
Goods and Services Contract

[Note to Council: Blue highlighted text is to be read and deleted. Yellow highlighted text is to be read and then amended accordingly so as to form part of the Contract]

Project: [Insert]

Contract no. [Insert]




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REGIONAL COUNCIL

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Particulars

Details	
Contractor:	[Insert legal name and ACN or ABN] of [Insert address]
Commencement Date:	[Insert]
Nature of Contract (Note: Council to select 'Yes' and complete only one this section)	
Option 1 – Supply for a Contract Term (clause 3.1 applies)	
Is the Supply for a Contract Term: (clause 3.1)	[Yes / No]
If Yes, the Contract Term for the Supply is:	[Insert period Contract Term.]
Extension of Contract Term: (clause 3.1(c))	[Insert additional period by which the Contract Term may be extended e.g. "12 months" or mark as 'N/A']
Option 2 – Supply required by a Completion Date (clause 6.2 applies)	
Is the Supply required by a Completion Date: (clause 3.2)	[Yes / No]
If Yes, the Completion Date is:	[Insert the date for Completion.]
Liquidated damages applying to the Completion Date: (clause 22.5)	[\$_____ per day (exc GST)] OR [No liquidated damages apply but Council's right to claim general law damages is preserved]
Option 3 – Supply under a Standing Offer Arrangement (clause 3.3 applies)	
Is the Supply under a Standing Offer Arrangement: (clause 3.3)	[Yes / No]
If Yes, the Contract Term for the Standing Offer Arrangement is:	[Insert period for Contract Term.]
Extension of Contract Term: (clause 3.3(d))	[Insert additional period by which the Contract Term may be extended e.g. "12 months" or mark as 'N/A']
Supply	
Goods to be supplied (if any):	[Insert]
Extent to which the Goods (if any) may not be new (clause 14.1(a)):	[Insert]
Services to be supplied (if any):	[Insert]
Excusable Delay (clause 1.1)	[Insert, e.g. "state-wide industrial disputes", or if none, insert, "not applicable".]
Site:	[Insert]

Details for notices under Contract	
Council's Representative:	Name: [Insert]
	Postal address: [Insert]
	Telephone: [Insert]
	Email address: [Insert]
	Email size limit: [Insert]
Contractor's Representative:	Name: [Insert]
	Postal address: [Insert]
	Telephone: [Insert]
	Email address: [Insert]
	Email size limit: [Insert]
Security of Payment notices: (clause 26.2)	Address / email address: [Insert]
Key Supply Dates	
Key Supply Dates: (clause 3)	[Insert]
Liquidated damages applying to the Key Supply Dates: (clause 22.5)	[\$ _____ per day (exc GST)] OR [No liquidated damages apply but Council's right to claim general law damages is preserved]
Defects Liability Period	
Defects Liability Period (clause 19)	[Insert] (If nothing is stated, then the period of 12 months)
Suspension Limit	
Maximum duration for Council caused suspension: (Clause 24.1(c))	[Insert maximum period e.g. "12 weeks"]
Payment	
Price: (clause 25.1)	[Means the lump sum amount of \$[Insert] (ex GST).] OR Means the lump sum amount and rates as identified in the Pricing Schedule. OR Means the rates, as identified in the Pricing Schedule.]
Price Cap: (clause 25.9)	[Insert]
Invoice Date: (clause 25.3(a))	Except for the Final Claim, the later of the dates worked out as follows: (a) the [Insert] date of each month; and (b) the date of satisfaction of the last Claim Precondition.
Time for payment schedule: (clause 25.5)	15 Security of Payment Days
Payment terms: (clause 25.6)	Within [Insert] days of the last day of the month in which the invoice is received.

Quality	
Quality assurance system: (Clause 17.1(c))	[Is / is not] required to be accredited.
Miscellaneous	
Security: (clause 6)	Clause 6 [Applies / does not apply] If clause 6 applies, [the percentage is [Insert]% of the Price] or [the total amount is \$[Insert]]
Information for Convenience which may be relied upon: (clause 7)	[Insert or mark 'N/A']
Key Personnel: (clause 9)	[Insert]
Insurances	
General third party liability insurance	
Minimum requirements for cover	[Insert minimum coverage required]
Additional requirements	[Insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]
Workers' compensation and employer's liability insurance	
Minimum requirements for cover	[Insert minimum coverage required]
Additional requirements	[Insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]
Motor vehicle insurance	
Minimum requirements for cover	[Insert minimum coverage required]
Additional requirements	[Insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]
Professional indemnity insurance	
Minimum requirements for cover	[Insert minimum coverage required]
Additional requirements	[Insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]
Goods insurance	
Minimum requirements for cover	[Insert minimum coverage required]
Additional requirements	[Insert any additional requirements e.g. scope of coverage, maximum deductibles]
Transit insurance	
Minimum requirements for cover	[Insert minimum coverage required]
Additional requirements	[Insert any additional requirements e.g. scope of coverage, maximum deductibles]
[Insert details of any other insurances required to be maintained]	
Limit of cover	[Insert minimum coverage required]
Additional requirements	[Insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]

Goods and/or Services Contract

Dated

Parties

Council Lockyer Valley Regional Council ABN 52 673 165 312 of 26 Railway Street, Gatton QLD 4343

Contractor As identified in the Particulars.

General Conditions

1 Definitions and Interpretation

1.1 Definitions

In the Contract:

Term	Definition	Term	Definition
Business Day	means a day that is not: <ul style="list-style-type: none"> (a) a public holiday, special holiday or bank holiday in Gatton, Queensland; (b) Saturday or Sunday; or (c) 27 to 31 December (inclusive) or 2 to 10 January (inclusive). 		<ul style="list-style-type: none"> (ii) controlling the voting power of the board of directors or any class of shareholders, or both, of the Contractor; or (iii) holding more than one half of the issued share capital (either beneficially or otherwise) of the Contractor,
Change of Control	means, in relation to the Contractor, if the Contractor is a corporation: <ul style="list-style-type: none"> (a) a change in the shareholding of the Contractor such that a change in control (as defined in the <i>Corporations Act 2001</i> (Cth)) of the Contractor occurs (whether occurring at the one time or through a series of transfers or issues of securities); (b) a change in the shareholding of the Contractor such that a change in control (as defined in the <i>Corporations Act 2001</i> (Cth)) of the Contractor occurs (whether occurring at the one time or through a series of transfers or issues of securities); or (c) any other event (including a change or alteration occurs in the corporate structure of the Contractor or the group of companies of which the Contractor is a member) occurs which results in a person other than the shareholders of Contractor at the date of this Contract: <ul style="list-style-type: none"> (i) controlling the composition of the board of directors of the Contractor; 	Claim	other than where shares or other equity interests in an entity are listed on any recognised Australian or overseas stock exchange and a Change in Control occurs due to any change in the legal or beneficial ownership of any such listed shares or interests. includes any claim (whether known or unknown, actual or contingent, fixed or unascertained), demand, action, proceeding or suit, for: <ul style="list-style-type: none"> (a) the payment of money (including damages) or any liability; (b) an adjustment to the Price (including amounts in the Pricing Schedule); (c) delay, disruption, acceleration or other time-based claim; or (d) relief from liability or performance of obligations, whether arising by way of indemnity, under contract, in equity, for restitution, under statute (to the maximum extent possible), in tort (including negligence) or otherwise, that is made under or in relation to: <ul style="list-style-type: none"> (e) the Contract or the Supply; or

Term	Definition	Term	Definition
	(f) the conduct of, or relationship between, the Contractor and Council, before or after the Contract came into force.		(e) all copies of the information, notes and other records referred to in paragraphs (a) to (d) above, but excludes information that:
Claim Precondition	has the meaning given in clause 25.3.		(f) was rightfully in the possession of the other party and not subject to an obligation of confidentiality on that party before the date of the Contract;
Commencement Date	means the commencement date specified in the Particulars.		(g) is or, after the date of the Contract, becomes available in the public domain (other than as a result of a breach of the Contract); or
Completion	means the stage when: (a) all applicable Goods have been Delivered to the appropriate location at the Site and installed and commissioned at the Site, as applicable, in accordance with the Contract and have been accepted by Council in accordance with clause 10.4; (b) all applicable Services have been completed in accordance with the Contract; (c) any documents or other information relating to the Completion of the Supply or any other obligations of the Contractor which the Contract requires or which Council requires have been provided to Council; and (d) all applicable conditions required by the Contract to be satisfied before Completion have been satisfied, as relevant for any Completion Date or Key Supply Date (as the case may be).		(h) is required to be disclosed by Law.
		Contract	means this Contract comprising the documents referred to in clause 2.1 together with any other documents which are incorporated by reference.
Completion Date	means the date specified in the Particulars (if any) or the Purchase Order (if applicable) by which the Supply must achieve Completion as may be adjusted in accordance with the Contract.	Contractor	means the entity making the Supply as stated in the Particulars, and includes its successors and permitted assigns.
Confidential Information	means the terms of the Contract and any information of a party: (a) which the party indicates or has indicated is confidential; (b) which by its nature might reasonably be understood to be confidential or to have been disclosed to the other party in confidence; or (c) which is commercially valuable or would be of commercial value to a competitor of the party to whom it belongs, as well as: (d) all notes and other records prepared by Council or anybody else, based on or incorporating information referred to in paragraphs (a) to (c) above; and	Contractor's Program	has the meaning given in clause 22.1.
		Contractor's Representative	means the person named in the Particulars or any replacement notified by the Contractor to Council from time to time under clause 8.3.
		Contract Term	means, subject to earlier termination of the Contract in accordance with clause 27 or otherwise at law: (a) the term specified in the Particulars (if any); and (b) any extension of that term under clause 3.1(c).
		Control	means an ability to control and includes control that can be exercised as a result of, by means of, or by the revocation or breach of: (a) a trust; (b) an agreement; (c) a practice; or (d) any combination of (a), (b) or (c), whether or not the arrangement is enforceable and regardless of whether the ability to control is express or implied, formal or informal or exercisable alone or jointly with someone else.
		Council	means Lockyer Valley Regional Council and includes where relevant any of its officers, agents or employees.
		Council's Representative	means the person named in the Particulars or any replacement notified by Council in writing to the Contractor from time to time under clause 8.1.

Term	Definition
Defect	means any part of the Supply which does not comply strictly with the requirements of the Contract, or is otherwise unsatisfactory to Council and includes any omissions.
Defects Liability Period	means the period specified in the Particulars and which commences on: <ul style="list-style-type: none"> (a) if the Particulars or a Purchase Order sets out a Completion Date, the date that Completion of the Supply is achieved by the Contractor (as determined by Council's Representative acting reasonably); or (b) if the Particulars states that the Contractor is to perform the Supply for a Contract Term or a Purchase Order sets out a term for the carrying out of the Supply, the later of the expiry of the Contract Term or the terms set out in the Purchase Order.
Delivery or Delivered	means the transfer of possession of the Goods to Council, including at the Site or any other delivery address notified by Council to the Contractor in writing.
Excusable Delay	means any of the following, to the extent that they cause the Contractor an actual delay in the performance of the Supply: <ul style="list-style-type: none"> (a) a breach of contract by Council or its Personnel; (b) a suspension of the Supply, or a Variation, that was neither caused nor contributed to by the breach of contract or unlawful or negligent act or omission of the Contractor or its Personnel; (c) a fire, natural disaster, or an accident that causes personal injury or loss of or damage to property, to the extent it could not be avoided or overcome by the Contractor and its Personnel taking reasonable actions in accordance with Industry Practice; (d) an unreasonable and unexpected delay by a Government Agency to take any necessary action that was not caused by the default or failure to apply Industry Practice by the Contractor or its Personnel; or (e) any other event described in the Particulars provided it is outside the reasonable control of the Contractor.
Goods	means the goods (if any) specified in the Particulars or the Purchase Order (if applicable) to be supplied, as may be further described in Schedule 1.

Term	Definition
Government Agency	means any of the following, excluding Council: <ul style="list-style-type: none"> (a) a government or government department or other body; (b) a governmental, semi-governmental or judicial person; or (c) a person (whether autonomous or not) who is charged with the administration of a law.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Heavy Vehicle	has the meaning given in the <i>Heavy Vehicle National Law Act 2012</i> (Qld).
Heavy Vehicle Law	means any Law, principles of law or equity established by decisions of an Australian Courts or requirements of persons with obligations relating to Heavy Vehicles, including the <i>Heavy Vehicle National Law Act 2012</i> (Qld) and the <i>Heavy Vehicle National Law Regulation 2014</i> (Qld).
Heavy Vehicle Safety Requirements	means any Heavy Vehicle Law and all requirements of: <ul style="list-style-type: none"> (a) the Contract; (b) Rules and Requirements; (c) Industry Practice, codes, practices and guidelines; and (d) the Contractor's management plans, relating to the operation of Heavy Vehicles.
Industry Practice	means: <ul style="list-style-type: none"> (a) that degree of care, skill, judgment and foresight that would be expected of a skilled, competent and experienced contractor qualified and regularly engaged in the business of supplying goods or services of a similar nature to the kind required by the Contract; and (b) compliance with all standards of Standards Australia Ltd (except to the extent that the Contract prescribes a contrary standard) applicable to the Supply, the best practices, methods and procedures applicable in the industry to which the Supply relate, and all relevant professional codes of conduct.
Information for Convenience	means any information in any form supplied or made available to the Contractor by or on behalf of Council, whether before or after the date the Contract came into force, except any document forming part of the Contract.
Insolvency Event	means any of the following events:

Term	Definition
	<p>(a) a party makes a statement, or conducts itself in a manner from which it may reasonably be deduced that the person is insolvent;</p> <p>(b) a party is seeking, or makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that the person is seeking, to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the <i>Corporations Act 2001</i> (Cth);</p> <p>(c) a person stops or suspends payment of all or a class of its debts, or threatens to stop or suspend payment of all or a class of its debts;</p> <p>(d) a party is insolvent or informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the Contract;</p> <p>(e) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the <i>Corporations Act 2001</i> (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;</p> <p>(f) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X of the <i>Bankruptcy Act 1966</i> (Cth) or a debt agreement under part IX of the <i>Bankruptcy Act 1966</i> (Cth);</p> <p>(g) the party is unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the <i>Corporations Act 2001</i> (Cth), or is presumed to be insolvent under the <i>Corporations Act 2001</i> (Cth);</p> <p>(h) the party ceases to carry on business; or</p> <p>(i) an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party, otherwise than for the purpose of an amalgamation or reconstruction,</p> <p>or anything analogous to any of the above events.</p>
Intellectual Property Rights	means all beneficial and legal ownership and intellectual and industrial protection rights both in Australia and throughout the world, both present and future, including rights in respect of or in connection with any Confidential Information, copyright (including future

Term	Definition
	copyright and rights in the nature of or analogous to copyright), Moral Rights, inventions (including patents), trade marks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.
Key Personnel	means the Personnel of the Contractor identified in the Particulars, whether they are individuals or other legal persons.
Key Supply Date	means a key date for the completion of specified Services or Delivery of specified Goods as set out in the Particulars or the Purchase Order (if applicable).
Labour Hire Licence	means the licence required by the <i>Labour Hire Licensing Act 2017</i> (Qld).
Law	includes: <ul style="list-style-type: none"> (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, the State or Territory relevant to the matters the subject of the Contract, the Supply or where any part thereof is being carried out; (b) certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with or recognised generally as authorities in respect of the carrying out of the Supply; (c) Australian Standards and any other applicable standards that are applicable to the Supply and the jurisdiction in which the Site is situated; and (d) fees and charges payable in connection with the foregoing.
Moral Rights	means: <ul style="list-style-type: none"> (a) the right of integrity of authorship; (b) the right of attribution of authorship; and (c) the right not to have authorship falsely attributed, <p>including those rights as conferred by the <i>Copyright Act 1968</i> (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement of the Contract.</p>
Personnel	means the employees, agents, subcontractors (including suppliers), consultants and representatives of a party, but in respect of Council, excludes the Contractor's employees, agents, consultants, subcontractors (including suppliers) and representatives.

Term	Definition
Personal Information	means information or an opinion (including information or an opinion forming part of a database), whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
Price	means the sum payable for performance of the Supply that is: <ul style="list-style-type: none"> (a) to the extent Council accepted a lump sum, the lump sum as set out in the Particulars or the Pricing Schedule; (b) to the extent Council rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the Pricing Schedule; and (c) where Council accepted a lump sum and rates, the aggregate of the paragraphs (a) and (b), subject to any amounts not exceeding any Price Cap.
Price Cap	means the amount in the Particulars, as may be adjusted in accordance with clause 25.9.
Pricing Schedule	means the schedule of either or both lump sum prices and rates set out or referenced in Schedule 2.
Purchase Order	means a request issued by Council to the Contractor for the supply of Goods and/or Services in accordance with clause 3.3(c).
QA System	has the meaning given in clause 17.1(c).
QBCC Act	means the <i>Queensland Building and Construction Commission Act 1991</i> (Qld).
Register of Licences	has the meaning given in section 103 of the <i>Labour Hire Licensing Act 2017</i> (Qld).
Rules and Requirements	means any policy, rule or requirement of Council or any third party notified to the Contractor from time to time, including any policies, rules or requirements referred to in the Contract, and Council's policies, rules and requirements that are publicly available, including those published on Council's website.
Security Interest	has the meaning given in the <i>Personal Property Securities Act 2009</i> (Cth).
Security of Payment Act	means the <i>Building Industry Fairness (Security of Payment) Act 2017</i> (Qld).
Security of Payment Days	means a 'business day' as that term is defined in the Security of Payment Act.
Services	means the services (if any) specified in the Particulars or the Purchase Order (if applicable) to be supplied, as may be further described in Schedule 1.

Term	Definition
Site	means the site or sites stated in the Particulars and any other site made available to the Contractor by Council for the purpose of carrying out the Supply.
Special Conditions	means the special conditions (if any) set out in Schedule 3.
Standing Offer Arrangement	means the arrangement where the Contractor will carry out Supply upon the issue of a Purchase Order in accordance with clause 3.3.
Subcontractors' Charges Legislation	means Chapter 4 of the Security of Payment Act.
Supply	means the supply of: <ul style="list-style-type: none"> (a) the Services (if any) and any minor incidental services that can be reasonably inferred as forming part of the Services; and (a) the supply of the Goods (if any).
Variation	has the meaning given in clause 23.1.
WHS Law	means: <ul style="list-style-type: none"> (a) the <i>Work Health and Safety Act 2011</i> (Qld), <i>Work Health and Safety Regulation 2011</i> (Qld) and all other Laws relating to health and safety; (b) principles of law or equity established by Australian Courts relating to health and safety; and (c) requirements of persons exercising statutory powers concerning health and safety.
WHS Obligations	means WHS Law and all requirements: <ul style="list-style-type: none"> (a) of the Contract; (b) of Rules and Requirements; (c) of Industry Practice; and (d) communicated at any inductions that the Contractor or its Personnel undertake in connection with the Supply, to the extent that they relate to health and safety.

1.2 Interpretation

In the Contract, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other;
- (c) headings are, in the interpretation of this Contract, to be disregarded;
- (d) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or

party to, this Contract, and references to this Contract include any schedules or annexures;

- (e) a reference to a party to the Contract or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (f) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a document or agreement (including a reference to the Contract) is to that document or agreement as amended, supplemented, varied or replaced;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) if any day on or by which a person must do something under the Contract is not a Business Day, then the person must do it on or by the next Business Day;
- (j) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (k) wherever the words 'include', 'included' or 'including' are used in this Contract, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative;
- (l) no provision of the Contract is to be construed against the interests of Council because Council prepared or relies on that provision; and
- (m) references to the Contractor include its Personnel.

1.3 Contractor consisting of multiple parties

If the Contractor consists of more than one person:

- (a) an obligation of those persons is joint and several, and each of those persons agrees that it is responsible for the acts and omissions of the other as if they were its own;
- (b) a right of those persons (including to payment) benefits them jointly, and a payment by Council to one of those persons will be deemed to be payment to all of them; and
- (c) the Contractor may not exercise any right under the Contract unless that right is exercised concurrently by all persons constituting the Contractor.

1.4 No relief from obligations

Approval, review, perusal or comment (or failure to do so) by Council of or on any document or information submitted by the Contractor does not relieve the Contractor of any of its obligations or liabilities, including responsibility for the correctness of information submitted by the Contractor.

1.5 Council's rights and obligations

- (a) Council's only obligations under or in connection with the Contract are those expressly set out in the Contract.

- (b) Except to the extent that this Contract expressly states to the contrary, any right, discretion, power, assessment, determination or decision that Council has under or in connection with the Contract may be exercised or made:
 - (i) in its sole and unfettered discretion (without being under any obligation to do so);
 - (ii) conditionally or unconditionally;
 - (iii) without being required to give reasons; and
 - (iv) without the need to act reasonably, or to act for the benefit of the Contractor.

2 Contract, ambiguities and term

2.1 Contract document

The Contract comprises only of the following documents:

- (a) where applicable, the Purchase Order issued to the Contractor for the relevant Supply (but only to the extent that it applies to the Supply);
- (b) the Particulars;
- (c) these terms and conditions;
- (d) Schedule 1;
- (e) the other schedules to the Contract; and
- (f) any documents stated in the schedules to form part of the Contract.

2.2 Resolving ambiguity

- (a) Any ambiguity between the documents comprising the Contract will be resolved according to the descending order of precedence set out in clause 2.1.
- (b) If the applicable order of precedence in clause 2.1 cannot resolve the ambiguity, then Council will direct the interpretation to be followed and the Contractor must comply with that direction and will have no Claim against Council in connection with that direction.

3 Nature of Contract

3.1 Supply for Contract Term

- (a) If the Particulars sets out Supply for a Contract Term (Option 1 is marked 'Yes') then this clause 3.1 applies.
- (b) The Contractor must commence the Supply on the Commencement Date and, subject to clause 3.1(c), cease the Supply on the last day of the Contract Term.
- (c) Council, in its absolute discretion, may by notice in writing to the Contractor not later than 2 weeks before the last day of the Contract Term, extend the Contract Term once by the additional period set out in the Particulars. The terms of the Contract will continue to apply during the extended period.

3.2 Supply required by a Completion Date

- (a) If the Particulars sets out the Supply is required by a Completion Date (Option 2 is marked 'Yes') then this clause 3.2 applies.
- (b) The Contractor must commence the Supply on the Commencement Date and must achieve Completion of the Supply by the Completion Date.

3.3 Supply under a Standing Offer Arrangement

- (a) If the Particulars sets out Supply under a Standing Offer Arrangement (Option 3 is marked 'Yes') then this clause 3.3 applies.
- (b) During the Contract Term, the Contractor offers to carry out the Supply as and when requested by Council and must remain ready, willing and able to do so.
- (c) If Council requires the Contractor to carry out a Supply at any time during the Contract Term, it may issue a Purchase Order to the Contractor.
- (d) Council, in its absolute discretion, may by notice in writing to the Contractor not later than 2 weeks before the last day of the Contract Term, extend the Contract Term once by the additional period set out in the Particulars. The terms of the Contract will continue to apply during the additional period.
- (e) On receipt of a Purchase Order under clause 3.3(c), the Contractor will be bound to carry out the Supply described in the Purchase Order and such Goods and Services required by the Purchase Order will become part of the Supply required under the Contract.
- (f) The Contractor must commence the Supply on the date for commencement of that Supply as stated in the relevant Purchase Order (or if no date is stated immediately upon receipt of the Purchase Order) and:
 - (i) if the Purchase Order sets out a Completion Date, achieve Completion of the relevant Supply by the Completion Date; or
 - (ii) if the Purchase Order sets out a term for carrying out the relevant Supply, cease the relevant Supply on the last day of the stated term.
- (g) Despite any other provision of the Contract, Council is not required to issue any Purchase Orders (or any minimum value or type of Purchase Order) to the Contractor at all during the Contract Term, and may itself perform or procure from other contractors, goods and services that are the same or similar to the Goods and Services during the Contract Term.
- (h) The Contractor agrees, and it is a condition of this Contract, that Council is not entering or granting an exclusive arrangement with the Contractor.
- (i) If a Purchase Order is issued prior to the expiration of the Contract Term and the Supply is not completed or the term for that relevant Supply extends beyond the expiry of the Contract Term, then the parties agree that this Contract will continue to apply to the Supply, despite any expiration of the Contract Term.

3.4 Key Supply Dates

If the Particulars or a Purchase Order (as applicable) sets out that any part of the Supply has been allocated a Key Supply Date, then the Contractor must achieve Completion of the relevant part of the Supply by the applicable Key Supply Date.

3.5 Time for Performance

- (a) The Contract will apply retrospectively to any Supply that the Contractor carried out in contemplation of the Contract before the Commencement Date.
- (b) At all times the Contractor must carry out the Supply expeditiously, efficiently and without delay.

4 Contractor's general warranties

4.1 Contractor's warranties

Without limiting any other obligation under the Contract, the Contractor agrees, and warrants to Council, that:

- (a) it has carefully reviewed the Supply described in the Particulars and Schedule 1 before entering into the Contract, and it has and will maintain the necessary experience, and an appropriately qualified and trained workforce, to carry out such Supply until Completion of the Supply or expiry of the Contract Term (as applicable);
- (b) the Price is appropriate and sufficient for the carrying out the Supply and the performance of that Supply and, except to the extent expressly stated to the contrary in the Contract or in the Pricing Schedule, compensates the Contractor for all expenses it may suffer or incur in relation to the Contract (including profit);
- (c) it has made its own investigation and assessment of the work and risks involved in carrying out the Supply and it has reviewed and satisfied itself about any information that Council has made available (including Information for Convenience) to it and that which is otherwise obtainable upon reasonable enquiries concerning the Supply and the Contract;
- (d) at the time of entering into the Contract, it does not have any conflict of interest that could be expected to affect the performance of its obligations under the Contract;
- (e) it did not, and will not, engage in any collusive behaviour, anti-competitive conduct or other similar conduct in contravention of Law relating to the Contract; and
- (f) it has the necessary authority and power to enter into the Contract and to perform the obligations under it.

4.2 Council's reliance

The Contractor acknowledges that Council, in entering into the Contract, is relying on the warranties and representations made in this Contract, including clause 4.1.

5 Obligations of the Contractor

5.1 Contractor's warranty

Without limiting any other obligations of the Contractor, the Contractor warrants that the Supply will:

- (a) comply with all applicable requirements of the Contract and Industry Practice (but only to the extent that Industry Practice is not inconsistent with any express requirements of the Contract);
- (b) comply with all applicable Laws and Rules and Requirements;
- (c) be fit for the purpose or purposes set out in, or reasonably inferred from, the Contract; and
- (d) be performed by appropriately qualified and experienced Personnel.

5.2 Compliance with demonstrated Supply

Without limiting clause 14, if the Contractor:

- (a) provides or provided Council with a demonstration or sample of the Supply before Council entered into the Contract, then the Supply must correspond in nature and quality with the Supply demonstrated; or
- (b) showed Council a result achieved by the Supply or similar Supply before Council entered into the Contract, then the Supply must correspond in quality with the Supply that achieved that result.

5.3 General obligations

The Contractor must:

- (a) maintain from the Commencement Date until Completion of all of the Supply or expiry of the Contract Term (as applicable) all accreditations and qualifications required:
 - (i) under Industry Practice and applicable Laws to carry out Supply of the kind described in the Particulars and Schedule 1; and
 - (ii) under the Contract;
- (b) if it learns of anything that may affect, or has affected, the scope or suitability of the Supply, promptly notify Council of that as soon as possible, and to the extent possible include in the notice details of the relevant matter and its cause;
- (c) co-ordinate the performance of the Supply with Council and its Personnel and otherwise consult regularly with Council; and
- (d) carry out the Supply in such a way as to:
 - (i) prevent any harm to, or contamination of, the natural environment;
 - (ii) without limiting clause 5.3(d)(i) comply with the requirements of the *Environmental Protection Act 1994* (Qld) and any other Laws in connection with protection of the environment; and
 - (iii) avoid causing any damage, harm, interference, nuisance or disturbance that has not been agreed to in advance, to any persons.

5.4 Ethical obligations

- (a) The Contractor must:
 - (i) at all times act in the best interests of Council; and
 - (ii) immediately disclose to Council any of its interests which may conflict with either the interests of Council or the Contractor's obligations under the Contract.
- (b) The Contractor acknowledges and agrees that while engaged under the Contract, it must comply with sections 199 and 200 of the *Local Government Act 2009* (Qld).

6 Security

6.1 Contractor to provide

- (a) If the Particulars state that security is required, then the Contractor must provide the security to Council, in the value, form and at the time required by this clause 6.
- (b) The Contractor must provide Council with security in the form of two unconditional undertakings (which must be in a form approved by Council), each equal to 50% of the percentage or amount specified in the Particulars, and given by a financial institution approved by Council. The Contractor must provide such security to Council within 5 Business Days of the execution of the Contract or such other time as agreed in writing.
- (c) Security is to ensure the due and proper performance of all obligations under this Contract by the Contractor, and to avoid the risk of loss to Council in relation to either the exercise of any right, or the making of any bona fide claim, by Council that has been disputed by the Contractor.
- (d) Council owns all interest that is earned in connection with any security.

6.2 Recourse to security

Council may have immediate recourse to the security without notice:

- (a) if Council has any claim against the Contractor in connection with any act or omission of either the Contractor or its Personnel related to the Contract or its subject matter;
- (b) for any amount due which remains unpaid after the time for payment, or where there is no time for payment specified, remains unpaid after 5 Business Days after demanding payment;
- (c) if the security provided by the Contractor has an expiry date and a replacement security on the same terms (other than the expiry date, which shall be not less than six months later than the original date), for the same amount and from the same financial institution is not provided at least 20 Business Days prior to the expiry date; or
- (d) for any other reason set out in the Contract.

6.3 Release

Subject to Council's rights of recourse, Council must:

- (a) if the Particulars states that the Contractor is to perform the Supply for a Contract Term, and the Particulars states that no Defects Liability Period applies to the Contract, then within 20 Business Days of the expiry of the Contract Term, release any security held by Council as at the date of expiry of the Contract Term;
- (b) if the Particulars states that the Contractor is to perform the Supply for a Contract Term, and the Particulars states that a Defects Liability Period applies to the Contract, then:
 - (i) within 20 Business Days of the expiry of the Contract Term, release 50% of the security held by Council as at the date of expiry of the Contract Term; and
 - (ii) within 20 Business Days of the expiry of the Defects Liability Period, release the remainder of any security held by Council as at the date of expiry of the Defects Liability Period;
- (c) if the Particulars sets out a Completion Date, and the Particulars states that no Defects Liability Period applies to the Contract, then within 20 Business Days of Completion being achieved by the Contractor (as determined by Council's Representative acting reasonably), release any security held by Council as at the date of Completion; and
- (d) if the Particulars sets out a Completion Date, and the Particulars states that a Defects Liability Period applies to the Contract, then:
 - (i) within 20 Business Days of Completion achieved by the Contractor (as determined by Council's Representative acting reasonably), release 50% of the security held by Council as at the date of Completion; and
 - (ii) within 20 Business Days of the expiry of the Defects Liability Period, release the remainder of any security held by Council as at the date of expiry of the Defects Liability Period.

7 Information for Convenience

The Contractor agrees that:

- (a) any Information for Convenience provided by Council has been, or will be, provided only for the Contractor's convenience;
- (b) except pursuant to clause 7(c), any Information for Convenience provided by Council has not been, and will not be, relied upon by the Contractor or its Personnel for any purpose (including entering into this Contract or performing its obligations under a Contract);
- (c) it may rely on the Information for Convenience only to the extent and for the purposes stated in the Particulars, and if it does so but such information is factually inaccurate for satisfying that purpose, then:

- (i) the Contractor must promptly (and within 5 days) after it becomes aware of the inaccuracy notify Council of the inaccuracy;
- (ii) Council will direct the Contractor as to what work (if any) it requires the Contractor to carry out to overcome the inaccuracy; and
- (iii) if compliance with any such direction causes the Contractor to incur more or less cost than would otherwise have been incurred had the direction not been given, the difference will be assessed by Council under clause 23.3 and added to or deducted from the Price,

but the Contractor will have no other Claim in relation to the Information for Convenience;

- (d) Council does not:
 - (i) assume any responsibility or duty of care in respect of; or
 - (ii) warrant, guarantee or make any representation as to, any aspect of Information for Convenience, including its completeness;
- (e) it will, by its own independent investigations, verify the correctness and suitability of any aspect of any Information for Convenience, before it relies on, or allows any of its Personnel to rely on, that Information for Convenience;
- (f) except pursuant to clause 7(c), the Contractor will have no Claim in relation to the Information for Convenience or the failure by Council to provide any other information; and
- (g) the Contractor shall indemnify Council against any Claim or liability arising from or in connection with the Contractor failing to satisfy itself in accordance with this clause 7.

8 Representatives

8.1 Council's representative

- (a) Council's Representative is:
 - (i) the primary liaison and point of contact between Council and the Contractor in relation to the administration of the Contract;
 - (ii) authorised to act on behalf of Council in discharging Council's functions under the Contract (including acting as the assessor, valuer or certifier in respect of any matter under the Contract which requires an assessment, valuation or certification by Council), except to the extent expressly provided otherwise in the Contract or in any notice issued by Council; and
 - (iii) an agent of Council and carries out all functions as such.

- (b) Council may at any time and from time to time by written notice to the Contractor replace the representative described in clause 8.1(a).
- (c) The Contractor and Council agree that Council's Representative acts at all times as Council's agent for the purposes of the Contract, is subject to the directions of Council and will act solely in the interests of Council.

8.2 Contractor's obligations

The Contractor must:

- (a) liaise with and report to Council's Representative about the Supply;
- (b) attend all meetings with, or provide briefings to, Council's Representative, as required by Council from time to time;
- (c) give any notice that the Contractor is required to give to Council under the Contract to Council's Representative; and
- (d) promptly comply with any request or direction given by Council's Representative, in accordance with the Contract, about the Supply.

8.3 Contractor's representative

- (a) The Contractor must:
 - (i) appoint a Contractor's Representative who will receive any directions, notices and other communications from Council in respect of the Contract and the Supply on behalf of the Contractor; and
 - (ii) notify Council of any change to the identity of the Contractor's Representative.
- (b) The Contractor's Representative must have the authority to bind the Contractor in respect of all matters relating to the Contract.
- (c) Matters within the knowledge of a Contractor's Representative are deemed to be within the knowledge of the Contractor.

9 Personnel

9.1 Key Personnel

The Contractor must:

- (a) not replace or remove any Key Personnel without Council's prior written approval;
- (b) if any Key Personnel leave the Contractor's employment, promptly replace each such Key Personnel with a person of comparable skill, experience and qualification, and obtain Council's prior written approval to such replacement Key Personnel. Council may not unreasonably withhold or delay that approval;
- (c) ensure that each of the Key Personnel is available at the times required by the Contract or as otherwise required in writing by Council; and
- (d) ensure that the Key Personnel properly perform their roles and responsibilities in accordance with the Contract.

9.2 Removal of Personnel for poor conduct

- (a) The Contractor must not allow any of its Personnel to behave in a manner that could be perceived as offensive, discriminatory or bullying, or to behave unsafely, incompetently or in breach of any Law or any Rules and Requirements.
- (b) If the behaviour described in clause 9.2(a) occurs, then without limiting Council's other rights, Council may direct the Contractor to replace that individual, and the Contractor must as soon as possible remove that individual from Council's premises, and as soon as reasonably possible afterwards have them replaced. The Contractor is not entitled to any Claim in connection with it removing and replacing that individual.

10 Parties' relationship

10.1 Principal and independent contractor

The parties acknowledge and agree that:

- (a) the parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership; and
- (b) the Contractor does not have the right or authority to act on behalf of or bind Council unless the Contractor has been expressly authorised by Council in writing.

10.2 No relationship between Council and Contractor's Personnel

- (a) No contractual relations will arise between any of the Contractor's Personnel and Council as a result of the Contract.
- (b) Apart from the Price, neither the Contractor nor the Contractor's Personnel are entitled to any fees, payments, commissions, bonuses, wages, holiday pay, long service leave, sick pay, termination pay or any similar entitlement from Council. The Contractor is solely responsible for providing the Contractor's Personnel with these entitlements.

11 Insurance

11.1 Requirement to maintain insurances

As a minimum, the Contractor must procure and maintain the insurances set out in the Particulars until:

- (a) the later of the end of the last Defects Liability Period or the period stated in the Particulars; or
- (b) if paragraph (a) is not applicable, Completion of the Services or expiry of the Contract Term (as applicable).

11.2 Insurer requirements

The insurances required under clause 11.1 must be taken out and maintained with an insurer that is authorised under applicable Laws to carry on an insurance business in Australia and complies with all applicable prudential and other requirements prescribed under applicable Laws.

11.3 Evidence of insurance

- (a) The Contractor must provide to Council certificates of insurance for all insurances it is required to effect under clause 11.1, on request by Council from time to time.
- (b) If at any time Council does not receive evidence that the Contractor has in place the insurances required by clause 11.1 with an insurer that complies with clause 11.2:
 - (i) Council may direct the Contractor to procure the prescribed insurance with an insurer that complies with clause 11.2, within the time directed by Council; and
 - (ii) if the Contractor fails to strictly comply with clause 11.3(b)(i), Council may effect and maintain the insurance and pay the premiums. All expenses suffered by Council in connection with it procuring that insurance will be a debt due and payable by the Contractor.
- (c) The Contractor must pay any deductibles or excesses in connection with a claim under any policy of insurance effected by Council or the Contractor, which relates to this Contract or the Supply.

11.4 Contractor to keep Council informed

The Contractor must:

- (a) inform Council in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 11.1 and keep Council informed of subsequent developments concerning the claim;
- (b) ensure that its subcontractors similarly comply with this obligation; and
- (c) immediately advise Council of any cancellation or amendment of the terms of any policy.

11.5 Liabilities and obligations

The liabilities and obligations of the Contractor under the Contract are not affected by reason of it or its Personnel maintaining the insurances required by this clause 11.

11.6 Subcontractors

Before any subcontractor commences any part of the Supply, the Contractor must ensure that each of its subcontractors is covered by or takes out and maintains policies of insurance of the types and for the amounts set out in clause 11.1 (to the extent that they are applicable to the functions performed by that subcontractor).

12 Safety obligations

12.1 Contractor's general obligations

The Contractor must:

- (a) ensure that all of its Personnel attend any inductions required by:
 - (i) Council; or
 - (ii) any other person who has responsibility for health and safety under WHS Law at any site where the

Contractor's Personnel must attend to perform the Supply (**Site Safety Officer**);

- (b) carry out the Supply and all obligations under the Contract safely, so as to prevent harm to persons or property;
- (c) discharge its duties under the WHS Law and Heavy Vehicle Safety Requirements;
- (d) at all times have documented safe work practices and procedures for the Supply;
- (e) ensure that there are processes in place to identify, assess and proactively control risks at the workplace at which the Supply is being undertaken;
- (f) carry out the Supply and all obligations under the Contract in accordance with:
 - (i) WHS Obligations;
 - (ii) Heavy Vehicle Safety Requirements;
 - (iii) Council's work, health, safety and environment requirements set out in the Rules and Requirements and all Laws;
 - (iv) lawful directions of Council's Representative relating to health and safety; and
 - (v) lawful directions of Council and any Site Safety Officer, to the extent those directions relate to issues of health and safety at the Site or the Heavy Vehicle Safety Requirements; and
- (g) consult, cooperate and coordinate with Council to ensure, so far as reasonably practicable, that the health and safety of persons is not put at risk by the performance of the Supply.

12.2 Safety audits

- (a) The Contractor must regularly conduct safety audits of its systems, procedures and work methods at its cost and retain copies of such audits.
- (b) Council may, on reasonable prior notice, from time to time direct the Contractor to carry out a safety audit or may itself or have others carry out a safety audit of the Contractor's, and any of its Personnel's, work practices.
- (c) Council must reimburse the Contractor for its direct costs reasonably incurred as a result of any audit under clause 12.2(b), but if the audit discloses any breaches of any of its obligations under this clause 12, then the Contractor will have no entitlement to Claim in connection with the audit.

12.3 Notification of incidents

(a) The Contractor must:

- (i) immediately notify Council in writing upon the occurrence of any health and safety incident which has a potential to be notifiable or reportable to a health and safety authority;

- (ii) immediately notify Council of any breach or potential breach of the WHS Obligations or the Heavy Vehicle Safety Requirements; and
 - (iii) notify Council within 24 hours of any health and safety incident not being an incident referred to in clause 12.3(a)(i).
- (b) Within 48 hours after the occurrence of any health and safety incident (or such longer period as Council may, in its sole and unfettered discretion allow), the Contractor must provide Council with a report including:
- (i) a detailed chronology and description of events;
 - (ii) a root cause analysis; and
 - (iii) proposed remedial action.

13 Site matters

- (a) This clause 13 will apply to the extent that any Supply is carried out at or on any Site (including the Contractor's Delivery at a Site).
- (b) Council will give the Contractor sufficient access to the Site to reasonably enable the Contractor to perform that part of the Supply required to be performed on the Site. The Contractor may only use the Site for the purpose of performing that part of the Supply required to be performed on the Site.
- (c) The Contractor may not have exclusive access to the Site or any part of it and must coordinate that part of the Supply required to be performed on the Site with activities of Council, Council's Personnel and any other contractors (**Separate Operators**).
- (d) The Contractor must:
- (i) permit the concurrent execution of work on the Site by any Separate Operators, and provide reasonable access for, and cooperate with such persons in the execution of that work to the extent necessary;
 - (ii) ensure that all of the Supply, the completion of which is necessary to allow any Separate Operators to commence work, has been completed,
- and will have no entitlement to Claim for doing so or for any impact of any interference caused to the Contractor or that part of the Supply required to be performed on the Site by any person on the Site (including Separate Operators).
- (e) The Contractor must avoid any disruptions or inconvenience to:
- (i) the usual and safe operations of the Site; or
 - (ii) the users of the Site,
- except to the extent expressly permitted by the Contract.

- (f) The Contractor must:
- (i) regularly remove from the Site all rubbish and debris arising from the performance of the Supply;
 - (ii) immediately remove from the Site any surplus plant and equipment belonging to the Contractor or its Personnel, that is used in performance of the Supply, but which is not intended to be transferred to Council; and
 - (iii) if performing Services at the Site, keep the relevant parts of the Site clean and secure at all times.
- (g) Without limiting any other provision of the Contract, the Contractor must take all necessary steps to:
- (i) prevent damage to property on or near the Site (including existing utility services (including water, electricity, gas, telecommunications, drainage, stormwater, sewerage services and supporting infrastructure) and assets of Council and work previously performed at the Site by another party);
 - (ii) prevent harm to any persons on or near the Site;
 - (iii) avoid unnecessary interference with the passage of people and vehicles on or near the Site; and
 - (iv) prevent nuisance and unreasonable noise and disturbance on or near the Site.
- (h) If any damage, harm, interference, nuisance or disturbance is caused by the Contractor or its Personnel, the Contractor must:
- (i) remedy, at its own cost and risk, the damage, harm, interference, nuisance or disturbance as soon as possible to the satisfaction of Council; and
 - (ii) indemnify Council for any damage, loss, cost or expense suffered by Council in connection with the damage, harm, interference, nuisance or disturbance.
- (i) If the Contractor fails to comply with its obligations in clause 13(h), Council may perform those obligations itself or through others and all costs, damages and expenses incurred by Council in performing those obligations will become a debt due and payable to Council from the Contractor.
- (j) Subject to any Laws that require otherwise, the Contractor must only access the Site, and perform any part of the Supply required to be performed on the Site, during the hours of work set out in the Contract unless directed otherwise by Council.

14 Rights and Obligations Specific to Goods

14.1 Warranty

The Contractor warrants that any Goods supplied will:

- (a) be new, except to the extent expressly stated otherwise in the Particulars, Schedule 1 or an applicable Purchase Order;
- (b) be of merchantable quality;
- (c) be free from Defects; and
- (d) to the extent it applies to the Goods, not be 'Non-Conforming Building Products' as defined under the QBCC Act.

14.2 Delivery

- (a) The Contractor must:
 - (i) Deliver and unload the Goods at the location at the Site or as otherwise directed by Council's Representative;
 - (ii) if the Particulars or a Purchase Order (if applicable) states that a Completion Date applies, not Deliver the Goods earlier or later than the Completion Date, except:
 - (A) with the consent of Council; or
 - (B) if the Contractor is required to install or commission the Goods;
 - (iii) if the carrier of the Goods is not the Contractor, without limiting the Contractor's obligations under clauses 12.1, 13 and 17.1, engage the carrier on terms that comply with all applicable Laws (including, without limitation, the Heavy Vehicle Safety Requirements) and ensure that the carrier complies with Industry Practice;
 - (iv) at the time of dispatch of the Goods to the Site, notify Council of the Contract number, the Purchase Order number (if applicable) and the description and quantity of Goods dispatched;
 - (v) package the Goods safely and securely so as to prevent damage during transit, and in all other respects in accordance with the carrier's requirements;
 - (vi) clearly label all Goods as the property of Council, so that it is visible to any person without having to remove any packaging; and
 - (vii) include a delivery docket with each package that details the description and quantity of Goods and the relevant Contract number and Purchase Order number (if applicable).
- (b) Any terms or conditions included in a delivery docket or other document provided by the Contractor or its Personnel, and signed by or on behalf of Council at Delivery, will have no application to either the Contract or Council.

14.3 Acceptance

- (a) The Contractor maintains risk in the Goods until Council is deemed to have accepted the Goods, which will occur on the earlier of:
 - (i) the date Council gives written notice to the Contractor that the Goods have been accepted; or
 - (ii) 20 Business Days after the date the Goods are Delivered, provided that during that 20 Business Day period Council did not notify the Contractor that any of the Goods were Defective.
- (b) Acceptance of the Goods by Council under this clause 14.3 is merely a record that Delivery has occurred and does not constitute declaration, approval or acceptance from Council that the Goods are free of Defects, nor does it affect the Contractor's obligations or Council's rights under the Contract including, but not limited to, obligations and rights during the Defects Liability Period.

14.4 Title, risk and warranties

- (a) Risk in the Goods passes to Council upon acceptance by Council in accordance with clause 14.3. The Contractor indemnifies Council against any loss of or damage to the Goods from Delivery until the Goods are accepted by Council in accordance with clause 14.3.
- (b) Title in the Goods passes to Council on the earlier of Delivery or payment for the Goods. If, prior to Delivery, title to the Goods passes to Council, the Contractor must set the relevant Goods aside and clearly mark them as being the property of Council, in a manner reasonably required by Council.
- (c) If the Contractor is not the manufacturer, the Contractor must, at its own cost, obtain and provide Council with any warranties available for the relevant Goods from the relevant manufacturer (**Manufacturer Warranties**).
- (d) The Contractor must ensure that the Manufacturer Warranties are in favour of Council and fully assignable and are provided to Council no later than upon Completion of the Supply.
- (e) The Contractor must give Council's Representative, and any other person authorised in writing by Council, reasonable access to any premises or facilities occupied by the Contractor or its Personnel where the Goods are being manufactured or stored to inspect or test any Goods or other material related to the Goods.
- (f) Council's Representative, and any other person authorised in writing by Council, must, when attending the Contractor's premises or facilities, comply with all reasonable rules, directions and procedures as notified by the Contractor, including those relating to work health and safety that are in effect at the premises or facilities.
- (g) On completion of the inspections or tests, the Contractor must promptly rectify any Defects in the Goods identified in the inspection or tests.
- (h) Costs in connection with testing will be paid by Council except where the Contract otherwise provides or the test

is required because of, or reveals a failure of, the Contractor to comply with the Contract.

and Construction Commission or any other authority (including by providing a copy of the notice or direction to Council).

15 QBCC Requirements

15.1 Provisions Subject to QBCC Act

- (a) The rights and obligations of the parties under the Contract are subject to the provisions of the QBCC Act to the extent they apply and have not been contracted out of.
- (b) Where there is any inconsistency between the Contract and the QBCC Act, the QBCC Act will prevail to the extent necessary to avoid the inconsistency.
- (c) Terms used in this clause 15 and defined in the QBCC Act, will have the meaning given to them by the QBCC Act.

15.2 QBCC Act

If the Supply constitutes 'building work' for the purposes of the QBCC Act, the Contractor:

- (a) warrants that the Supply will be undertaken by persons with the necessary licences required under the QBCC Act to undertake the Supply, including that the Contractor is licenced to the extent that it undertakes any 'building work' itself; and
- (b) must supervise and manage the performance of the Supply (including any Supply performed by subcontractors) personally or by a competent representative and must otherwise comply with the requirements in sections 43 and 43A of the QBCC Act.

15.3 Non-conforming building products

- (a) To extent the QBCC Act applies to the Goods, the Contractor:
 - (i) warrants that the Goods do not constitute 'Non-Conforming Building Products' as defined under the QBCC Act (**Non-Conforming Building Products**);
 - (ii) must comply with all of its obligations under the QBCC Act in connection with Non-Conforming Building Products and ensure that its acts or omissions do not cause or contribute to Council contravening the QBCC Act in connection with Non-Conforming Building Products; and
 - (iii) must at all times keep Council indemnified against any action, claim, suit, demand or liability to pay compensation or damages and costs or expenses arising out of, or in respect of, any breach or alleged breach of this clause 15.3.
- (b) The Contractor must immediately notify Council of:
 - (i) any breach or potential breach by the Contractor or any of its Personnel in respect of clause 15.3(a); or
 - (ii) any notice or direction received by the Contractor or any of its Personnel under or in connection with clause 15.3(a) from the Queensland Building

16 Labour Hire Licensing

- (a) This clause applies to the extent that work under the Contract includes labour hire.
- (b) The Contractor:
 - (i) warrants that it currently holds the required Labour Hire Licence;
 - (ii) warrants that it is on the Register of Licences as holding a Labour Hire Licence;
 - (iii) at its expense, must maintain a Labour Hire Licence that allows it to lawfully perform work under the Contract;
 - (iv) must ensure work under the Contract complies with any conditions imposed on the Contractor's Labour Hire Licence;
 - (v) must immediately inform Council if the Contractor is subject to any disciplinary action, including a show cause process, regarding the Contractor's Labour Hire Licence; and
 - (vi) must immediately inform Council if the Contractor's Labour Hire Licence is cancelled, suspended or has any conditions imposed on it.
- (c) Council may immediately terminate this Contract by giving written notice to the Contractor if the Contractor's Labour Hire Licence is cancelled, suspended or is made the subject of conditions that prevent the Contractor from lawfully performing work under the Contract. The Contractor's rights will be the same as if the Contract was terminated under clause 27.4.

17 Quality assurance, meeting and reporting

17.1 Quality assurance and record keeping

During the period from the Commencement Date until:

- (a) the expiry of the last Defects Liability Period under the Contract; or
- (b) where the Particulars states that no Defects Liability Period applies, Completion of all of the Supply or expiry of the Contract Term (as applicable),

the Contractor must:

- (c) have in place and maintain a quality assurance system (**QA System**) that is applicable to the Supply described in the Particulars and Schedule 1. If required in the Particulars, the QA System must be accredited by Standards Australia or another organisation approved by Council; and
- (d) make and keep accurate records of the Supply it has performed, in accordance with Industry Practice.

17.2 Inspections and audits

- (a) From time to time until the expiry of the period set out in clause 17.1, the Contractor must, after reasonable notice by Council:
 - (i) at its own cost, provide Council with documentation that describes its QA System and copies of any records relating to the Supply, in the format reasonably requested by Council; and
 - (ii) allow Council and its representatives access to the Contractor's premises, and the premises of any relevant subcontractors, to do any one or more of:
 - (A) inspect the performance of the Supply; and
 - (B) audit records relating to the QA System, the conformance of applicable processes to the QA System and the conformance of the Supply to the Contract.
- (b) Council must reimburse the Contractor its direct costs reasonably incurred as a result of an audit under clause 17.2(a), unless the audit discloses any material non-conformances under the QA System or any breach of the Contract.

17.3 Contractor not relieved of obligations

The Contractor is not relieved of any of its obligations under the Contract by any audit or inspection under clause 17.2(a) or by the maintenance of the QA System.

17.4 Meetings and reports

- (a) The Contractor must keep Council fully informed on all aspects of the Supply.
- (b) The Contractor must have relevant Personnel attend any meetings requested by Council from time to time to discuss either the Contract or the Supply. If directed by Council, the Contractor must prepare and circulate minutes of those meetings.
- (c) The Contractor must provide to Council all reports required under the Contract, and any other reports requested by Council from time to time, regarding the status, and any particular details, of the Supply, requested by Council. The Contractor must ensure that all reports comply with all applicable requirements in the QA System.

18 Contractor's resources and Council property

18.1 Contractor to supply all necessary resources

- (a) The Contractor must supply at its own expense all plant, equipment, vehicles, appliances and other property and items the Contractor requires to fulfil its obligations under the Contract, except to the extent expressly stated otherwise.
- (b) If Council determines, acting reasonably, that any of the Contractor's resources referred to in clause 18.1(a) are inadequate or unsuitable to carry out the Supply in accordance with the Contract, then it may direct the

Contractor to take any action necessary to rectify that inadequacy within a reasonable time directed by Council. The Contractor must comply with that direction and will have no Claim in connection with it doing so.

- (c) The Contractor's compliance with a direction under clause 18.1(b) neither relieves it of any liability under the Contract nor prejudices any other right or remedy of Council.

18.2 Council property

- (a) Any plant, equipment, tools, appliances or other property and items that Council provides to the Contractor to enable it to comply with its obligations under the Contract remain Council's property and must only be used for complying with its obligations under the Contract.
- (b) The Contractor must keep Council's property in good order and condition, subject to fair wear and tear.

19 Defects

19.1 Contractor to notify

- (a) If, before the expiry of the Defects Liability Period, the Contractor learns of any Defect in the Supply, it must notify Council in writing of the nature and reason for the non-compliance as soon as possible.
- (b) Without limiting clause 19.1(a), where Council becomes aware of any Defect during the carrying out of the Supply or during the Defects Liability Period (if applicable), it may direct the Contractor by notice to, at its own cost and risk, rectify the Defect (by any one or more of repair, replacement or re-performance as determined by Council).

19.2 Rectification of Defects

- (a) The Contractor must, at its cost, rectify any Defect during the carrying out of the Supply or the Defects Liability Period (if applicable). The Contractor is responsible for all work and liable for all costs associated with the rectification of the Defect.
- (b) If any Defect is not rectified within 5 Business Days (or such longer time as agreed in writing) of a direction by Council under clause 19.1(b), Council may itself or by others, rectify the Defect and the cost of remedying the Defect will become a debt due and payable to Council from the Contractor.
- (c) Instead of exercising its rights under clauses 19.1(b) and 19.2(b), but without limiting Council's other rights, if before Completion or the expiry of the Contract Term (as the case may be), or otherwise during the Defects Liability Period, Council discovers any Defects in any Goods (**Defective Goods**), Council may:
 - (i) notify the Contractor that Council rejects the Defective Goods, in which case the Contractor must, at its cost and risk, collect the Defective Goods within 5 Business Days of Council's notice; or
 - (ii) if the Contractor fails to collect the Defective Goods in accordance with the preceding

subparagraph, return the Goods to the Contractor at the Contractor's cost and risk,

and Council may recover from the Contractor all expenses incurred by Council arising from the return of the Defective Goods as a debt due and payable by the Contractor to Council.

- (d) Any repairs or replacement Goods, or re-performed or rectified Services, provided by the Contractor will be subject to the same warranties as the original Supply from the date of repair, replacement, re-performance or rectification and the Defects Liability Period will recommence from such date.

19.3 Contractor's obligations not affected

Any action taken by Council under clause 19.2 will not relieve the Contractor of any of its obligations or liabilities under the Contract, but may be taken into account in the calculation of any applicable damages award.

20 Assignment, novation and change of control

- (a) The Contractor may only assign its rights under the Contract, or effect a Change of Control, with the written consent of Council, whose consent may be withheld, or given subject to conditions, in its sole and unfettered discretion.
- (b) Council may at any time in its sole and unfettered discretion assign any or all of its rights under the Contract to a third party by notice in writing to the Contractor.
- (c) Council may at any time in its sole and unfettered discretion novate all of its rights and obligations under the Contract to any third party that is carrying out work or Supply related to the Supply. The Contractor must execute any deed or Contract that Council reasonably requires to effect that novation.
- (d) If the Contractor effects a Change of Control without Council's prior written consent, Council may, in its absolute discretion, exercise a right set out in clauses 27.1(h) and 27.1(i).

21 Subcontracting

21.1 No subcontracting allowed without approval

The Contractor must not subcontract any obligation under the Contract without Council's prior written consent. Council may refuse its consent, or grant its consent on any conditions, in Council's sole and unfettered discretion.

21.2 Liability of Contractor for subcontracted Supply

If the Contractor subcontracts any of its obligations pursuant to clause 21.1, the Contractor:

- (a) remains fully responsible for the performance of those obligations;
- (b) must ensure that the subcontractor performs its duties with due care and skill and in accordance with all applicable obligations under the Contract; and

- (c) will be vicariously liable to Council for the acts and omissions of its subcontractors and their employees as if they were acts or omissions of the Contractor.

22 Time

22.1 Contractor's program

- (a) If directed by Council, the Contractor must, at its own cost, provide to Council:
 - (i) a program that sets out all of the Supply, or any portion of the Supply directed by Council, apportioned to their component activities to the degree of detail reasonably requested by Council, and showing the corresponding dates by which each of those activities are to be completed which must align with any Completion Date and Key Supply Dates (where applicable). If requested by Council, the program must show the logic links between all activities; and
 - (ii) a labour histogram that corresponds to the above program,

which show the Completion of the Supply by the Completion Date, if any, (**Contractor's Program**).
- (b) From time to time, Council may direct the Contractor to provide it with an updated version of the Contractor's Program if any aspect of it becomes inaccurate due to delays or other events, and the Contractor must do so at its own cost.

22.2 Contractor to notify of delays

- (a) If the Contractor believes that anything, including any breach, act or omission of Council, may delay the progress of the Supply, the Contractor must notify Council with details of the estimated extent of the delay and the cause.
- (b) Within 3 Business Days of learning of an actual or likely delay to any Supply that has a Key Supply Date or Completion Date, the Contractor must notify Council in writing of the delay, its cause, its estimated duration, and any actions it is taking to avoid or overcome those effects. The Contractor must regularly update Council of all of those matters in writing if a likely delay eventuates or if an actual delay continues beyond its initially estimated duration.

22.3 Extension of time

- (a) This clause 22.3 will only apply to any Supply that has a Key Supply Date or Completion Date.
- (b) If:
 - (i) an Excusable Delay will delay the Contractor's completion of the Supply, or part of the Supply by the relevant Key Supply Date or Completion Date;
 - (ii) the Contractor has strictly complied with clause 22.2;
 - (iii) the Supply is not concurrently delayed (in whole or to the extent of any part) by a cause that is not an Excusable Delay; and

- (iv) the Contractor has, by notice in writing to Council, requested an extension of time to the affected Key Supply Date or Completion Date within 5 Business Days of the earlier of it first learning of the Excusable Delay or of when it should reasonably have first learnt of it,

then Council must assess the Contractor's claim and either grant the Contractor by notice in writing a reasonable extension to all affected Key Supply Dates and the Completion Date (as applicable) or if not granted the reasons why.

- (c) Council may grant the Contractor an extension to any Key Supply Date or Completion Date at any time, and from time to time, in its sole and unfettered discretion. This right is solely for Council's benefit and may be granted even if the Contractor is not eligible for an extension to a Key Supply Date or Completion Date.
- (d) Except to the extent that the Contract expressly provides to the contrary, the Contractor will have no other Claim in connection with the granting of any extension of time.

22.4 Earlier completion

- (a) Without limiting Council's rights under clause 22.6 where the Contractor has failed to, or will be unable to, complete the Supply by a relevant date, if Council directs the Contractor to do so, the Contractor must complete any part or all of the Supply on a date earlier than the applicable Key Supply Date or the Completion Date (as applicable) even when the Contractor has not been delayed in carrying out the Supply.
- (b) The Contractor will not be entitled to any Claim as a result of Council's direction, unless the Contractor can reasonably demonstrate that incurring extra expense is unavoidable, in which case the Contractor's only Claim in connection with the direction is for payment of an amount valued in accordance with clause 23.3 which the Contractor must Claim as part of a payment claim under clause 25.

22.5 Liquidated damages

- (a) This clause 22.5 will only apply if the Particulars or a Request for Services (if applicable):
 - (i) sets out a Completion Date or one or more Key Supply Dates; and
 - (ii) specifies a rate for liquidated damages to apply to the Completion Date or Key Supply Date.
- (b) If the Contractor fails to achieve Completion by the Completion Date or fails to complete a Supply by the relevant Key Supply Date (if applicable), the Contractor will be liable to Council for liquidated damages at the rate stated in the Particulars or the Request for Services (if any), for every day after the Completion Date or Key Supply Date (as applicable) up to and including the date that Completion is achieved or the relevant Supply is completed by the Contractor (as determined by Council's Representative acting reasonably) or the date that the Contract is terminated, whichever occurs first.

- (c) Council and the Contractor agree that all liquidated damages which may be payable by the Contractor to Council pursuant to this clause 22.5:
 - (i) are a genuine pre-estimate of the damages likely to be suffered by Council if the Contractor does not achieve Completion by the relevant Completion Date or complete a Supply by the relevant Key Supply Date (as applicable);
 - (ii) do not limit Council's other rights under the Contract or at law for any other breach of the Contract; and
 - (iii) do not relieve the Contractor from any of its obligations or liabilities under the Contract, including its obligations to achieve Completion and meet any Key Supply Dates.
- (d) If the Particulars do not provide for any liquidated damages or if the liquidated damages are for any reason found to be void or unenforceable, the Contractor indemnifies Council for damages at common law for the Contractor's failure to achieve Completion by the Completion Date or complete a Supply by the relevant Key Supply Date.

22.6 Actions to rectify delays

- (a) If the Contractor has failed to, or will be unable to, complete the Supply, or any relevant part of the Supply, by the applicable Key Supply Date or Completion Date (as applicable), then the Contractor must, if requested by Council, at its own cost promptly provide to Council a plan that sets out a range of reasonable actions that the Contractor has available to it to expedite the Supply achieving Completion as soon as possible, and the cost of each of those actions (**Recovery Plan**). The Contractor agrees that such actions may include engaging additional Personnel and other resources and expending funds.
- (b) The Contractor must immediately carry out any one or more actions from the Recovery Plan that Council directs, or any other reasonable action directed by Council. The Contractor will not be entitled to any Claim in connection with carrying out any such action except to the extent that:
 - (i) the action was required due to an Excusable Delay; and
 - (ii) it can reasonably demonstrate that incurring extra expense is unavoidable,
 in which case the Contractor's only Claim in connection with the direction is for payment of an amount valued in accordance with clause 23.3.
- (c) The Contractor will not be relieved of any liability under the Contract, and Council's remedies under any applicable contract or otherwise will not be prejudiced, as a result of the Contractor taking any actions directed under this clause 22.2.

23 Variations

23.1 Council directed variations

- (a) Council may direct the Contractor to:
- (i) increase, decrease or omit any part of the Supply (including omission for the purpose of performing that Supply itself or by engagement of a third party);
 - (ii) change the nature or quality of the Supply; or
 - (iii) perform additional Supply,
- (Variation)** provided that any changed or additional Supply remain largely consistent with the types of Supply described in Schedule 1. For the avoidance of doubt, a Purchase Order does not constitute a Variation.
- (b) Unless Council and the Contractor agree on the price for a Variation, Council must determine the value of a Variation in accordance with clause 23.3.
- (c) If the Contractor is of the opinion that any direction or instruction is a Variation even though it was not expressed as such, the Contractor must notify Council's Representative within 3 Business Days of receipt of the direction or instruction and before giving effect to the direction or instruction. If the Contractor fails to notify Council in accordance with this clause, the Contractor will not be entitled to make any Claim with respect to the instruction or direction.
- (d) No Variation or combination of Variations shall invalidate the Contract.

23.2 Variation proposal

- (a) Council may issue a proposal to the Contractor for a Variation and direct the Contractor to notify Council, within a reasonable time nominated by Council, of:
- (i) the applicable rates and total price to effect the Variation; and
 - (ii) the time frame to perform the Variation, the effect of the Variation on the other Supply and any alternatives to that Variation that may satisfy Council's aims.
- (b) Council must reimburse the Contractor its reasonable costs necessarily incurred as a direct result of complying with a direction under clause 23.2(a), and the Contractor will have no other entitlement to Claim in connection with it complying with that direction.
- (c) If the Particulars sets out the Supply is under a Standing Offer Arrangement (Option 3 is marked 'Yes'), then without limiting Council's rights under the Contract including clause 23.1, Council may, in its absolute discretion, require a proposal from the Contractor under clause 23.2 for a proposed Purchase Order, and clause 23.2 will be read as if the references to a proposed Variation were references to a proposed Purchase Order.

23.3 Valuation

- (a) If the Contract states that a valuation is to be made under this clause, then the valuation must be undertaken as follows:
- (i) if the Contract contains applicable rates or prices, then those rates or prices are to be used;
 - (ii) to the extent clause 23.3(a)(i) does not apply, then the Pricing Schedule is to be used to the extent it is applicable;
 - (iii) to the extent that neither clauses 23.3(a)(i) nor 23.3(a)(ii) apply, then Council must determine reasonable rates and prices to be used; and
 - (iv) if the valuation concerns a change to, or the imposition of a new, fee or charge, then only the actual amount of the fee or charge is to apply,
- except that if the Variation was caused or materially contributed to by the Contractor's breach of the Contract, then the Contractor will have no Claim for its performance of the Variation.
- (b) The Contractor may only Claim in connection with a valuation which is to be made under this clause as part of a payment claim under clause 25 provided the Contractor has fully complied with all other requirements under the Contract (including clause 29 if applicable).

24 Suspension

24.1 Council's right to suspend the Supply

- (a) Subject to clause 24.1(c), the Contractor must suspend the whole or any part of the Supply that Council directs it in writing to suspend, in Council's sole and unfettered discretion, for such periods directed by Council from time to time.
- (b) Subject to clause 24.1(c), the Contractor must re-commence the Supply as soon as reasonably possible after receiving a written direction from Council to do so.
- (c) Except if a suspension was caused or contributed to by the Contractor's breach of the Contract, Council may not suspend the entirety of the Supply under the Contract for a continuous period of more than the period set out in the Particulars.

24.2 Consequences of suspension

If a suspension directed by Council was a Contractor-caused suspension, then the Contractor will have no Claim in connection with the suspension. In all other circumstances, the Contractor's only Claim in connection with the suspension will be for its costs necessarily and reasonably incurred as a direct result of the direction to suspend, provided that the Contractor has used reasonable endeavours to mitigate all such costs.

25 Invoicing and payment

25.1 Price

- (a) Subject to Council's rights under the Contract, Council must pay the Contractor the Price in consideration of the Contractor performing the Supply in accordance with the Contract.
- (b) Neither the Price nor the Pricing Schedule (if applicable) are subject to any rise and fall, currency fluctuation or other adjustment, other than any adjustment permitted by clause 23.3 or Schedule 2.

25.2 Preconditions to payment claims

Despite any other provision of the Contract, the Contractor is neither entitled to submit to Council any claim for payment nor entitled to any payment and an Invoice Date will not arise unless:

- (a) if the Contract states that payment of the Price is to be made in lump sum or capped amounts on completion of a nominated Supply:
 - (i) the Contractor has completed the applicable Supply; and
 - (ii) the amount claimed in respect of that Supply does not exceed the corresponding lump sum or any capped amount stated, except to the extent that lump sum or capped amount has been varied previously in accordance with clause 23.3 or the Price Cap is otherwise increased under clause 25.9;
- (b) all insurance policies that the Contract requires the Contractor to procure are currently in effect in accordance with all requirements of the Contract; and
- (c) the Contractor has provided security in accordance with clause 6.

25.3 When payment claims may be issued

- (a) The Contractor must issue payment claims to Council:
 - (i) at the times set out in, or calculated in accordance with, the Particulars (**Invoice Date**); and
 - (ii) in accordance with this clause 25.
- (b) A payment claim submitted earlier than the Invoice Date will be deemed to have been submitted on the Invoice Date, but if the Invoice Date is not a Business Day, then the payment claim will be deemed to have been submitted on the next Business Day.
- (c) If the Contract stipulates that the Contractor may not claim payment of the Price until a condition has been satisfied or an event has occurred, including those in clause 25.2 (**Claim Preconditions**), then the only date that the Contractor will be entitled to submit a claim for payment will be the later of:
 - (i) the date that the last of the Claim Preconditions applicable to it has been satisfied; and
 - (ii) the date calculated under clauses 25.3(a) and 25.3(b).

25.4 Information to include in payment claims

The Contractor must ensure that each claim for payment (including the Final Claim under clause 25.8):

- (a) identifies the contract number applicable to the Contract and Purchase Order number (if applicable);
- (b) is in the form of a Tax Invoice;
- (c) includes the Contractor's name, ABN and the name of the Council's Representative;
- (d) sets out the Contractor's calculation of the amount due to the Contractor by Council in accordance with the Contract;
- (e) sets out any deductions in respect to amounts owed to Council by the Contractor; and
- (f) includes any other information or documentation reasonably requested by Council.

25.5 Payment Schedule

Within the time set out in the Particulars of receipt of a payment claim, Council will issue to the Contractor a payment schedule stating:

- (a) the payment claim to which the payment schedule applies;
- (b) the amount of the payment claim which in the opinion of Council (subject to clause 25.7), is payable by Council; and
- (c) if the amount in the payment schedule is less than that in the payment claim, the reasons why,

(**Payment Schedule**).

25.6 Payment

- (a) Subject to clause 25.7 and any other rights Council may have, Council will pay the amount in the Payment Schedule within the time frame stated in the Particulars after receipt of a payment claim which complies with clause 25.4.
- (b) Payments by Council are on account only and are neither evidence of Council's acceptance that the Supply have been performed in accordance with the Contract nor an admission of liability.

25.7 Deductions

- (a) Without limiting any other right that Council may have under the Contract or otherwise at law, Council may deduct or set-off from any payment due to the Contractor, any:
 - (i) amounts which the Contractor owes, or must reimburse, to Council;
 - (ii) amounts which Council pays on the Contractor's behalf pursuant to a right under the Contract; or
 - (iii) other money that is the subject of a bona fide claim by Council against the Contractor, whether for damages or otherwise.

- (b) If no payment is due to the Contractor, or if the payment due to the Contractor is insufficient to discharge the amount which may be deducted or set-off, Council may have recourse to any security provided in accordance with clause 6.

25.8 Final Claim

- (a) On the later of:
- (i) when the last Claim Precondition has been satisfied;
 - (ii) 10 Business Days after Completion of all of the Supply or expiry of the Contract Term (as applicable); and
 - (iii) 10 Business Days after the expiry of the last Defects Liability Period (if applicable),
- the Contractor shall lodge with Council a final payment claim and endorse it 'Final Claim'.
- (b) The Contractor shall include in that Claim all moneys which the Contractor considers to be due from Council under or arising out of this Contract or any alleged breach of it. Any Claim by the Contractor must be in writing and must specify:
- (i) the legal basis for the Claim, whether based on a term of the document or otherwise, and if based on a term of the document, clearly identifying the specific term;
 - (ii) the facts relied upon in support of the Claim in sufficient detail to permit proper verification and assessment by Council; and
 - (iii) details of the quantification of the Claim, in all cases showing the basis of the calculations.
- (c) After the expiration of the period for lodging a Final Claim, any Claim which the Contractor could have made against Council and which has not been made and any upward adjustment to the quantum of the Final Claim made shall be barred.

25.9 Price Cap

- (a) Without limiting clause 23, if the Price exceeds or is likely to exceed the Price Cap, the Contractor must obtain Council's prior written approval for any increase in the Price over the Price Cap. Council will not be liable to pay the Contractor more than the Price Cap unless prior written approval is obtained.
- (b) Without limiting the Contractor's obligations under clause 25.9(a), Council may increase the Price Cap at any time, and from time to time, in its sole and unfettered discretion, without being obliged to or considering the interests of the Contractor, even if the Contractor has not requested such approval.

26 Security of Payment

26.1 Application

This clause applies to the extent that any part of the Supply is subject to the Security of Payment Act.

26.2 Security of Payment notices

- (a) The Contractor must:
- (i) ensure that any written communication it delivers or arranges to deliver to Council of whatever nature in relation to the Security of Payment Act is delivered to the address for service of notices set out in the Particulars; and
 - (ii) promptly give Council a copy of any written communication of whatever nature in relation to the Security of Payment Act, which the Contractor receives from another party (excluding any 'payment claims' or 'payment schedules' as defined under the Security of Payment Act).
- (b) If the Contractor suspends the whole or part of the Supply pursuant to the Security of Payment Act:
- (i) the suspension will not affect the Completion Date or relevant Key Supply Date; and
 - (ii) subject to any payment owed under the Security of Payment Act, Council shall not be liable for any costs, expenses, damages, losses or other liability whatsoever suffered or incurred by the Contractor as a result of the suspension.

26.3 Subcontractors' Charges Legislation

If any person at any time lodges, or purports to lodge, under the Subcontractors' Charges Legislation, a charge over any moneys payable by Council to the Contractor:

- (a) the Contractor must indemnify, and keep indemnified, Council against any loss or expense (including legal fees on an indemnity basis and expert fees) that Council suffers or incurs arising from or in connection with the lodgement of the charge (including in responding to any notice of claim or paying any moneys into court) (**Charges Liabilities**); and
- (b) the Charges Liabilities shall be a debt due and immediately payable to Council by the Contractor,

whether or not the charge is validly lodged or any action taken by the person lodging the charge is successful.

27 Default and Termination

27.1 Council's right to terminate for default

If the Contractor:

- (a) breaches any term of the Contract, in circumstances where Council has determined in its sole and unfettered discretion that:
 - (i) the breach was capable of being remedied;
 - (ii) the Contractor has failed to remedy that breach to Council's satisfaction within the time notified by Council in writing to do so; and
 - (iii) the Contractor has failed to satisfy Council, within the time notified by Council in writing to do so, that the Contractor has implemented all necessary measures to ensure that a breach of a similar nature will not occur again;

- (b) commits any breach of this Contract in such a way as to pose an unacceptable risk of harm to any person or the natural environment, as determined by Council in its sole and unfettered discretion;
- (c) commits any breach of this Contract that Council considers, in its sole and unfettered discretion:
 - (i) has placed a person at an unacceptable risk of harm; or
 - (ii) constitutes an unacceptable non-compliance with its safety or environmental management systems;
- (d) breaches any term of the Contract, in circumstances where Council has determined in its sole and unfettered discretion that such breach is not capable of being remedied;
- (e) commits a fraudulent or other illegal act;
- (f) fails to provide a statutory declaration required under the Contract or provides a statutory declaration pursuant to the Contract which is false, misleading or deceptive in any respect; or
- (g) suffers an Insolvency Event,

Council may, in its sole and unfettered discretion, immediately:

- (h) terminate the Contract, whereby the rights and liabilities of the parties shall be the same as they would have been at common law had the Contractor repudiated the Contract and Council elected to treat the Contract as at an end and recover damages; or
- (i) take out of the hands of the Contractor the whole or part of the Supply remaining to be completed (which may include all of the Supply within one or more Purchase Orders),

by notice in writing to the Contractor.

27.2 Taking Supply out of Contractor's hands

- (a) When Supply which is taken out of the hands of the Contractor under clause 27.1 is completed, Council's Representative must ascertain the cost incurred by Council in completing the Supply and must issue a certificate to Council and the Contractor certifying the amount of that cost.
- (b) If the cost incurred by Council is greater than the amount which would have been paid to the Contractor if the Supply had been completed by the Contractor, the difference will be a debt due from the Contractor to Council. If the cost incurred by Council is less than the amount that would have been paid to the Contractor if the Supply had been completed by the Contractor, the difference will be a debt due to the Contractor from Council.

27.3 Council not to pay costs

If Council exercises its rights under clause 27.1, Council will not be liable to make any further payment to the Contractor for the Supply.

27.4 Council's right to terminate for convenience

- (a) Council may at any time in its sole and unfettered discretion terminate the Contract or one or more of the Purchase Orders for its convenience and without reason by giving 7 days' notice in writing to the Contractor.
- (b) Subject to clause 27.4(c), if Council terminates the Contract or one or more Purchase Orders under clause 27.4(a), the Contractor's sole entitlement to Claim in relation to that termination will be for payment of:
 - (i) all Supply carried out in accordance with the Contract or the relevant Purchase Orders (as applicable) up to, but excluding, the date that the termination becomes effective;
 - (ii) items validly ordered by the Contractor prior to the date of termination which would have formed part of the Supply, provided that title in such items will transfer to Council upon payment for the item;
 - (iii) any costs reasonably incurred by the Contractor in the expectation of completing the Supply, and which are not included in any other claim for payment; and
 - (iv) reasonable costs of demobilising individuals and equipment that are incurred as a direct and unavoidable result of the termination,

provided that:

- (v) a claim for payment under this clause 27.4 is subject to clause 25; and
- (vi) the Contractor may not claim payment for any amounts that have been the subject of a previous payment claim.
- (c) If Council terminates the Contract or one or more Purchase Orders under clause 27.4(a) and at the time of termination the Contractor:
 - (i) is subject to an Insolvency Event;
 - (ii) has not provided a statutory declaration in accordance with clause 27.10 (if requested); or
 - (iii) has provided a statutory declaration which required under the Contract and such statements are determined by Council (acting reasonably) to be untrue, false or misleading,

Council shall not be required to make further payment to the Contractor.

- (d) If Council terminates one or more Purchase Orders, but does not terminate the Contract, all Purchase Orders other than those specified by Council as being terminated will continue in force.
- (e) For the avoidance of doubt, if Council terminates the Contract, all Purchase Orders will terminate as of the same date and time as the date and time for termination of the Contract.

27.5 Termination not valid

- (a) If Council terminates, or purports to terminate, under clause 27.1 or otherwise at law and it is subsequently held to be invalid, void or otherwise unenforceable then Council will be deemed to have terminated for Council's convenience under clause 27.4 as at the same date and time as the original notice of termination.
- (b) The Contractor waives any Claim the Contractor has or would have had, but for this clause 27.5, arising out of or in connection with any termination, or purported termination, by Council under clause 27.1, or otherwise at law being subsequently held to be invalid, void or otherwise.

27.6 Contractor's right to terminate

- (a) If:
 - (i) Council has failed to pay the Contractor an amount that is due and payable to the Contractor within the time required by the Contract, and that amount is not under dispute; and
 - (ii) after expiry of the applicable time for payment, the Contractor notifies Council in writing of the amount that is outstanding, attaches the original claim for payment of that amount and states in the notice that the Contractor will terminate the Contract if Council does not make payment in full of the outstanding amount within 10 Business Days,

and Council fails to pay the outstanding amount within 10 Business Days of receipt of the notice in clause 27.6(a)(ii), then the Contractor may immediately terminate the Contract by notice in writing to Council.
- (b) If the Contractor terminates the Contract under clause 27.6(a) or pursuant to any other rights it may have whatsoever, then the Contractor's sole entitlement to Claim in relation to that termination will be as set out in clause 27.4(b).

27.7 Clauses that survive termination

Rights and obligations of the Contract that are capable of surviving the expiration or termination of the Contract, will survive that expiration or termination, irrespective of the reason for any termination, except if the context requires otherwise.

27.8 Actions following termination or expiry of Contract

Promptly upon the expiry, or termination for any reason, of the Contract, the Contractor must:

- (a) either return or destroy all Confidential Information (including copies) belonging to Council, except if Council agrees to allow the Contractor to keep one copy solely for its internal records;
- (b) provide to Council all parts of the Supply executed by the Contractor up to the date of termination, whether they are complete or not;
- (c) return to Council all of its property,

in the Contractor's possession, power or control and cease carrying out the Supply.

27.9 Termination reference date

- (a) This clause shall only apply to the extent that the Security of Payment Act applies to the Contract.
- (b) Despite anything else in the Contract to the contrary or which would otherwise limit the operation of this clause (including termination of the Contract), in the event of termination of the Contract for any reason, the Contractor is entitled to make a single claim for payment in accordance with clause 25 (whether or not the Contractor has satisfied the Claim Preconditions which would otherwise apply in respect of that claim for payment) on and from the termination date, such termination date being considered a 'reference date' for the purposes of the Security of Payment Act (**Termination Reference Date**).
- (c) For the avoidance of doubt, nothing prevents the Council setting off or withholding any amount arising out of, or in connection with, a failure of the Contractor to satisfy any Claim Preconditions, where such failure is also a breach of the Contract or results in any other claim of Council against the Contractor.
- (d) The Contractor may only include in the claim for payment contemplated by this clause, any amount which is due and payable to the Contractor under the Contract in respect of Supply properly undertaken prior to or on the Termination Reference Date.
- (e) Unless otherwise instructed by Council, the Council's Representative must not assess any other amounts and Council shall have no obligation to pay another amount, including additional amounts contemplated under clause 27, until such time as the claim for payment contemplated by this clause has been made and assessed in a payment schedule by the Council's Representative (or the time for making such a payment claim has elapsed under the Security of Payment Act).
- (f) The parties acknowledge and agree that where the Contract is terminated for any reason the Termination Reference Date will be the sole and final 'reference date' under the Security of Payment Act to survive beyond termination.
- (g) At any time following a termination, including after the submission and assessment of any claim for payment contemplated by this clause, Council may request the Council's Representative to issue a payment schedule, including to assess any amounts owing either to Council from the Contractor, or to the Contractor from Council, as the case may be.
- (h) Within 15 Business Days of receipt of such a request, the Council's Representative must issue a payment schedule to Council and the Contractor. Any amount owing under the payment schedule must be paid by the Contractor to Council, or Council to the Contractor, as the case may be, within 15 Business Days of the date of the payment schedule.

27.10 Statutory declaration and notification

The Contractor agrees that:

- (a) at any time, the Council's Representative may request the Contractor to provide a completed and signed statutory declaration (in a form and containing such detail as reasonably required by the Council's Representative) from a representative of the Contractor who is in a position to know the facts confirming that the Contractor:
 - (i) is solvent and not subject to any Insolvency Event;
 - (ii) has no reason to suspect that the Contractor may be or may become insolvent or subject to an Insolvency Event; and
 - (iii) is not seeking, to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the *Corporations Act 2001* (Cth); and
- (b) the Contractor must provide such completed and signed statutory declaration within 2 Business Days of the request from the Council's Representative; and
- (c) the Contractor must immediately notify Council in writing if it has taken advantage or sought to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B if the *Corporations Act 2001* (Cth).

28 Disputes

28.1 Dispute resolution process

Either party may by prior written notice refer any disagreement or dispute relating to this Contract or its subject matter (**Dispute**) for resolution in accordance with this clause 28, in which case the Dispute must be referred:

- (a) initially for resolution by Council's Representative and the Contractor's Representative, who must use their best endeavours to resolve the Dispute within 14 days of receipt of the notice of Dispute; and
- (b) if the Dispute is not resolved in accordance with clause 28.1(a), to Council's Chief Executive Officer, or its nominated representative, who must try to resolve the Dispute with the Contractor's General Manager or equivalent within 28 days of receipt of the notice of Dispute.

28.2 Termination of the dispute resolution process

If the Dispute is not resolved by the parties in accordance with clause 28.1 then either party may by notice in writing commence litigation.

28.3 Continued performance required

Despite the existence of a Dispute, the parties must continue to perform their obligations under this Contract.

28.4 Urgent interlocutory relief

Despite clause 29.1, a party may commence court proceedings relating to any Dispute at any time if that party seeks urgent interlocutory or interim relief.

28.5 Survival

The obligations in this clause survive termination of the Contract.

29 Notification of claims

29.1 Requirements for notice

- (a) Council shall not be liable upon any Claim unless:
 - (i) if the requirements for notification of the Claim are prescribed elsewhere in this Contract, the Contractor has strictly complied with those requirements; or
 - (ii) if clause 29.1(a)(i) does not apply, the Contractor has given Council written notice of the Claim within 14 days of when the Contractor should first have become aware of its right to make the Claim if it had applied Industry Practice.
- (b) A notice under clause 29.1(a)(ii) must be in writing and include:
 - (i) the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;
 - (ii) the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment; and
 - (iii) details of the quantum of the Claim showing the calculations and their bases.

29.2 Non-compliant Claims barred

Failure by the Contractor to comply with this clause 29 is an absolute bar to making the Claim and constitutes an irrevocable release of that Claim by the Contractor.

29.3 No other payments

Where the Contractor is expressly entitled to submit a Claim or notice of Claim (or similar) during the Contract:

- (a) the relevant document submitting or notifying the Claim:
 - (i) must not be in the form of (and is not) an invoice; and
 - (ii) is not a document requesting payment, or notifying an obligation on Council to make any payment, of the amount submitted or notified; and
- (b) Council's liability for, and payment to the Contractor of, the amount submitted or notified is expressly dealt with in accordance with the Contract.

30 Confidential Information

30.1 Information to be kept confidential

- (a) The Contractor must keep confidential, and not use for any purpose other than performing its obligations under the Contract, any Confidential Information of Council, except for the following disclosures:

- (i) to its Personnel to the extent necessary to complete the Supply;
 - (ii) to its professional advisors; or
 - (iii) with Council's prior written permission, which may be given subject to reasonable conditions, and the Contractor agrees to comply with those conditions.
- (b) If Confidential Information is disclosed in accordance with clauses 30.1(a)(i) or 30.1(a)(ii), the Contractor must ensure that the person agrees to keep the information confidential, and if requested by Council, have that person execute a legally binding agreement to keep the information confidential.
- (c) Council must keep confidential all Confidential Information of the Contractor, except for the following disclosures:
- (i) to its professional advisors, provided that they undertake to keep it confidential;
 - (ii) to its Councillors;
 - (iii) to its Personnel for the administration of the Contract;
 - (iv) with the Contractor's prior written permission, which may be given subject to reasonable conditions, and Council agrees to comply with those conditions; and
 - (v) as required under Law (including the *Right to Information Act 2009* (Qld)).

30.2 Survival

The obligations in this clause 30 survive for a period of 3 years from the expiry or earlier termination of the Contract.

30.3 Contractor acknowledgment

The Contractor acknowledges and agrees:

- (a) that Council may disclose Confidential Information as provided from the Contractor to a Government Agency as may be necessary for Council;
- (b) to return or destroy material containing Confidential Information when it is no longer required by Council, Government Agency or by a discloser of the Confidential Information, subject to any Law; and
- (c) to immediately notify Council if the Contractor becomes aware of a suspected or actual breach of this clause 30 and take steps to prevent or stop the suspect or actual breach.

31 Intellectual Property Rights

31.1 Licence

- (a) The Contractor grants Council an irrevocable, royalty free, fully assignable licence, including a right to sublicense, to use the Intellectual Property Rights in the Supply, including any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material or Goods provided to

Council in connection with the Contract for any purpose associated with the Supply.

- (b) The Contractor warrants to Council that the carrying out of the Supply, and any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material or Goods provided to Council in connection with the Contract, will not infringe the Intellectual Property Rights of any third party.
- (c) If the Contractor suspects or becomes aware that any part of the Supply will infringe any third party's Intellectual Property Rights then the Contractor must:
 - (i) immediately notify Council of that infringement; and
 - (ii) take any action required by Council in connection with the infringement or suspected infringement of that third party's Intellectual Property Rights.
- (d) The Contractor is liable for, and indemnifies Council from and against, all loss or damage (including legal costs) incurred or suffered by Council in connection with a breach of this clause 31.1.

31.2 Reputation and logos

- (a) The Contractor must not perform any act or omission which damages or is likely to damage the reputation of Council.
- (b) The Contractor must not, and must ensure that its officers, employees and agents do not, use the names, trade marks or logos of Council except with the prior consent of Council.

31.3 Survival of obligations

The obligations of the Contractor, and the Intellectual Property Rights granted, under this clause 31 continue after the expiry or termination of the Contract for any reason.

32 Privacy Laws

32.1 Contractor's warranties

In relation to any Personal Information (as defined in the *Privacy Act 1988* (Cth) (**Privacy Act**)) provided or to be provided by the Contractor in connection with the Supply, the Contractor warrants to Council:

- (a) the Contractor has obtained and will obtain the consent of each individual about whom any Sensitive Information (as defined in the Privacy Act) is provided; and
- (b) the Contractor has ensured, or will within the time required by the Privacy Act ensure, that each individual about whom any Personal Information is provided has received or will receive a written statement setting out all of the matters required by National Privacy Principle 1.3:
 - (i) in relation to disclosure of the Personal Information to Council, and any Personnel of Council requiring the information for the purposes set out in clause 32.1(b)(ii); and

- (ii) disclosing that the entities referred to in clause 32.1(b)(i) shall use the Personal Information for the purposes of reviewing and assessing matters relevant to the Works from time to time.

32.2 Contractor's compliance

The Contractor will comply with the provisions of the Privacy Act in relation to any Personal Information provided to the Contractor by Council and any consultant of Council.

32.3 Eligible data breach

If the Contractor becomes aware of an 'eligible data breach' (as defined in the Privacy Act) (**Eligible Data Breach**) involving information obtained from Council it:

- (a) must immediately notify Council of the Eligible Data Breach;
- (b) must not notify any other party of the information pertaining to the Eligible Data Breach unless advised by Council to do so;
- (c) must provide, at the Contractor's cost, with all reasonable assistance required by Council (including access to records, employees and agents of the Contract) for it to investigate the Eligible Data Breach and meet any notification requirements Council may have under the Privacy Act or other Law; and
- (d) will indemnify Council against all damages, expenses (including, without limitation, including legal fees on an indemnity basis and consultancy fees) loss or liability of any nature suffered or incurred by Council arising out of the Eligible Data Breach.

33 Information Privacy Act

- (a) If the Contractor collects or has access to Personal Information in order to carry out the Supply in accordance with the Contract, the Contractor must:
 - (i) if Council is an 'agency' within the meaning of the *Information Privacy Act 2009* (Qld) (**IPA**), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Contractor was Council;
 - (ii) not use Personal Information other than in connection with carrying out the Supply in accordance with the Contract, unless required or authorised by law;
 - (iii) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of Council, unless required or authorised by Law;
 - (iv) ensure that its officers, employees, agents and subcontractors do not access, use or disclose Personal Information other than in connection with carrying out the Supply in accordance with the Contract;
 - (v) ensure that its subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause;

- (vi) fully cooperate with Council to enable Council to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- (vii) comply with such other privacy and security measures as Council may reasonably require from time to time.

- (b) On request by Council, the Contractor must obtain from its employees, officers, agents or subcontractors carrying out the Works in accordance with Contract, an executed deed of privacy in a form acceptable to Council.
- (c) The Contractor must immediately notify Council on becoming aware of any breach of this clause 33.
- (d) This clause will survive the termination or expiry of the Contract.
- (e) In this clause, '**Personal Information**' is information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

34 Indemnity

34.1 Contractor to indemnify Council

The Contractor must indemnify Council from and against any claim (including Claims by the Contractor), loss, expense or damage, of any nature (including financial loss and all legal expenses on a full indemnity basis) suffered or incurred by Council in connection with:

- (a) loss of, or damage to, real or personal property of any person (including the Contractor);
- (b) personal injury, illness or death to any person (including the Contractor's Personnel); or
- (c) harm to the environment or nuisance to third parties, arising out of any act or omission of the Contractor or its Personnel, except to the extent that any negligent act or omission of Council or its Personnel contributed to the event giving rise to the obligation to indemnify.

34.2 Effect of indemnities

Council need not incur any cost before enforcing an indemnity under clause 34.1.

34.3 Survival

The obligations in this clause survive the expiry or termination of the Contract.

35 GST and Tax

35.1 Definitions

Any terms capitalised in clause 35 and not already defined in clause 1.1 have the same meaning given to those terms in the GST Act.

35.2 GST exclusive

Except under clause 35, the consideration for a Supply made under or in connection with the Contract does not include GST.

35.3 Taxable Supply

If a Supply made under or in connection with the Contract is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Contractor an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under the Contract for that Supply; and
- (b) the Contractor must give the Recipient a Tax Invoice for the Supply.

35.4 Later GST change

For clarity, the GST payable under clause 35.3 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Contractor is liable, however caused.

35.5 Reimbursement or indemnity

If either party has the right under the Contract to be reimbursed or indemnified by another party for a cost incurred in connection with the Contract, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

35.6 Warranty that Tax Invoice is issued regarding a Taxable Supply

Where a Tax Invoice is given by the Contractor, the Contractor warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

35.7 Progressive or Periodic Supplies

Where a Supply made under or in connection with the Contract is a Progressive or Periodic Supply, clause 35.3 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

35.8 Other Taxes, Duties and Charges

Except as provided in this clause 35 or explicitly stated elsewhere in the Contract, the Contractor must pay, and reimburse Council for the payment of (where applicable), all sales tax, customs duties, stamp duties and other duties, charges, taxes or imposts payable in connection with the carrying out the Supply.

36 Personal Property Securities Act

- (a) If Council determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed, and supplying information) as Council may reasonably require for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
 - (ii) enabling Council to apply for, and obtain, any registration or providing any notification in accordance with the *Personal Property Securities Act 2009* (Cth) (**PPSA**); or
 - (iii) enabling Council to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.

- (b) The Contractor waives each right to receive any notice from Council under the PPSA (including notice of a verification statement) that can be waived.
- (c) Except as expressly agreed in writing to the contrary, the Contractor:
 - (i) acknowledges that neither the Contract nor a transaction in connection with it is intended to provide a Security Interest in favour of the Contractor; and
 - (ii) agrees that it will not register or otherwise perfect (or seek to perfect) any Security Interest, and will remove any registration in respect of the Contract or a transaction in connection with it.
- (d) The Contractor must promptly notify Council if it knows or becomes aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has or claims a Security Interest over a product of the Supply:
 - (i) owned by Council;
 - (ii) supplied or to be supplied by the Contractor to Council; or
 - (iii) in which Council has an interest.
- (e) The Contractor must, on request by Council, use best endeavours to ensure that the third party:
 - (i) discharges any such Security Interest, and does not register or otherwise perfect (or seek to perfect), and removes any registration, in respect of any such Security Interest; or
 - (ii) subordinates any such Security Interest to the interest of Council, by an agreement in form and substance satisfactory to Council.
- (f) At any time when title to or ownership of any product of the Supply, is passed to Council, the Contractor must ensure that title or ownership is passed free of any Security Interest of the Contractor or any other person.
- (g) The Contractor must ensure that each subcontract has, for the benefit of Council, a clause that reflects this clause 36.
- (h) Without limiting clause 30, neither Council nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. However, this does not prevent disclosure where required under section 275

of the PPSA because of the operation of section 275(7) of the PPSA.

37 General

37.1 Amendments

The Contract may only be amended by written Contract between all parties.

37.2 Counterparts

The Contract may be signed in any number of counterparts. All counterparts together make one instrument.

37.3 No merger

The rights and obligations of the parties under the Contract do not merge on completion of any transaction contemplated by the Contract.

37.4 Entire Contract

- (a) The Contract supersedes all previous Contracts about its subject matter and any Contracts collateral to those Contracts. The Contract embodies the entire Contract between the parties regarding its subject matter.
- (b) Except to the extent expressly provided to the contrary in the Contract, each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into the Contract.

37.5 Further assurances

The Contractor must do all things necessary to give effect to the Contract and the transactions contemplated by it.

37.6 No fetter

- (a) Despite anything in this Contract to the contrary:
 - (i) Council is not obliged to exercise any executive or statutory right or duty, or to influence, override, interfere with or direct any other Government Agency in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - (ii) nothing in this Contract has the effect of constraining Council or placing any fetter on Council's discretion to exercise or not exercise any of its executive or statutory rights or duties.
- (b) Subject to clause 37.6(c), the Contractor will not be entitled to make a Claim against Council relating to any exercise or failure of Council to exercise its executive or statutory rights or duties.
- (c) Clauses 37.6(a) and 37.6(b) do not limit any liability which Council would have had to the Contractor under this Contract as a result of a breach by Council of this Contract but for these clauses.

37.7 No waiver

- (a) The failure of a party to require full or partial performance of a provision of the Contract does not affect the right of that party to require performance subsequently.

- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under the Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

37.8 Governing law and jurisdiction

- (a) The Contract is governed by, and construed in accordance with, the laws of Queensland, except that the Sale of Goods (*Vienna Convention*) Act 1986 (Qld) and section 68 of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) does not apply to the Contract or the Supply.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

37.9 Severability

A clause or part of a clause of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining clauses or parts of the clause of the Contract continue in force.

Schedule 1

Scope of Supply

[Insert scope of Services to be carried out or details of Goods.]

Schedule 2

Pricing Schedule

[Insert as required.]

Schedule 3

Special Conditions

Execution

EXECUTED as an agreement

Signed on behalf of **LOCKYER VALLEY REGIONAL COUNCIL** ABN 52 673 165 312
on / /20 by its duly authorised officer in
the presence of:

^ _____	^ _____ Signature of Authorised Officer
^ _____ Signature of witness	^ _____ Full Name of Authorised Officer
^ _____ Name of witness (print)	^ _____ Office Held

[Alternative 1: use below if contractor is a company with two or more officers, and delete the other alternatives]

Executed by
[Insert company name (in title case)] ACN [Insert
ACN] on / /20 by:

^ _____ Director	^ _____ Director/Secretary
^ _____ Full name of Director	^ _____ Full name of Director/Secretary

[Alternative 2: use below if contractor is a company with only one officer, and delete the other alternatives]

Executed by
[Insert company name (in title case)] ACN [Insert
ACN] on / /20 by:

^ _____
Signature of [Insert name of sole director
or sole secretary] who signs in the capacity
of sole secretary and sole director

[Alternative 3: use below if contractor is a trust with a corporate trustee, and delete the other alternatives]

Executed by
 [Insert company name (in title case)] ACN [Insert
 ACN] as trustee for [Insert name of trust]
 on / /20 by:

^ _____
 Director

^ _____
 Director/Secretary

^ _____
 Full name of director

^ _____
 Full name of director/secretary

[Alternative 4: use below if contractor is a company, but refuses to execute using alternatives 1 or 2, and delete the other alternatives. NB: it is safer for Council if alternative 1 or 2 (as applicable) is used]

Signed by
 [Insert company name (in title case)] ACN [Insert
 ACN] on / /20 by its duly authorised
 officer in the presence of:

^ _____
 Signature of Authorised Officer

^ _____
 Signature of witness

^ _____
 Full Name of Authorised Officer

^ _____
 Name of witness (print)

^ _____
 Office Held

[Alternative 5: use below if contractor is an individual, and delete the other alternatives]

[Use if the Contractor is an individual]

Signed by [Insert name] in the presence of:

▲ _____
Signature of [Insert name]

▲ _____
Signature of witness

▲ _____
Name of witness (print)