
Conditions of Contract - Minor Works

TENDERERS NOTE:

This document is in draft, to be finalised by Council, to align to the Request for Offer /Tender, the accepted response and any additional terms specified and agreed by both parties and acknowledged in the Notice of Acceptance.

All proposed departures will be provided with the Tenderers submission as applicable. Council reserves the right to request Tenderers withdraw their departures to the terms and conditions and may decline or accept departures, as it deems appropriate.

Contract Reference number: *Insert*

Contract Title: *Insert*

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Particulars

Contractor's details	Name: <i>Insert</i> Address: <i>Insert</i> ACN: <i>Insert</i> ABN: <i>Insert</i> QBCC licence no (if applicable): <i>Insert</i>	
Contractor's Representative	Name: <i>Insert</i> Address: <i>Insert</i>	
Council's Representative Contract Manager	Name: <i>Insert</i> Address: <i>Insert</i>	
Access Date (clause 1.1)	<i>Insert</i> weeks/days from date Contract is executed by last party to do so.	
Date for Completion (clause 1.1)	<i>Insert</i> weeks/days from the date that the Contractor is given access to the Site to commence the Works.	
Excusable Delay (clause 1.1)	<i>As defined at clause 1.1 and as agreed by the Council Representative</i>	
Completion Requirements (clause 1.1)	<i>Insert</i> [e.g. "keys and other security access passes have been given to Council", or if none, insert, "not applicable".]	
Completion Documents (clause 1.1)	<i>Insert</i> [e.g. "warranty's, guarantees, as-built drawings", or if none, insert, "not applicable".]	
Site (clause 1.1)	<i>Insert</i> [address(es) and specific location(s) at address(es) that are to be used for the Works. It should be narrowed to a specific location where the Contractor will be allowed to work and store tools etc, e.g. 'The area marked X on drawing no. ... at 5 Smith Street, Smithville, Qld']	
Works (clause 1.1)	<i>Insert</i> [details of the Works to be completed by the Contractor.]	
Information for Convenience documents (clauses 1.1 and 6.5)	<i>Insert</i> [Documents that the Contractor is allowed to rely on, e.g. any existing as-built drawings that Contractor must use and can rely on in carrying out works. If there are none, insert, 'not applicable'.]	
Non-PC Site (clause Error! Reference source not found.)	<i>Insert</i> [Description of that part of the Site, (which may be some, all or none of the Site), for which the Contractor is not to have management or control. These would be areas of the Site where Council, or some third party, will be continuing their operations while the Work is being carried out, or, areas of the Site for which someone other than the Contractor is to be the Principal Contractor.] Note that for these areas of the Site, the Contractor will not be able to discharge any duties that it may hold as a Principal Contractor. Any part of the Site that is not an 'Accessed Site' will be a 'Controlled Site'.	
Key Personnel (clauses 1.1 and 4.1)	Person	Role
	<i>Insert Full Name</i>	<i>Insert Role</i>
	<i>Insert Full Name</i>	<i>Insert Role</i>
Additional Obligation Documents (clauses 1.1 and 4.1)	[Insert Additional Obligation Documents, such as funding agreements, leases, etc.]	

Minor Design Work (Schedule 3)	<p>Does 0 apply? [Check below boxes]</p> <p><input type="checkbox"/> Applicable.</p> <p><input type="checkbox"/> Not applicable</p> <p>If applicable, the Minor Design Work is [Insert]</p>
Demolition Work (Schedule 4)	<p>Does 0 apply? [Check below boxes]</p> <p><input type="checkbox"/> Applicable.</p> <p><input type="checkbox"/> Not applicable</p> <p>If applicable, the Demolition Work is [Insert]</p>
Hazardous Materials (Schedule 4)	<p>If 0 applies, [Check below boxes]</p> <p><input type="checkbox"/> The Contractor is expected to encounter Hazardous Material in performing the Works and the Contractor shall have no Claim for encountering Hazardous Material.</p> <p><input type="checkbox"/> The Contractor may or may not encounter Hazardous Material in performing the Works.</p>
Documents comprising Contract (clause 1.4)	<p>The Contract between the Principal and the Contractor is comprised in descending order of precedence:</p> <ol style="list-style-type: none"> Agreed special conditions (if any); These Conditions of Contract - Minor Works Schedules to the Conditions of Contract - Minor Works (if any); Annexures to the Conditions of Contract - Minor Works (if any); Notice of Acceptance Preliminary clauses; Request for Quotation / Tender document Drawings and Requirements included in the Request for Quotation / Tender; Any other document expressly referred to in items (a) to (h) of this clause as forming part of the contract (together the contract). the Contractor's Offer / Tender response including any Drawings; so that the provision in the higher ranked document, to the extent of the inconsistency, shall prevail
Security (clause 3)	<p>Council's preferred form of Security is two Bank Guarantees each to the value of 5% of the Contract Sum. If Council will hold retention money in addition to Bank Guarantees, or instead of them, Council will not hold an aggregate total of more than 10% between all forms of Security</p> <p>Is Security required? Yes/No</p> <p>If it is required, form of Security is to be:</p> <ul style="list-style-type: none"> [Two] Bank Guarantees each to the value of [5]% of the Contract Sum, to be provided before the Contractor accesses the Site; [and][or] [retention money in the amount of [10]% of each Payment Claim until [insert]% of the Contract Sum is held as retention money]. <p>Must be unconditional irrevocable doesn't have an expiry date.</p>
Margin for provisional sums (clause Error! Reference source not found.3(b))	<p>Margin is: [Insert]%</p>
Liquidated Damages (clause 10.8)	<p>[Insert daily rate or if no liquidated damages, Insert 'No liquidated damages apply but Council reserves its right to claim general law damages']</p>

Milestones, Milestone Dates and liquidated damages (clause 10.10)	Milestone [Insert separate description of the Works for each Milestone, but if there are to be no Milestones, then Insert 'not applicable' in this item and for each of the following two items]	Milestone Date [Insert corresponding date for completion of each Milestone]	Liquidated damages [Insert daily rate or if no liquidated damages apply but there is a Milestone Date, then Insert 'No liquidated damages apply but Council reserves its right to claim general law damages']
Is the Contractor the Principal Contractor? (clause 13)	[Yes / No. NB, if the total value of the construction project for which this contract relates is less than \$250,000 (which includes variations), then there can be no Principal Contractor and this entry should be completed as, "not applicable"]		
Working Hours and Days (clause 18.4)	[Insert the days, and the hours on each of those days, that the Contractor may carry out the Works at the Site]		
Defect Liability Period (clauses 1.1 and 23)	[Insert] weeks from the Date of Completion		
Payment Claim Date (clause 1.1 and 26.1)	At each of the following times: On the later of: <ul style="list-style-type: none"> the [Insert day of the month] day of each month before the Completion Claim Date in respect of [if payment is based on Milestones, then insert: 'all work comprising the Works for a completed Milestone, so that no payment may be claimed for carrying out the Works for a Milestone if that Milestone is incomplete'] [if payment is not based on Milestones, insert: 'work done up to and including the [insert] day of the month']; and the date that the last Claim Precondition is satisfied. On the later of: <ul style="list-style-type: none"> the Completion Claim Date; and the date that the last Claim Precondition is satisfied. On the later of: <ul style="list-style-type: none"> the Final Claim Date; and the date that the last Claim Precondition is satisfied. 		
Payment terms (clause 26.7)	Within the Response Period of receipt of the Payment Certificate.		
Notices (clause 42.10)	Council Attention: <i>Insert</i> <i>Insert address</i> Phone: <i>Insert</i> Email: <i>Insert</i> Email size limit: <i>Insert</i> Contractor Attention: <i>Insert</i> <i>Insert address</i> Phone: <i>Insert</i> Email: <i>Insert</i> Email size limit: <i>Insert</i>		

If Separable Portions apply:

Separable Portion	Details
Separable Portion:	<i>Insert</i>

Description of Separable Portion's Works:	<i>Insert</i>
Access Date (clause 1.1)	<i>Insert</i>
Date for Completion: (clause 1.1 Error! Reference source not found.)	<i>Insert</i>
Completion Requirements: (clause Error! Reference source not found.)	<i>Insert</i>
Completion Documents: (clause 1.1)	<i>Insert</i>
Non-PC Site: (clause 1.1)	<i>Insert</i>
Liquidated Damages per Day: (clause 10.8)	<i>Insert daily rate</i> or 'No liquidated damages apply but Council reserves its right to claim general law damages'
Defects Liability Period: (clauses 1.1 and 23)	<i>Insert</i>

Minor Works 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 the following definitions apply:

Access Date means the date stated in the Particulars or otherwise as notified in writing by Council to the Contractor.

Additional Obligation Documents has the meaning in [clause 41](#)

Adverse Event means any:

- (a) loss of or damage to any real or personal property (including the Works and any withdrawal of support from third party property or from any building, structure or erection that has been placed on or below any third-party property);
- (b) nuisance, death, injury or ill health to any persons (including that suffered by the Contractor's Personnel); or
- (c) loss of or damage to the environment, including Environmental Harm.

Approved Security Provider has the meaning given in the Financial and Performance Management Standard 2009 (Qld), but excludes an insurance company.

Bank Guarantee means an irrevocable and entirely unconditional undertaking from an Approved Security Provider that:

- (a) is acceptable to Council, acting reasonably;
- (b) is immediately payable on demand without reference to the Contractor or any other party; and
- (c) may be claimed against at a branch in Queensland.

Business Day means a day that is not:

- (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).

Certificate of Completion has the meaning given in [clause 10.9](#)

Change of Control means, in relation to the Contractor, if the Contractor is a corporation:

- (a) a change in the shareholding of the Contractor such that a change in control (as defined in the Corporations Act 2001 (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 Corporations Act 2001 (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:
 - (i) controlling the composition of the board of directors of the Contractor;
 - (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, 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.

Claim includes any claim (whether known or unknown, actual or contingent, fixed or unascertained), demand, action, proceeding or suit, for:

- (a) the payment of money (including damages or any liability);
 - (b) an adjustment to the Contract Sum;
 - (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:
- (e) the Contract; or
 - (f) the conduct of, or relationship between, the Contractor and Council, before or after the Contract came into force

Claim Precondition has the meaning given in **clause Error! Reference source not found.**

Completion means the stage of the Works when:

- (a) the Works are complete except for minor omissions or minor defects that Council considers do not prevent the Works from being safely used for any purpose and the rectification of which will not hinder the convenient use of the Works;
- (b) the Contractor has cleaned the Site and removed all rubbish and surplus material;
- (c) all Completion Documents, and other information required under the Contract, have been supplied to Council;
- (d) all tests required by the Contract, or reasonably required by Council, to be passed before Completion, have been carried out and passed and documentary evidence of the passing of such tests has been provided to Council;
- (e) all requirements identified in the Particulars have been complied with; and
- (f) all Laws necessary to be satisfied in order for the Works to be used for their purpose have been satisfied, and original certificates and other documents evidencing the same have been given to Council.

Completion Claim Date means a date within 14 days after the Contractor's receipt of the Certificate of Completion that certifies Completion has been achieved.

Completion Documents means the documents listed in the Particulars.

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
- (e) all copies of the information, notes and other records referred to in paragraphs (a) to (d) above,

but excludes information that:

- (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;
- (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
- (h) is required to be disclosed by Law.

Construction Program means a Gantt Chart that:

- (a) itemises the Works into activities of sufficient specificity to enable accurate assessment of progress, and the effects of delays, to be made;
- (b) shows clearly defined critical paths;
- (c) shows relationships between activities that are sufficient in number to clearly indicate the intended sequence of work and shows all dependencies dictated by constructability and the availability of labour or equipment resources;
- (d) clearly demonstrates the Contractor's ability to achieve Completion by the Date for Completion, and to achieve any milestones by their applicable dates; and
- (e) identifies all resources, including human resources, to be employed on the Contract throughout its duration.

Contract has the meaning given in **clause 1.4**

Contractor means the entity carrying out the Works as stated in the Particulars, and includes its successors and permitted assigns.

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 7.1**

Contract Sum means:

- (a) if Council accepted a lump sum price in the Pricing Schedule, that amount;
- (b) if Council accepted rates, the sum ascertained by calculating the products of the rates in the Pricing Schedule and the corresponding quantities of Work actually performed; and
- (c) if Council accepted both lump sums and rates, the aggregate of the sums referred to in paragraphs **Error! Reference source not found. and Error! Reference source not found.**,

including Provisional Sums but excluding any additions or deductions which may be required to be made under the Contract.

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 7.1**

Date for Completion means the date stated in the Particulars, as adjusted in accordance **with clause 10**, but if another date is determined in any dispute resolution proceeding, then that other date.

Date of Completion means the date that the Works have reached Completion, as certified in a Certificate of Completion.

Defect means any part of the Works which do 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, which commences on the Date of Completion.

Dispute has the meaning given in **clause 30.1**

Environmental Harm has the meaning given in the *Environmental Protection Act 1994* (Qld).

Excusable Delay means any of the following, to the extent that they cause the Contractor an actual delay in the performance of the Works:

- (a) a breach of contract by Council or its Personnel;
- (b) a suspension of the Works, or a Variation (other than a Variation described **in clause 24.3**, 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.

Final Claim Date means the date within 14 days after expiry of the Defects Liability Period.

Government Agency means any of the following, excluding Council:

- (a) a government or government department or other body;
 - (b) a governmental, semi-governmental or judicial person; or
- a person (whether autonomous or not) who is charged with the administration of a law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Heavy Vehicle has the meaning given in the *Heavy Vehicle National Law Act 2012* (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 *Heavy Vehicle National Law Act 2012* (Qld) and the *Heavy Vehicle National Law Regulation 2014* (Qld).

Heavy Vehicle Safety Requirements means any Heavy Vehicle Law and all requirements of:

- (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:

- (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 performing works and services of the kind required by the Contract; and
- (b) compliance with all standards of Standards Australia Ltd applicable to the Works (except to the extent that the Contract prescribes a contrary standard) and the best practices, methods and procedures applicable in the industry to which the Works 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:

- (a) a party makes a statement, or conducts itself in a manner from which it may reasonably be deduced that the person is insolvent;
- (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 *Corporations Act 2001* (Cth);
- (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;
- (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;
- (e) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;
- (f) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X of the *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX of the *Bankruptcy Act 1966* (Cth);
- (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 *Corporations Act 2001* (Cth), or is presumed to be insolvent under the *Corporations Act 2001* (Cth);
- (h) the party ceases to carry on business; or
- (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,

or anything analogous to any of the above events.

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 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.

Labour Hire Licence means the licence required by the *Labour Hire Licensing Act 2017* (Qld).

Latent Conditions means physical conditions in, over or under the Site (excluding weather conditions and the effects of weather conditions) that differ materially from what should reasonably have been anticipated by an experienced and competent contractor at the time that the Contractor first tendered for the Works, if the Contractor had:

- (a) applied Industry Practice; and
- (b) done the things warranted under clause 6.1

Law includes:

- (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 Works 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 Works;
- (c) Australian Standards and any other applicable standards that are applicable to the Works and the jurisdiction in which the Site is situated; and
- (d) fees and charges payable in connection with the foregoing.

Milestone means those of the Works comprising the corresponding Milestone set out in the Particulars.

Milestone Date means the date for completion of a Milestone set out in the Particulars.

Moral Rights means:

- (a) the right of integrity of authorship;
- (b) the right of attribution of authorship; and
- (c) the right not to have authorship falsely attributed, including those rights as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement of the Contract.

Non-PC Site means those parts of the Site (if any):

- (a) described in the Particulars to be Non-PC Site;

- (b) directed by Council to be a Non-PC Site at any time before or after they are made available to the Contractor under the Contract; or
- (c) which have previously been handed over to Council following Completion of the Works within or upon those parts of the Site.

Payment Claim has the meaning given in [clause 26.1](#)

Payment Claim Date means the date or the Milestone specified in the Particulars on which Payment Claims are to be submitted.

PC Site means those parts of the Site not comprising any Non-PC Site.

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.

Pricing Schedule means the schedule of either or both lump sum prices and rates set out or referenced in [Annexure A](#).

Principal Contractor has the meaning given in the *Work Health and Safety Regulation 2011* (Qld).

QBCC Act means the *Queensland Building and Construction Commission Act 1991* (Qld).

Register of Licences has the meaning given in section 103 of the *Labour Hire Licensing Act 2017* (Qld).

Response Period means the period being:

- a) 10 Business Days; or
- b) if the Payment Claim is made by the Contractor under the Security Payment Act, any longer period permitted for the service of a corresponding payment schedule under the Security Payment Act.

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 in Schedule 5](#), and Council's policies, rules and requirements that are publicly available, including those published on Council's website.

Scope and Specification means the contents of [Annexure B](#).

Security means either:

- (a) retention money; or
- (b) one or more Bank Guarantees,

as set out in the Particulars, if any.

Security of Payment Act means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

Site means the site specified in the Particulars and any other land or places made available to the Contractor by Council.

Special Conditions means the special conditions (if any) [set out in schedule 1](#).

Subcontractors' Charges Legislation means Chapter 4 of the Security of Payment Act.

WHS Law means:

- (a) the *Work Health and Safety Act 2011* (Qld), *Work Health and Safety Regulation 2011* (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
- requirements of persons exercising statutory powers concerning health and safety.

WHS Obligations means WHS Law and all requirements:

- (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 Works,
- to the extent that they relate to health and safety.

Works means the works stated in the Particulars; Documents comprising contract, including:

- (a) the work and materials to be carried out or supplied under the Contract and handed over to Council;
- (b) Variations to, and the supply of temporary work and materials for, the work and materials [described in paragraph \(a\)](#);
- (c) rectification works relating to the work and materials described in [paragraphs \(b\) and \(c\)](#);
- (d) if stated in the Particulars [that schedule 3](#) is applicable, the works [stated in schedule 3](#);
- (e) if stated in the Particulars [that schedule 4](#) is applicable, the works [stated in schedule 4](#); and

all other work and services reasonably necessary for or inferred from the work referred to in the Contract.

Variation has the meaning given in [clause 24](#)

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 Documents forming contract

- (a) This Contract comprises the documents set out in the Particulars.
- (b) Any ambiguity between the documents comprising the Contract, will be resolved according to the descending order of precedence set out in the Particulars (with the first document listed having the highest precedence).
- (c) If the applicable order of precedence set out in the Particulars 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.

1.5 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.

1.6 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 Performance of Works

2.1 Performance generally

- (a) The Contractor must carry out and complete the Works in accordance with the Contract by the Date for Completion.

- (b) This Contract applies to all Works and activities carried out by or on behalf of the Contractor before, on and after this Contract is entered into.

2.2 Standard of Works

- (a) The Works must be carried out by the Contractor:
- (i) in accordance with the Scope and Specification, (including all plans, drawings and specifications) and the rest of the Contract;
 - (ii) in an efficient, professional and cost effective manner and in accordance with Industry Practice,
 - (iii) in accordance with all Law, Rules and Requirements and directions given by Council and Council's Representative including in respect to safety, environment and cultural heritage; and
 - (iv) using materials which (unless expressly stated otherwise) are new, of merchantable quality, free from Defect of material and workmanship, and fit for the purpose for which they are used.

2.3 Contractor to supply all things necessary

The Contractor must, except to the extent stated to the contrary in this Contract, supply all labour, plant, tools, equipment, appliances and other property the Contractor requires to fulfil its obligations under the Contract.

2.4 Contractor warrants necessary skill

The Contractor warrants that:

- (a) it is skilled in the performance of works of a similar size, scope and complexity as the Works; and
- (b) it has and will at all times maintain a workforce that is appropriately experienced, qualified and resourced in accordance with applicable Law and Industry Practice to carry out the Works.

2.5 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).

3 Security

3.1 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 the Particulars and **by this clause 3**.
- (b) 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.
- (c) Council owns all interest that is earned in connection with any Security.

3.2 Security as retention money

If the Security required includes retention money, Council may withhold the amount of retention money stated in the Particulars from each payment under **clause 26**, until Council has deducted the maximum amount of retention money stated in the Particulars.

3.3 Additional Bank Guarantees

- (a) This clause only applies if the Contractor has provided Bank Guarantees as Security (whether or not in combination with retention money).
- (b) If at any time the net value of all additions and deductions made under the Contract (for any reason whatsoever), equates to an increase to the Contract Sum of 10%, Council may direct the Contractor to provide an additional Bank Guarantee of a value of 10% of the value of Bank Guarantees it originally provided.
- (c) Council may again require the Contractor to provide additional Bank Guarantees, of a value of 10% of the value of Bank Guarantees it originally provided, for each such additional 10% increase in the net value of all additions and deductions made under the Contract.
- (d) If directed to do so under this clause, the Contractor must provide each additional Bank Guarantee within 5 days from the direction. Council may issue such a direction at any time before the time for release of Security under **Clause 3.5**.

3.4 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.

3.5 Release

Subject to Council's rights of recourse, Council must return to the Contractor:

- (a) all Security, if any, in excess of 5% of the total of the Contract Sum and all additions and deductions that have been made under the Contract, that Council holds as at the Date of Completion, within 10 Business Days after the Date of Completion; and
- (b) all remaining Security, if any, then held by Council within 20 Business Days of the later of:
 - (i) the first to occur of submission of the Contractor's Payment Claim in respect of the Final Claim Date, and termination of the Contract; and
 - (ii) the payment to Council of all money owing to Council, including after the resolution of any Dispute that either party had notified to the other before the date worked out under clause 3.5(b)(i).

3.6 Security after Completion

The Contractor acknowledges that to the extent that Council holds, after the Date of Completion, Security to an aggregate value in excess of 2.5% of the Contract Sum, then that excess:

- (a) does not relate to the need to correct Defects identified in the Defects Liability Period, but instead to the recovery by Council of any costs, damages or other amounts which may become payable to Council by the Contractor under or in connection with the Contract; and
- (b) is not subject to section 67N QBCC Act.

4 Contract Sum

4.1 Contract Sum

The Contract Sum and any rates or prices in a Pricing Schedule (together with any additions or deductions expressly provided for by the Contract):

- (a) includes all costs, expenses, fees, customs duties and charges that may be incurred by the Contractor in performing all its obligations under the Contract;
- (b) includes all items of work required to be performed under the Contract even if not specifically mentioned in this Contract (including the supply of all labour, constructional plant, materials, utilities, services or other necessary items);
- (c) includes all Site services and facilities required by the Contractor to complete the Works;
- (d) includes the Contractor's profit, attendance, preliminaries, supervision and on Site and off Site overheads in connection with the performance of all of its obligations under the Contract; and
- (e) will not be subject to any rise and fall in costs of materials or labour or otherwise, foreign exchange adjustment or any other adjustment for any reason,

except to the extent expressly provided by the Contract.

4.2 Pricing Schedule

If the Pricing Schedule omits an item which should have been included, the item is deemed to have been included in other items in the Pricing Schedule and the Contractor shall have no right to Claim in connection with the omission.

4.3 Provisional sums

A provisional sum included in the Contract or in the Contract Sum will not be payable by Council but if Council directs the Contractor to perform the applicable provisional sum work, then:

- (a) if the relevant work is carried out by the Contractor, Council is to pay the Contractor the value for the work that is determined under clause 24.2; or
- (b) if the relevant work is carried out by a subcontractor to the Contractor, Council is to pay the Contractor the amount payable by the Contractor to that subcontractor for that work, disregarding any damages or late payment costs payable by the Contractor to the subcontractor or vice versa, in addition to the amount or percentage for profit and overheads set out in the Particulars for that provisional sum, provided that the Contractor provides Council with satisfactory evidence of the amount payable to the subcontractor and its method of calculation.

5 Directions and Separable Portions

5.1 Directions

- (a) Directions by Council may be given in writing or given orally and later confirmed in writing.
- (b) The Contractor must comply with any direction of Council, within the time nominated, or if no time is nominated, as soon as reasonably possible. Except as provided in the Contract, the Contractor has no Claim arising from or in connection with any direction.

5.2 Separable portions

- (a) The interpretations of:
 - (i) Access Date;
 - (ii) Date for Completion;
 - (iii) Date of Completion;
 - (iv) Completion,

and clauses 3, 10, 23 and 38 will apply separately to each Separable Portion and any references therein to the Works will mean so much of the Works as is comprised in the relevant Separable Portion.

- (b) If a part of the Works has reached a stage equivalent to that of Completion but another part of the Works has not reached such a stage, Council may determine that the respective parts will be Separable Portions, and direct the Contractor accordingly.
- (c) If the Contract does not make provision for the amount of Security or liquidated damages applicable to a Separable Portion, the respective amounts applicable will be such proportion of the Security or liquidated damages applicable to the whole of the Works as the value of the Separable Portion bears to the value of the whole of the Works.

6 Information

6.1 Investigation by the Contractor

The Contractor warrants and represents that it has:

- (a) examined all information made available in writing by Council to the Contractor;
- (b) visited the Site prior to tendering for the Works and the execution of this Contract and has made itself aware of the following matters:
 - (i) nature and location of the Site and its surroundings;
 - (ii) as far as practicable, the climatic conditions (including cyclonic activity, rainfall, evaporation rates, soil conditions, geological conditions, prevailing winds and temperatures) at or near the Site; and
 - (iii) as far as practicable, the nature of the Works and the materials necessary for the completion of the Works;
- (c) informed itself as to the extent, location and nature of all utilities, existing improvements and temporary utilities necessary to undertake the Works and to ensure the continuing operation of any existing use of the Site;
- (d) informed itself as to the availability of labour, including transport and accommodation required, and all other industrial relations factors;
- (e) informed itself of the means and access to any facilities at the Site and the transport facilities for deliveries to the Site and to have made an allowance for these matters;
- (f) informed itself as far as practicable of the surface water courses (including those affecting access to the Site) relevant to the performance of the Works;
- (g) examined all information which is relevant to risks, contingencies and other circumstances which could affect its performance of the Works and which is obtained by the making of reasonable enquiries and acquisition of expert reports; and
- (h) ascertained and ensured compliance with Law.

6.2 No Claim

Despite any other provision of this Contract, the Contractor shall have no Claim of any kind regarding, and accepts the risk of, the matters in clause 6.1, except to the extent permitted by clause 19.

6.3 Purpose of 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 6.3(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 24.2](#) and added to or deducted from the Contract Sum,

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 6.3\(c\)](#), 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 6.3](#).

7 Representatives

7.1 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 7.1\(a\)](#).

7.2 Contractor's obligations

The Contractor must:

- (a) liaise with and report to Council's Representative about the Works;
- (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 Works.

7.3 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 Works 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.

8 Personnel

8.1 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.

8.2 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 8.2(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.

9 Parties' relationship

9.1 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.

9.2 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 Contract Sum, 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.

10 Time

10.1 Construction Program

The Contractor must, at its own expense:

- (a) within 3 Business Days prior to the Access Date, provide to Council the Construction Program in hard copy, and in an electronic format acceptable to Council, for review and approval by Council;
- (b) not depart from an approved Construction Program, except where justified by the Contract; and
- (c) revise and resubmit to Council the Construction Program in hard and electronic format with each Payment Claim and whenever the progress of the Works falls 7 days behind the Construction Program.

10.2 Approval of Construction Program

- (a) Council will review and either approve, or give reasons for not approving, each Construction Program submitted by the Contractor.
- (b) The Contractor must:
 - (i) promptly correct any errors or omissions in the Construction Program identified by Council; and
 - (ii) not use a Construction Program until it has been approved by Council.

10.3 Progress

The Contractor must:

- (a) proceed with the Works expeditiously and without delay and must achieve Completion by the Date for Completion; and
- (b) subject to **clause 10.3(a)**, comply with the timing and sequencing in the latest approved Construction Program.

10.4 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 Works, 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 the Works, 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.

10.5 Grounds for an extension of time

If the Contractor:

- (a) suffers a delay to the Works (on the critical path of the approved Construction Program) that:

- (i) was caused by an Excusable Delay;
 - (ii) will unavoidably prevent the Contractor from achieving Completion by the Date for Completion; and
 - (iii) was not contributed to by an act or omission of the Contractor or its Personnel;
- (b) has strictly complied with **clause 10.4**; and
- (c) within 10 days of the earlier of the Contractor learning of the cause of delay, and of when it should have learnt of the cause of delay if it had been applying Industry Practice, the Contractor gives Council written notice of:
- (i) the cause and expected duration of the delay and the activities affected and a copy of the latest approved Construction Program that demonstrates that the delay satisfies the requirements in **clause 10.5(a)(ii)**; and
 - (ii) the actions that the Contractor has taken and is taking to reduce the effect of the delay,
- then Council will assess if the Contractor is entitled to a reasonable extension of time to the Date for Completion, in accordance with **clause 10.6**, in respect only of that much of the delay, if any, that is not concurrent with a period of delay that was caused (in whole or in part) by anything other than an Excusable Delay.

10.6 Council's grant of extension of time

- (a) Subject to **clause 10.5**, Council must, within 14 days of receiving the Contractor's claim under **clause 10.5(c)**, either grant the Contractor a reasonable extension of time to the Date for Completion and notify the Contractor of the revised Date for Completion, or if not granted provide the reasons why.
- (b) In assessing the duration of any extension of time to be granted under **clause 10.6(a)**, Council may take into account, among other things, the adequacy of the actions that the Contractor:
 - (i) has taken to avoid and minimise the delay or its effects; and
 - (ii) is currently taking to overcome or minimise the effects of the delay.
- (c) Council may (at any time in its sole and unfettered discretion and solely for Council's benefit) by notice in writing to the Contractor grant an extension of time to the Date for Completion even if the Contractor has not requested an extension of time.

10.7 Delay costs

- If:
- (a) the Contractor is granted an extension of time under **clause 10.6(a)** due to a breach of the Contract by, or negligent act or omission of, either Council or any of its Personnel; and
 - (b) the Contractor submits a notice in writing to Council within 14 days of the extension of time being granted, setting out the amount of its claim and the methods by which it has been calculated, in sufficient detail to enable Council to evaluate the claim, and including reasonable documentary evidence of the bases for the costs it has claimed,
- then:
- (c) the Contractor will be entitled to reimbursement only of its reasonable costs that it has unavoidably incurred as a direct result of the delay (which shall not include any off site overhead, profit or margin of any kind), as determined by Council acting reasonably; and
 - (d) the Contractor will have no other entitlement to Claim in connection with that delay,
- but nothing in this **clause 10.7** will entitle the Contractor to Claim costs for delay which have already been included in the value of a Variation or any other payment under the Contract.

10.8 Liquidated damages

- (a) If the Contractor fails to achieve Completion by the Date for Completion, the Contractor will be liable to Council for liquidated damages at the rate stated in the Particulars for every day after the Date for Completion up to and including the Date of Completion or the date that the Contract is terminated, whichever occurs first.
- (b) If Council grants the Contractor an extension of time to the Date for Completion under **clause 10.6** after any liquidated damages have been paid or offset from a Payment Claim, then Council must repay the Contractor either:
 - (i) in the next Payment Claim that is due under the Contract; or
 - (ii) if no further Payment Claim is due under the Contract, then within 10 Business days of the relevant extension of time being granted.
- (c) Any liquidated damages which may be payable by the Contractor to Council pursuant to this **clause 10.8** do not:
 - (i) limit Council's other rights under the Contract or at law for any other breach of the Contract; or
 - (ii) relieve the Contractor from any of its obligations or liabilities under the Contract.
- (e) Council and the Contractor agree that all liquidated damages which may be payable by the Contractor to Council pursuant to this
- (f) **clause 10.8**:
 - (i) are a genuine pre-estimate of the damages likely to be suffered by Council if the Contractor does not achieve Completion by the Date for Completion;
 - (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.
- (e) 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 Date for Completion.

10.9 Certificate of Completion

- (a) The Contractor must give Council at least 7 days prior written notice of the date on which the Contractor anticipates that Completion will be reached. When the Contractor is of the opinion that Completion has been reached, it must in writing request Council to issue a Certificate of Completion.
- (b) Within 14 days after receiving the request, Council will give the Contractor a Certificate of Completion stating the date on which Completion was achieved or written reasons for not doing so.
- (c) If Council is of the opinion that Completion has been reached, it may issue a Certificate of Completion even though no request has been made.

10.10 Milestones

If the Particulars set out any Milestones with corresponding Milestone Dates, then the parties agree that:

- (a) the Contractor must achieve the Milestones set out in the Particulars by the corresponding Milestone Date set out in the Particulars (as extended or brought forward in accordance with this clause);
- (b) clauses 2.1(a), 10.3(a), 10.5, 10.6, 10.8, 10.9, 10.11 and 26.6 apply separately to the Milestones and Milestone Dates for the Milestones as follows:
 - (i) references to 'Completion' will be taken to include reference to the achievement of a Milestone;
 - (ii) reference to the 'Date for Completion' and 'Date of Completion' will be taken to include reference to the Milestone Dates;
 - (iii) the rate of liquidated damages applying to the Contractor's failure to achieve a Milestone by the Milestone Date is that rate set out in the Particulars corresponding to that Milestone; and
 - (iv) the Contractor is not liable to Council for liquidated damages resulting from the Contractor's failure to achieve Completion to the extent of the liquidated damages for which the Contractor has already become liable for that same period in respect of a Milestone.

10.11 Reduction in time for Completion

If any direction given or approved by Council (including any Variation) has the effect of reducing the amount of time required by the Contractor to achieve Completion, Council may give to the Contractor a written direction bringing forward the Date for Completion by a reasonable period.

11 Compliance with Law

11.1 Compliance

Except to the extent that the Contract expressly states to the contrary, the Contractor must comply with all Laws.

11.2 Contractor to obtain approvals and maintain licences

The Contractor must, at its own expense, procure and maintain, and ensure that its Personnel procure and maintain, all certificates, licences, consents, permits, accreditations, registrations and other approvals:

- (a) required for the lawful carrying out of the Works, including those specifically required by its Personnel; or
 - (b) relating to the completion, occupation or use of the Works,
- other than the certificates, licences, consents, permits, accreditations, registrations and other approvals that the Contract expressly states are to be obtained by Council.

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 Works (**Site Safety Officer**);
- (b) carry out the Works 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 Works;

- (e) ensure that there are processes in place to identify, assess and proactively control risks at the workplace at which the Works is being undertaken;
- (f) carry out the Works and all obligations under the Contract in accordance with:
 - (i) WHS Obligations;
 - (ii) Heavy Vehicle Safety Requirements and **clause 14**;
 - (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
 - (vi) 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 Works; and
- (g) comply with all environmental management plans, and other management plans, provided by or on behalf of Council to the Contractor or provided by the Contractor and approved by Council.

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 11** 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.

12.4 Protection from harm

- (a) Without limiting any other obligation under the Contract, the Contractor must ensure that it and its Personnel take all precautions, and provide all things, in accordance with Industry Practice so as to prevent any Adverse Event occurring in connection with the Works.
- (b) If the Contractor or its Personnel cause or contribute to any Adverse Event, the Contractor must, at its own cost, take all actions directed by Council to remedy or otherwise make good that Adverse Event to the satisfaction of Council.
- (c) If the Contractor fails to comply with 12.4(b), Council may perform those obligations itself or through others and all expenses incurred by Council in performing those obligations will be a debt due and immediately payable from the Contractor to Council.

12.5 Council's right to intervene

- (a) If Council considers that there is an unacceptable risk of any Adverse Event arising from the Contractor's or its Personnel's performance of the Works or any other act or omission, Council may direct the Contractor to change its manner of working or to cease doing a thing, and the Contractor must, at its cost, comply with such direction, and ensure that its Personnel also comply.
- (b) The Contractor acknowledges and agrees that:
 - (i) Council is not under any obligation to exercise its rights under **clause 12.5(a)**; and
 - (ii) the power granted to Council under **clause 12.5(a)** (whether or not exercised) neither relieves the Contractor of, nor limits, any obligation, duty of care, warranty or liability of the Contractor under the Contract or otherwise.

13 Work Health and Safety

- (a) In this **clause 13**:
 - (i) 'Act' means the Work Health and Safety Act 2011 (Qld);
 - (ii) 'Regulation' means the Work Health and Safety Regulation 2011 (Qld);

- (iii) 'Workplace', 'Inspector', 'Notifiable Incident', 'Principal Contractor' and 'Regulator' have the same meaning as in the Act.
- (b) If the Contract Sum is less than \$250,000, the Contractor must comply with the following work health and safety requirements as set out in the Particulars or the Scope and Specification:
- (i) **Work health and safety management plan** – before the Contractor commences the Works, the Contractor must prepare and have available for inspection at all times, a written work health and safety management plan for the Works, that complies with any requirements set out in the Scope and Specification including:
 - (A) the names, positions and health and safety responsibilities of all persons whose positions or roles involve specific health and safety responsibilities;
 - (B) the arrangements in place for managing any work health and safety incidents that occur at the Site;
 - (C) any Site specific health and safety rules, and the arrangements for ensuring that all persons at the Site are informed of these rules; and
 - (D) the arrangements for the collection and any assessment, monitoring and review of safe work method statements.
 - (ii) **Site risks** – The Contractor must manage risks to health and safety associated with the following:
 - (A) the storage, movement and disposal of materials and waste at the Site;
 - (B) the storage at the Site of plant that is not in use;
 - (C) traffic in the vicinity of the Site that may be affected by the Works;
 - (D) essential utilities at the Site; and
 - (E) any other items set out in the Scope and Specification.
 - (iii) **Amenities** – In relation to any amenities provided at the Site, the Contractor must ensure that such amenities:
 - (A) meet the requirements of section 315A, Part 6.4 of the Regulation as if the Contractor was the 'Principal Contractor' and the Works constituted a 'construction project'; and
 - (B) meet any other requirements set out in the Scope and Specification.
 - (iv) **Safe work method statements** – the Contractor must ensure safe work method statements are prepared in accordance with the Scope and Specification.
 - (v) **Other Works specific health and safety requirements** – as stated in the Particulars and the Scope and Specification.
- (c) If the Contract Sum is \$250,000 or more (whether at the date of commencement of the Contract or subsequently), from the date that the Contractor has access to the Site (unless notified in writing by Council):
- (i) subject to clause 13(c)(iii), Council appoints the Contractor as the Principal Contractor in respect of the Works;
 - (ii) the Contractor accepts appointment under clause 13(c)(i);
 - (iii) the Works in respect of which the Contractor is appointed Principal Contractor under clause 13(c)(i) includes:
 - (A) all work under the Contract (other than work under the Contract carried out upon the Non-PC Site); and
 - (B) all works (whether or not work under the Contract) carried out or to be carried out upon the PC Site (including works carried out by separate contractors); and
 - (iv) Council authorises the Contractor to:
 - (A) assume management and control of the PC Site; and
 - (B) carry out and discharge the duties given to the Principal Contractor under Chapter 6 of the Regulation,
 for the period during which the Contractor is the 'person in control' of the PC Site (as referred to in clause 13(f)), unless and to the extent that such authorisation is withdrawn by Council in writing prior to the end of that period.
 - (d) To the extent that there is design work involved in the Works and the Particulars state that Schedule 3 is applicable, the Contractor will consult with Council and will consult with the designers of the whole or any part of a structure to be constructed under the Contract, about how to ensure that risks to health and safety arising from the design are eliminated during construction of the work under the Contract or, if it is not reasonably practicable to eliminate the risks, minimise, so far as is reasonably practicable.
 - (e) The Contractor will, in performing its obligations under the Contract, take into account and take appropriate action having regard to any information given to the Contractor by Council or any other person, about hazards and risks at or in the vicinity of the workplace where the work under the Contract is being carried out.
 - (f) If the Contractor is Principal Contractor under clause 13(c)(i), the Contractor is for the purposes of the Act and Regulation the 'person in control' of the Site and all things on the Site:
 - (i) from the date that the Contractor has access to the Site until the Date of Completion; and
 - (ii) during the time of, and for so long as that part of the Site is affected by, the carrying out of work under the Contract during the Defects Liability Period.
 - (g) The Contractor must:
 - (i) attend any inductions, tool box talks or such other safety meetings required by Council;
 - (ii) comply with all lawful directions issued by any person with control of the applicable part of the Site pursuant to any Law relating to workplace health and safety;
 - (iii) comply with and discharge all obligations imposed on the Contractor by the Act, the Regulation and any other Law in connection with health and safety;
 - (iv) comply with all Rules and Requirements relating to work health and safety;
 - (v) take all reasonable care to provide and maintain a workplace free of accidents and injuries;

- (vi) without limiting **clause 13(h)**, immediately notify Council of any accidents involving the Contractor's Personnel and, within 1 Business Day, give Council a detailed report of the circumstances and consequences of the accident; and
- (vii) cooperate in any investigations relating to workplace incidents.
- (h) If a Notifiable Incident occurs at the Workplace at which the Works are being undertaken, the Contractor must:
 - (i) immediately notify the Regulator and Council of the Notifiable Incident; and
 - (ii) take all reasonably practicable steps to secure the area where the Notifiable Incident occurred until an Inspector arrives at the area or any earlier time that an Inspector directs.
- (i) Without limiting any other obligation under the Contract, the Act, the Regulation or any other Law, if material that might contain asbestos or other hazardous substance is discovered the Contractor must:
 - (i) immediately notify Council; and
 - (ii) comply with all applicable obligations and restrictions imposed by the Act, the Regulation and any other relevant Law.
- (j) The Contractor must provide all assistance and access to its officers, Personnel and records to enable Council and any Government Agency to conduct audits on the Contractor's compliance with the Contractor's obligations under **this clause 13**, the Rules and Requirements and any Law relating to work health and safety. If any non-conformance is detected, the Contractor must immediately rectify the non-conformance at its own cost.
- (k) The Contractor must notify Council once the non-conformance has been rectified.
- (l) If urgent action is necessary to protect the Works, other property or people, and the Contractor fails to take the action, in addition to any other remedies of Council, Council may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the costs incurred by Council in performing those obligations will become a debt due and payable to Council from the Contractor.

14 Heavy Vehicles

- (a) The Contractor must ensure that:
 - (i) the Works are carried out in accordance with the Heavy Vehicle Law and Heavy Vehicle Safety Requirements; and
 - (ii) all Heavy Vehicles operated by the Contractor or the Contractor's Personnel in connection with the Works comply with the Heavy Vehicle Law and Heavy Vehicle Safety Requirements.
- (b) Without limiting **clause 14(a)**, the Contractor must at all times:
 - (i) discharge its duties under the Heavy Vehicle Law;
 - (ii) ensure its Personnel discharge their respective duties under the Heavy Vehicle Law,
 in connection with the Works.
- (c) The Contractor must:
 - (i) ensure that the Construction Program **under clause 10.1**:
 - (A) enables the Contractor to discharge its duties under the Heavy Vehicle Law; and
 - (B) allows for the use and operation of Heavy Vehicles associated with the Works to comply with the Heavy Vehicle Safety Requirements, including but not limited to mass, dimensions, loading, speed and fatigue; and
 - (ii) warrants that it has taken into account the Heavy Vehicle Safety Requirements before:
 - (A) submitting any Construction Program **under clause 10.1** (including any program submitted with its tender); and
 - (B) committing to execute the Works to Completion by the Date for Completion and any other time based obligation.
- (d) Council may at any time conduct its own audit of the Contractor's records for its Heavy Vehicles and compliance with Heavy Safety Requirements (including any safety management systems of the Contractor) and the Contractor must:
 - (i) co-operate fully with Council in connection with that audit (including by providing all necessary access, Contractor's policies or other information); and
 - (ii) immediately address, and ensure the Contractor's Personnel address, any issues identified by Council from its audit and notified to the Contractor.
- (e) Council may issue a direction at any time if it considers that the Contractor has not complied or may potentially not comply with the requirements **in this clause 14**. The Contractor shall have no claim due to Council issuing, or failing to issue, any such direction.
- (f) The Contractor must immediately notify Council of:
 - (i) any breach or potential breach by the Contractor or any of the Contractor's Personnel of the Heavy Vehicle Safety Requirements; or
 - (ii) any notice or direction received by the Contractor or any Contractor's Personnel under or in connection with the Heavy Vehicle Law (including by providing a copy of the notice or direction to Council).

15 Statutory levies

15.1 Forms

If directed by Council to do so, the Contractor must file the form prescribed by section 67 Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld) in the manner required by that section.

15.2 Payment of levies

The Contractor warrants that it has not included in the Contract Sum or in the Pricing Schedule, any amount in respect of the following statutory levies and fees in connection with the Works or the Contract:

- (a) the building and construction industry training levy;
- (b) the long service leave levy; and
- (c) the work health and safety levy,

under the Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld) and the Contractor warrants that it has used its best endeavours to ensure that its subcontractors also have not included any allowance for such levies and fees in any amount payable to them.

15.3 Evidence

The Contractor must, upon request by Council, provide Council with evidence of its compliance with the requirements of clause 15.2.

16 QBCC Requirements

16.1 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 and defined in the QBCC Act, will have the meaning given to them by the QBCC Act.

16.2 Contractor's licence

The Contractor represents and warrants that:

- (a) it and its Personnel will at all times maintain all licences required by the QBCC Act to carry out the Works; and
- (b) that the QBCC Licence identified in the Particulars, if any, belongs to the Contractor and is current.

16.3 Security and the QBCC Act

The parties agree that for the purposes of section 67J QBCC Act to the extent it applies, the Contractor accepts that any Payment Schedule or other notice issued by Council under this Contract which refers to an amount owed by the Contractor to Council shall be taken to be advice from Council of the proposed use of security (as defined in the QBCC Act) held by Council to obtain the amount owed.

16.4 Non-conforming building products

- (a) The Contractor:
 - (i) warrants that the materials supplied under this Contract 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 16.4.
- (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 16.4(a); or
 - (ii) any notice or direction received by the Contractor or any of its Personnel under or in connection with clause 16.4(a) from the Queensland Building and Construction Commission or any other authority (including by providing a copy of the notice or direction to Council).

17 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 29.4**.

18 Site matters

18.1 Access to Site

- (a) Council will use reasonable endeavours to give the Contractor sufficient access to the Site to commence performance of the Works on or before the Access Date. If access to all of the Site on which the Works is to be carried out is not given to the Contractor at that time, Council will progressively grant the Contractor further access to the Site to enable the Works to be performed.
- (b) If Council fails to give the Contractor access to the Site within the times required by **clause 18.1(a)**, then:
- (i) the Contractor may Claim an extension of time and delay costs subject to, and in accordance with, **clause 10**; and
 - (ii) **subject to clause 29.6(b)**, the Contractor will not have any other entitlement either to Claim or to terminate the Contract in connection with the delay.

18.2 Coordination with other users

The Contractor will not have exclusive access to the Site or any part of it and must coordinate the Works with activities of Council and Council's Personnel. The Contractor acknowledges that it has allowed in the Contract Sum for, and is not entitled to a Claim arising from, the impact of any inefficiency or disruption suffered by the Contractor or its Personnel due to Council or its Personnel.

18.3 Site Meetings

The Contractor must ensure that it and any Personnel requested by Council attend any project or site meetings to openly discuss all matters relevant to the Works and their progress, which may be convened by Council by reasonable notice to the Contractor.

18.4 Working hours and days

- (a) The Contractor shall be permitted to undertake the Works on Site during the hours and on the days stated in the Particulars.
- (b) Council may from time to time, by written notice to the Contractor, direct or approve alternative working hours or days for undertaking the Works on the Site.

19 Latent Conditions

19.1 Encountering Latent Conditions

If during the performance of the Works the Contractor encounters a Latent Condition, the Contractor must immediately, and before such conditions are disturbed, give Council written notice of:

- (a) the existence of the Latent Condition;
- (b) whether the Contractor considers a Variation is required to deal with the Latent Condition, in which case the Contractor must submit a statement advising:
 - (i) the Contractor's estimated price of performing such a Variation; and
 - (ii) the Contractor's estimated impact that such a Variation may have on the Date for Completion.

19.2 Dealing with the Latent Condition

Within 5 Business Days of receiving the Contractor's notice under **clause 19.1**, Council must notify the Contractor if any further details are required by Council.

19.3 Effect of Latent Condition

- (a) Within 10 Business Days of Council's receipt of:
- (i) the Contractor's notice under **clause 19.1**; and
 - (ii) any further information required by Council **under clause 19.2**,

Council must notify the Contractor whether, in Council's opinion (acting reasonably), a Latent Condition has been encountered, and if so, Council must direct a Variation to overcome or avoid the Latent Condition.

- (b) The parties acknowledge that the procedure set out in **clause 24** applies in relation to the Variation directed under this **clause 19.3**, except that in valuing that Variation, Council need not have regard to any costs or delays resulting from a Latent Condition incurred more than 5 Business Days before the date of the Contractor's notice **under clause 19.1**.

19.4 No Claim

- (a) Except as expressly set out in this **clause 19**, the Contractor has no Claim in connection with encountering and overcoming any Latent Condition or any other impediments of any kind relating to the Site in performance of the Works.
- (b) The Contractor accepts the risk of encountering and overcoming Latent Conditions at its own cost if it does not strictly comply with **clause 19.1**.

20 Risk in the Works

20.1 Protection of the Works

- (a) Subject to **clause 20.3** and to the extent Schedule 4 is applicable, the Contractor is responsible for the care of:
- (i) the Works (including any parts of the Works that are in transit to the Site or are on the Site but are unfixed) and things belonging to Council that are in the possession of the Contractor, from the date that the Contractor is given access to the Site to commence the Works until 5.00pm on the Date of Completion, at which time responsibility for care of the Works passes to Council (except to the extent provided in **clauses 20.1(a)(ii), (iii) or (iv)**); and
 - (ii) plant, equipment, tools, appliances or other property and items that the Contractor is to remove from the Site after 5.00pm on the Date of Completion;
 - (iii) any outstanding work for the Works yet to be completed by the Contractor after 5.00pm on the Date of Completion until completion of those Works;
 - (iv) those Works that are the subject of testing or rectification during any periods that the Contractor has obligations under this Contract in respect of testing and rectification of Defects.
- (b) While the Contractor is responsible for their care under **clause 20.1(a)**, the Contractor must do and supply all things necessary to protect unfixed items on the Site or in transit to the Site, including by packaging any items in transit in a manner to prevent damage to them and in accordance with Law and Industry Practice.

20.2 Contractor to make good

If, during the period that the Contractor is responsible for the care of things described in **clause 20.1**, those things suffer loss or damage that is:

- (a) not caused by an event described **in clause 20.3**, the Contractor must, at its cost, promptly rectify any damage or replace any lost item; or
- (b) caused by an event described in **clause 20.3**, Council may direct the Contractor to rectify the loss or damage, and such direction will be deemed to be a Variation, provided that if the loss or damage is caused by both events described in **clause 20.3** and other events, then Council must apportion any extension of time and any valuation under **clause 10** to proportionately reflect only the contribution of the event **described in clause 20.3**.

20.3 Excluded risks

The Contractor's liability for the loss of or damage to any things described **in clause 20.1** will be reduced to the extent such loss or damage was caused by the breach of Contract by, or negligence of, Council or its Personnel but only to the extent the same loss or damage is not the subject of any of the Contractor's warranties under this Contract.

21 Assignment, subcontracting and Change of Control

21.1 Restrictions on Contractor assigning, subcontracting or changing control

- (a) The Contractor must not subcontract any of the Works, assign the Contract or any right, benefit or interest under the Contract, or effect a Change of Control without the prior written consent of Council.
- (b) No consent by Council under this clause will relieve the Contractor of any of its obligations under the Contract.
- (c) The Contractor remains vicariously liable for the acts, defaults and omissions of its subcontractors as if they were the acts, defaults or omissions of the Contractor.
- (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 29.1(g) or 29.1(h)**.

21.2 Council's right to assign or novate

Council may assign or novate this Contract or assign a right under this Contract by notice to the Contractor. The Contractor must execute any document reasonably required by Council to affect its rights under this clause.

22 Insurance

22.1 Requirement to maintain insurances

Before commencing the Works, the Contractor must at its cost take out and maintain the insurance policies set out in Schedule 2.

22.2 Insurer requirements

The insurances required **under clause 22.1** 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.

22.3 Evidence of insurance

- (a) The Contractor must provide to Council certificates of insurance for all insurances it is required to effect **under clause 22.1** 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 22.1** with an insurer that complies **with clause 22.2**:
 - (i) Council may direct the Contractor to procure the prescribed insurance with an insurer that complies with **clause 22.2**, within the time directed by Council; and
 - (ii) if the Contractor fails to strictly comply with **clause 22.3(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 Works.

22.4 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 22.1** 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.

22.5 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 22**.

22.6 Subcontractors

Before any subcontractor commences any part of the Works, 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 22.1** (to the extent that they are applicable to the functions performed by that subcontractor).

23 Defects

23.1 Rectification of defects

The Contractor must, at its cost, and with as little inconvenience to the occupants or users of the Works as reasonably possible, rectify any Defect which appears in the Works during the performance of the Works or during the Defects Liability Period.

23.2 Council's directions as to defects

- (a) Without **limiting clause 23.1**, if Council becomes aware of any Defect during the performance of the Works or during the Defects Liability Period, it may direct the Contractor to rectify the Defect.
- (b) If any Defect is not rectified within 10 days of a direction by Council under **clause 23.2(a)**, Council may itself or by others, rectify the Defect and the expense of remedying the Defect will become a debt due and immediately payable to Council from the Contractor.
- (c) The Contractor is not relieved from any of its obligations under the Contract as a result of Council exercising its rights under **Clause 17**.

24 Variations

24.1 Council's right to vary

- (a) Council may at any time direct the Contractor in writing to amend, increase, decrease, omit (including for the purpose of carrying out the Works itself or engaging a third party to do so) or change the quality, timing character or method of performing the Works or to execute additional work (**Variation**). No Variation directed by Council will invalidate the Contract.
- (b) Council must determine the value of a Variation **under clause 24.2** and adjust the Contract Sum accordingly.
- (c) Other than as set **out in clauses 10 and 24.2**, the Contractor has no Claim arising out of, or in connection with, any Variation.

24.2 Valuation

Any adjustment to the Contract Sum will be determined as follows:

- (a) as agreed between Council and the Contractor;
- (b) **if clause 24.2(a)** does not apply, then to the extent that this Contract sets out rates or prices that are applicable to the valuation those rates or prices will be used; and
- (c) **if clause 24.2(b)** does not apply, then a reasonable price (including, where there are omissions, a reasonable amount for profit and overheads) as determined by Council's Representative, acting reasonably.

24.3 No claim for certain variations

Despite clauses 24.1, 24.2 or any other provision of the Contract, the Contractor will not be entitled to make any Claim in connection with a Variation directed:

- (a) in connection with the default or negligence of the Contractor or its Personnel;
- (b) in connection with the need to overcome a Defect;
- (c) for the Contractor's convenience; or
- (d) to enable the Contractor to comply with the Contract.

25 Suspension

25.1 Suspension

Council may at any time and for any reason direct the Contractor in writing to suspend the performance of all or any part of the Works and the Contractor must immediately comply. The Contractor's only Claim arising out of a suspension under this clause will be for an extension of time under clause 10.5, except that the Contractor will have no entitlement to Claim at all if the suspension was caused or contributed to by the Contractor or its Personnel, or for any event or circumstance the risk of which is borne by the Contractor under this Contract.

25.2 Resuming the Works

Council may at any time direct the Contractor to resume the performance of the Works and the Contractor must promptly comply with such a direction at its cost.

26 Payment

26.1 Contractor to submit Payment Claims

- (a) The Contractor must submit to Council its claims for payment for the Works carried out, and any other money owing under the Contract (**Payment Claim**), which must:
 - (i) be in the form required by Council;
 - (ii) contain details which, in the reasonable opinion of Council, are sufficient to identify the work carried out and evaluate the amounts claimed;
 - (iii) request payment of the amount claimed for payment; and
 - (iv) be accompanied by a tax invoice.
- (b) A Payment Claim submitted earlier than the Payment Claim Date will be deemed to have been submitted on the Payment Claim Date, but if the Payment Claim Date is not a Business Day, then the Payment Claim will be deemed to have been submitted on the next Business Day.

26.2 Additional matters to include in certain claims

Without limiting clause 26.1, the Contractor's Payment Claims in respect of the Completion Claim Date and the Final Claim Date must include details of any Claim that the Contractor may have in relation to the Contract or its subject matter (Release Date Matters), set out in accordance with clause 38.1(b), and including any other information that Council may reasonably require.

26.3 Releases

Despite any other provision of this Contract, as at each of the Completion Claim Date and the Final Claim Date, the Contractor agrees that, except in respect of:

- (a) any Claims that have been submitted strictly in accordance with the requirements of either this clause 26 or clause 38.1(b), for which either Council has agreed to pay but not yet paid, or for which:
 - (i) the Contractor has been notified in writing of the rejection of either or both the Contractor's entitlement to make that Claim (in whole or in part), or of the Contractor's calculation of the quantum of that Claim; and
 - (ii) the Contractor has, within 14 days of the date of receiving the notice of rejection, issued to Council a notice of Dispute in accordance with clause 30.1 that identifies the relevant part or parts of the rejected Claim that it maintains;
 - (b) any amounts claimed in any previous Payment Claim for which Council has not notified of a Dispute, but has not yet paid; and
 - (c) any amounts that are the subject of a Dispute that remains unresolved,
- the Contractor:
- (d) has been paid all amounts due and payable by Council, or to which the Contractor is entitled:
 - (i) under this Contract; or
 - (ii) arising out of, or in any way in relation to, either this Contract or its subject matter,
 as at each of the Completion Claim Date and the Final Claim Date, respectively; and
 - (e) will not be entitled to any Claim in respect of any Release Date Matters, arising or occurring before the Completion Claim Date or Final Claim Date, as applicable (whether known or unknown, actual or contingent).

26.4 Statutory Declaration

The Contractor must complete and issue to Council a statutory declaration in accordance with Annexure C at least one day before submitting each Payment Claim.

26.5 Payment Schedule

Within 10 Business Days of receipt of a valid 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 clauses 3 and 26.8) is payable by Council; and
- (c) if the amount is less than that in the Payment Claim, the reasons why, (Payment Schedule).

26.6 Provisional assessment of liquidated damages

When issuing a Payment Schedule after the Date for Completion, Council may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing to the date of the Payment Schedule, despite Completion not having occurred.

26.7 Payment

Subject to clauses 26.8 and 26.11 payments will be paid within the time frame set out in the Particulars. Any payment by Council is on account only and is not evidence of any Works or other obligations having been carried out in accordance with the requirements of the Contract.

26.8 Deductions by Council

Council may set off against and deduct from any monies due to the Contractor, any debt, damages, loss or expense due to or claimed by Council from the Contractor arising from or in connection with the Contract, the Works or any other contract between the parties. If no monies are due to the Contractor, or if the monies due to the Contractor are insufficient to discharge the debt, damages, loss or expense, Council may have recourse to the Security.

26.9 Unfixed plant and materials

- (a) The Contractor cannot claim payment for materials, plant or equipment which have not either been delivered to the Site or incorporated into the Works, unless Council otherwise agrees in writing.
- (b) Council's agreement in writing may be subject to conditions, including a requirement that the Contractor provide to Council before any such payment is made, additional Security to the value of the relevant payment. The Contractor must comply with any such conditions.

26.10 Free from encumbrances

- (a) Ownership of any items that are to form part of the Works that are delivered to the Site by or for the Contractor will become the unencumbered property of Council upon the earlier of incorporation into the Works or payment for the item.
- (b) The Contractor represents and warrants that it is entitled to pass unencumbered title in items in accordance with clause 26.10(a).
- (c) This clause applies despite anything to the contrary in any tender, quotation, delivery docket, consignment note, invoice or other document of the Contractor or a subcontractor.

26.11 Disputed amounts and money owing to subcontractors

- (a) Council is not required to pay any amounts which it disputes until after the dispute has been resolved in accordance with clause 30 and determined that money is payable to the Contractor but will pay all amounts not subject to the dispute.
- (b) Council may at any time and from time to time contact any subcontractor of the Contractor to verify any information provided by the Contractor under clause 26.4 in relation to them, and to obtain information from them in relation to any money claimed by them from the Contractor, if Council has reason to believe that the subcontractor may not have been paid all that is owing to them by the Contractor.
- (c) Without being under any obligation to do so, Council may, at any time in its sole and unfettered discretion, pay any of the Contractor's subcontractors any amount that they have claimed from the Contractor and which remains unpaid, and that same amount will be a debt due and immediately payable from the Contractor to Council.

27 Security of Payment Act

27.1 Provisions Subject to the Security of Payment Act

- (a) The rights and obligations of the parties under the Contract are subject to the provisions of the Security of Payment Act to the extent that they apply and have not been contracted out of.
- (b) Where there is any inconsistency between the Contract and the Security of Payment Act, the Security of Payment Act shall prevail to the extent necessary to avoid the inconsistency.

- (c) Terms used in this clause and defined in the Security of Payment Act, shall have the meaning given to them by the Security of Payment Act.

27.2 Definition of Reference Date for the Purposes of the Security of Payment Act

- (a) The Contractor shall only be entitled to submit a Payment Claim from each applicable date stated in or worked out under the Contract.
- (b) Despite any other provision of the Contract, if the Contract provides that until the satisfaction of any condition or occurrence of any event that is a precondition to the date on which a claim for a payment may be made (**Claim Preconditions**), then the only date on which a claim for that payment may be made by the Contractor shall be the later of:
- (i) the date of satisfaction of the last Claim Precondition to be satisfied; and
 - (ii) the date after which that claim for payment can otherwise be made under the Contract.
- (c) The Claim Preconditions, without limitation, include:
- (i) the Contractor has fully complied with its obligations to provide Security (if any) **under clause 3** (and where Security is retention money, provided for the retention in any Payment Claim in accordance with the Contract);
 - (ii) the Contractor has provided satisfactory evidence of compliance with its insurance obligations in accordance **with clause 22**;
 - (iii) if the Particulars indicate that a payment is conditional on completion of a Milestone, then the Claim Precondition in respect of that Milestone is that the Contractor has achieved completion of that Milestone; and
- (iv) **the Contractor has submitted all material and information in support of its Payment Claim required by clause 26 (including without limitation the statutory declaration in the form of Annexure C as required by clause 26.4).**

27.3 Calculations or Valuations

Despite any other provision of the Contract, and **notwithstanding clause 26**, in calculating any payment to which the Contractor is entitled under the Contract, and in respect of which the Contractor is entitled to claim in any Payment Claim:

- (a) the following amounts must not be included:
- (i) any amount which the Contract provides cannot be claimed or is not payable because of the failure by the Contractor to take any action (including to give notice to Council);
 - (ii) any amount which represents unliquidated damages claimed against Council (whether for breach of contract, in tort or otherwise);
 - (iii) any amount which the Contract provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied; or
 - (iv) any amount in respect of which the obligation of Council to make payment has been suspended under the Contract;
- (b) the following amounts must be deducted:
- (i) amounts which have become due from the Contractor to Council under the Contract;
 - (ii) amounts which have been claimed by Council (acting bona fide) under or in connection with the Contract at any time;
 - (iii) amounts which Council is entitled under the Contract to set off against the progress payment;
 - (iv) amounts which are estimated to be amounts likely to become due from the Contractor to Council under or in connection with the Contract as a result of any act or omission of the Contractor (including breach of the Contract); and
 - (v) amounts which Council is entitled under the Contract to withhold, deduct or retain from the progress payment;
- (c) in determining amounts to be excluded or deducted under **subclauses 27.3(a) or 27.3(b)**, regard must be had to matters or circumstances occurring at any time before the date that the determination is being made; and
- (d) the value of any Works relevant to the payment must:
- (i) be determined having regard to the Contract Sum (with additions or deductions provided for by the Contract);
 - (ii) include a deduction equal to the greater of:
 - (A) the diminution in value of Works resulting from; and
 - (B) the estimated cost of rectifying in accordance with the Contract, any omitted or defective Works;
 - (iii) exclude the value of any unfixed plant or materials (unless the Contract expressly provides for payment for the unfixed plant or materials and the Contractor has fully satisfied those requirements which the Contract provides are to be fulfilled before Council is required to pay for those items); and
 - (iv) not include any amount in respect of which the Contractor has failed to provide supporting material or information as required by the Contract.

27.4 Suspension by Contractor

If the Contractor, at any time suspends the whole or any part of the Works pursuant to the Security of Payment Act then, despite any other provision of the Contract:

- (a) the Date for Completion shall not be affected but the suspension shall be an Excusable delay for which the Contractor may claim an extension of time in accordance with the Contract; and
- (b) except to the extent as expressly provided 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.

27.5 Suspension by Subcontractors

If any subcontractor at any time suspends the provision by it of work, services, materials or other things (which form part of the Works) pursuant to the Security of Payment Act, despite any other provision of the Contract:

- (a) the Contractor shall not be relieved of any of its obligations under the Contract and the suspension by the subcontractor shall not entitle the Contractor to any Claim; and
- (b) the Contractor shall immediately provide to Council full details of the circumstances giving rise to the subcontractor's right or alleged right to suspend or take any other action.

27.6 Payment schedules

Unless and until Council notifies the Contractor in writing otherwise, Council authorises its lawyers that it has engaged in connection with the Contract to issue payment schedules under Security of Payment Act on its behalf, without affecting Council's right to issue a payment schedule under Security of Payment Act.

28 Subcontractors' Charges Legislation

If any person at any time lodges, or purports to lodge, under the Subcontractors' Charges Legislation, a charge over any moneys (including Security) 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 charge or paying any moneys into court) (**Council's Charges Liabilities**); and
- (b) Council's 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.

29 Default and Termination

29.1 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 that Council considers, in its sole and unfettered discretion:
 - (i) has placed a person at an unacceptable risk of harm;
 - (ii) constitutes an unacceptable non-compliance with its safety or environmental management systems; or
 - (iii) has created an unacceptable risk of Environmental Harm;
- (c) 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;
- (d) commits a fraudulent or other illegal act;
- (e) 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
- (f) suffers an Insolvency Event,

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

- (g) 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
- (h) take out of the hands of the Contractor the whole or part of the Works remaining to be completed, by notice in writing to the Contractor.

29.2 Taking Works out of Contractor's hands

- (a) When the Works which is taken out of the hands of the Contractor **under clause 29.1(h)** is completed, Council's Representative must ascertain the cost incurred by Council in completing the Works 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 Works 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 Works had been completed by the Contractor, the difference will be a debt due to the Contractor from Council.

29.3 Council not to pay costs

If Council exercises its rights **under clause 29.1**, Council will not be liable to make any further payment to the Contractor for the Works.

29.4 Council's right to terminate for convenience

- (a) Council may at any time in its sole and unfettered discretion terminate the Contract for its convenience and without reason by giving 7 days prior written notice to the Contractor.
- (b) If Council terminates the Contract **under clause 29.4(a)**:
 - (i) if the Contractor:
 - (A) is subject to an Insolvency Event;
 - (B) has not provided a statutory declaration in **accordance with clause 29.10**; or
 - (C) has provided a statutory declaration which the Contractor is required to provide in accordance with the Contract and such statements are determined by Council (acting reasonably) to be untrue, false or misleading (as applicable,

Council shall not be required to make further payment to the Contractor; or

- (ii) in all other circumstances, but **subject to clause 29.8**, the Contractor's sole entitlement to Claim in relation to that termination will be for payment of:
 - (A) all the Works carried out in accordance with the Contract up to, but excluding, the date that the termination becomes effective;
 - (B) any costs of third party materials that are reasonably incurred by the Contractor in the expectation of completing the Works, and which are not included in any other Payment Claim, provided that unencumbered title to those materials passes to Council upon payment and they are delivered to Council; and
 - (C) reasonable costs of demobilising individuals and equipment that are incurred as a direct and unavoidable result of the termination,
 provided that:
 - (D) a claim for payment **under this clause 29.4** is subject, without limitation, to **clauses 26, 27 and 28**; and
 - (E) the Contractor may not claim payment for any amounts that have been the subject of a previous Payment Claim.

29.5 Termination not valid

- (a) If Council terminates, or purports to terminate, **under this clause 29** 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 convenience **under clause 29.4** as at the same date and time as the original notice of termination.
- (b) The Contractor waives, and indemnifies Council from and against, any Claim the Contractor has or would have had, but for this **clause 29.5**, arising out of or in connection with any termination, or purported termination, by Council under the Contract or otherwise at law being subsequently held to be invalid, void or otherwise unenforceable.

29.6 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 Payment Claim and states in the notice that the Contractor will suspend the Works if Council does not make payment in full of the outstanding amount within 20 Business Days,
 and Council fails to pay the outstanding amount within 20 Business Days of receipt of the notice in **clause 29.6(a)(ii)** then the Contractor may:
 - (iii) immediately suspend the performance of the Works by notice in writing to Council; and
 - (iv) if Council does not pay the outstanding amount within 10 Business Days of that suspension commencing, terminate the Contract by prior written notice to Council.
- (b) If Council delays in giving the Contractor sufficient access to the Site to perform the Works by any period in aggregate that exceeds the period set out in the Particulars, other than delays that were due to the default of the Contractor or its Personnel or suspensions pursuant to the Contract, then the Contractor may terminate the Contract if Council fails to rectify that inadequate access within 20 Business Days' notice to do so.
- (c) If the Contractor terminates the Contract pursuant to any right whatsoever, then the Contractor's sole entitlement to Claim in relation to that termination will be as set out in **clause 29.4(b)**.

29.7 Contractor's obligations on termination

Upon termination of the Contract, the Contractor must immediately on the date that the termination takes effect, cease all further work and remove from the Site all constructional plant and other things used in the execution of the Works belonging to the Contractor or the Contractor's Personnel, and any rubbish or debris and leave the whole of the Site in a clean and safe condition. The Contractor is not entitled to any Claim for carrying out the obligations **under this clause 29.7**.

29.8 Termination reference date

- (a) 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 Payment Claim in accordance with **clause 26** (whether or not the Contractor has satisfied the Claim Preconditions which would otherwise apply in respect of that Payment Claim) 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**').
- (b) For the avoidance of doubt, nothing prevents Council setting off or withholding any amount arising out of, or in connection with, a failure of the Contractor to satisfy any Claim Precondition, where such failure is also a breach of this Contract or results in any other Claim of Council against the Contractor.
- (c) The Contractor may only include in the Payment Claim contemplated by **this clause 29.8** (such claim to be assessed in accordance with the Contract, including being subject to **clause 38**), any amount which is due and payable to the Contractor under the Contract in respect of the Works properly undertaken prior to or on the Termination Reference Date.
- (d) Council must not assess any other amounts and Council shall have no obligation to pay another amounts, including additional amounts **contemplated under clause 29**, until such time as the Payment Claim contemplated by **this clause 29.8** has been made and assessed in a payment schedule by Council (or the time for making such a Payment Claim has elapsed under the Security of Payment Act).
- (e) 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.
- (f) At any time following a termination, including after the submission and assessment of any Payment Claim contemplated **by this clause 29.8**, Council 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.
- (g) Within 15 Business Days of receipt of such a request, Council 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.
- (h) Without limitation, the **provisions of clause 27.3** apply to the Payment Claim contemplated **by this clause 29.8** and in issuing the payment schedule contemplated under this **clause 29.8** Council must also have regard to the principles **under clause 27.3**.

29.9 Remedy of Contractor's breach

In addition to any other rights of Council, Council may perform or have others perform at the Contractor's cost any obligation of the Contractor which the Contractor has failed to perform after reasonable notice from Council requiring such performance.

29.10 Statutory declaration and notification

The Contractor agrees that:

- (a) at any time, Council may request that the Contractor provides a completed and signed statutory declaration (in a form and containing such detail as reasonably required by Council) 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 an 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);
- (b) the Contractor must provide such completed and signed statutory declaration within 2 Business Days of the request from Council; 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 of the Corporations Act 2001 (Cth).

30 Disputes

30.1 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 30**, 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 30.1(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.

30.2 Termination of the dispute resolution process

If the Dispute is not resolved by the parties in accordance with **clause 30.1** then either party may by notice in writing commence litigation.

30.3 Continued performance required

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

30.4 Urgent interlocutory relief

Despite clause 38.1, a party may commence court proceedings relating to any Dispute at any time if that party seeks urgent interlocutory or interim relief.

30.5 Survival

The obligations in this clause survive termination of the Contract.

31 Indemnity

31.1 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.

31.2 Effect of indemnities

Council need not incur any cost before enforcing an indemnity under clause 31.1.

31.3 Survival

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

32 GST and Tax

32.1 Definitions

Any terms capitalised in clause 32 and not already defined in clause 1.1 have the same meaning given to those terms in the GST Act.

32.2 GST exclusive

Except under clause 32, the consideration for a Supply made under or in connection with the Contract does not include GST.

32.3 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.

32.4 Later GST change

For clarity, the GST payable under clause 32.3 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.

32.5 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).

32.6 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.

32.7 Progressive or Periodic Supplies

Where a Supply made under or in connection with the Contract is a Progressive or Periodic Supply, clause 32.3 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

32.8 Other Taxes, Duties and Charges

Except as provided in this **clause 32** 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.

33 Confidential Information

33.1 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 Works;
 - (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 33.1(a)(i) or 33.1(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)).

33.2 Survival

The obligations in this **clause 33** survive for a period of six years from the earlier of the expiration or termination of this Contract.

33.3 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 33** and take steps to prevent or stop the suspect or actual breach.

34 Intellectual Property Rights

34.1 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 Works, including any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material provided to Council in connection with the Contract for any purpose associated with the Works.
- (b) The Contractor warrants to Council that the carrying out of the Works, and any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material 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 Works 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 34.1**.

34.2 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.

34.3 Survival of obligations

The obligations of the Contractor, and the Intellectual Property Rights granted, under this **clause 34** continue after the expiry or termination of this Contract for any reason.

35 Records, inspection and testing

35.1 Records

The Contractor must keep and maintain accurate accounts, records (including information stored by or accessible by computer or other electronic means or technology) and timesheets of the Works.

35.2 Inspection and review

At all reasonable times, Council (by itself or by its agents) will have the right to inspect and review performance of the Works and the records and information created by the Contractor in the performance of the Works and on request by Council, Council may itself (or may require the Contractor to) take or arrange for copies of any such records and information.

35.3 Testing

- (a) At the times stated in the Contract the Contractor must perform the tests required by the Contract.
- (b) At all other reasonable times, Council may (by itself or by its agents or by request for the Contractor to do so) test the Works (and the Contractor's performance of the Contract), including Works performed at:
 - (i) the Site;
 - (ii) the Contractor's premises; and
 - (iii) the premises of any of the Contractor's Personnel.
- (c) Unless expressly stated otherwise by written notice to the Contractor, the Contractor must:
 - (i) ensure a representative of Council is present at all tests; and
 - (ii) take or arrange for copies of the records and results of all tests to be sent to Council within three days of the test having been completed.
- (d) The Contractor shall pay the costs of all tests in connection with the Contract, except to the extent:
 - (i) the test was directed by Council under **clause 35.3(b)**;
 - (ii) the test was not requested by Council in connection with any Defect; and
 - (iii) the records and results of the test showed a compliance with the Contract,

in which case Council shall reimburse the Contractor for the reasonable additional costs incurred in performing the test.

35.4 Survival

The obligations in this **clause 35** will continue for a period of six years from expiry or termination of this Contract, whichever occurs first.

36 Privacy Laws

36.1 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 Works (whether as part of its tender or otherwise), 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 36.1(b)(ii)**; and
 - (ii) disclosing that the entities referred to in **clause 36.1(b)(i)** shall use the Personal Information for the purposes of reviewing and assessing matters relevant to the Works from time to time.

36.2 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.

36.3 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.

37 Information Privacy Act

- (a) If the Contractor collects or has access to Personal Information in order to carry out the Works 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 Works 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 Works 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 37**.
- (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.

38 Notification of claims

38.1 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 38.1(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 38.1(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.

38.2 Non-compliant Claims barred

Failure by the Contractor to comply with this **clause 38** is an absolute bar to making the Claim and constitutes an irrevocable release of that Claim by the Contractor.

38.3 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.

39 Council's statutory rights and duties

39.1 No fetter

Despite anything in this Contract to the contrary:

- (a) Council is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, 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
- (b) nothing in this Contract has the effect of constraining Council or placing any fetter on Council's discretion to exercise or not to exercise any of its executive or statutory rights or duties.

39.2 Restriction on Claims

- (a) Subject to **clause 39.2(b)**, the Contractor will not be entitled to make any Claim against Council relating to any exercise or failure of Council to exercise its executive or statutory rights or duties.
- (b) **Clauses 39.1 and 39.2(a)** 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.

40 Parties' relationship

40.1 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.

40.2 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 Contract Sum, 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.

41 Additional Obligation Documents

- (a) The Contractor:
 - (i) acknowledges that it has had the opportunity to satisfy itself as to;
 - (ii) shall satisfy the obligations, conditions, restrictions, prohibitions or requirements of (so far as they are relevant to the carrying out of the Works in accordance with the Contract);
 - (iii) shall not, by any act or omission, place Council in breach of; and
 - (iv) shall comply with the reasonable directions of Council and provide all assistance reasonably required by Council (including access to information and personnel and executing documents), as to enable Council to comply with its obligations, conditions, restrictions, prohibitions or requirements under,
 the agreements, licences, approvals or other documents referred to in the Particulars (**Additional Obligation Documents**).
- (b) Without limiting this **clause 41**:
 - (i) the Contractor acknowledges that a number of obligations in the Additional Obligation Documents will result in restrictions or limitations being placed on the ability of the Contractor to carry out the Works in accordance with the Contract; and
 - (ii) where the Contractor is required to obtain Council's consent or approval (or similar) under the Contract, such consent or approval may be subject to:
 - (A) Council obtaining the consent or approval from a party to the Additional Obligations Documents; and
 - (B) conditions applying to such consents or approvals referred to in **clause 41(b)(ii)(A)**.
- (c) The Contractor shall:
 - (i) not be entitled to any extension of time, adjustment to the Contract Sum or any other Claim arising from the matters or requirements disclosed in or which could have been anticipated from information in the Additional Obligation Documents; and
 - (ii) to the maximum extent permitted by law, indemnify and keep indemnified Council and its employees and agents against all Claims, demands, actions, costs (including legal costs) charges, expenses, damages, loss or other liability (including without limitation in tort or under any law), arising from or contributed to by the Contractor's breach of **clause 41** or any acts or omissions of the Contractor or the Contractor's Personnel which cause or contribute to Council breaching any of the Additional Obligation Documents.

42 General

42.1 Relationship

The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.

42.2 Amendments

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

42.3 Counterparts

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

42.4 No merger

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

42.5 Entire agreement

The Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.

42.6 Further assurances

Each party must do all things reasonably necessary to give effect to the Contract and the transactions contemplated by it.

42.7 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.

42.8 Governing law and jurisdiction

- (a) The law of Queensland governs this Contract.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the courts of the Queensland and courts competent to hear appeals from those courts.

42.9 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.

42.10 Notices

- (a) A notice, consent or communication under the Contract is only effective if it is in writing, in English, signed by or on behalf of the person giving it and addressed to the person to whom it is to be given and given as follows:
 - (i) delivered by hand to that person's address;
 - (ii) sent by prepaid express post (and by prepaid express airmail if the person is overseas) to that person's address; or
 - (iii) sent by email to that person's email address.
- (b) A notice, consent or communication delivered under **clause 42.10(a)** is given and received:
 - (i) if it is hand delivered by 5.00pm (local time in the place of receipt) on a Business Day, on that day, or after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day – on the next Business Day;
 - (ii) if it is sent by express post:
 - (A) within Australia – 2 Business Days after posting; or
 - (B) to or from a place outside Australia – 5 Business Days after posting; and
 - (iii) if it is sent by email, when the email is sent to that person's email address. For the purposes of this clause, an email is not sent to a person's email address if the sender:
 - (A) receives any communication to the effect that the email is undeliverable or undelivered to the recipient's email address; or
 - (B) transmits or attempts to transmit any email that is a file size greater than that set out in the Particulars.
- (c) A person's address and email are those set out in the Particulars, or as one party may notify the other of a change of such address in writing.

42.11 Indemnities

- (a) Each indemnity in the Contract is a separate and independent obligation that survives the expiry, or termination for any reason, of the Contract.
- (b) Council need not incur any expense before enforcing an indemnity under the Contract.
- (c) Any third party whom the Contractor has promised to indemnify under the Contract may accept the benefit of that indemnity for the purposes of section 55 of the Property Law Act 1974 (Qld) by notice in writing to the registered office of the Contractor within 24 months from the earlier of the Date of Completion and termination of the Contract.
- (d) Unless expressly stated otherwise in the Contract, the rights and remedies under any indemnity or otherwise provided under the Contract are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.
- (e) Any amount which the Contractor is expressly liable to pay or reimburse to Council under the Contract will be a debt due and payable to Council in the time expressly provided or otherwise on demand.

42.12 **Survival**

- (a) Any clause of this Contract which by implication from its purpose, or by express statement, is intended to survive the termination or expiry of this Contract, will survive the rescission, termination (for any reason) or expiry of this Contract.
- (b) No provision of this Contract which is expressed to survive the expiry or termination of this Contract will, as a matter of interpretation, prevent any other clause of this Contract from surviving the expiry, rescission or termination of this Contract.

SCHEDULE 1

Special Conditions

1 Security acknowledgement

Council and the Contractor acknowledge that under the QBCC Act, unless the parties expressly agree otherwise, to the extent that it applies, section 67K(2) of the QBCC Act makes this Contract subject to a condition that at any time before practical completion (as defined in the QBCC Act) the total of:

- (a) all retention moneys withheld by Council; and
- (b) all securities held by Council,

under this Contract (other than those referred to in section 67K(3) QBCC Act) is not to exceed 5% of the Contract Sum for this Contract (which under the QBCC Act includes adjustments for Variations).

By initialling this Contract in the space provided below, Council and the Contractor expressly agree that this Contract is not subject to the condition imposed by section 67K(2) as explained above.

Council's initials

Contractor's initials

2 **[Insert other special conditions / agreed departures (if applicable)]**

SCHEDULE 2

Insurances

Contract Works Insurance	
Limit of cover	Minimum coverage required – value of works plus 15%
Period of insurance	From Access Date to the Date of Completion. Additional periods apply to
Note Council's interests?	Yes
General third party liability insurance	
Limit of cover	[Insert minimum coverage required per occurrence and in aggregate – common amount would be \$20,000,000 per occurrence and in the aggregate]
Period of insurance	From Access Date to end of Defect Liability Period
Note Council's interests?	Yes
Workers' compensation and employer's liability insurance	
Limit of cover	Amount required by law
Period of insurance	From Access Date to end of Defect Liability Period
Comprehensive motor vehicle insurance	
Required?	Yes/no
Limit of cover	As required by law and replacement value of motor vehicles
Period of insurance	From Access Date to end of Defect Liability Period
Note Council's interests?	Yes
Plant and equipment insurance	
Required?	Yes/no
Limit of cover	Replacement value
Period of insurance	From Access Date to end of Defect Liability Period
Note Council's interests?	Yes
Asbestos liability insurance	
Required?	Yes/no
Limit of cover	[Insert minimum coverage required]
Period of insurance	From Access Date to the Date of Completion.
Note Council's interests?	Yes
[Insert any others that are required, or delete this row and those below]	
Limit of cover	[Insert minimum coverage required]
Period of insurance	From Access Date to end of Defect Liability Period [Insert any longer period, if necessary]
Additional requirements	[Insert any additional requirements e.g. scope of coverage, maximum deductibles, situation of risk]
Note Council's interests?	Yes/no

SCHEDULE 3

Minor Design Work

1 Minor Design Work

1.1 Application

This 0 applies if the Particulars states that it applies.

1.2 Definitions

The terms defined in the Contract have the meanings given to those terms, and:

Design Documents mean the drawings, specifications and other information, samples, models, patterns and the like required by the Contract and created (and including, where the context so requires, those to be created by the Contractor) for the construction of the Works.

Minor Design Work means the design, specification and documentation of the Works as specified in the Particulars, including the design, specification and documentation of any Variation at any time, to enable the completion of the Works in accordance with the Scope and Specification.

2 Minor Design Work obligations

- (a) The Contractor agrees the description of the Works set out in the Contract is adequate for the Contractor to complete the Minor Design Work in accordance with the Contract.
- (b) The Contractor must complete the Minor Design Work so that:
 - (i) the construction of the Works may be commenced or progressed within the time required by the Contract and so as to enable Completion to be reached by the Date for Completion; and
 - (ii) the Minor Design Work is fit for its intended purpose.
- (c) The Contractor warrants that the Works, when completed, will:
 - (i) comply with the Contract;
 - (ii) comply with all Laws; and
 - (iii) be fit for their intended purpose, which includes the purposes (if any) set out in the Contract.

3 Prior Design Works

If Council has had the design, specification or documentation of the Works as specified in the Particulars partially completed by another contractor (**Prior Design Work**), the Contractor agrees:

- (a) the Contractor will be fully responsible for the whole of the Minor Design Work despite any errors, inconsistencies, omissions or inadequacy in the Prior Design Work;
- (b) the Minor Design Work includes the Contractor carrying out the development, correction and completion of the Prior Design Work (as the case may require); and
- (c) the Prior Design Work will not affect the obligations or liabilities of the Contractor under the Contract.

4 Council's prior consent to use Design Documents

The Contractor must not commence any part of the Works for which the Contractor is required to carry out the Minor Design Work until:

- (a) the design, specification and documentation of that part of the Works has been completed in accordance with the Contract; and
- (b) the Design Documents have been submitted to Council and Council has consented to their use for the purposes of the Works.

5 Purpose and effect of Council's consent

- (a) The Contractor agrees that the requirement for it to obtain Council's consent to the use of a design, specification or other document for which the Contractor is required to carry out the Minor Design Work is:
 - (i) for the purpose of allowing Council an opportunity to consider the Works as designed by the Contractor and whether it requires any variation to that part of the Works; and

- (ii) not to be taken to impose on Council any obligation in respect of the completion of the design of that part of the Works.
- (b) The Contractor agrees that neither Council's consent to the use of any documents or comment or failure to comment upon, review or non-review of or rejection or non-rejection of the Design Documents or any other documents will relieve the Contractor from any of its obligations in respect of the Minor Design Work.

6 Professional indemnity insurance

- (a) The Contractor must effect professional indemnity insurance covering the Contractor and its employees and ensure that each consultant engaged in connection with the Minor Design Work effects a policy of professional indemnity insurance, which must be:
 - (i) effected with an insurer, with a limit of liability of not less than \$10 million and on terms and conditions a prudent and competent contractor would obtain, taking into account the methods of the Works and the Contractor's obligations and liabilities under or arising out of the Contract; and
 - (ii) effected before any of the Minor Design Work is commenced and maintained at least for the period of seven years commencing from the end of the last Defects Liability Period.
- (b) The liabilities and obligations of the parties will not be limited by the effecting of any professional indemnity insurance under this [clause 6 of Schedule 3](#).

SCHEDULE 4

Demolition Work

1 Demolition Works

1.1 Application

This 0 applies if the Particulars states that it applies.

1.2 Definitions

The terms defined in the Contract have the meanings given to those terms, and:

Asbestos	has the meaning given to it in the <i>Work Health and Safety Act 2011</i> (Qld) and includes asbestos mineral fibres and asbestos containing or affected materials.
Contamination	means the presence in the natural or built environment of any substance, including Asbestos, which poses a risk of harm to human health or Environmental Harm, either: <ul style="list-style-type: none"> (a) in its current location or if released or moved from its current location; or (b) in its current state or if altered from its current state.
Debris	means the materials, rubbish and debris that are produced at the Site as a result of the Demolition Works, including any Asbestos or other Contamination, but excludes the Salvaged Materials.
Demolition Works	means: <ul style="list-style-type: none"> (a) the demolition works that the Contractor is to carry out at the Site pursuant to the Contract, including the disposal of all Debris, and the recovery of all Salvaged Materials and their delivery to Council; (b) Variations to, and the supply of temporary work and materials for, the services described in paragraph (a); and (c) rectification work relating to the services, work or materials described in paragraphs (a) or (b).
Environmental Harm	has the meaning given in the <i>Environmental Protection Act 1994</i> (Qld).
Hazardous Material	means unsafe, dangerous or hazardous waste, material or other thing which may cause illness, injury or death to any person or loss or damage to property or the environment if handled or encountered in the Works, including any unsafe fibrous mineral, asbestiform, asbestos, medical waste, syringes, unhygienic waste, oils and acids.
Salvaged Materials	means the items described in the Scope and Specification, if any, that are to be recovered from the Site as part of the Demolition Works and delivered to Council.

2 Dilapidation and neighbouring properties

2.1 Contractor to carry out survey

Before commencing any other Works at the Site, the Contractor must, as part of the Demolition Works obtain Council's approval to the scope of, and subsequently carry out to the satisfaction of Council and thereafter provide to Council, a comprehensive dilapidation investigation survey and report in respect of the Site and all improvements on or in the vicinity of the Site.

2.2 Compliance with report

The Contractor must:

- (a) in carrying out the Works, take into account and comply with the recommendations arising from dilapidation investigations, surveys and reports referred to in [Clause 2.1 of Schedule 4](#); and
- (b) at the times reasonably required by Council, undertake to Council's satisfaction and provide to it any further dilapidation investigation, survey and report at the Contractor's own cost and expense for the purposes of monitoring the impact of the Works on the Site or on any improvements on or in the vicinity of the Site.

2.3 Assessment before practical completion

Before Completion may be determined to have been reached, the Contractor must:

- (a) undertake a further dilapidation investigation survey and report in respect of the Site and all improvements on or in the vicinity of the Site as Council may reasonably require in the circumstances; and
- (b) ensure that, to the extent required by Council, Council's Representative is present at all necessary inspections, tests or investigations and is provided with copies of all information collected or compiled in connection with the dilapidation investigation survey or report.

3 Risk in the Works

3.1 Interpretation

Where there is any inconsistency between this clause 3 of Schedule 4 and clause 20 of the Contract, this clause 3 of Schedule 4 shall prevail to the extent necessary to avoid the inconsistency.

3.2 Protection of Site, Works and Salvaged Materials

- (a) Subject to clause 3.4 of Schedule 4, the Contractor is responsible for the care of:
 - (i) the Site and all Works from and including the date it is granted access to the Site to 5.00pm on the Date of Completion, at which time responsibility for the care of the Site and all Works will pass to Council;
 - (ii) outstanding Works and items to be removed from the Site by the Contractor after 4.00pm on the Date of Completion until completion of outstanding Work or compliance with clauses 23 and 35.3 of the Contract;
 - (iii) plant, equipment, tools, appliances or other property and items that the Contractor is to remove from the Site after 5.00pm on the Date of Completion;
 - (iv) all Salvaged Materials, and assumes the obligations of a bailee in respect of the Salvaged Materials, from and including the date it is granted access to the Site to the earlier of the date that they have been delivered to Council in accordance with clause 3.4 of schedule 4 and 5.00pm on the Date of Completion, at which time responsibility for the care of Salvaged Materials will pass to Council;
 - (v) any outstanding Works yet to be completed by the Contractor after 5.00pm on the Date of Completion until completion of those Works.
- (b) While the Contractor is responsible for care under clause 3.2(a) of Schedule 4, the Contractor must do and supply all things necessary to protect unfixed items on the Site or in transit to the Site, including by packaging any items in transit in a manner to prevent damage to them and in accordance with Law and Industry Practice.

3.3 Reinstatement

If, during the period that they are in the Contractor's care under clause 3.2 of Schedule 4, any of the Works (except to the extent the Works comprises any Debris, which is subject to clause 4 of Schedule 4) or Salvaged Materials, suffer loss or damage that is:

- (a) not caused or contributed to by an event described in clause 3.4 of Schedule 4, then the Contractor must, at its cost, promptly rectify such loss or damage within the time directed by Council; or
- (b) caused or contributed to by an event described in clause 3.4 of Schedule 4, Council may direct the Contractor to rectify the loss or damage, and such direction will be deemed to be a Variation, provided that if the loss or damage is caused by both events described in clause 3.4 of Schedule 4 and other events, then Council must apportion any extension of time and any valuation under clause 10 of the Contract to proportionately reflect only the contribution of the event described in clause 3.4 of Schedule 4.

3.4 Excluded risks

Despite clause 3.2 of Schedule 4, Council will be liable for:

- (a) the loss of or damage to any items caused by the negligence of Council or Council's Personnel; and
- (b) damage to the existing property on the Site which is being demolished, subject to such damage being the direct and unavoidable result of the Contractor demolishing the property in accordance with this Contract,

but only to the extent the same loss or damage is not the subject of any of the Contractor's warranties under this Contract.

3.5 Salvaged Materials

The Contractor must:

- (a) protect and care for the Salvaged Materials in undertaking the Works;
- (b) ensure that it will undertake the Works to ensure the Salvaged Materials will be fit for future use by Council;
- (c) detach all Salvaged Materials from their fixtures at the Site;

- (d) store and package those Salvaged Materials in the manner required by the Scope and Specification, or if the Scope and Specification is silent, then in the manner directed by Council, or as a minimum, so as to protect them from weather and from damage during transport; and
- (e) deliver those Salvaged Materials to the location and at the times set out in the Scope and Specification, or if the Scope and Specification is silent, then to the location and at the times directed by Council.

4 Contamination and Debris

4.1 Contractor's Licence

The Contractor represents and warrants that:

- (a) it and its Personnel will at all times maintain all licences required to carry out the Works; and
- (b) that the removal, handling and disposal of any Asbestos material is to be undertaken only by an asbestos removal contractor who holds a current asbestos licence of the appropriate class issued by WorkCover Queensland.

4.2 Asbestos

- (a) Despite any other provision of the Contract, Council does not have, and is not obliged to have, insurance cover for any disease, injury or death, including mesothelioma or asbestosis, or any loss, loss of use of or damage to property (including consequential loss) arising directly or indirectly out of or in connection with or in consequence of:
 - (i) inhaling, ingesting or physical exposure to Asbestos or goods or products containing Asbestos;
 - (ii) the use of Asbestos in constructing or manufacturing any good, product or structure;
 - (iii) the removal of Asbestos from any good, product or structure;
 - (iv) the handling, manufacture, sale, transportation, storage or disposal of Asbestos; and
 - (v) the presence of Asbestos in any building.
- (b) The Contractor shall, at its own cost:
 - (i) handle, transport, store and dispose of (and ensure its subcontractors handle, transport, store and dispose of) all Asbestos or any other Hazardous Materials in accordance with Law; and
 - (ii) engage appropriately qualified and licensed subcontractors to handle, transport, store and dispose of any Asbestos and ensure such subcontractors effect and maintain Asbestos liability insurance with a minimum level of cover of \$20 million per claim and otherwise with an insurer and on terms and conditions both satisfactory to and approved in writing by Council (which approval shall not be unreasonably withheld).

4.3 Debris

- (a) Subject only to the extent that another provision of the Contract expressly requires to the contrary and excluding the Salvaged Materials, the Contractor must safely dispose of all Debris to an appropriate location away from the Site.
- (b) The Contractor shall have no Claim in relation to its performance of the obligations in the preceding paragraph, including without limitation in relation to the re-sale value or lack thereof of the Debris (or any Contamination forming part of the Debris), or the expense of it safely disposing of the Debris in accordance with applicable Laws and its other obligations under the Contract. The Contractor's expenses of, and any losses it suffers from, doing so are deemed to have been included and accounted for in the Contract Sum.
- (c) Council makes no warranty, representation or otherwise in relation to the condition, quality, nature, re-sale value or otherwise of the Debris.
- (d) The disposal of all Debris (including without limitation any attempted sale or actual sale of material) is entirely at the risk of the Contractor.
- (e) Title to Debris shall vest in the Contractor at the time it leaves the Site.

4.4 Contamination indemnity

The Contractor indemnifies Council and its Personnel, and any third parties with an interest in the Site, (**Indemnified Persons**) against any Claim of the Contractor, and any third party claim, demand or proceedings, and against all damages and expenses suffered or incurred by Indemnified Persons, in connection with any Contamination:

- (a) existing on, in, over or under the Site;
- (b) that has emanated or migrated or is emanating or migrating from or to the Site; or
- (c) that has been caused or contributed to by the transport or disposal of any Debris from the Site,

- (d) to the extent that such Contamination:
 - (i) was caused or contributed to by an act or omission of the Contractor or any of its Personnel; or
 - (ii) was not caused or contributed to by an act or omission of the Contractor or any of its Personnel but:
 - (A) was disturbed or interfered with by the Contractor or any of its Personnel; or
 - (B) would have been prevented or minimised by a prudent, competent and experienced contractor applying Industry Practice in the circumstances.

4.5 Hazardous Material

- (a) The Contractor acknowledges that the Site may contain Hazardous Materials and that the Works may require the Contractor to remove, or have removed, Hazardous Materials from the Site. Without limiting any other provision of this Contract, the Contractor must ensure the safety of all persons in handling or removing Hazardous Material and compliance with all Law.
- (b) Without limiting any other obligation under the Contract or any Laws, in performance of the Works, the Contractor must:
 - (i) unless otherwise stated in the Contract, if unexpected Hazardous Material is encountered by the Contractor and is impacting the Contractor's Works, immediately cease the Works and notify Council;
 - (ii) comply with all directions from Council in connection with the Hazardous Material;
 - (iii) comply with any obligations and restrictions imposed by relevant legislative requirements.
- (c) The Contractor will have no Claim in connection with Hazardous Materials, or compliance with this clause 4.5 of Schedule 4, provided this provision does not limit the rights of the Contractor to claim that the Hazardous Material encountered constitutes a Latent Condition (unless the Particulars have been completed to state that hazardous materials are expected to be encountered).
- (d) The Contractor must ensure that any relevant insurance policy it is required to effect under clause 22 of the Contract or otherwise in this Contract includes suitable coverage in respect of the handling and disposal of Hazardous Material likely to be encountered (including where the Particulars state they are to be expected). To the extent Hazardous Material is encountered unexpectedly, before handling the Hazardous Material, the Contractor satisfy Council that all relevant insurances are in place or taken out by those who will be responsible for the handling of the Hazardous Material.
- (e) The Contractor shall indemnify Council from and against any claim, loss or damage suffered by Council in connection with the personal injury or death of any person in connection with any Hazardous Material encountered at the Site or in the performance of the Works.

SCHEDULE 5

Rules and Requirements

[Insert relevant documents, or type relevant information into this annexure, or write, 'not used']

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 witness

^ _____
Name of witness (print)

^ _____
Signature of Authorised Officer

^ _____
Full Name of Authorised Officer

^ _____
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

^ _____
Full name of Director

^ _____
Director/Secretary

^ _____
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 witness

^ _____
Signature of Authorised Officer

^ _____
Name of witness (print)

^ _____
Full Name of Authorised Officer

^ _____
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 witness

^ _____
Signature of [Insert name]

^ _____
Name of witness (print)

Annexure A

Pricing Schedule

[Alternative 1: If a lump sum only, use the following (delete if not applicable):]

Council has accepted the lump sum of \$[Insert] (GST exclusive) as the Contract Sum [Inclusive of the following provisional sums (exclusive of GST): [Insert each provisional sum item and price here, or delete this text if not applicable]].

The rates and prices in the Table of Rates and Prices below (which are exclusive of GST) may be used by Council for:

- (a) valuing Variations;
- (b) certifying Payment Claims; and
- (c) making other relevant determinations under the Contract,

to the extent that Council, in its sole and unfettered discretion, decides to do so.

The Table of Rates and Prices:

- (d) constitutes Information for Convenience;
- (e) does not, in any way, define or limit the scope of the Works; and
- (f) does not give rise to any basis for a Claim by the Contractor.

[Alternative 2: If entirely a remeasurable schedule of rates, use the following (delete if not applicable):]

Council has accepted as the Contract Sum the amount calculated by applying the rates in the Table of Rates and Prices below (which are exclusive of GST) to the Works that are carried out.

[Alternative 3: If partly a remeasurable schedule of rates and partly lump sum, use the following (delete if not applicable):]

Council has accepted as the Contract Sum the aggregate of:

- (a) the amount calculated by applying the rates in the Table of Rates and Prices below (which are exclusive of GST) to that part of the Works comprising [Identify remeasurable work] that are carried out; and
- (b) the lump sum of \$[Insert] (GST exclusive) for all of the remaining Works.

[Note: End of alternatives.]

Table of Rates and Prices

Item	Description	Unit	Rate (GST excl.)	Total
1				
2				
3				
4				
5				
6				
7				

Annexure B

Scope and Specification

[Insert]

Annexure C

Statutory Declaration

Statutory Declaration made pursuant to *Oaths Act 1867* (Qld)

To Wit

I,

of [Insert address and occupation]

in the State of Queensland, do solemnly and sincerely declare that, in relation to the contract between Lockyer Valley Regional Council (**Council**) and:

..... (**Contractor**)

for (**Contract**).

- (a) I hold the position of
- (b) I am in a position to know the facts contained herein and to bind the Contractor by the terms of this declaration, and I am duly authorised by the Contractor to make this declaration on its/his behalf.
- (c) All the Contractor's employees who at any time have been engaged on any of the Works (as that term is defined in the Contract) by the Contractor have been paid, in accordance with the relevant award or industrial instrument (and otherwise in accordance with all Laws, including the *Fair Work Act 2009* (Cth)), all moneys due and payable to them up to the date of submission by the Contractor to Council of invoice No [Insert the number or a reference to the last invoice to be submitted], other than for the following disputed amounts:
 - (i) [Insert any disputed amounts] [Insert brief details of the dispute].
- (d) All of the remainder of the Contractor's workforce, other than its employees, who at any time have been engaged on any of the Works (as that term is defined in the Contract) have:
 - (i) claimed the following amounts up to the date of this statutory declaration:

.....

[Identify each subcontractor/supplier and amount they have claimed for payment]
 - (ii) been paid all of the above amounts, other than for the following amounts claimed by the following businesses and individuals for the following reasons:

.....

[Insert business/individual's name] [Insert any disputed amounts] [Insert brief details of the dispute]
- (e) The Contractor is solvent and is not subject to an Insolvency Event as that term is defined in **clause 1.1 of the Contract**.
- (f) I make this solemn declaration believing the same to be true and by virtue of the provisions of the *Oaths Act 1867* (Qld).

SIGNED AND DECLARED by the above named declarant this day)
of)
at)
in the presence of:)

▲ _____
Commissioner for Declarations/Solicitor/ Barrister at
Law/Justice of the Peace

▲ _____
Declarant

Annexure D

Drawings

[Insert relevant drawings, or drawing register, or write, 'not used']