respondent's Response;
 - (f) **(additional information)** request additional information from one or more Respondents relating to a Response, the Procurement Process, the Respondent's compliance with the Procurement Process Conditions or any other matter which the Principal considers relevant to its assessment (including information that should have been, but was not, included in the Respondent's Response);
 - (g) **(negotiation)** negotiate amendments to any aspect of a Response with any one or more Respondents and suspend or terminate such negotiations at any time;
 - (h) **(revised Responses)** invite one or more Respondents to provide a revised Response or best and final offer; and/or
 - (i) **(shortlisting)** create a shortlist of one or more Respondents and exercise any of its rights only in respect of one or more of the shortlisted Respondents.
- 1.3 **(Conduct of Respondents)** The Respondent must not, and must ensure that its Personnel do not, engage in any Improper Conduct. The Respondent must immediately notify the Principal in the event that it becomes aware that it, or any of its Personnel, have engaged in Improper Conduct. Where appropriate, the Principal may report Improper Conduct by the Respondent to the appropriate Authority and provide that Authority with any relevant information related to that conduct.
- 1.4 **(Complaints in relation to the Procurement Process)** The Respondent must make any complaint in relation to the Procurement Process using the Communication Method immediately upon the cause of the complaint arising or upon the Respondent becoming aware of the cause. The complaint must be made in writing to the Complaints Manager and must contain adequate detail to allow the Complaints Manager to properly investigate the complaint.

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- 1.5 **(No warranty)** The Principal gives no warranty and makes no representation that the Procurement Documents or any other information provided to the Respondent in connection with the Procurement Process is accurate, adequate or complete.
- 1.6 **(No liability)** Neither the Principal nor its Personnel shall be liable upon any Claim for any Specified Loss in connection with the Procurement Process.

2. BRIEFINGS AND SITE INSPECTIONS (RFT ONLY)

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

3. COMMUNICATIONS DURING PROCUREMENT PROCESS

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

4. THE RESPONSE (RFT ONLY)

- 4.1 **(Application of clause)** This clause 4 only applies in respect of an RFT .
- 4.2 **(Acceptance of Contract and Scope)** If one has not been provided, the Respondent must obtain a copy of the Contract from the Principal by requesting a copy through the Communication Method. Except to the extent that the Respondent has detailed a proposed

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alternative, amendment, qualification or departure in a Response, the Respondent will be taken to have unconditionally accepted and agreed to:

- (a) be bound by the terms and conditions of the Contract; and
- (b) carry out and complete the whole of the obligations described in or to be reasonably inferred from the Procurement Documents.

4.3 **(Price)** The Price must be submitted exclusive of GST and in Australian dollars.

4.4 **(Discrepancy in Price)** Where the Response Form requires the Respondent to provide a Price and there is a discrepancy between the amount stated in the Response Form as the Respondent's Price and the sum total of the items in any Price Schedule then:

- (a) if the Contract provides that it is a lump sum contract, then the sum total of the items in the Price Schedule shall be the Respondent's Price; or
- (b) if the Contract provides that it is a schedule of rates contract or a part lump sum and part schedule of rates contract, then the rate, price or lump sum of each item will prevail over the total shown, and the total shall be adjusted accordingly.

4.5 **(Response Validity Period)** The Respondent's Response will remain valid and open for acceptance by the Principal until the end of the Response Validity Period and thereafter until it is withdrawn in writing by the Respondent or the Procurement Process is finalised. The Principal may consent to the Respondent withdrawing its Response before the end of the Response Validity Period. The Principal may request an extension of the Response Validity Period at any time by giving written notice to the Respondent. If the Respondent does not agree to the requested extension then the Principal may exclude the Respondent's Response from assessment or further assessment as the case may be.

4.6 **(Alternative Responses)** Pursuant to Clause 8.4(a) the Principal may, but is not obliged to, reject or exclude from assessment any Response that is an Alternative Response. Notwithstanding this, if the Respondent wishes to submit an Alternative Response, then the Respondent is encouraged to:

- (a) also submit a Conforming Response; and
- (b) submit the Alternative Response on a separate Response Form to the Conforming Response, clearly marked, "ALTERNATIVE RESPONSE" accompanied by a clear summary of all points of difference between the Alternative Response and the Conforming Response.

5. RESPONDENT'S GENERAL WARRANTIES AND REPRESENTATIONS

5.1 **(Warranties and Representations)** By lodging a Response, the Respondent warrants and represents that:

- (a) **(conduct of Respondent)** neither the Respondent nor any of its employees or agents has engaged in any Improper Conduct;
- (b) **(authority)** the Response has been signed and lodged by a person with authority to do so on behalf of the Respondent;
- (c) **(basis of Response)** the Respondent:
 - (i) has received or obtained copies of all of the Procurement Documents and all information or documents referred to in the Procurement Documents; and
 - (ii) has not relied on the accuracy, adequacy or completeness of any documents or information provided or any representation made by or on behalf of the

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Principal in connection with the Procurement Process in preparing its Response;

- (d) **(accuracy of Response)** all information provided in or with the Response is accurate;
- (e) **(ability)** the Respondent and its relevant Personnel:
 - (i) hold (and are compliant with all requirements of) all necessary competencies, licences (including if necessary, a licence under the *Queensland Building and Construction Commission Act 1991* (Qld)), accreditations, certifications, permits, clearances and other authorisations which will be required for the Respondent to carry out the Scope if it is ultimately engaged to carry out that Scope; and
 - (ii) are not excluded from submitting a tender under any applicable Queensland or Federal Government scheme, code or policy;
- (f) **(suitability etc. of works, goods or services)** where the Principal has stated in the Procurement Documents the purpose(s) for which the works, goods or services must be suitable, appropriate, adequate or fit, the works, goods or services shall be suitable, appropriate, adequate and fit for those purposes (but this warranty and representation will not apply to the extent (if any) that the Respondent has expressly excluded or limited it in the Respondent's Response);
- (g) **(Effect of implied warranties)** neither clause 5 nor clause 6 shall operate in any way to limit, exclude or otherwise restrict the operation of any warranty implied by law.

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

- 6.1 **(Application of clause)** This clause 6 only applies in respect of an RFT .
- 6.2 **(Warranties and Representations)** By lodging a Response, the Respondent warrants and represents that:
 - (a) **(investigations)** the Respondent has undertaken its own enquiries and investigations to satisfy itself of:
 - (i) the nature and extent of the Scope, its contractual obligations and all other risks, contingencies and other circumstances which could have an impact on its ability to carry out and complete the obligations it will have under the Contract if its Response is accepted for the Price; and
 - (ii) the suitability, appropriateness and adequacy of the Scope (including, in respect of contracts under which the successful Respondent is required to design works, any preliminary design included in the Scope) for the purposes stated in or to be reasonably inferred from the Scope;
 - (b) **(ability)** the Respondent and its relevant Personnel:
 - (i) have and will maintain the necessary experience, expertise and skill to perform its obligations under the Contract in accordance with the requirements of the Contract in the event that its Response is accepted; and
 - (ii) have and will maintain the resources necessary to comply with the timeframes for the performance of the Contract stated in the Procurement Documents (as amended if at all, pursuant to these Procurement Process Conditions);
 - (c) **(price)** the Price, and all rates, sums and prices included in the Response allow for:
 - (i) all of the risks, contingencies and other circumstances which could have an effect on the Respondent's ability to carry out and complete the obligations it

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will have under the Contract if its Response is accepted for the Price, except to the extent that the Contract expressly allows an adjustment;

- (ii) the provision of all materials, plant, labour and other services necessary for the proper completion of the obligations it will have under the Contract if its Response is accepted, whether or not those items are expressly mentioned in the Contract; and
- (iii) unless the Contract expressly allows an adjustment, rise and fall in costs;
- (d) **(competitive neutrality)** if the Respondent is required by law to comply with principles of competitive neutrality, the Respondent has properly considered, assessed and complied with the applicable competitive neutrality principles in relation to the Procurement Process and the acceptance by the Principal of the Respondent's Response will not breach those principles;
- (e) **(notice)** the Respondent has notified the Principal in its Response of any:
 - (i) ambiguity, inconsistency, uncertainty, error or omission which it has discovered in or from the Procurement Documents;
 - (ii) any assumptions that it has made in determining its Price;
 - (iii) further information or investigations which it considers that it requires to enable it to give the warranties and make the representations in this clause 6,

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

7. LODGEMENT AND OPENING OF RESPONSES

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

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

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

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

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

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

8. ASSESSMENT OF RESPONSES

- 8.1 **(Evaluation Criteria)** In determining which Response(s) are most advantageous to the Principal, each Response evaluated in accordance with these Procurement Process Conditions will be assessed, but not necessarily exclusively, against the Evaluation Criteria (if any).
- 8.2 **(Considerations)** In assessing Responses, the Principal may consider any information which the Principal reasonably considers to be relevant to its assessment (however obtained), including:
- (a) information contained in the Response or any amendment to or clarification of a Response;
 - (b) information provided at a meeting with or presentation by the Respondent;
 - (c) outcomes from discussions with a Respondent's referees (if any);
 - (d) information obtained pursuant to clause 8.5;
 - (e) the Respondent's past performance under other contracts with the Principal or third parties; and
 - (f) the reasonably held subjective opinions of the persons appointed by the Principal to evaluate Responses or any advisor to such persons.
- 8.3 **(Uncertainties)** The Principal may ignore any part of a Response which is ambiguous, uncertain, unclear or illegible without seeking clarification from the Respondent and may assess the balance of the Response.
- 8.4 **(Right to exclude)** The Principal may, but shall not be obliged to, reject or exclude from assessment any Response including:
- (a) a Non-Conforming Response, an Alternative Response or a Late Response;
 - (b) a Response, in respect of which the Principal reasonably believes that the Respondent has:
 - (i) failed to comply with these Procurement Process Conditions or any request made by or on behalf of the Principal pursuant to them within the time required; or
 - (ii) breached a warranty given or representation made pursuant to these Procurement Process Conditions or that a warranty, declaration or representation in the Respondent's Response is false or misleading in any material respect;
 - (c) a Response in respect of which the Principal reasonably believes that the Respondent cannot reasonably comply with the obligations which it will have under the Contract (in the event that its Response is successful) for the Price; or
 - (d) a Response which fails to achieve a satisfactory score against any of the Evaluation Criteria, even if the overall score of the Response is satisfactory;
- 8.5 **(Other information or assistance)** The Principal may undertake its own investigations, or engage third parties to do so on its behalf, in relation to any aspect of a Response (including verifying any warranty, representation or declaration made or given in the Response or pursuant to these Procurement Process Conditions) or any other matter which it considers relevant to the conduct of the Procurement Process. The Respondent must cooperate with such investigations

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and provide all information and assistance reasonably requested by or on behalf of the Principal in connection with the investigation.

9. ACCEPTANCE (RFT ONLY)

- 9.1 **(Application of clause)** This clause 9 only applies in respect of an RFT .
- 9.2 **(Ability to accept)** The Principal is not bound to accept the Response with the lowest Price or the Response with the highest score against the Evaluation Criteria, or any Response. The Principal will, if it accepts a Response, accept the Response(s) which it reasonably believes are the most advantageous to it having regard to the Sound Contracting Principles and the requirements of the *Local Government Regulation 2012* (Qld) to the extent that they are applicable and relevant to the Procurement Process.
- 9.3 **(Local preference)** The Principal may accept a Response lodged by a Local Supplier in preference to comparable Responses from Non-Local Suppliers even if the Responses from the Non-Local Suppliers have been assessed as more favourable in terms of one or more Evaluation Criteria, so long as the overall differences are not substantial, and so long as it is clear that the Local Supplier can meet the Principal's requirements at an acceptable standard which is generally comparable to that of the Non-Local Suppliers.
- 9.4 **(Acceptance of more than one Response and acceptance of part of a Response)** The Principal may accept a Response in whole or in part. Without limiting this, where the Scope comprises distinct portions of works, goods or services, the Principal may accept a Response from one or more Respondents in relation to different portions of the works, goods or services as if those portions had been the subject of separate Procurement Processes.
- 9.5 **(No contract or appointment until formal acceptance)** Unless and until the Principal expressly notifies the Respondent in writing that the Respondent's Response (as amended by any post-Response negotiation, if any) has been successful or the parties execute a contract:
- (a) no binding contract for the provision of any work, services and/or goods by the Respondent will exist between the parties; and
 - (b) in respect of an RFT for appointment as a Pre-qualified Supplier or Preferred Supplier, the Respondent will not be considered to be appointed as a Pre-qualified Supplier or Preferred Supplier.
- For clarity, a statement published by the Principal but not specifically notified to the Respondent (including a record of a council resolution) to the effect that a Response has been accepted or a contract has been awarded does not, of itself, constitute an acceptance of the Response or notice that the Response has been successful or constitute a rejection of any other Response.
- 9.6 **(Form of Contract)** Unless the RFT stated that the Respondent would not be required to enter into a contract until it is separately engaged by the Principal to provide works, goods or services, if a Response is accepted, the successful Respondent will be required to enter into a contract in the form of the Contract, as amended by agreement between the parties.
- 9.7 **(Unsuccessful Respondents)** Unsuccessful Respondents will be notified after a Response has been accepted. The Principal may, at its discretion, notify unsuccessful Respondents of the name of, and Price submitted by, the successful Respondent. The Principal may provide feedback to unsuccessful Respondents if requested to do so, but such feedback may be general in nature and will be limited to the Respondent's Response only.
- 9.8 **(Arrangement with other local governments)** The Respondent acknowledges that if, pursuant to the Procurement Process, the Respondent is selected to be a Preferred Supplier or Pre-qualified Supplier for goods and/or services then any Related Local Government may make a contract with the Respondent for the supply of those goods and/or services, as if that Related Local Government had itself selected the Respondent to be a Preferred Supplier or Pre-qualified Supplier of those goods and/or services.

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10. DOCUMENTS AND INFORMATION

- 10.1 **(Ownership)** The Procurement Documents remain the property of the Principal. The Response will become the property of the Principal upon lodgement.
- 10.2 **(Intellectual Property Rights)** Intellectual Property Rights in documents and information provided on behalf of a party in connection with the Procurement Process remain, as between the parties, with the party on whose behalf they were provided. The Principal and the Respondent grant each other a perpetual, non-exclusive, royalty free licence to do the things contemplated by clause 10.9. The licence so granted by the Respondent is irrevocable. The licence granted by the Principal may be revoked at any time on the giving of written notice.
- 10.3 **(Warranty and representation)** The Respondent warrants and represents that:
- (a) it owns or has a right to use the Intellectual Property Rights in its Response for the purpose of lodging a Response and undertaking the obligations which it will have under a contract with the Principal in the event that the Respondent's Response is accepted; and
 - (b) it has the right and authority to grant the licence in clause 10.2 and the Principal's exercise of the rights so granted will not infringe the Intellectual Property Rights of a third party.
- 10.4 **(Confidentiality)** Except to the extent otherwise provided in these Procurement Process Conditions, each party shall keep Confidential Information of the other party confidential. The Respondent must inform each of its Personnel and any other person to whom Confidential Information of the Principal is disclosed of the Respondent's obligations under this clause 10.4. Subject to clause 10.9(b), the Respondent must return any and all Confidential Information when requested to do so by the Principal.
- 10.5 **(Information Privacy Act)** If the Respondent collects or has access to 'Personal Information' as that term is defined in the *Information Privacy Act 2009* (Qld) in connection with the Procurement Process, the Respondent must comply with Parts 1 and 3 of Chapter 2 of that Act as if the Respondent was the Principal. The Principal collects and uses personal information and non-personal information in the Response so that it can properly conduct the Procurement Process and otherwise carry out its functions as a Local Government. The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information in the Respondent's Response will be accessible by employees of the Principal and third party personnel engaged to assist the Principal in conducting the Procurement Process or otherwise carrying out the functions of the Principal. Information in the Response may also be disclosed as required by the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld) as described below.
- 10.6 **(Local Government Regulation)** The *Local Government Regulation 2012* (Qld) provides that the Principal must, as soon as possible after entering into a contractual arrangement worth \$200,000 or more (exclusive of GST) publish relevant details of the contract (including the person with whom the Principal has entered into the contractual arrangement, the value of the contractual arrangement and the purpose of the contractual arrangement) on the Principal's website and display those details in a conspicuous place in the Principal's public office. The relevant details must be published or displayed in this manner for a period of at least 12 months.
- 10.7 The *Local Government Regulation 2012* (Qld) may also require the Principal to make documentation and information contained in, or provided by the Respondent in connection with, a Response (including documentation and information identified by the Respondent as confidential) publicly available where that documentation or information is:
- (a) discussed in a Local Government Meeting;
 - (b) included in a report or other document that:

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- (i) relates to an item on the agenda for a Local Government Meeting and is made available to Councillors or committee members for the purposes of the meeting;
 - (ii) is directly relevant to a matter considered or voted on at a Local Government Meeting; or
 - (iii) is presented at a Local Government Meeting for the consideration or information of the Local Government or committee; or
 - (c) otherwise required to be disclosed pursuant to a provision of *the Local Government Act 2009* (Qld) or the *Local Government Regulation 2012* (Qld).
- 10.8 **(Right to Information)** The *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including the Principal). The Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest. Information or documentation contained in or provided by the Respondent in connection with a Response is potentially subject to disclosure to third parties, including documentation and information identified by the Respondent as confidential. Any application for disclosure will be assessed in accordance with the terms of the Act. Notwithstanding any other provision of the Procurement Documents or a Response, if a Response is accepted, the Principal may publish on a Queensland Government website or by any other means, contract information including:
- (a) the name and address of the Principal and the successful Respondent;
 - (b) a description of the goods and/or services to be provided or works to be carried out pursuant to the contract;
 - (c) the date of award of the contract (including the relevant stages if the contract involves more than one stage);
 - (d) the contract value (including the value for each stage if the contract involves more than one stage and advice as to whether any non-price criteria were used in the evaluation of Responses);
 - (e) the procurement method used; and
 - (f) for contracts with a value over \$10 million, the contract, or summary information in respect of the contract, between the Principal and the Respondent.
- 10.9 **(Use of documents and information)** Documents and information provided on behalf of a party to the other party in connection with the Procurement Process (including documentation and information identified by the Respondent as confidential) may be used, copied, modified or disclosed as required by any law and otherwise:
- (a) by the Principal, as the Principal considers to be reasonably necessary to:
 - (i) properly conduct the Procurement Process;
 - (ii) exercise the rights granted to it in these Procurement Process Conditions;
 - (iii) obtain legal, accounting or other professional advice in connection with the Response;
 - (iv) report any actual or suspected Improper Conduct to the appropriate Authority; and/or;
 - (v) to otherwise properly carry out its functions as a Local Government;
 - (b) by the Respondent, as is reasonably necessary to enable the Respondent to:
 - (i) prepare the Response;

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- (ii) obtain legal, accounting or other professional advice in connection with the Response; or
- (iii) comply with the Respondent's corporate governance requirements.

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

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

11. DEFINITIONS

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

- (a) **Addenda and Addendum** means any communication issued to Respondents in accordance with these Procurement Process Conditions which is identified as an Addendum;
- (b) **Alternative Response** means a Response which is otherwise a Conforming Response but which in the opinion of the Principal, contains significant alternatives, qualifications or amendments to or departures from the Contract or the Scope;
- (c) **Authority** means a local government, the State of Queensland, the Commonwealth or other any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality having jurisdiction over the project;
- (d) **Business Day** means a day that is not a Saturday, Sunday or public holiday at Biloela;
- (e) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including at law (including a breach of an express or implied term of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law, pursuant to any other principle of law, in connection with the Procurement Process;
- (f) **Communication Closing Time** means the time identified in the General Information as the time by which communications by Respondents must be submitted;
- (g) **Communication Method** means submitting an enquiry through the website forum or sending an email to the email address nominated for communications by Respondents in the General Information;
- (h) **Complaints Manager** means the person identified in the General Information as the person to whom complaints regarding the Procurement Process should be directed;
- (i) **Confidential Information** means documents and information provided or made available by or on behalf of one party to the other party in connection with the Procurement Process which are of their nature confidential (including copies of such documents and information) but not including documents and information which are in the public domain other than through a breach of clause 10.4;
- (j) **Conforming Response** means a Response which, in the opinion of the Principal:
 - (i) is substantially in the form and contains substantially all of the documentation, information, acknowledgements, warranties, declarations and undertakings required by the Response Schedules;

Procurement Process Conditions

- (ii) contains no significant alternatives, qualifications or amendments to or departures from the Contract or the Scope; and
 - (iii) in respect of Tenders or EOIs only, does not substantially exceed the Maximum Page Limit (if any);
- (k) **Contract** means:
 - (i) a contract which may be entered into between the Principal and a Respondent pursuant to an RFT and which will be in the form referenced in Part 4 – Contract of the RFT , as amended (if at all) by the express written agreement of the Principal; and
 - (ii) where an RFT is for appointment as a Preferred Supplier or Pre-qualified Supplier, also includes a contract which may be entered into during the term of the appointment unless the context requires otherwise;
- (l) **Councillor** has the same meaning as in the *Local Government Act 2009* (Qld);
- (m) **Evaluation Criteria** means:
 - (i) for an RFT , the evaluation criteria (if any) set out in the General Information; and
- (n) **General Information** means Part 2 – General Information of the RFT (as the case may be);
- (o) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (p) **Improper Conduct** means:
 - (i) engaging in any activity or obtaining any interest which results in or is likely to result in any actual, potential or perceived conflict between the interests of the Respondent and the Respondent's obligations to the Principal in connection with the Procurement Process;
 - (ii) engaging in misleading or deceptive conduct in connection with the Procurement Process;
 - (iii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other Respondent, or any other person in connection with the Procurement Process;
 - (iv) canvassing, attempting to improperly influence, offering any inducement to or accepting or inviting improper assistance from any Councillor or other Personnel (or former Personnel) of the Principal in connection with the Procurement Process;
 - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the Respondent's Response;
 - (vi) breaching any law in connection with the Procurement Process;
 - (vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
 - (viii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld);

Procurement Process Conditions

- (q) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- (r) **Late Response** means any Response that is not received in the Tender Box (or otherwise received by the Principal by an alternative method permitted under the Procurement Process Conditions) by the Response Closing Time;
- (s) **Local Government** has the same meaning as in the *Local Government Act 2009* (Qld);
- (t) **Local Government Meeting** has the same meaning as in the *Local Government Act 2009* (Qld);
- (u) **Local Supplier:**
 - (i) where the Principal's procurement policy provides a meaning of local supplier, has the meaning given in the Principal's procurement policy, a copy of which can be obtained from the Principal upon request; or
 - (ii) where the Principal does not have a procurement policy, or the procurement policy does not provide a meaning of local supplier, means a supplier that:
 - (A) is beneficially owned and operated by persons who are residents or ratepayers of the local government area of the Principal as determined under the *Local Government Regulation 2012* (Qld); or
 - (B) has its principal place of business within that local government area; or
 - (C) otherwise has a place of business within that local government area that solely or primarily employs persons who are residents or ratepayers of that local government area;
- (v) **Maximum Page Limit** means the number of pages which may be lodged as, with or in relation to the Response (including, unless otherwise indicated, all attachments, annexures, supplements, parts, schedules or appendices), which the General Information states a Response should not be longer than;
- (w) **Non-Conforming Response** means a Response which is not a Conforming Response or an Alternative Response;
- (x) **Non-Local Supplier** means a supplier (including a Respondent) that is not a Local Supplier;
- (y) **Personnel** includes the officers, employees, agents, representatives, contractors and consultants of a party and any other person or entity for whom that party is vicariously liable;
- (z) **Preamble** means Part 1 – Preamble of the RFT (as the case may be);
- (aa) **Preferred Supplier** means a supplier that has been selected as a preferred supplier pursuant to section 233 of the *Local Government Regulation 2012* (Qld);
- (bb) **Pre-qualified Supplier** means a supplier that has been selected as a pre-qualified supplier pursuant to section 232 of the *Local Government Regulation 2012* (Qld);
- (cc) **Price** means:
 - (i) where the Procurement Process is for appointment as a Preferred Supplier or Pre-qualified Supplier, the rates, sums or prices stated in the Response;

Procurement Process Conditions

- (ii) otherwise, subject to clause 4.4, the total price stated in the Response;
- (dd) **Price Schedule** means a Response Schedule which provides a breakdown of the Price, and which may include rates, lump sums, prices, provisional sums, estimated quantities and other information;
- (ee) **Principal** or **Purchaser** means Banana Shire Council;
- (ff) **Procurement Documents** means:
 - (i) the RFT (as the case may be); and
 - (ii) any Addenda issued pursuant to these Procurement Process Conditions,and includes all documents included in or incorporated by reference into these documents;
- (gg) **Procurement Process** means the process by which the Principal intends to, or does, invite, assess and where applicable, accept or reject Responses in respect of the Scope;
- (hh) **Procurement Process Conditions** means these procurement process conditions;
- (ii) **Related Local Government** means a local government that has entered into an arrangement with the Principal, as contemplated in section 235(f) of the *Local Government Regulation 2012* (Qld), to the effect that the local government may make a contract with a supplier that has been selected by the Principal to be a Preferred Supplier or Pre-qualified Supplier of goods and/or services, as if that local government had itself selected that supplier to be a Preferred Supplier or Pre-qualified Supplier of those goods and/or services.
- (jj) **Respondent** means:
 - (i) any person who lodges a Response; and
 - (ii) to the extent to which the term can apply to any other person who obtains a copy of any of the Procurement Documents during the Procurement Process, also includes such other persons,and includes a Tenderer;
- (kk) **Response** means, where these Procurement Process Conditions are incorporated into an:
 - (i) RFT, a Tender; or
- (ll) **Response Closing Time** means the time identified in the General Information as the time by which Responses must be submitted as varied (if at all) pursuant to these Procurement Process Conditions;
- (mm) **Response Form** means in respect of an:
 - (i) RFT:
 - (A) the document identified as the tender form or the quotation form (as the case may be) in the Response Schedules; or
 - (B) otherwise where there is no document identified as the tender form or quotation form, any document (other than a Price Schedule) which states the total price offered by the Respondent in the Response;

Procurement Process Conditions

- (nn) **Response Schedules** means the schedules identified in Part 5 – Response Schedules of the RFEI or Part 6 – Response Schedules of the RFT (as the case may be);
- (oo) **Response Validity Period** means the period stated in the General Information as the time for which Responses are to be valid as extended (if at all) pursuant to clause 4.5;
- (pp) **RFT (or Request for Tender)** means the request for tenders issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions, the Contract and the Scope);
- (qq) **Scope** means the scope described in Part 4 – Scope of the RFEI or Part 5 – Scope of the RFT (as the case may be) and all documents incorporated into it (whether physically or by reference), and includes any amendments provided for in an Addendum;
- (rr) **Sound Contracting Principles** has the meaning given in section 104(3) of the *Local Government Act 2009* (Qld);
- (ss) **Specified Loss** means:
 - (i) any loss of, or loss of anticipated, profit, income, revenue, saving, production; business, contract or opportunity; increase in financing or operating costs; liability for loss or damage suffered by third parties; legal costs (on a solicitor and client basis); fines levied; loss of reputation or embarrassment and the cost of abating or reducing such; any other financial or economic loss; and
 - (ii) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraph, howsoever arising;
- (tt) **Tender** means a Response lodged by a Tenderer in response to an RFT and includes all documents and information lodged with or as part of the tender;
- (uu) **Tender Box** means the website, email address or physical location at which the General Information states that Responses are to be submitted;
- (vv) **Tenderer** means:
 - (i) any person who lodges a Tender; and
 - (ii) to the extent to which the term can apply to any other person who obtains a copy of any of the Procurement Documents during the Procurement Process, also includes such other persons,

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

12. GENERAL PROVISIONS

- 12.1 **(Interpretation of Procurement Documents)** The Procurement Documents must be read and construed together and are intended to be mutually explanatory.
- 12.2 **(Joint and several obligations)** An obligation of two or more parties binds them jointly and each of them severally and an obligation incurred in favour of two or more parties is enforceable by them severally.
- 12.3 **(Headings)** Clause headings are for reference purposes only and must not be used in interpretation.
- 12.4 **(No limitation)** The words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.

Procurement Process Conditions

- 12.5 **(Grammatical Forms)** Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.
- 12.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Procurement Documents expires on a day which is not a Business Day, the period will expire at the end of the next Business Day.
- 12.7 **(Discretion)** Unless expressly provided otherwise:
- (a) any right of the Principal pursuant to these Procurement Process Conditions may be exercised; and
 - (b) any consent of the Principal required under these Procurement Process Conditions may be given, withheld or given subject to conditions,
- in the absolute discretion of the Principal without giving reasons and without reference to the Respondent unless, and then only to the extent that the Procurement Process Conditions provide otherwise.
- 12.8 **(Law)** A reference to 'law' includes:
- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licences, accreditations, clearances, authorisations, approvals, consents, and permits and any related fees and charges,
- which are applicable to the Procurement Documents, the Procurement Process or the Contract or which are otherwise in force at any place where an obligation under the Contract is to be carried out.
- 12.9 **(Governing Law)** The Procurement Process is governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland. The Principal and the Respondent submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 12.10 **(Contra proferentem)** The *contra proferentem* rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 12.11 **(Rights Cumulative)** The rights and remedies of the Principal and the Respondent provided in the Procurement Process Conditions are cumulative on each other and on any rights or remedies conferred at law or in equity.
- 12.12 **(Severance)** If a provision of the Procurement Process Conditions is void or unenforceable it must be severed and the provisions that are not void or unenforceable are unaffected by the severance.
- 12.13 **(No waiver)** No waiver by the Principal of a provision of these Procurement Process Conditions is binding unless made in writing.
- 12.14 **(Other references)** A reference to:
- (a) a person includes any other legal entity and a reference to a legal entity includes a person;

Procurement Process Conditions

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



PART 4: CONTRACT

MANAGEMENT AND OPERATION OF MOURA
AQUATIC FACILITY

CONTRACT NO: T22526.27

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SCHEDULE 1 – SCOPE AND PRICE

Reference Schedule

Item		Details		
1	Term (Clause 4)			
	(a) Term Start Date:			
	(b) Term End Date:			
	(c) Extension Periods:			
2	Exclusivity (Clause 7)	<p>The Contract is:</p> <p><input type="checkbox"/> Exclusive</p> <p><input type="checkbox"/> Not exclusive</p> <p><i>If nothing selected, the Contract is not exclusive</i></p>		
3	Principal's Representative (Clause 9)			
	(a) Name:			
	(b) Address:			
	(c) Telephone:			
	(d) Email:			
4	Supplier's Representative (Clause 10)			
	(a) Name:			
	(b) Address:			
	(c) Telephone:			
	(d) Email:			
5	Key Personnel (Clause 12.2)	Name	Role	Period <i>(If nothing stated, for the duration of the Term)</i>
6	Time for Meetings (Clause 15)	<i>If nothing stated, as reasonably required by the Principal.</i>		
7	Invoices: (Clause 18)			
	(a) Invoices may be submitted on:	<p>[Insert date on which invoices may be submitted] for [Insert the Services for which payment may be claimed]</p> <p><i>If nothing stated, on the 21st day of each month for Services provided up to the 21st of that month.</i></p>		
	(b) Invoices should be emailed to:	accounts.payable@banana.qld.gov.au		
	(c) Other requirements for invoices:	[Detail all other requirements including required details and the supporting documentation which is required to be submitted with each invoice]		

Reference Schedule

Item		Details
8	Applicable policies, guidelines, procedures and codes of the Principal (Clause 19.1)	As detailed in the Tender Specification Document.
9	Liability Limit (Clause 24) (a) The Principal's liability is limited to:	0
		<i>If nothing stated, the Principal's liability is limited to an amount equal to the Price paid in the 12 months preceding the relevant Claim.</i>
	(b) The Supplier's liability is limited to:	\$20,000,000.00 <i>If nothing stated, the Supplier's liability is not limited.</i>
10	The Supplier must effect the following insurances: (Clause 25)	<input checked="" type="checkbox"/> Public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims <input checked="" type="checkbox"/> Professional indemnity insurance in the amount of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims <input checked="" type="checkbox"/> Plant and equipment insurance for each item of plant for the full replacement value of the plant owned by Operator <input checked="" type="checkbox"/> Workers' compensation insurance in respect of the Supplier's Personnel as required by law <i>If not selected, the Supplier is not required to effect the insurance.</i>
11	Intellectual Property (Clause 28) (a)	Not Applicable
	(b)	

General Conditions



PARTIES:

BANANA SHIRE COUNCIL ABN 85 946 116 646 of 62 VALENTINE PLAINS ROAD BILOELA
in the State of Queensland.

(Principal)

[Insert Supplier's Name] of [Insert Supplier's address].

(Supplier)

BACKGROUND:

- A. The Supplier has offered to provide the Services to the Principal and has made the representations and given the warranties stated in this Contract to the Principal in connection with its offer.
- B. In reliance on those representations and warranties, the Principal has accepted the Supplier's offer.
- C. The Parties wish to enter into the Contract to record the terms on which the Supplier will provide the Services to the Principal during the Term.

THE PARTIES AGREE:

1. DEFINITIONS

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

- (a) **Affected Party** has the meaning given in clause 31.1;
- (b) **Applicable Standards** means the standards, plans, requirements, codes, guidelines, policies, standard drawings or standard specifications included or incorporated by reference into the Contract or a Work Order, or, if none is included or incorporated, any Australian standards applicable to the Goods, as current at the Time for Work Order Commencement;
- (c) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
- (d) **Authority** means a local government, the State of Queensland, the Commonwealth or any other Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality (including a stock exchange) having jurisdiction over the Contract or the obligations to be performed under the Contract;
- (e) **Background IP** of a Party means all Intellectual Property Rights which are made available by a Party for the purpose of the provision of the which are in existence at the date of the Contract or brought into existence after the date of the Contract other than in connection with the Contract;
- (f) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made in connection with the Contract;
- (g) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law

(including without limitation any claim by the Supplier for an extension of time, Variation or other adjustment to the Price);

- (h) **Confidential Information** means the Contract and all documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a Party in connection with the Contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public domain other than through a breach of clause 27;
- (i) **Conflict of Interest** means any actual, potential or perceived conflict between the interests of the Supplier and the Supplier's obligations under the Contract;
- (j) **Contract** means the documents identified in clause 2.1;
- (k) **Discloser and Disclosee** have the meanings given in clause 1.1(h);
- (l) **Exceptional Circumstances** means disclosure:
 - (i) for the purpose of complying with the Disclosee's obligations or exercising the Disclosee's rights in connection with the Contract;
 - (ii) with the Discloser's prior consent;
 - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to whom it is necessary to disclose the information;
 - (iv) to the extent necessary to comply with the Disclosee's reasonable corporate governance or insurance requirements;
 - (v) to any of its Personnel who are bound to keep the information confidential and to whom it is necessary to disclose the information;
 - (vi) to comply with the law or a requirement of an Authority;
 - (vii) to the extent necessary to enforce its rights or defend a Claim in connection with the Contract;
 - (viii) by the Principal for the purposes of enabling the Principal to properly discharge its functions as a local government authority; and
 - (ix) to the extent otherwise expressly permitted by the Contract;
- (m) **Force Majeure** means:
 - (i) an act of God, earthquake, lightning, cyclone, tsunami, flooding, fire emanating from outside the Site, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;
 - (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
 - (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
 - (iv) embargo;
 - (v) illness declared by the World Health Organisation to be a pandemic;
 - (vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the Supplier or otherwise caused by or contributed to by the Supplier

and which affects an essential portion of the Supplier's obligations under the Contract;

which:

- (A) is beyond the immediate or reasonable control of the Affected Party;
 - (B) is not directly or indirectly caused or contributed to by the Affected Party or the Affected Party's Personnel; and
 - (C) cannot reasonably be avoided, remedied or overcome by the Affected Party by a standard of care and diligence expected of a prudent and competent local government or supplier (as the case may be) or the expenditure of a reasonable sum of money;
- (n) **General Conditions** means these general conditions;
- (o) **Good Industry Practice** means:
- (i) the standard of skill, care and diligence; and
 - (ii) practices, methods, techniques and acts,
- of a skilled and competent supplier engaged in the business of providing goods, services or work similar to the Services;
- (p) **Goods** means any plant, equipment, materials, parts, consumables or other goods provided, or to be provided by the Supplier in connection with the Services and includes Goods which are required for the proper performance of the Services in accordance with the Contract, whether or not specifically mentioned in the Contract;
- (q) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (r) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (s) **HVNL** means the Heavy Vehicle National Law (Queensland) and the regulations made under that law, as may be amended or replaced from time to time;
- (t) **Improper Conduct** means:
- (i) engaging in misleading or deceptive conduct in relation to the Procurement Process or the Contract;
 - (ii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the Procurement Process;
 - (iii) failing to disclose a Conflict of Interest in breach of clause 8.3;
 - (iv) attempting to improperly influence any Personnel of the Principal, or violate any applicable law regarding the offering of inducements in connection with the Procurement Process or the Contract;
 - (v) accepting or inviting improper assistance of employees or former employees of the Principal in preparing its tender or any Claim against the Principal in connection with the Contract;

- (vi) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract;
- (vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
- (viii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).
- (u) **Insolvency Event** in respect of a Party, means the Party:
 - (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
 - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
 - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (v) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, project management, industrial, scientific, literary or artistic fields, whether foreign or domestic and includes Moral Rights;
- (w) **Key Personnel** means the Personnel (if any) nominated as key personnel in the Reference Schedule;
- (x) **Liability Limit** means:
 - (i) in respect of the Principal, the sum of:
 - (A) the amount specified in item 9(a) of the Reference Schedule; and
 - (B) the amount of any excess payable under a policy of insurance required to be effected and maintained by the Principal under the Contract;
 - (i) in respect of the Supplier, the sum of:
 - (A) the amount specified in item 9(b) of the Reference Schedule; and
 - (B) the amount of any excess payable under a policy of insurance required to be effected and maintained by the Supplier under the Contract;
- (y) **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
- (z) **Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth);
- (aa) **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- (bb) **National Police Certificate** means a hard copy or digital national police certificate issued by the Queensland Police Service;
- (cc) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;

- (dd) **Party or Parties** means one or both of the Principal and the Supplier as the context requires;
- (ee) **Payment Period** means:
 - (i) if the Contract is a 'building contract' as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), the period ending 15 Business Days after receipt by the Principal of the claim;
 - (ii) otherwise, the period ending 25 Business Days after receipt by the Principal of the claim.
- (ff) **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld);
- (gg) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, suppliers, contractors and subcontractors of a Party and any other person or entity for whom that Party is vicariously liable but in respect of the Principal, does not include the Supplier;
- (hh) **Price** means the amount payable for the provision of Services as determined in accordance with Schedule 1 and the relevant Work Order;
- (ii) **Principal** means the entity identified as the Principal on page 5 of the Contract;
- (jj) **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the Supplier pursuant to clause 9.1 and includes, except where the context requires otherwise, a person authorised as a delegate of the Principal's Representative pursuant to clause 9.3;
- (kk) **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;
- (ll) **Project IP** means the Intellectual Property Rights in the Supplier Documents and all goods, materials, documents or data created in the performance of the Supplier's obligations under the Contract;
- (mm) **Qualifying Cause of Delay** means:
 - (i) an act or omission of the Principal or the Principal's Personnel;
 - (ii) Force Majeure; or
 - (iii) any other cause of delay identified elsewhere in the Contract or Work Order as entitling the Supplier to an extension of the Time for Work Order Completion;
- (nn) **Reference Schedule** means the schedule of that name included in the Contract;
- (oo) **Regulator** has the meaning given in the WHS Act and WHS Regulation;
- (pp) **Scope** means the documents describing the Principal's requirements for the Services, Goods or Works which are provided at Schedule 1 and also provided with or as part of, or are identified in, the Work Order;
- (qq) **Services** means the services to be provided or the work to be carried out by the Supplier as described in Schedule 1 (including the supply, use or installation of any Goods, the construction of any Works and the provision of Supplier Documents) and any services or work not specifically mentioned in Schedule 1 but that are obviously and indispensably necessary for the performance of the services or work that is mentioned;

- (rr) **Site** means the site or sites made available by the Principal to the Supplier for the purpose of the Supplier carrying out its obligations under the Contract;
- (ss) **Substantial Breach** includes:
 - (i) in respect of the Supplier:
 - (A) a material breach of the Contract including:
 - I a material breach of clause 11.1;
 - II the Supplier or any of the Supplier's Personnel engaging in:
 - (1) any Improper Conduct in connection with the Contract; or
 - (2) otherwise engaging in any Improper Conduct (whether or not in connection with the Contract) in a manner which, in the Principal's opinion, causes harm to the Principal's reputation;
 - III failing to make a payment to the Principal within 20 Business Days after the due date for the making of the payment in clause 18.6;
 - IV failing to effect and maintain the insurance policies required under clause 25;
 - V failing to comply with a direction given or purportedly given under clause 29;
 - VI a warranty given or representation made in or pursuant to this Contract is found to be incorrect, false or misleading in any material respect;
 - VII a material breach of a law in connection with the Contract;
 - (B) a material departure from any program or schedule included in the Contract without reasonable cause or the Principal's approval or, where there is no program, failing to proceed with due expedition and without delay;
 - (C) suspending performance of its obligations under the Contract without the prior written consent of the Principal;
 - (D) the consistent or repeated breach of the Contract by the Supplier, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the Supplier;
 - (E) anything else which the Contract elsewhere provides is a substantial breach of the Contract;
 - (ii) in respect of the Principal:
 - (A) failing to make payment to the Supplier within 20 Business Days after the due date for the making of the payment in clause 18.6 or 18.7 as the case may be;
 - (B) otherwise committing a material breach of the Contract; or

- (C) anything else which the Contract elsewhere provides is a substantial breach of the Contract;
- (tt) **Supplier** means the person or entity identified as the Supplier on page 5 of the Contract;
- (uu) **Supplier Documents** means those records, reports, designs, specifications, certificates, plans and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Supplier (including any WHS documentation and management plans required by the Contract) and all information advice, procedures, undertakings designs, calculations and recommendations in those documents;
- (vv) **Supplier's Representative** means the person identified as the Supplier's representative in the Reference Schedule or as otherwise approved by the Principal pursuant to clause 10.2;
- (ww) **Term** means the period determined pursuant to clause 4.1;
- (xx) **Term End Date** means the date described as such in the Reference Schedule as extended (if at all) pursuant to the Contract;
- (yy) **Term Start Date** means the time stated in the Reference Schedule by which the Supplier is required to commence performing its obligations under the Contract (or where no time is stated, promptly after the date of the Contract);
- (zz) **Time for Work Order Commencement** means the time stated in a Work Order by which the Supplier is required to commence performing its obligations under the Work Order (or where no time is stated, as directed by the Principal) as extended (if at all) by agreement between the Parties;
- (aaa) **Time for Work Order Completion** means the time (if any) stated in a Work Order by which the Supplier is required to achieve Work Order Completion as extended (if at all) pursuant to the Contract;
- (bbb) **Variation** means any material increase, decrease or change to the Services described in a Work Order or the Supplier's obligations under the Contract;
- (ccc) **Warranty Period** for Goods means the longer of:
- (i) the period stated in Contract or where no period is stated, 12 months after Work Order Completion; and
 - (ii) such further period required under or implied by any applicable law;
- (ddd) **WHS** means work, health and safety;
- (eee) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;
- (fff) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;
- (ggg) **Wilful Misconduct** means an intentional act or omission by or on behalf of a Party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;
- (hhh) **Work Order** means, unless the Parties expressly agree otherwise:

- (i) where a written request or order for Services is issued by the Principal, the written document(s) issued by the Principal to the Supplier which:
 - (A) detail the Principal's requirements for the provision of Services by the Supplier; and
 - (B) either request the Supplier to provide, or accept the Supplier's offer to provide, those Services to the Principal,
 including all documents attached to or incorporated by reference into those written documents and which may include a request for quotation, quotation, scope, specifications, drawings, product description, price list or other documents; and
- (ii) where a oral request or order for Services is made by the Principal, means the information provided by the Principal orally, and the information contained in any documents to which the Supplier's attention is directed by the Principal;
- (iii) **Work Order Completion** means that stage in the performance of the Supplier's obligations under the Contract at which:
 - (i) each and every part of the Services has been carried out and completed in accordance with the Contract and the relevant Work Order, except for minor omissions which do not reasonably affect the benefit to the Principal of the Services or prevent the Principal from using the Supplier Documents for the purpose or purposes stated in or to be reasonably inferred from the Contract or the Work Order;
 - (ii) all Supplier Documents have been updated and provided to the Principal in accordance with the Contract and the relevant Work Order;
 - (iii) other obligations of the Supplier which are stated in the Contract or the relevant Work Order to be a requirement of Work Order Completion, or which are otherwise required to be undertaken prior to Work Order Completion have been completed;
- (jjj) **Workplace** has the meaning given in the WHS Act and the WHS Regulation; and
- (kkk) **Works** means any work which by the Contract, is to be handed over to the Principal.

2. CONTRACT

- 2.1 **(Documents comprising Contract)** The Contract comprises:
 - (a) the Reference Schedule;
 - (b) these General Conditions; and
 - (c) Schedule 1 – Scope and Price.
- 2.2 **(Final agreement)** The Contract constitutes the entire, final and concluded agreement between the Parties as to its subject matter. It supersedes all prior representations, agreements, statements and understandings between the Supplier and the Principal (whether oral or in writing).
- 2.3 **(Order of precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 2.1, then the documents will take precedence in the order set out in clause 2.1 with the document described in clause 2.1(a) being the highest in the order.
- 2.4 **(Early Services)** Where any obligation described in the Contract has been carried out by the Principal or the Supplier prior to the date on which the Contract is executed, that obligation shall

be taken to have been carried out pursuant to, and the carrying out of that obligation shall be governed by, the Contract as if the obligation had been carried out after the Contract was executed.

3. PERFORMANCE AND PAYMENT

- 3.1 **(Performance)** Subject to clause 6.1, the Supplier must, at the Supplier's expense:
- (a) provide any Services described in a Work Order issued during the Term; and
 - (b) perform the Supplier's other obligations under the Contract and all Work Orders issued pursuant to it,
- in accordance with the Contract and all directions of the Principal issued pursuant to it.
- 3.2 **(Payment)** Subject to the Contract, the Principal must pay the Supplier the Price for Services provided in accordance with the Contract and Work Orders issued pursuant to it.

4. TERM

- 4.1 **(Term)** Subject to clause 4.2, the Term shall commence on the Term Start Date and end on the Term End Date, unless the Contract is earlier terminated.
- 4.2 **(Extension of Term)** The Principal may, in its absolute discretion, extend the Term End Date by the periods stated in the Reference Schedule on the same terms as the Contract, by giving written notice to this effect to the Supplier at any time prior to the Term End Date. For clarity:
- (a) the Principal may extend by a period shorter than that provided in the Reference Schedule; and
 - (b) the Parties may agree to extend for further periods in addition to those contemplated in the Reference Schedule.
- 4.3 **(Continuation of obligations)** The Contract shall remain in force until the later of the expiration of the Term and the time at which all obligations of the Parties pursuant to it have been satisfied, unless the Contract is earlier terminated.

5. APPOINTMENT AS PREFERRED SUPPLIER OR PRE-QUALIFIED SUPPLIER

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

6. ENGAGEMENT OF SUPPLIER

- 6.1 **(Engagement by Work Order)** At any time during the Term, the Principal may but shall not be obliged to, issue a Work Order to the Supplier for the provision of Services. The Supplier must promptly after receiving the Work Order and within any timeframes stated in the Contract or the Work Order, notify the Principal as to whether or not it accepts the Work Order. The Supplier must accept a Work Order which is consistent with the Contract unless it cannot reasonably

comply with the Work Order. The Principal may withdraw a Work Order at any time prior to the Supplier notifying the Principal in writing that the Work Order is accepted.

- 6.2 **(No separate contract)** The Principal's acceptance of a Work Order under clause 6.1 does not create a separate contract. Subject to clause 6.3, any services of the same or a similar type to the Services provided by the Supplier to the Principal during the Term shall be taken to have been provided pursuant to this Contract.
- 6.3 **(Alternative terms and conditions)** Nothing in this Contract shall be taken to prevent the Parties from entering into one or more separate contracts, on different terms to the Contract, for the provision by the Supplier of services of the same or a similar type to the Services during the Term.

7. EXCLUSIVITY

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

8. RELATIONSHIP OF THE PARTIES

- 8.1 **(Relationship)** The Supplier is an independent contractor of the Principal. The Contract does not create any partnership, joint venture or employment relationship. The Supplier is solely responsible for payments required to be made to its Personnel for the performance of services in connection with the Contract and solely responsible for determining the manner in which it complies with its obligations under the Contract. The Supplier must provide such materials, equipment, knowledge and Personnel as the Supplier deems necessary to comply with its obligations and under the Contract.
- 8.2 **(Representations)** The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Principal. Except to the extent expressly contemplated in the Contract, the Supplier must not represent itself or allow anyone else to represent that the Supplier is an agent of the Principal.
- 8.3 **(Conflict of Interest)** The Supplier warrants and represents that as at the date of the Contract, the Supplier is not aware of any Conflict of Interest. The Supplier must not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which does, or is likely to, result in a Conflict of Interest during the Contract and must immediately notify the Principal

in the event that a Conflict of Interest that has not previously been disclosed arises or is likely to arise.

9. PRINCIPAL'S REPRESENTATIVE

- 9.1 **(The Principal's Representative)** The Principal's Representative is appointed as the Principal's agent to exercise any of the Principal's rights or functions under the Contract. The Principal's Representative is not an independent certifier or valuer.
- 9.2 **(Rights and powers of the Principal's Representative)** The Principal's Representative may exercise any rights and powers granted to the Principal under this Contract. The Principal's Representative may give a direction in respect of any matter relating to this Contract, including the protection of people, property and the environment and the Supplier's performance of the Services.
- 9.3 **(Authorised delegates)** The Principal's Representative may, by giving written notice to the Supplier setting out the rights and powers which may be exercised, authorise another person to exercise all or some of the rights and powers under clause 9.2. Subject to clause 9.5, no other person is permitted to exercise any right or function of the Principal. The Supplier must notify the Principal immediately if it receives a purported direction in connection with the Contract from any other person. The Principal shall not be liable upon any Claim relating to a direction given to the Supplier by any other person.
- 9.4 **(Compliance)** The Supplier must, and must ensure that its Personnel, comply with all directions given by the Principal's Representative, within the time specified in the direction, or where no time is stated, as soon as is reasonably practicable.
- 9.5 **(Change)** The Principal may notify the Supplier of a change in the Principal's Representative at any time.

10. SUPPLIER'S REPRESENTATIVE

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

11. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

- 11.1 **(Obligations, Warranties and Representations)** The Supplier:
- (a) **(ability)** must ensure, and warrants and represents that the Supplier and, to the extent applicable to them, its Personnel:
 - (i) have the experience, skills, expertise, resources and judgement;
 - (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

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

- (b) **(standard)** must, and to the extent applicable to them must ensure that its Personnel, provide the Services and carry out the Supplier's other obligations in connection with the Contract in accordance with Good Industry Practice and so that the Services are suitable and adequate for the purpose or purposes stated in the Contract;
- (c) **(workmanship)** where the Services require the carrying out and completion of any Works, must ensure that at Work Order Completion those Works:
 - (i) are free from defects; and
 - (ii) comply in all respects with:
 - (A) the Contract;
 - (B) the Work Order;
 - (C) any approved design of the Works; and
 - (D) Applicable Standards;
 - (iii) are suitable and adequate for the purpose stated in the Contract and/or the relevant Work Order,

and that any design prepared by the Supplier in relation to the Works is in accordance with the requirements of the Contract;
- (d) **(condition of Goods)** must ensure that all Goods used or supplied in the performance of the Services:
 - (i) at the time at which they are used or supplied and for the duration of any applicable Warranty Period:
 - (A) are free from defects and of merchantable quality;
 - (B) comply in all respects with the Contract and/or the relevant Work Order including as to quality, quantity, performance, functionality and description;
 - (C) conform to any sample goods approved by the Principal; and
 - (D) are suitable and adequate for the purpose or purposes for which they are used or supplied;
 - (ii) at the time at which they are used or supplied, comply with applicable law and Applicable Standards and where manufactured, are new; and
 - (iii) when title passes, are free from all encumbrances and interests, except for an encumbrance or interest which arises by operation of a law and which cannot be excluded by agreement;
- (e) **(Supplier Documents)** must ensure that where the Supplier provides Supplier Documents under the Contract:
 - (i) those Supplier Documents:
 - (A) comply with the requirements of the Contract, the relevant Work Order and applicable law;
 - (B) are of a standard and quality reasonably expected of a skilled and competent supplier using Good Industry Practice;

- (C) are suitable and adequate for the purpose for which they are provided; and
 - (ii) except to the extent that they are prepared strictly in accordance with technical plans or drawings provided to the Supplier by the Principal:
 - (A) the Supplier Documents; and
 - (B) the Principal's use of the Supplier Documents for a purpose stated in or to be reasonably inferred from the Contract or the relevant Work Order,
- will not infringe Intellectual Property Rights;
- (f) **(investigations)** warrants and represents that the Supplier has carefully reviewed the Contract and will carefully review each Work Order (including the Scope and all other information contained or referenced in the Work Order) prior to acceptance of it to satisfy itself that the Scope and other information is appropriate and adequate to enable the Supplier to comply with its obligations under the Contract;
 - (g) **(legal capacity)** must ensure, and warrants and represents that the Supplier has the full power, authority and capacity to enter into the Contract and that the Supplier's obligations under the Contract are valid and binding on it, and enforceable against it;
 - (h) **(Price)** warrants and represents that the rates and prices in the Contract include compliance with all of the Supplier's other obligations under the Contract except, and then only to the extent, that the Contract provides otherwise.
- 11.2 **(Improper Conduct)** The Supplier warrants and represents that neither the Supplier nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Supplier must not engage in any Improper Conduct in connection with the Contract.
- 11.3 **(Notice of breach)** The Supplier must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached a warranty given, representation made or obligation provided for, in clause 11.1 or 11.2.
- 11.4 **(Obligations, warranties and representations not affected)** The obligations, warranties and representations in clause 11.1 remain unaffected notwithstanding:
- (a) that the Scope was prepared by the Principal or the Principal's Personnel;
 - (b) any inspection, test, receipt, review, permission, approval or comment on, of or in relation to the Services by the Principal or the Principal's Personnel;
 - (c) any Variation or other direction by the Principal or the Principal's Personnel; or
 - (d) the adoption or incorporation into the Supplier Documents by the Supplier of any industry standard or any information or documentation provided by others (including any information or documentation provided by or on behalf of the Principal),

except that clauses 11.4(c) and 11.4(d) do not apply to the extent that the Supplier has, prior to acting or omitting to act in reliance on the direction or the affected Supplier Documents, given the Principal written notice expressly stating that the Variation, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

12. SUPPLIER'S PERSONNEL

- 12.1 **(General)** The Supplier must ensure that its Personnel involved in the performance of the Supplier's obligations under the Contract:

- (a) act professionally and courteously in all dealings with the Principal, the Principal's Personnel and the general public in connection with the Contract;
 - (b) do not engage in any Improper Conduct;
 - (c) do not directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Services are to be carried out or to the public generally;
 - (d) are familiar with and properly trained for their allocated role;
 - (e) perform their allocated role competently, safely and in accordance with Good Industry Practice and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations; and
 - (f) are not affected by alcohol or drugs whilst performing any part of the Supplier's obligations under the Contract (other than prescription medication which does not affect the ability of the person to perform the relevant obligations under the Contract).
- 12.2 **(Key Personnel)** The Supplier must ensure that only Key Personnel perform the roles identified in the Reference Schedule and that the nominated Key Personnel perform those roles for the period identified in the Reference Schedule. The Supplier may seek the approval of the Principal to change the identity or role of any Key Personnel or to engage additional persons as Key Personnel. The Supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal cannot unreasonably refuse to approve a replacement or additional key person that is of equal or greater skill, experience and competency to the person nominated in the Contract as the key person for that role.
- 12.3 **(Local Government Worker)** The Supplier must ensure that when acting as a Local Government Worker, the Supplier's Personnel:
- (a) have all appropriate qualifications, skills and training to exercise a power or perform a responsibility under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009* (Qld);
 - (b) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Personnel are authorised as Local Government Workers by the Principal; and
 - (c) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).
- 12.4 **(Police checks)** If the Principal directs the Supplier to obtain a National Police Certificate in respect of any of the Supplier's Personnel then the Supplier must not permit those Personnel to perform any part of the Services or to have access to any Confidential Information of the Principal or the Site unless and until 5 Business Days after the Supplier has given the Principal a written copy of the National Police Certificate for those Personnel. If the National Police Certificate contains any entries, the Principal may, in its absolute discretion, notify the Supplier that the person is not permitted to perform the Services or may otherwise place conditions upon that person's role in performing the Services. The Supplier must use its best endeavours to provide any additional information which the Principal may reasonably request in relation to a National Police Certificate.
- 12.5 **(Industrial relations)** The Supplier remains solely responsible for the management of industrial relations relating to its Personnel. The Supplier must promptly inform, and keep informed, the Principal in relation to any potential or actual industrial relations issues which could affect the ability of the Supplier to comply with its obligations under the Contract.
- 12.6 **(Modern Slavery)** The Supplier:
- (a) must not engage in Modern Slavery and warrants and represents that it has not engaged in any Modern Slavery;

- (b) must take, and warrants and represents that it has taken, all reasonable steps to identify and eliminate Modern Slavery in the business and operations of its subcontractors, suppliers and consultants;
 - (c) immediately notify the Principal in writing if it becomes aware of any Modern Slavery in the Supplier's business or operations or the business or operations of its subcontractors, suppliers or consultants.
- 12.7 **(Labour Hire)** The Supplier must not provide or utilise any labour for any part of the Services, unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld)
- 12.8 **(Removal)** The Principal may at any time direct the Supplier to remove any of the Supplier's Personnel from the performance of the whole or part of the Supplier's obligations under the Contract if the Principal reasonably believes that the Supplier is in breach of any clauses 11.1(a), 11.2, 12.1, 12.3, 12.6 or 12.7 or if a National Police Certificate contains any entries in respect of that person, or that the person is otherwise responsible for a breach of the Contract by the Supplier.

13. SUBCONTRACTING, ASSIGNMENT AND NOVATION

- 13.1 **(By the Supplier)** The Supplier must not subcontract, assign or novate the whole or any part of its rights and/or obligations under the Contract unless it has first obtained the written consent of the Principal. Subcontracting of the Supplier's obligations shall not relieve the Supplier from any liability or obligation under the Contract. As between the Principal and the Supplier, the Supplier shall be responsible, and liable to the Principal, for the acts and omissions of the Supplier's Personnel in connection with the Contract as if they were the acts or omissions of the Supplier.
- 13.2 **(By the Principal)** The Principal may contract, assign or novate the whole or any part of its rights and/or obligations under the Contract in its absolute discretion and without obtaining the consent of the Supplier.
- 13.3 **(Third party warranties)** The Supplier shall obtain and provide to the Principal, the warranties required by the Contract. Unless otherwise directed by the Principal, the Supplier shall also obtain a warranty from each subcontractor, supplier, retailer or manufacturer on terms commonly provided by those subcontractors, suppliers, retailers or manufacturers for their parts of the Services, in the name of both the Principal and the Supplier.
- 13.4 **(Subcontracts)** The Supplier must ensure that any subcontracts into which it enters place the same obligations, responsibilities and liabilities on the subcontractor that this Contract places on the Supplier to the extent that they are relevant to the services provided by the subcontractor.

14. SITE

- 14.1 **(Access for Supplier)** The Principal will give the Supplier sufficient, but non-exclusive, access to the Site to carry out the Supplier's obligations under the Contract. The Principal may refuse to give such access until the Supplier has given the Principal:
- (a) evidence of insurance required by clause 25.3;
 - (b) copies of all competencies, licences, accreditations, qualifications, permits, clearances or other authorisations which are required for the Supplier to comply with its obligations under the Contract;
 - (c) any other documents or information which the Contract requires to be given to the Principal before access to the Site shall be given, including those identified in the Work Order or elsewhere in the Contract; and

- (d) evidence that the Supplier has done all other things which the Contract requires to be done before access to the Site shall be given, including those identified in the Work Order or elsewhere in the Contract.

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

14.3 **(Site specific requirements)** The Supplier must comply with the reasonable requirements of the Principal in relation to the Supplier's access to or conduct on the Site.

15. MEETINGS

15.1 The Supplier must, at the times required by the Contract or the relevant Work Order and when otherwise reasonably required by the Principal, meet and discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract.

16. TIMING

16.1 **(Work Orders)** The Supplier must commence performing its obligations described in a Work Order by the Time for Work Order Commencement or where no time is stated, promptly after the Supplier receives the Work Order, and must perform those obligations:

- (a) within any working hours described in the Contract or the Work Order;
- (b) with due expedition and without delay;
- (c) in accordance with any requirements of the Contract and the Work Order and any reasonable directions of the Principal as to the order and timing of the performance of those obligations (including any program or schedule included in a Work Order or agreed between the Parties); and
- (d) so that all Services reach Work Order Completion by the applicable Time for Work Order Completion.

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

16.3 **(Extension of time)** If the Supplier:

- (a) is delayed in reaching Work Order Completion by the Time for Work Order Completion because of a Qualifying Cause of Delay; and
- (b) the Supplier gives the Principal a written claim an extension of the Time for Work Order Completion within 10 Business Days of the delay first occurring,

then the Principal shall grant a reasonable extension of the Time for Work Order Completion. The Principal may grant an extension of the Time for Work Order Completion for delay caused by any other cause of delay. The Supplier must provide the Principal with all information reasonably directed by the Principal's Representative in connection with the delay.

16.4 **(Monetary compensation)** If the Supplier:

- (a) is entitled to an extension of the Time for Work Order Completion under clause 16.3 because of a delay caused by the Principal or the Principal's Personnel; and
- (b) submits a written claim for delay costs within 10 Business Days of the cessation of the delay,

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

17. VARIATIONS

- 17.1 **(Direction for Variation)** The Principal may, in respect of any Work Order, at any time prior to the Time for Work Order Completion and for any reason, direct a Variation by giving written notice to the Supplier. The Principal cannot direct a Variation which is outside the general scope of the Contract. The Supplier cannot carry out a Variation without a written direction to do so from the Principal.
- 17.2 **(Variation proposal)** The Principal may direct the Supplier to provide an estimate or quotation for a Variation and/or a statement as to the impact of a Variation on the Services (including the cost and timing of the Services). The Principal may direct the Supplier to support the estimate, quotation or statement with documentary evidence and may direct the time within which the estimate, quotation or statement is to be provided. The Supplier must comply with such a direction at its expense.
- 17.3 **(Adjustment of Price)** Subject to clause 17.4, the effect of a Variation on the Supplier's entitlement to payment shall be determined using the following order of priority:
 - (a) agreement between the Parties;
 - (b) applicable fees, rates or prices (if any) stated in Schedule 1; or
 - (c) by the Principal (acting reasonably).
- 17.4 **(No entitlement)** The Principal shall not be liable upon any Claim in connection with a direction for a Variation, unless:
 - (a) the Principal's Representative has, expressly stated in writing that the direction is a direction for a Variation; or
 - (b) within 10 Business Days of being given the direction, and where possible before the Supplier complies (in whole or part) with the direction the Supplier has notified the Principal in writing that it considers that the direction constitutes a Variation.
- 17.5 **(Variations requested by the Supplier)** The Principal may approve a request for a Variation by the Supplier. Unless the Principal agrees otherwise in writing, a Variation approved under this clause 17.5 shall have no effect on the Supplier's entitlement to payment, timing of the Supplier's obligations or any other obligation of the Supplier under the Contract.
- 17.6 **(Omissions)** Where the Principal directs a Variation omitting or reducing any part of the Services described in a Work Order, then the Principal may subsequently provide the omitted or reduced Services itself or engage others to do so on its behalf. The Supplier shall not be entitled to any monetary compensation in connection with an omission or reduction and such omission or reduction shall not invalidate or constitute repudiation of the Contract.

18. INVOICES AND PAYMENT

- 18.1 **(Timing of invoices)** Subject to clause 18.11, the Supplier may submit invoices to the Principal for Services provided in accordance with the Contract and the relevant Work Order at the times

and for the Services stated in the Reference Schedule. Unless otherwise directed, all invoices should be submitted promptly and final invoices should be submitted no later than 5 Business Days after Work Order Completion.

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

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

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

18.4 **(Entitlement to payment)** The Supplier shall only be entitled to payment for Services which are provided in accordance with the requirements of the Contract (including the warranties given and representations made in the Contract).

18.5 **(Amount due)** The Principal may deduct from any amount claimed by the Supplier under or in connection with the Contract (including for a breach of the Contract):

- (a) any amount which the Contract entitles the Principal to deduct; and
- (b) any other amount due and owing by the Supplier to the Principal.

The balance remaining after such deductions shall be due by the Principal to the Supplier or by the Supplier to the Principal as the case may be and shall be certified as such by the Principal within 15 Business Days after the invoice is received.

18.6 **(Due date for payment)** Subject to the Contract, the Principal shall pay the amount due to the Supplier (if any) including any applicable GST before the end of the Payment Period. If an amount is due from the Supplier to the Principal, the Supplier must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from the Principal.

18.7 **(Disputed Invoice)** If the Principal disputes an invoice issued by the Supplier:

- (a) the Principal will pay the undisputed portion of the relevant invoice (if any) less any deductions provided for under clause 18.5 and dispute the balance; and
- (b) if the resolution of the dispute determines that the Principal must pay an amount to the Supplier, the Principal will pay that amount upon resolution of that dispute.

18.8 **(No admission)** Payments made by the Principal to the Supplier are made on account only and do not constitute an admission that the Supplier is entitled to the payment made or that the Services and/or the Supplier Documents the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.

18.9 **(Sole entitlement)** Except to the extent expressly provided otherwise in the Contract payment of the Price shall be the Supplier's only entitlement to monetary compensation for the provision of the Services and compliance with the Supplier's other obligations under the Contract and any Work Order issued pursuant to it.

18.10 **(Liability for GST)** If GST is imposed on any supply made pursuant to the Contract, the amount payable for the supply is to be increased by the amount of that GST. Each Party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Contract.

- 18.11 **(Recipient created tax invoices)** Where the Principal is the recipient of a taxable supply under this Contract the Principal may issue recipient created tax invoices or recipient created adjustment notes in respect of these supplies in accordance with the GST Law and direct the Supplier not to issue tax invoices or adjustment notes in respect of the same supplies.

19. LAW AND POLICIES

- 19.1 **(Compliance)** The Supplier must, and must ensure that its Personnel involved in the performance of the Services, comply with:

- (a) all law, standards and codes of practice applicable to the Supplier, the Supplier's business or the Supplier's obligations under the Contract; and
- (b) any applicable policies, guidelines, procedures and codes of the Principal which are identified in the Contract or the relevant Work Order or which are publicly available or otherwise made known to the Supplier from time to time.

- 19.2 **(Change in law)** If a law:

- (a) necessitates:
 - (i) a change to the Services;
 - (ii) a change in a fee or charge; or
 - (iii) the payment of a new fee or charge;
- (b) comes into effect after the date of the relevant Work Order and could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the Supplier to incur more or less cost than otherwise would have been incurred,

then the Supplier may notify the Principal in writing of the law and the effect of it on the Supplier.

After the notice is given, the Parties shall attempt to agree on a change to either or both of the Services or the Price. If the Parties have not reached agreement within 45 Business Days after the notice is given, then either Party may give a notice of dispute pursuant to clause 34. Unless otherwise directed by the Principal, but notwithstanding the giving of a notice of dispute, the Supplier must continue to comply with its obligations under the Contract, including by making any payments or doing any things required to comply with the law.

20. WORK HEALTH AND SAFETY

- 20.1 **(Relationship of obligations)** The obligations in this clause 20 are in addition to, and not in substitution for, any other obligation of the Supplier:

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

Nothing in this clause 20 is intended to reduce or limit such other obligations and none of those other obligations shall be taken to reduce or limit the Supplier's obligations under this clause 20.

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

- (a) comply with all law (including the WHS Act and the WHS Regulation) and codes of practice relating to WHS that are in any way applicable to this Contract;

- (b) discharge the duties and comply with all relevant duties, obligations, standards and requirements under the WHS Act and WHS Regulation which are or may become applicable in connection with the Contract including any direction relating to WHS issued by the Regulator or any other Authority;
- (c) at all times identify and take all reasonably practicable steps to ensure health and safety of all persons who may be affected by the performance of the Supplier's obligations under the Contract;
- (d) consult with and co-operate with the Principal in relation to matters of WHS that the Principal (acting reasonably) considers the Supplier cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal to ensure any issues are resolved to that standard;
- (e) except where the Supplier is the principal contractor for a Site under the WHS Regulation, (in which case this clause 20.2(e) does not apply), comply with:
 - (i) the reasonable requirements of any third party appointed by the Principal as principal contractor for the Site; or
 - (ii) if no third party has been so appointed for the Site, the WHS policies and procedures and other WHS requirements of the Principal which are in any way applicable to this Contract for that Site.

20.3 (Incident notification) The Supplier must:

- (a) report any Notifiable Incidents to the Regulator within the specified time frame as per the WHS Act and WHS Regulation;
- (b) if any of the Supplier's Personnel are involved in an accident or other health and safety incident or otherwise suffer an injury in connection with the performance of the Services:
 - (i) immediately notify the Principal of the accident, incident or injury; and
 - (ii) within 3 Business Days of the accident, incident or injury (or such longer period as the Principal may agree) provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future; and
- (c) cooperate and assist (and procure its Personnel to cooperate and assist) the Principal with any investigation by the Principal into any accident, injury or other health and safety incident in connection with the Contract.

20.4 (Supplier's WHS systems) The Supplier:

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

and must update such documentation as required from time to time to ensure that it complies with clause 20.4(c);

- (d) must, where directed to do so by the Principal:
 - (i) prior to commencing the Services, submit the Supplier's WHS documentation (including the documentation required elsewhere under the Contract) to the Principal for review; and
 - (ii) within the time directed by the Principal submit to the Principal for review any other WHS documentation that the Principal directs it to prepare,

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

20.5 **(Site specific induction)** Unless otherwise directed by the Principal, the Supplier must ensure that each of its Personnel working at the Site receives a site-specific induction and that each person visiting the Supplier or its Personnel at that Site receives a site-specific induction or is accompanied by someone who has received such an induction.

21. HEAVY VEHICLE NATIONAL LAW

- 21.1 **(Definitions)** Terms used in this clause which are defined in the HVNL have the same meaning as in that law unless the context otherwise requires.
- 21.2 **(Primary obligation)** The Supplier must ensure that, so far as is reasonably practicable, the safety of the Supplier's transport activities. Without limiting this, the Supplier 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 Supplier's conduct does not directly or indirectly cause or encourage:
 - (i) the driver of the heavy vehicle to contravene the HVNL; 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 HVNL.
- 21.3 **(Notice)** The Supplier must immediately notify the Principal if the Supplier considers that anything in this Contract, or any act or omission of the Principal or the Principal's Personnel has or is likely to directly or indirectly cause or encourage the Supplier or any employee or subcontractor of the Supplier:
 - (a) being the driver of a heavy vehicle to contravene the HVNL; or

- (b) being the driver of a heavy vehicle to exceed a speed limit applying to the driver; or
- (c) being another person, including another party in the chain of responsibility, to contravene the HVNL.

22. PROTECTION OF PROPERTY AND THE ENVIRONMENT

22.1 **(General)** The Supplier must and must ensure that to the extent applicable to them, its Personnel:

- (a) perform the Supplier's obligations under the Contract safely and in a manner that will prevent pollution, contamination or damage to property or the environment; and
- (b) take all measures necessary to protect property and the environment in the performance of its obligations under the Contract.

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

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

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

23. INDEMNITY

23.1 **(Indemnity)** To the extent permitted by law, the Supplier shall indemnify and keep indemnified the Principal and the Principal's officers, employees and related bodies corporate against:

- (a) any of the following:
 - (i) loss of or damage to property of the Principal (including Supplier Documents);
 - (ii) Claims by any person against the Principal in respect of personal injury or death, or loss of or damage to property of any party; and
 - (iii) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal,

to the extent caused or contributed to by the negligence or Wilful Misconduct of the Supplier or its Personnel in connection with the Contract and/or the breach of Contract by the Supplier; and

- (b) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal resulting from an infringement or alleged infringement of Intellectual Property Rights in connection with the Services by the Supplier or its Personnel,

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

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

24. LIMITATION OF LIABILITY

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

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

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

- (a) liability of the Principal to pay the Price;
- (b) liability of either Party in connection with personal injury, or death or damage to property;
- (c) liability of a Party arising as a result of:
 - (i) an infringement of confidentiality or Intellectual Property Rights;
 - (ii) a deliberate breach or abandonment of the Contract;
 - (iii) Wilful Misconduct;
 - (iv) a breach of any law; or
 - (v) fraud or other criminal conduct,by that Party; or
- (d) liability of the Supplier which the Supplier:
 - (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 Supplier uses all reasonable endeavours to, but does not actually, recover that liability; or
 - (ii) would have been entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) but for any act or omission of the Supplier or the existence of this clause 24,

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

25. INSURANCE

- 25.1 **(Insurances to be effected and maintained)** The Supplier must effect the insurances stated in the Reference Schedule and any other insurance which the Supplier considers is necessary to protect its interests or which is required by law.

- 25.2 **(Period of insurance)** The insurance policies required under clause 25.2 must be maintained at all times from the Term Start Date:

- (a) until 5pm on the later of:

- (i) the Term End Date; and
 - (ii) the date on which the Supplier's obligations under the Contract are complete; and
 - (b) in respect of professional indemnity insurance only, for a period of 7 years after the date in clause 25.2(a).
- 25.3 **(Subcontractors)** The Supplier must ensure that any subcontractor, supplier or consultant of the Supplier has equivalent insurances to the extent that they are applicable to the part of the Services to be carried out by the subcontractor, supplier or consultant.
- 25.4 **(Evidence of insurance)** If requested by the Principal, the Supplier must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by the Principal of the Supplier's compliance with this clause 25. The Principal may suspend the Contract or any Work Order issued pursuant to it until such evidence is provided.
- 25.5 **(No implied limitation)** Nothing in this clause, nor the Supplier's compliance or non-compliance with it, shall be taken to limit or reduce the Supplier's liability under the Contract or at law.
- 25.6 **(Notification)** The Supplier must:
- (a) if any insurance policy required under the Contract is cancelled or the Principal's interest in respect of any of those policies is adversely affected, immediately notify the Principal's Representative of this;
 - (b) if any event occurs which may give rise to a claim involving the Principal under any policy of insurance to be effected by the Supplier under this clause 25:
 - (i) notify the Principal within 10 Business Days of that event; and
 - (ii) ensure the Principal is kept fully informed of any subsequent actions and developments concerning the relevant claim.

26. INSPECTIONS AND TESTS

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

27. HANDLING OF INFORMATION

- 27.1 **(Obligation of confidence)** A Party must not use the other Party's Confidential Information for any purpose other than complying with its obligations or exercising its rights in connection with the Contract ("Permitted Purpose"). A Party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.
- 27.2 **(Breach of Confidence)** If a Party becomes aware of a suspected or actual breach of clause 27.1, that Party must immediately notify the other Party and take reasonable steps required to

prevent, stop or mitigate the extent of the breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.

- 27.3 **(Return of Confidential Information)** Subject to this clause 27, the Disclosee of Confidential Information must return or destroy (at the Discloser's discretion) all Confidential Information and material containing Confidential Information when it is no longer required by the Disclosee for the Permitted Purpose or when otherwise directed by the Discloser. The Disclosee may, subject to its continuing obligation to comply with this clause 27, keep such copies as are required to comply with any law or to comply with its reasonable corporate governance requirements for so long as is necessary to satisfy those requirements.
- 27.4 **(Personnel)** The Parties must make every reasonable effort to ensure that only its Personnel that have a need to know any Confidential Information for the Permitted Purpose are permitted to access and use the other Party's Confidential Information and its Personnel are aware of and comply with the obligations of confidentiality in this clause 27.
- 27.5 **(Collection of information by the Supplier)** If the Supplier collects or has access to Personal Information as that term is defined in the *Information Privacy Act 2009* (Qld) in order to carry out its obligations under the Contract, the Supplier must comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Contract as if the Supplier was the Principal. Where the Principal consents to the Supplier subcontracting the whole or part of the Supplier's obligations under this Contract, the Supplier must ensure that any subcontract with a subcontractor that will collect or have access to Personal Information contains a clause requiring the subcontractor to acknowledge and agree that it is a 'bound contracted service provider' as that term is defined in the *Information Privacy Act 2009* (Qld).
- 27.6 **(Collection of information by the Principal)** The Principal collects Personal Information and other information in connection with the Contract so that it can properly administer the Contract and otherwise carry out its functions as a local government authority. The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information will be accessible by Personnel of the Principal engaged to assist the Principal in connection with the Contract or otherwise carrying out the functions of the Principal. Information may also be disclosed as otherwise permitted under the Contract or at law, including under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld).
- 27.7 **(Right to Information)** The Supplier acknowledges that:
- (a) the *Right to Information Act 2009* (Qld)':
 - (i) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including the Principal);
 - (ii) requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest; and
 - (b) information provided by the Supplier in connection with the Contract is potentially subject to disclosure to third parties, including information marked as confidential;
 - (c) the Principal will assess any application for disclosure in accordance with the terms of the *Right to Information Act 2009* (Qld).
- 27.8 **(Media)** The Supplier must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether oral or written, in connection with the Contract in any media without the prior approval of the Principal.

28. INTELLECTUAL PROPERTY

- 28.1 **(Background IP)** Background IP of a Party shall remain the exclusive property of that Party. The Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Principal's Background IP strictly for the purpose of complying with the

Supplier's obligations under the Contract and for no other purpose. The Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Supplier's Background IP for any purpose for which the Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract. Each Party warrants and represents to the other that the use of the Party's Background IP will not infringe any Intellectual Property Rights of a third party.

28.2 **(Project IP - Alternative 1)** If the Reference Schedule provides that Project IP vests in the Principal, then:

- (a) Project IP vests on creation in and is the exclusive property of the Principal;
- (b) to the extent (if any) that clause 28.2(a) does not vest Project IP in the Principal, the Supplier assigns all right, title and interest in the Project IP to the Principal; and
- (c) the Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Supplier to comply with the Supplier's obligations under the Contract and for no other purpose.

28.3 **(Project IP - Alternative 2)** If the Reference Schedule provides that Project IP vests in the Supplier, Project IP vests in the Supplier on creation and the Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Project IP for any purpose for which the Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract.

28.4 **(Moral Rights consent)** If the Reference Schedule provides that a Moral Rights consent is required then:

- (a) the Principal may do anything which would, but for this clause, constitute an infringement of the Moral Rights of the Supplier or any of its Personnel in the Background IP or the Project IP; and
- (b) the Supplier must procure, and on request by the Principal provide to the Principal a copy of, a written consent to this effect from each of its Personnel that is the author of any Supplier Documents.

28.5 **(Warranty and representation by Supplier)** The Supplier warrants and represents that:

- (a) it has the necessary rights to exercise any Intellectual Property Rights that it uses to provide the Services, or to assign or license the Supplier's Background IP and Project IP in accordance with this clause 28;
- (b) it has not infringed and will not infringe any Intellectual Property Rights of a third party in connection with the performance of its obligations under the Contract; and
- (c) except to the extent that the infringement is caused by the Supplier's incorporation of the Principal's Background IP, the Project IP and the Principal's use of the Project IP for a purpose stated in or to be reasonably inferred from the Contract will not infringe the Intellectual Property Rights of a third party.

29. NON-CONFORMANCE

29.1 **(Non-conformance)** Where any of part of the Services provided by the Supplier does not conform strictly to the requirements of the Contract or the Supplier fails to comply with any other obligation of the Supplier under the Contract, the Principal may, in addition to or as an alternative to exercising its rights under clause 32 and 33, exercise the rights provided in clause 29.2.

29.2 **(Principal's rights)** Where permitted by clause 29.1, the Principal may:

- (a) direct the Supplier to provide a detailed proposal as to how the Supplier proposes to rectify the non-conformance and the time within which such a proposal is to be provided; or
 - (b) whether or not the Principal has given a direction under clause 29.2(a), direct the Supplier to:
 - (i) rectify the non-conformance or failure, including by:
 - (A) performing or reperforming any non-conforming Services;
 - (B) removing, demolishing, repairing, replacing or reconstructing any non-conforming Works;
 - (C) removing, repairing or replacing any non-conforming Goods;
 - (D) replacing non-conforming Supplier Documents; and
 - (ii) make good any damage to any property (including Works or Goods) to the extent caused by the non-conformance or the rectification,
- at the Supplier's expense and within the timeframes reasonably directed by the Principal.

29.3 **(Step-in rights)** Where the Supplier fails to comply with a direction under clause 29.2(a) or 29.2(b), the Principal may:

- (a) after giving at least 5 Business Days written notice to the Supplier (except in the case of emergency, in which case no notice is required), take any of the steps contemplated by clause 29.2(b) itself or engage a third party to do so; or
- (b) accept the non-conformance or failure and adjust the Price as if the Principal had directed a Variation for the non-conformance or failure.

29.4 **(Costs)** The cost reasonably incurred by the Principal in connection with any action taken pursuant to clause 29.2 or 29.3 shall be a debt due and owing by the Supplier to the Principal.

29.5 **(Timing)** The rights given to the Principal under clauses 29.2 or 29.3 may be exercised at any time up to 12 months after the later of:

- (a) the date on which the Services, Works, Goods or Supplier Documents were provided by the Supplier; and
- (b) the Term End Date.

29.6 **(Application of clause)** For clarity, this clause 29 shall apply to all Services, Works, Goods and Supplier Documents provided or to be provided, under the Contract, including Services, Works, Goods and Supplier Documents provided in compliance with a direction under clause 29.2(b).

30. SUSPENSION

30.1 **(Right to suspend)** The Principal may direct the Supplier to suspend the performance of the whole or part of the Supplier's obligations under the Contract at any time and for any reason and may direct the Supplier to recommence performing those obligations by giving written notice to the Supplier. The Supplier must not suspend the performance of its obligations under the Contract without the prior written consent of the Principal.

30.2 **(Costs of suspension)** If the suspension is directed due to any act or omission of the Supplier or its Personnel (including a breach of the Contract by the Supplier) then the Supplier shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which

the Supplier demonstrates it has reasonably, necessarily and not prematurely incurred by reason of the suspension and which the Supplier demonstrates it cannot reasonably mitigate.

31. FORCE MAJEURE

- 31.1 **(Notification of Force Majeure)** If either Party is rendered unable wholly or in part by Force Majeure to carry out any of its obligations under the Contract (other than an obligation to make a payment of monies), that Party ('the Affected Party'), shall give to the other Party prompt written notice of such Force Majeure detailing the particulars of the Force Majeure and to the extent that it is ascertainable at the time of giving the notice, the extent to which it will be unable to perform or be delayed in performing its obligations.
- 31.2 **(Suspension)** On the giving of a notice under clause 31.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.
- 31.3 **(Mitigation)** The Affected Party shall use all reasonable diligence to mitigate the effect of the Force Majeure on its obligations as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.
- 31.4 **(Industrial relations)** Clause 31.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on terms contrary to its wishes. The manner in which all such difficulties shall be handled shall be entirely within the discretion of the Affected Party.
- 31.5 **(Principal's rights)** Where the Supplier gives a notice under clause 31.1, the Principal may at its election:
- (a) itself perform, or engage others to perform the obligations which the Supplier is unable to perform and may continue to perform such obligations until the later of the time that the Principal is reasonably satisfied that the Supplier is able to resume performance of those obligations and the time at which any interim arrangements put in place by the Principal are able to be reasonably brought to an end;
 - (b) take such other action as the Principal, acting reasonably, considers appropriate.
- The cost incurred by the Principal in exercising these rights shall be borne by the Principal.
- 31.6 **(Termination)** If Force Majeure extends for a period of greater than 20 consecutive Business Days then the Principal may terminate the Contract immediately by giving written notice to the Supplier.

32. CANCELLATION OF WORK ORDER

- 32.1 **(Cancellation of a Work Order)** The Principal may cancel any Work Order at any time, for any reason, at its convenience. Any Work Orders which are on foot at the time at which the Contract is terminated by either Party pursuant to clause 33 shall be deemed to be immediately cancelled pursuant to this clause 32.1, unless the Parties expressly agree otherwise.
- 32.2 **(Consequences of cancellation)** If a Work Order is cancelled, then:
- (a) unless otherwise directed by the Principal, the Supplier must secure the Site in a safe and proper manner and remove all of its Personnel, plant and equipment from the Site within 5 Business Days of the date of cancellation of the relevant Work Order;
 - (b) the Principal may carry out any obligation of the Supplier which has not been carried out and completed as at the date of cancellation itself or engage others to do so on the Principal's behalf; and
 - (c) the Principal shall, subject to the Contract, pay the Supplier:

- (i) the amount which the Supplier is entitled to be paid under the Contract for Services provided by the Supplier in accordance with the Contract up to and including the date of cancellation; and
- (ii) if the cancellation is solely due to the act or omission of the Principal, without any fault on behalf of the Supplier, the amount of any other direct costs which the Supplier cannot reasonably mitigate and which the Supplier has reasonably, necessarily and not prematurely incurred:
 - (A) prior to the cancellation in the expectation of completing its obligations under the Contract or the relevant Work Order; or
 - (B) as a direct consequence of cancellation,

except that the total amount payable to the Supplier in respect of the Work Order shall not under any circumstances exceed the amount to which the Supplier would have become entitled to be paid had the Work Order not been cancelled and the Supplier had completed its obligations under the Work Order.

33. TERMINATION, DEFAULT AND INSOLVENCY

- 33.1 **(Termination for convenience)** The Principal may at any time and for any reason in its absolute discretion terminate the Contract by giving 25 Business Days written notice to the Supplier.
- 33.2 **(Notice to show cause)** If a Party ("the defaulting Party") commits a Substantial Breach of the Contract, then the other Party may give the defaulting Party a notice to show cause. The notice to show cause must state:
 - (a) that it is a notice to show cause under clause 33.2;
 - (b) the alleged Substantial Breach;
 - (c) that the defaulting Party is required to show cause in writing why the other Party should not exercise a right referred to in clause 33.3 or clause 33.4 (as the case may be);
 - (d) the date and time by which the defaulting Party must show cause (which must be a reasonable period taking into account the nature of the breach); and
 - (e) where applicable, the place at which cause must be shown.
- 33.3 **(Principal's rights)** If:
 - (a) the Supplier is subject to an Insolvency Event;
 - (b) the Supplier commits a Substantial Breach which is incapable of remedy; or
 - (c) by the time specified in the notice to show cause given by the Principal to the Supplier under clause 33.2, the Supplier fails to show reasonable cause why the Principal should not exercise a right under this clause 33.3,

the Principal may by giving written notice to the Supplier:

- (i) cancel any Work Order pursuant to clause 32.1;
- (ii) to the extent permitted by law, immediately terminate this Contract; or
- (iii) permanently or temporarily take the whole or any part of the obligations of the Supplier remaining to be completed pursuant to any Work Order (including the obligation to remedy the default) out of the hands of the Supplier and may itself

perform those obligations or engage a third party to do so on the Principal's behalf, in which case:

- (A) the Supplier shall not be entitled to any further payment in respect of the obligations taken out of the Supplier's hands;
- (B) the Supplier must continue to perform any obligations under the Contract and the relevant Work Order that were not taken out of the Supplier's hands;
- (C) the Principal or the third party so engaged may enter the Site and any relevant premises of the Supplier and use all of the Supplier's plant, equipment and materials as may be necessary to perform the obligation;
- (D) the Principal may, on the giving of reasonable notice, require the Supplier to resume the performance of the obligations of the Supplier under the Contract and the relevant Work Order which were taken out of the hands of the Supplier if the Supplier ceases to be subject to an Insolvency Event or the Principal is otherwise of the view that the Supplier is capable of continuing to perform its obligations under the Contract and the relevant Work Order in accordance with the Contract; and
- (E) if the costs incurred by the Principal in performing the obligations or engaging a third party to do so are greater than the costs which would have been incurred had the Supplier performed the obligation then the difference shall be a debt due and owing by the Supplier to the Principal and may be deducted from payments otherwise owing to the Supplier. Until such costs are incurred, the Principal may deduct the estimated costs from payments to the Supplier.

33.4 (Supplier's rights) If:

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

the Supplier may at its election:

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

If the Supplier suspends the whole or part of the Services under this clause 33.4, the Supplier shall lift the suspension if the Principal remedies the breach but if, within 45 Business Days after the suspension, the breach is not remedied and the Principal fails to make other arrangements to the reasonable satisfaction of the Supplier, then the Supplier may terminate the Contract by giving written notice to the Principal.

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

- (a) the termination of the Contract by either Party;
- (b) the cancellation of a Work Order; or
- (c) the Principal taking obligations out of the hands of the Supplier,

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

34. DISPUTE RESOLUTION

- 34.1 **(Mandatory process)** Unless otherwise stated in this Contract, any dispute between the Parties must be resolved in accordance with this clause 34.
- 34.2 **(Notice of dispute)** If a Party considers that a dispute has arisen between the Parties in connection with this Contract, then the Party must give written notice to the other, setting out the particulars of the dispute and stating that the notice is given under this clause 34. Unless the Parties otherwise agree in writing, the notice shall be delivered by hand or registered post.
- 34.3 **(Initial conference)** If a Party gives written notice to the other of a dispute under the Contract, representatives of the Parties shall promptly confer to attempt to resolve the dispute.
- 34.4 **(Mediation)** If the dispute is not resolved within 10 Business Days after the giving of the notice (or such longer period as may be agreed by the Parties) a Party may by written notice to the other Party refer the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute. The mediation must be conducted by a mediator to be appointed by agreement of the Parties or in default of agreement to be appointed by the President of the Queensland Law Society or his nominee at the request of a Party.
- 34.5 **(Legal proceedings)** If the dispute is not resolved within 20 Business Days after the appointment of the mediator any Party may take legal proceedings to resolve the dispute.
- 34.6 **(Urgent relief)** This clause 34 does not prevent any Party from taking any steps under any law out of which the Parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.
- 34.7 **(Obligation to continue)** Notwithstanding the existence of a dispute, the Parties shall, subject to clauses 30, 31, 32 and 33 continue to perform the Contract.

35. CLAIMS

- 35.1 **(Claims pursuant to the Contract)** The Principal shall not be liable upon any Claim by the Supplier for an extension of time, an adjustment to the Price (including due to a Variation) or other monetary compensation pursuant to the Contract unless the Supplier has complied with the requirements in the Contract for notifying the Principal of and making such a claim.

36. INTERPRETATION

- 36.1 **(Headings)** Headings are for reference purposes only and must not be used in interpretation;
- 36.2 **(No limitation)** The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that the Principal 'may' do something the Principal is not obliged to do that thing and is not prevented from doing any other thing;
- 36.3 **(Grammatical forms)** Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.
- 36.4 **(Law)** A reference to 'law' includes all:
- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licences, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,

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

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

- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
- (b) a clause is to a clause in the Contract unless expressly stated otherwise;
- (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
- (d) a monetary amount is a reference to an Australian currency amount.

36.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Contract or the relevant Work Order expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day. A reference to a day, week or month means a calendar day, week or month.

36.7 **(Indemnities)** Each indemnity provided in the Contract is a continuing indemnity which survives the expiration or termination of the Contract. The Principal need not incur any expense or make any payment in order to rely on an indemnity.

36.8 **(Contra proferentem)** The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.

36.9 **(Severance)** If a provision of the Contract is void or unenforceable it must be severed from the Contract and the provisions that are not void or unenforceable are unaffected by the severance.

37. GENERAL PROVISIONS

37.1 **(Costs)** Each Party must pay its own costs and expenses incurred in negotiating, executing, stamping, registering and performance of the Contract.

37.2 **(Joint and several obligations)** To the extent permitted by law, if either Party consists of two or more persons the Contract binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally, and any obligation incurred in favour of that Party may be enforceable by each person comprising that Party severally;

37.3 **(Governing law)** The Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.

37.4 **(Binding on successor)** The Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.

37.5 **(Further assurance)** The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under the Contract.

37.6 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the Reference Schedule or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:

- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
 - (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.
- 37.7 **(Waiver)** No waiver by a Party of a provision of the Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.
- 37.8 **(Amendments)** This Contract may only be amended by written agreement executed by or on behalf of each Party.
- 37.9 **(Consent)** Any consent of the Principal under the Contract may be given, withheld or given subject to conditions at the absolute discretion of the Principal.
- 37.10 **(Consideration)** In consideration for the Supplier entering into this Contract, the Principal agrees to pay the Supplier the sum of \$10 on demand. In consideration for the Principal entering into this Contract, the Supplier agrees to pay the Principal the sum of \$10 on demand.
- 37.11 **(Discrepancy or inconsistency)** Where there is a discrepancy or inconsistency between any obligation of the Supplier under the Contract, the Supplier must notify the Principal in writing of the discrepancy or inconsistency, If the discrepancy or issue cannot be resolved using the order of precedence under clause 2.3 then unless otherwise directed by the Principal, the Supplier must comply with the highest or most onerous requirement.
- 37.12 **(Cumulative rights and obligations)** The rights and remedies of a Party provided in the Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of the Contract will not relieve the Supplier of any other obligation under the Contract, at law or in equity. The exercise by the Principal of a right provided in the Contract shall not invalidate or constitute a repudiation of the Contract.
- 37.13 **(Electronic execution)** The Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by email. For clarity, the Parties consent to the Contract being executed electronically using DocuSign or an equivalent electronic method to identify the Parties.
- 37.14 **(Current versions)** Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Supplier must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or prices in the Contract shall be deemed to have allowed for compliance with that version.
- 37.15 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, clauses 23, 24, 25.2(b), 27, 28, 32.2, 33.5 and 35 survive the expiration or earlier termination of the Contract.

Schedule 1 - Scope and Price

Execution

EXECUTION BY THE PRINCIPAL

SIGNED for and on behalf BANANA
SHIRE COUNCIL by its duly authorised
representative in the presence of:

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

EXECUTION BY THE SUPPLIER (WHERE SIGNATORY IS A CORPORATION)

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

.....)
Director)	Director/Secretary
.....)
Name (block letters))	Name (block letters)
.....)
Date)	Date

EXECUTION BY SUPPLIER (WHERE SIGNATORY IS NOT A CORPORATION)

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

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



PART 5: SCOPE

Management and Operation of Moura Aquatic Facility

CONTRACT NO: T2526.27

BANANA SHIRE COUNCIL
MANAGEMENT AND OPERATION OF MOURA AQUATIC FACILITY

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1 INTRODUCTION

Banana Shire Council (the Principal or Council) is situated in Central Queensland, Australia. The Banana Shire is sparsely populated, with its population of approximately 15,742 people spread over 28,577 square km's. The region is home to many natural attractions including gorges, rivers and National Parks such as the Glebe Weir, Lake Murphy and Mount Scoria Conservation Parks, and Expedition, Kroombit Tops and Isla Gorge National Parks.

Banana Shire Council currently has two (3) aquatic centres. This contract and scope are for management and operation of Moura Memorial Pool.

Council places particular importance on the Supplier's ability to work closely with Banana Shire Council and the local community to increase opportunities for the community to participate in active sport, fitness, leisure and recreation.

2 AQUATIC CENTRE:

2.1 MOURA MEMORIAL POOL- 21 DAVEY STREET, MOURA QLD 4715

The Moura Memorial Pool is a seasonally operated outdoor pool facility open from 1 September to 30 April that services the Moura township and surrounding areas.



PORTION OF LOT PLAN: 1M86327

The pool has a resident swimming club and is well supported by the local community in the Summer months.

Facilities include:

- Outdoor 50m Olympic pool (infinity wet deck)
- Shaded and fenced outdoor wading pool
- Outdoor heated 25m pool (infinity wet deck)
- Fixed picnic seating and grass areas
- Shaded poolside seating
- Male, female and disability change rooms and toilets
- Public barbecue
- Food and beverage kiosk with kitchen (capable of obtaining Food Safety Licences)
- Fenced and shaded playground

2.1.1 Minimum services and activities to be delivered at Moura Memorial Pool:

- Learn to swim program (from 4 years +)
- Infant Learn to Swim program (6 months – 4 years)
- Squad training
- Swim training
- School swimming program and carnivals (Swim Instructors if required to be provided for school programs can be charged at Supplier's determination).
- Recreational swimming e.g. lap swimming, water walking, holiday programs and fun activities.
- Water Aerobics and other health related classes
- If required, Provision of up to, two lifeguards at Swimming Club Night and Club events (cost of lifeguards is to be borne by Swimming Club and paid to the Supplier). If further lifeguards are required, this will need to be negotiated with the Swimming Club and Supplier, and associated costs of this service determined.
- Provision of pool hire to the Swimming Club for one night, each week following closure to general public on a user pays basis according to Councils Fees and Charges.

All services are to be fee for service according to Council's approved Fees and Charges listed on Council's website or at Supplier's determination for activity based or lifeguard provision of services out of normal pool operating hours.

2.1.2 Extra Services to be provided, if possible but not essential:

- Provision of an accredited development coach to train squad and competitive swimmers.
- Attendance of the development coach at 50% Swimming Club nights to provide technical training to swimmers they coach, subject to costs being agreed between the club and provider.

2.1.3 Moura Minimum Opening Hours

1 September to April 30th (Summer)	Open	Close	Open	Close
Monday - Friday	0530	1200	1430	1800
Saturday	1000	1800		
Sunday	1000	1800		
Public Holidays	At the discretion of Supplier		With 6 months' advance notice to the public	
May to August (Winter)				
Closed to Public	Subject to Supplier's discretion, can be open for swim coaching to be offered to swim Club members. Council must give its approval before swimming can be conducted during winter break.			

Note: Council, during the summer period requires the pool to be open for a minimum of 10 hours per day and the needs of swimming club and schools are to be negotiated in and around these times.

3 SITE INSPECTIONS

Not used.

4 SPECIFIC REQUIREMENTS OF THIS CONTRACT

The Scope includes (but is not limited to) the following specific requirements:

- The Supplier
- The construction of any Supplier proposed facilities additional to the existing facilities must be funded solely by the Supplier, with the Supplier also responsible for all maintenance and repairs of this item for the duration of the Contract Term.
- The operation and management include full responsibility for all Supplier detailed operational expenditures at section 6.1 and retention of all associated pool fees and extra activity revenues.
- The Supplier will actively and regularly engage in the local community relationships building (including but not limited to all schools and the local Swimming Clubs) and establish themselves and the venue as a community hub for a variety of events and activities.

- The Supplier shall manage the community aquatic and leisure facilities on a day-to-day basis in conjunction with limited assistance and guidance from Council.

4.1 EVALUATION CRITERIA

- Demonstrated experience in managing an aquatic centre and/or aquatic based business including but not limited to, evidence of:

Evidence of previous implementation of a supervisory lifeguard plan in accordance with the Royal Surf Life Saving Association of Australia or submission of a Sample Plan for the Pool you are submitting a Tender submission for.

Evidence of awareness of legislation documented in section 5 and how this will be implemented in your business plan, WHS Management Plan and Operational Plans

Experience in operating pool filtration and pump plant.

Evidence of operating Pool cleaning vacuum units.

- Provide details of the company or individual/s involved, including qualifications held. Include your business plan & operation plan for the site you are lodging a submission for.
- Demonstrated value for money to the Principal.
- Demonstrated safety performance including provision of a detailed Risk Register appropriate for pool operations, your businesses WHS Policy and any developed Safety Management Plans/Procedures.
- Evidence of ability to establish community relationships by way of two written supporting letters.

Letter 1 is from a community group you have worked with in current pool operations, or a community group from the community of the pool facility you are tendering for e.g. Moura Chamber of Commerce,

Letter 2 is from a school group you have previously worked with or a school in the location of the Pool you are submitting a Tender for e.g. Biloela Redeemer College.

- Provide evidence of suitably qualified staff and/or contractors to ensure the continuous operation of the facility from day one of the Contract.
- Proposed programming plan for the centre, demonstrating a commitment to community utilisation of the centre, and the provision of affordable activities and programs.
- Provide evidence of experience in troubleshooting technical issues with Pool Pumps and Plant to addresses minor maintenance items.
- Provide evidence of experience in ordering, safe handling, safe storage of chemicals and monitoring of pool chemical levels in water.
- Detail your plans to increase community engagement and work with Council (The Principal)
- Address in your submission the principals 'Local Buy' criteria providing details of your proposed staffing model including the number of FTE, PTE or Casual employees that will be employed from within the Banana Shire Area.

4.2 PERFORMANCE MEASURES (KPIs), TARGETS AND OUTCOMES FOR THE SUPPLIER

- Maintain or increase patronage levels.

- Maintain or increase programming participation.
- Maintain or increase the type and availability of aquatic and leisure programming at the facility.
- Limit repairs and maintenance required at the facility by way of appropriate proactive and preventative maintenance reporting & initiation of repairs within approved financial limits.
- Deliver consistent high quality pool water conditions as per section 10 of this Scope.
- Establishment of a marketing program in partnership with Banana Shire Council Media team.
- Establishment of new and innovative community programming.
- Continued and timely provision of Reports to the Principal as detailed in Section 4.3 of this Scope.

4.3 REPORTING REQUIREMENTS

The Supplier must keep formal records and report to Council as per the following:

Immediate Reporting:

- Plant & Equipment breakdowns.
- All incidents and accidents with the Supplier's investigation report.
- Positive or Negative Customer feedback relates to pool infrastructure facility.
- Official banning of patrons (and their names) under the provided 2 monthly ban authorisations given to pool Suppliers by Council.
- If water quality testing returns out of guideline levels consistently for more than half a day despite Supplier's efforts to rectify
- Maintenance or repairs requiring action above the Supplier's authorised limits or of a capital nature (including plumbing and electricity items).
- Any changes to opening hours or special event dates to be placed on Council's website.

Monthly Reporting to be received within seven (7) days of the end of each month:

- Maintenance activity undertaken by the Pool Supplier within their authorised financial delegation limits under the Contract.
- Pool water quality testing records for the month.
- Attendance figures (specifically total number of visitors to the pool, total number of learn to swim classes, total number of school classes and number of students).
- Staff training and other training.

All reports are to be submitted electronically in the required format to enquiries@banana.qld.gov.au and addressed to Attention: Principal Land and Lease Management Coordinator.

5 LEGISLATION & GUIDELINES POOL SUPPLIERS MUST ADHERE TO

- Work Health & Safety Act 2011 & Work Health and Safety Regulations 2011
- Safety in Recreational Pool Operations 2011
- Building Fire Safety Regulations 2008
- Guidelines for Safe Pool Operations – Aquatic Supervision (Royal Surf Lifesaving Australia)
- Water Quality Guidelines for Public aquatic Facilities – Public Health Act 2005
- Food Act 2006
- Environmental Protection Act 1994
- Any other statutory requirements for conducting your business operations.

6 CONTRACT RESPONSIBILITIES

6.1 SUPPLIER RESPONSIBILITIES:

- Undertake day-to-day operation and management of the pool facility in accordance with all sections of this Scope and all legislative and guidelines listed at section 5.
- Ensure regular communications with Council as detailed in section 4.3 of this Scope.
- Provide aquatic, community, sport and health and fitness programming, services and management within operating hours and parameters as agreed by Council including all minimum services listed in Section 2.1.1 of this Scope.
- Develop all operational manuals, policies and procedures to industry standards for aquatic, community, sport and health and fitness operations/management.
- Operations and monitoring of all onsite filtration plant and equipment (including dosing systems), placing orders for all chemicals required and operating the plant in accordance with the principal's provided "How to Guide".
- Build and maintain excellent relationships with the Swimming Club Committee, local schools and Council, ensuring the Supplier operates with a goal to respond reasonably to all requests made by these stakeholders, provide quotes for services where required, and proactively initiate conflict resolution if needed with the goal to provide for the needs of these groups in a way that ensures water safety and community wellbeing for all parties.
- Take lead with negotiating terms of agreement between the Swimming Club use of the pool site at the start of each pool season (including access to club buildings onsite), agreement is to be in writing with the agreed terms of relationship and provide a signed copy to the Principal within 30 days of starting the contract and then annually.
- Perform site general maintenance on fixtures, fittings and buildings up to a value of \$700 (including GST)/item to ensure site safety and service to the community. This does not include plumbing and electrical maintenance which will be dealt with by Council.
- Report all required maintenance for buildings and facility which will cost above \$700 (Inc GST) to the Principal's representative including **any** plumbing leaks not able to be resolved by the Supplier (if qualified), **all** electrical matters and any capital works required to the sub structure and superstructure of buildings.

- All operational staffing matters (recruitment, selection, training and development, performance management, and exit).
- Daily cleaning of pools, spaces and associated equipment (e.g. all internal rooms, offices, pool deck and surroundings, amenities, kiosk, foyers, back of house service areas, common spaces, bathrooms etc).
- Where pools are to be emptied or filled for any reason ensure the Principal's Water Retic team have been notified to enact downstream actions around water plant operations.
- Maintain a current Food Business Licence (where applicable).
- Maintain a current Blue Card, Working with Children qualification for each member of staff.
- Safety, risk management & Building Fire Safety obligations including but not limited to annual emergency procedures & drills, patron safety including a regularly reviewed lifeguard supervisory plan, annually reviewed risk register, annual training of staff in fire equipment use, staff first aid and CPR training, annual lifeguard training in accordance with your supervisory plan. This includes all responsibilities detailed in Section 23 & 24 of this Scope.
- Ensure pool site security by only issuing keys to required staff, maintaining an up-to-date key log of which employees have Council issued site keys and develop procedures for key and site access for Swimming Club and external hirers of the pool facility.
- Ensure lawns and gardens are maintained including ensuring grounds are watered and kept green, maintenance of underground sprinklers where provided, maintain grass to a height of up to 100mm, including the nature strip, all bins and litter are regularly emptied and set out for truck collection, vegetation and palm fronds removed regularly to waste stations, trees and hedges trimmed and maintained, all gardens weeded and the site kept to a suitable standard year round;
- Ensure concrete footpath surfaces and buildings are pressure cleaned at least annually or more frequently if required.
- Compliance with environmental legislation and regulations including correct storage of chemicals in provided bunded areas.
- Regularly dispose of chemical containers. They must be triple washed before disposal.
- Development and delivery of a marketing program for the facilities under Banana Shire Council Media team guidance at the Supplier's cost.
- Payment of telephone and internet charges (currently no NBN infrastructure exists at the pool sites and use of mobile network internet is the current procedure).
- Payment of cleaning costs and supplies (excluding pool vacuum and chemicals).
- Any legal, accounting and other professional fees as required for operations of your business.
- Provision, installation, and maintenance of all patron information by way of a point-of-sale system capable of providing reporting to Council in an approved format and in accordance with the Privacy Act 1988 and Information Privacy Act. (Currently the pool site uses the Links Modular patron program for POS with scanning wands owned by the principal).
- Supply of suitable IT equipment to operate POS programs.

- Provide all ancillary swimming equipment for classes and activities.
- Supply and replacement (where applicable) of all fixed furnishings and equipment requirements over and above what is supplied by Banana Shire Council and outlined in the facility inventory in Section 12.
- Payment of any fees owed to the Principal under the Contract.
- Manage winter off-season water quality monitoring and general site maintenance (including lawn and gardens).
- Must work in accordance with Council's Code of Conduct Policy # 73.
- Participate in any Council initiated annual Fees & Charges reviews, Council 10-year Capital planning, annual WHS facility audits & any WHS QLD Inspector audits.
- Pay for verification laboratory pool water testing (collection, shipping and provision of report), Council will coordinate and collect samples and on charge this expense to the Supplier at a suitable invoicing schedule.
- Negotiate in good faith with the principal around matters of local disasters where the use of the pool may be required during heatwaves.

6.2 BANANA SHIRE COUNCIL'S RESPONSIBILITIES:

- Setting of general admission fees, annual pass fees, pool hire fees, lane hire and Swimming Club hire of facility for club night/club events, school student (school booking) fees for the duration of the contract. This is completed in February each year.
- Undertake a review of pool fees in consultation with the Pool Supplier.
- Maintaining a suitably funded operations and maintenance budget to ensure Suppliers can continue to conduct safe operations.
- Provide annual maintenance on plant and equipment, including pumps, valves and chemical dosing equipment, Lovibond Calibrated photometer & Wave Robot pool vacuums.
- Provide interim repairs to plant equipment, including pumps, valves and chemical dosing equipment, Lovibond Calibrated photometer & Wave Robot pool vacuums (except where damage has been caused by Supplier error).
- Payment of utilities supply and consumption charges including electricity, chemicals, gas, water, sewerage, and refuse charges, but excluding telephone, internet, cleaning and mowing costs and other consumables.
- Provision of electrical & plumbing maintenance and repairs to ensure continued operations.
- Consultation with the Supplier when updating Council's 10 Year Capital Plan for pools.
- Establishment and management of key performance indicators with Supplier and conduct quarterly reviews.
- Management and project management of capital asset works including condition audits.
- Maintenance of fire safety equipment, RCD's, asbestos registers, locks and keys & Pest Control.
- Maintain adequate damage insurance cover for buildings and assets at pool sites.

- Conduct & coordinate verification laboratory pool water testing (collection, shipping and provision of report to Supplier). These costs will be invoiced to the supplier.
- Maintain a current "How to Guide" for operations and use of Pool filtration plant and equipment.
- Negotiate in good faith with the Supplier around matters of local disasters where the use of the pool may be required during heatwaves.

7 IMPLEMENTATION TIMETABLE

Contract commencement date is 1 August 2026. The successful operator would be permitted access to the facilities as early as possible after awarding of the contract to assist in establishing procedures and continuity of operation. Council will provide all available information relating to the operation of the facilities.

8 POOL SEASON

Summer Season starts 1 September and concludes 30 April each year.

Winter season starts 1 May and concludes 31 August.

9 GENERAL ADMISSION FEE

Council sets entry fees across all of its swimming pools based upon the facilities available and these fees may not be amended without the Principal's approval.

Suppliers may request for fees to be amended by way of a formal request to Council, to be received no later than 31st July each year and accompanied by a written justification for the proposed amendments or new fees to be added taking into consideration the most recent annual CPI increases released around March each year.

Suppliers are permitted to set their own fees for other products and services offered at each facility in line with market trends, providing Council does not deem the fees unreasonably excessive and in keeping with Council's intention of providing affordable quality aquatic and leisure opportunities for the community.

Fees and Charges are set annually by Council and are published on Council's website on 1 July each year.

10 POOL WATER QUALITY GUIDELINES

All Suppliers must ensure that the water in all pools is balanced according to Queensland Health Swimming and Spa Pool Water Quality and Operational Guidelines and any periodical updates. All Suppliers must maintain safe water chemistry and microbiological levels by way of monitoring with Council provided calibrated photometer (Lovibond) test kits on an hourly schedule and adjustment of chemicals accordingly.

Verification testing will be undertaken by Council's Environmental Health team and Water Collection team at the required schedules and sent to external labs for analysis. Council will

coordinate this process, and costs of testing will be on charged to the Supplier at an agreed schedule.

All aquatic facility Suppliers are required to clean pools on a minimum daily basis by way of pool vacuums (provided by Council) and or manual cleaning devices so as to ensure the pool shell is clean and suitable for public use.

All Suppliers are required to treat pools with approved chemicals to ensure that there is no presence of algal growth (including during winter closedown periods).

Suppliers must maintain the regular filtration and treatment of pool water during winter closure periods unless otherwise agreed by Council. The minimum level of service includes maintaining water quality parameters as directed, use of pool blanket where available, vacuum and clean filters once per week, shock dose chlorine if necessary to treat algal growth.

11 GENERAL MAINTENANCE RESPONSIBILITIES

The Supplier must keep the premises clean and presentable including all pool internal shells, grounds (including lawns and gardens), pipes, drains, surfaces and gutters, changing rooms and amenities facilities, table and chairs and playground equipment.

The Supplier will be responsible for organising and paying for general maintenance and repairs up to a value of \$700 (including GST), (except for plumbing repairs, electrical repairs and repairs to buildings superstructure or substructure, including door locks which will be the Principal's responsibility and cost).

Condition assessments will be conducted onsite with the Supplier in accordance with the Principal's Asset Management Plan and any identified maintenance assessed as a high to catastrophic risk assessment must be repaired immediately subject to responsibilities detailed in Section 6.

11.1 ADDITIONAL IMPROVEMENTS

The Supplier may offer to construct additional improvements on the managed area as part of their proposal to Council. Any additional improvements shall become the property of the Council upon construction. The Supplier will be responsible for any maintenance, running and replacement costs associated with additional improvements during the Contract term.

The Supplier will be responsible for obtaining all development and other statutory approvals associated with any proposed additional improvements. All proposed additional improvements will be subject to final approval and sign off by Council. All improvements made by the Supplier, unless otherwise agreed, will immediately revert to Council ownership upon construction or installation.

12 EQUIPMENT

An inventory of Council provided fixtures, fittings and equipment is provided and will form part of the Pool Operation and Management Contract. The Supplier must supply and maintain any other equipment required to operate the Pool and meet its obligations under the Contract.

12.1 Moura Pool Inventory

Outdoor 50m Pool
Shaded Wading Pool
Outdoor heated 25m Pool
25M Pool blankets (2x parts)
Lanes Ropes
Disabled persons hoist
2x removable pool steps
Wave 300L Pool Vacuum
Side By Side Pool Vacuum
Dive Blocks & Covers
Links Modular IT POS, Cash Drawer, Scanner Wand & Printer
Outdoor Seating & Shade Structures
Kiosk/Canteen
BBQ
First Aid Kit
Oxygen Resuscitation gear
Defibrillator (including paediatric pads)
Office
25M Plant Area
50M Plant Room and chemical store
3x Acid Pumps
3x Chlorine Pumps
3x Dosing Control Systems

Other Moura Facility Assets owned by Council but in use by others are:
Swimming Club House and Kitchen
Swimming Club Storage Room

13 INSURANCE

Refer to clause 25 of the General Conditions of the Contract.

14 COACHING RIGHTS

The Supplier has the sole rights to coach members of the public in swimming and other aquatic activities. By agreed arrangement and agreement the Supplier may provide coaching to members of swimming clubs and schools using the facilities.

The supplier must be able to provide an accredited development coach to train squad and competitive swimmers.

15 SWIMMING CLUB

The Supplier must permit a local registered Swimming Club to use the swimming pool and facilities for one night of the week following closure of the pool to the public. This will be at the rate listed in Council's Fees and Charges.

The swimming club is responsible for ensuring they have the required number of lifeguards on duty for these club nights. The club and Supplier may agree that the supplier provides lifeguards at the fees determined by the Supplier.

It is a requirement of the Supplier to negotiate terms of use of the facilities with the Swimming Club, at the beginning of this contract. A written agreement signed by both parties needs to be completed and a copy is to be provided to the Principal. An annual review of this agreement must take place with the Swimming Club to ensure both parties goals are being achieved.

All items stored in the Club's designated facilities within the pool complex, must be insured by the Swimming Club.

All Swimming Club buildings and kitchens must be kept clean and free from open foods at all times by the Swimming Club. The Supplier must be provided a key to all swimming club areas to undertake inspections from time to time.

In the event of a dispute between the Supplier and the Swimming Club, where reconciliation and conflict resolution meetings have failed between the Supplier and the Club, the matter can be referred to the Principal will make the final decision.

16 KIOSK

The Supplier must conduct the kiosk business and keep the kiosk open each day during the summer season. The Supplier has exclusive rights to provide catering and sell swimming apparel at the Premises.

The Supplier is responsible for:

- payment of all expenses and outgoings connected with the kiosk business and shall carry on such business in a proper business like and orderly manner.
- Maintain compliance to any statute, regulation or local law in accordance with the provision of food and kiosk items, including a food license (where applicable).

Should the swimming club or schools apply for the appropriate consent to use the kiosk from the Supplier and the Supplier's written consent is given, then they may cater for their own events provided all the appropriate licences are obtained and any determined (and agreed fees) are paid to the Supplier.

17 SCHOOLS

The Supplier must permit schools to use the swimming pool and facilities in accordance with the Council's fees and charges. The Supplier is encouraged to develop a school usage agreement

with each school for arrangements made that includes a timetable for school use of the pools. This agreement and timetable must be made available to the Principal.

Schools have the right to provide their own qualified swim teacher.

18 CONDUCT OF BUSINESS AND SUPERVISION

The Supplier must conduct business honestly and professionally, in accordance with good business practices and so as to retain and enhance the goodwill of the business. The level of customer service provided by the Supplier and staff to pool users must meet the reasonable expectations of Council and operate the premises in accordance with the Contract.

19 MARKETING

The Supplier will ensure that the pool is promoted, and the public is kept informed of all matters concerning pool activities and hours of operation via as many communication methods as possible.

The Supplier will coordinate with the Council's Media team on any public campaigns that include Council's name.

20 RULES AND REGULATIONS

The Supplier must ensure pool rules and regulations are in accordance with the Guidelines for Safe Pool Operation as published and periodically updated by the Royal Lifesaving Society of Australia.

The Supplier agrees to observe and comply with the guidelines (as amended from time to time) and in particular the guidelines detail the Supplier's minimum staffing qualifications and supervision requirements for lifesaving, first aid, aquatic education, Blue Card and pool plant operation.

21 STAFF QUALIFICATIONS

Staff must hold suitable minimum Australian industry qualifications associated with the undertaking of duties or the provision of services. Acceptable qualifications include:

<u>ROLES</u>	<u>EXAMPLE SERVICE</u>	<u>MINIMUM QUALIFICATION OR EQUIVALENT</u>
Centre Managers/Duty Manager or person acting as the responsible officer for the operation of the aquatic centre	Responsible person for the aquatic facility	Pool Plant Operation (Aquatic Technical Supplier Skill Set (SISSS0013 or SISSS00110)), RLSSQ Pool

		Lifeguard or equivalent & Blue Card
Lifeguards	Supervision of pools	RLSSQ or equivalent pool lifeguard certificate & Blue Card
Swimming teachers general	General learn to swim, school swimming	Austswim/Australian Swimming Coaches and Teachers Association (ASCTA) general & Blue Card
Swimming teachers infants	General learn to swim, school swimming and infant swim teaching	Austswim/ASCTA general and Austswim/ASCTA infants Module & Blue Card
Swimming teachers disability	General learn to swim, school swimming and disability swim teaching	Austswim/ASCTA general and Austswim/ASCTA disability module & Blue Card
Aqua Aerobics	General learn to swim, school swimming	Australian Accredited Certificate III in Fitness plus aqua specific module & Blue Card
Squad swimming	Competitive swim teaching, squad swim coaching up to 12 years old.	Austswim green license/Swimming Australia junior or assistance coach & Blue Card
Squad swimming, competitive swim teaching, squad swim	coaching all swimmers	ASCTA competitive swimming/Swimming Australia Bronze coach, Blue Card
Fitness Instructors	Any land based group exercise programming	Australian Accredited Certificate III in Fitness & Blue Card
Personal trainers	Undertaking one on one or group personal training	Australian accredited Certificate IV in Fitness, Blue Card
Kiosk Staff	Service of foods	I'm Alert Food Safety online training (complete module), & Blue Card

Note: Each facility must have a nominated suitably qualified pool plant Supplier either on site or on call at all times of operation.

At any stage Council may request copies of staff qualifications.

22 MINIMUM STAFFING AT FACILITIES

All facilities must comply with minimum supervision recommendations as outlined in the most recent version of the Guidelines for Safe Pool Operation issued by the Royal Lifesaving Society of Australia.

23 WORKPLACE HEALTH AND SAFETY (WHS)

Without limiting the Supplier's obligations under clause 18 of the General Conditions of this Contract:

- the Supplier must ensure that the Pool and its use of the Pool comply with all statutory workplace health and safety obligations; and
- the Supplier must implement a WHS management system to meet the statutory obligations for all aspects of the facility's operation. These include, but are not limited to, working at heights, confined spaces, dangerous goods, hazardous substances, chemical storage and handling, emergency procedures and staff training.

The Supplier will maintain water quality at the pool by operating the chlorination/disinfection system and maintaining water circulation throughout the entire year.

All staff and volunteers working at the facility must complete a Banana Shire Council WHS General Online Induction annually (the Supplier must provide their employees/volunteers name and email address to the Principals Training and Development team via enquiries@banana.qld.gov.au).

The Supplier will make themselves available to conduct an annual site WHS audit with the Principal's representative, this will normally be planned for August each year prior to the Pool season beginning.

During this audit the following records will need to be presented to the Principal to pass the audit:

- Annually reviewed and updated Supplier's Risk Register
- Evidence of weekly eye wash station inspections by Supplier or their employees
- Evidence of first aid kit & Defib inspections
- A correctly made & reviewed Emergency Plan that addresses risks identified in the Supplier's risk register. This Emergency Plan for the site must be made in accordance with the criteria set out in the Building Fire Safety Regulations 2008.
- Written evidence training record of General Site Evacuation Training, for existing staff annually and within 2 days of a new employee starting, in accordance with the Building Fire Safety Regulations 2008.

- Written evidence of the provision of First Response Instruction to all employees in accordance with section 36 of the Building Fire Safety Regulations 2008.
- Written evidence (training record) of employees undertaking an evacuation drill in accordance with section 45 of the Building Fire Safety Regulations 2008.

For each written training record the following details must be captured to comply with the Regulations.

- The name of each person who was given instructions.
- The name of the person who gave the instruction.
- The date the instructions were given.
- A brief description of the instructions given

24 ENVIRONMENTAL DUTY

Without limiting the Supplier's obligations under clause 20 of the General Conditions of this Contract the Supplier must ensure that the pool and its use of the pool facility comply with all statutory environmental obligations and shall take all reasonable steps to ensure that environmental harm does not occur.

The Supplier must from the Term Start Date implement an Environment Management Plan demonstrating compliance with the Principal's Environmental Sustainability Policy (available on Council's website), the Environmental Protection Act 1994 & the Public Health Act 2005.

Through the Contract Term, the Principal, through consultation with the Supplier, may require updated procedures and policies to be implemented by the Supplier to ensure compliance with environmental responsibilities.

The Supplier will be able to book a site meeting with the Principal's Environmental and sustainability team to provide clarification on any environmental matter during the term of the contract.

25 COMMUNICATION WITH COUNCIL

The Supplier is to direct all maintenance request or enquiries during the course of this Contract to the Principal's Council Services Department, Land and Lease team:

Phone: (07) 4992 9500

Email: enquiries@banana.qld.gov.au

Council's Principal Land & Lease Management Coordinator is the Principal's Representative for the purposes of this Contract and the responsible officer for overseeing the duties and responsibilities of each party to this Contract.

The Principal Land & Lease Management Coordinator is also the responsible officer for the purposes of this Contract for the overseeing the daily duties and responsibilities of the Supplier & any facility management matters.

The Supplier agrees to contact the appropriate responsible officer in relation to its enquiries.

The Supplier agrees that any contact with media organisations or personnel regarding any Council Owned Aquatic Facilities or its operation must be referred to Council's CEO for approval of any response/comment.

26 CONFLICTS OF INTEREST

Refer to clause 8.3 of the General Conditions of the Contract. The Supplier must provide any information reasonably requested by Council in relation to a Conflict of Interest and follow all reasonable directions from Council about the method for handling a Conflict of Interest.

27 SUPPLIER PERFORMANCE ASSESSMENT

The Principal will continually assess the Supplier performance and will issue a supplier improvement notice if required:

Without limiting the Principal's rights under clauses 30 and 33 of the General Conditions of the Contract, a Supplier Improvement Notification may be issued at any time by the Principal, including (but not limited to) instances where the Principal reasonably believes, that one or more of the following issues need to be addressed by the Supplier:

- Continual Plant/Equipment breakdowns due to Supplier error
- Failure by the Supplier to maintain pool water quality as per recommended guidelines;
- Failure by the Supplier to not undertake maintenance where it is their responsibility to do so under this Contract.
- Failure by the Supplier to maintain minimum opening hours.
- Failure by the Supplier to provide minimum services or activities.
- Failure by the Supplier to comply with the Principal's requirements for cleanliness;
- Failure by the Supplier to comply with the Principal's environmental standards or directions.
- Failure to comply with the specifications of this Contract.
- Failure to comply with work health and safety or Building Fire Safety regulations;
- Supplier's staff not meeting minimum qualification standards or consistent complaints in performance from pool users.
- Failure to implement and/or monitor the controls and instructions as per the Supplier's Operational or Work Healthy and Safety Plan.

When Supplier Improvement Notification Form is issued a copy will be sent to the Supplier accompanied by a letter from Council's Representative inviting feedback from the Supplier.

Nothing in this paragraph 30 will prevent Council from exercising its rights under clauses 30 and 33 of the General Conditions of the Contract. For the avoidance of doubt, Council may exercise any of its rights under clauses 30 and 33 of the General Conditions of the Contract regardless of the existence or absence of any Supplier Improvement Notice.

28 CODE OF CONDUCT FOR SUPPLIERS & THEIR EMPLOYEES

Council's Code of Conduct Policy as shown on Council's website is to be implemented into the Suppliers Employee Handbook.

28.1 GIFTS OR BENEFITS TO COUNCIL CONTRACTORS

During the Term of this Contract, the Supplier and their employees and agents will not personally receive any gift, fee, profit, commission or other discount or benefit from any other person or corporation for any reason or on any pretence whatsoever due to the Supplier's Contract with Council, other than may be provided for in writing by Council.

28.2 REQUIREMENT TO REPORT FRAUD AND CORRUPTION

Should the Supplier have reasonable grounds to suspect that an employee or contractor of Council has sought inducements in return for allocation of contracts or work the Supplier must report the matter to the Chief Executive Officer of Council or the Crime and Corruption Commission.

28.3 USE OF INAPPROPRIATE LANGUAGE

The Supplier or their employees will conduct themselves in a professional manner at all times and not use any inappropriate language while on any sites, buildings or public place while contracted to the Principal. If reported the Council will take appropriate action.

28.4 VIOLENCE AND THREATS

The Supplier or their employees will conduct themselves in a professional manner at all times and not use any violence or threats against any members of the public, Council employees or Councillors to intimidate or coerce decisions while on any sites, buildings or public place for the duration of the Contract Term. If reported the Council will take appropriate action.

28.5 USE OF COUNCIL RESOURCES

The Supplier or their employees shall not use or borrow any Council plant, equipment, materials, or fuel unless directed by Council Representative. Use of Council plant and equipment shall only be with the prior written approval.

28.6 RELATIONSHIP OF PARTIES

The relationship of the parties is a contracted one,

28.7 RISK MANAGEMENT

Without limiting the Supplier's obligations under clause 20 of the General Conditions of Contract, the Supplier is responsible for ensuring all hazards associated with the Services to be performed at the aquatic sites, have been identified, assessed and added to the Supplier's Risk Register. This includes appropriate controls implemented prior to any work by their employees and undertaking risk assessments, with Safe Work Method Statements, where required.

28.8 SAFETY TRAINING

Without limiting the Supplier's obligations under clause 20 of the General Conditions of Contract, the Supplier shall be responsible for identifying and providing any Health and Safety

training required for the provision of Services under the Contract. The Supplier shall provide evidence that the workers have received such training and are competent in the type of work to be performed under the Contract. Council may require any Supplier's workers, at the Supplier's expense, to attend further site safety induction and training when considered necessary.

28.9 HEALTH AND SAFETY INDUCTIONS AND SITE INDUCTIONS

Without limiting the Supplier's obligations under clause 20 of the General Conditions of Contract, the Supplier shall undertake a site-specific induction Work Health and Safety induction with all new pool employees on their first shift.

The Supplier must also provide the name and email address of all employees at the aquatic facility to the Principal so their staff can complete the online contractor induction.

28.10 NO DRUGS AND ALCOHOL ON SITE

The Supplier shall comply with any legislative requirements for Drug and Alcohol Testing and Procedures and adhere to Council's Drug and Alcohol Policy.

The Supplier must ensure that they and their employees, whilst undertaking any work or performing their duties:

- Do not consume any alcohol
- Are not intoxicated or under the influence of any drug which impedes their ability to safely and efficiently perform any services or duties.

28.11 PROTECTIVE CLOTHING AND EQUIPMENT

Without limiting the Supplier's obligations under clause 20 of the General Conditions of Contract, the Supplier in accordance with its Work Health and Safety Management Plan shall comply with any legislative requirements for personal protective equipment or clothing. The Supplier must also comply with any directives issued by the Principal where specific protective clothing or equipment is to be used whilst carrying out Services under the Contract and it is not occurring.

The Supplier and its employees are responsible for the supply and maintenance of protective clothing and equipment and for ensuring staff are trained in its correct use as appropriate.

The Supplier shall be responsible for ensuring their employees are suitably dressed at all times. In all cases, any kind of undressed appearance or use of leisure clothing (e.g. beachwear, thongs, open footwear, singlets etc.) is not acceptable.