

# Goods and Services Contract

Maranoa Regional Council

And

Supplier

Dated: insert date

Contract no.

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# Goods and/or Services Contract

## Background

- A Council requires the Supply.
- B The Contractor has represented to Council that it has the expertise, capacity and willingness to provide such Supply to Council.
- C Council has agreed to engage the Contractor as an independent contractor to carry out the Supply set out in the Contract and the Contractor agrees to accept such appointment on the following terms and conditions.

## Agreed terms

### 1 Definitions and Interpretation

#### 1.1 Definitions

In the Contract:

**Business Day** means a day that is not:

- (a) a public holiday in Roma, Queensland; or
- (b) Saturday, Sunday or 27, 28, 29, 30 or 31 December.

**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 Price (including amounts in the Pricing Schedule); or
- (c) delay, disruption, acceleration or other time-based claim,

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:

- (d) the Contract or the Supply; or
- (e) the conduct of, or relationship between, the Contractor and Council, before or after the Contract came into force.

**Claim Preconditions** has the meaning given in clause 17.2.

**Commencement Date** means the commencement date specified in Schedule 1.

**Completion** means the stage when:

- (a) all applicable Goods have been Delivered to the appropriate location at the Site and installed and commissioned at the Site, as applicable, in accordance with the Contract and have been accepted by Council in accordance with clause 8.4;
- (b) all applicable Services have been completed in accordance with the Contract;
- (c) any documents or other information relating to the Completion of the Supply or any other obligations of the Contractor which the Contract requires or which Council requires have been provided to Council; and
- (d) all applicable conditions required by the Contract to be satisfied before Completion have been satisfied,

as relevant for any Completion Date or Key Supply Date (as the case may be).

**Completion Date** means the date specified in Schedule 1 (if any) by which the Supply must achieve Completion as may be adjusted in accordance with the Contract.

**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 sub-clauses (a) to (c) above; and
- (e) all copies of the information, notes and other records referred to in sub-clauses (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 Legislative Requirements.

**Contract** means this Contract comprising the documents referred to in clause 2.1 together with any other documents which are incorporated by reference.

**Contractor** means the entity making the Supply as stated in Schedule 1.

**Contractor's Representative** means the person named in Schedule 1 or any replacement notified by the Contractor to Council from time to time under clause 13.2.

**Contract Term** means, subject to earlier termination of the Contract in accordance with clause 28 or otherwise at law:

- (a) the term specified in the Schedule 1 (if any); and
- (b) any extension of that term under clause 4.1(c).

**Council's Representative** means the person named in Schedule 1 or any replacement notified by Council in writing to the Contractor from time to time under clause 13.1.

**Defect** means any part of the Supply which does not comply strictly with the requirements of the Contract or is otherwise unsatisfactory to Council and includes any omissions.

**Defects Liability Period** means the period stated in Schedule 1 and which commences on:

- (a) if Schedule 1 sets out a Completion Date, the date that Completion of the Supply is achieved by the Contractor (as determined by Council's Representative acting reasonably); or
- (a) if Schedule 1 states that the Contractor is to perform the Supply for a Contract Term sets out a term for

the carrying out of the Supply, the later of the expiry of the Contract Term.

**Delivery** means the transfer of possession of the Goods to Council, including at the Site or any other delivery address notified by Council to the Contractor in writing.

**Environmental Law** means any Legislative Requirements, including but not limited to the *Environmental Protection Act 1994* (Qld), or local government by-law whenever in force (including the common law) concerning the environment including without limitation, laws relating to environmental protection, planning, development, pollution, green house gas emissions, contamination, conservation, heritage, natural resources, biodiversity, endangered species, the production, storage, handling, use or transportation of wastes or hazardous materials.

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

- (a) a breach of contract or negligent or unlawful act or omission by Council or its Personnel;
- (b) a suspension of the Supply, or a Variation, that was neither caused nor contributed to by the breach of contract or unlawful or negligent act or omission of the Contractor or its Personnel;
- (c) a fire, natural disaster, or an accident that causes personal injury or loss of or damage to property, to the extent it could not be avoided or overcome by the Contractor and its Personnel taking reasonable actions in accordance with Industry Practice; or
- (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.

**Goods** means the goods (if any) specified in Schedule 1 to be supplied.

**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
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

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

**Heavy Vehicle** has the meaning given in the *Heavy Vehicle National Law 2012* (Qld).

**Heavy Vehicle Law** means:

- (a) the *Heavy Vehicle National Law Act 2012* (Qld) and its subordinate legislation including the *Heavy Vehicle National Law Regulation 2014* (Qld); and
- (b) all other Legislative Requirements relating to Heavy Vehicles.

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

- (a) the Contract;
- (b) Policies and Plans;
- (c) Industry Practice; 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 supplying goods or services of a similar nature to the kind required by the Contract; and
- (b) compliance with all standards of Standards Australia Ltd (except to the extent that the Contract prescribes a contrary standard) applicable to the Supply, the best practices, methods and procedures applicable in the industry to which the Supply relate, and all relevant professional codes of conduct.

**Insolvency Event** means any of the following events:

- (a) 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;
- (b) the party makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that the party is insolvent;
- (c) the party 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) 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 Contract under part IX of the *Bankruptcy Act 1966* (Cth);
- (e) 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);
- (f) 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);
- (g) the party ceases to carry on business;
- (h) 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
- (i) anything analogous to any event above.

**Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, Moral Right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, know-how, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of those rights.

**Key Supply Date** means a key date for the completion of specified Services or Delivery of specified Goods as set out in Schedule 1.

**Legislative Requirements** includes:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State applicable to the Supply;
- (b) certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with or recognised generally as authorities in respect of the carrying out of the Supply;
- (c) Australian Standards and any other relevant standards; and
- (d) fees and charges in connection with the foregoing.

**Personnel** means any officer, employee, agent or sub-contractor of a party but Council's Personnel do not include the Contractor or the Contractor's Personnel and the Contractor's Personnel do not include Council or Council's Personnel.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Policies and Plans** means any policy or plan of Council notified to the Contractor, referred to in the Contract or publicly available (including on any website), as amended or replaced from time to time by notice in writing to the Contractor.

**Price** means the sum payable for performance of the Supply that is:

- (a) to the extent Council accepted a lump sum, the lump sum as set out in Schedule 1 or the Pricing Schedule;
- (b) to the extent Council rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the Pricing Schedule; and
- (c) where Council accepted a lump sum and rates, the aggregate of the paragraphs (a) and (b).

**Privacy Act** means the *Privacy Act 1988* (Cth) and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under that legislation, as amended from time to time.

**Privacy Laws** means:

- (a) the Privacy Act;
- (b) the *Information Privacy Act 2009* (Qld);
- (c) the Australian Privacy Principles contained in schedule 1 of the Privacy Act; and
- (d) all other applicable Legislative Requirements, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.

**Progressive or Periodic Supply** means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.

**QA System** has the meaning given in clause 12.1(c).

**Pricing Schedule** means the rates and prices set out in Schedule 3.

**Security Interest** has the meaning given in the *Personal Property Securities Act 2009* (Cth).

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

**Services** means the services (if any) specified in Schedule 1 to be carried out.

**Site** means the site or sites stated in Schedule 1 and any other site made available to the Contractor by Council for the purpose of carrying out the Supply.

**Supply** means the supply of:

- (a) the Services (if any) and any minor incidental services that can be reasonably inferred as forming part of the Services; and
- (b) the supply of the Goods (if any).

**Variation** has the meaning given in clause 20.1.

**WH&S Law** means:

- (a) the *Work Health and Safety Act 2011* (Qld), *Work Health and Safety Regulation 2011* (Qld) and all other Legislative Requirements relating to health and safety; and
- (b) requirements of persons exercising statutory powers concerning health and safety.

**WH&S Obligations** means WH&S Law and all requirements:

- (a) of the Contract;
- (b) of Policies and Plans;
- (c) of Industry Practice; and
- (d) communicated at any inductions that the Contractor or its Personnel undertake in connection with the Supply,

to the extent that they relate to health and safety.

## 1.2

### Interpretation

In the Contract, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other;
- (c) headings are for convenience only and are not to be used for interpretation;
- (d) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the Contract, and references to the Contract include any of its schedules or annexures;
- (e) a reference to a party to the Contract or any other document or Contract 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 Contract (including a reference to the Contract) is to that document or

- Contract 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) the words 'include', 'included', 'including' or the equivalent are not words of limitation;
  - (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.

## 2 Contract, ambiguities and term

### 2.1 Contract document

The Contract comprises only of the following documents:

- (a) these terms and conditions;
- (b) Schedule 1 of the Contract;
- (c) Schedule 2 of the Contract;
- (d) the other schedules to the Contract; and
- (e) any documents stated in the schedules to form part of the Contract.

### 2.2 Resolving ambiguity

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

## 3 Contractor's general warranties

### 3.1 Contractor's warranties

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

- (a) it has carefully reviewed the Supply described in Schedule 1 and Schedule 2 before entering into the Contract, and it has and will maintain the necessary experience, and an appropriately qualified and trained workforce, to carry out such Supply until Completion of the Supply or expiry of the Contract Term (as applicable);
- (b) the Price is appropriate and sufficient for the carrying out the Supply and the performance of that Supply and, except to the extent expressly stated to the contrary in the Contract or in the Pricing Schedule, compensates the Contractor for all expenses it may suffer or incur in relation to the Contract (including profit);
- (c) it has made its own investigation and assessment of the work and risks involved in carrying out the Supply and it has reviewed and satisfied itself about any information that Council has made available to it and that which is otherwise obtainable upon reasonable enquiries concerning the Supply and the Contract;
- (d) at the time of entering into the Contract, it does not have any conflict of interest that could be expected to affect the performance of its obligations under the Contract;
- (e) it did not, and will not, engage in any collusive behaviour, anti-competitive conduct or other similar conduct in contravention of Legislative Requirements relating to the Contract; and
- (f) it has the necessary authority and power to enter into the Contract and to perform the obligations under it.

### 3.2 Council's reliance

The Contractor acknowledges that Council, in entering into the Contract, is relying on the warranties and representations made in this Contract, including clause 3.1.

## 4 Nature of Contract

### 4.1 Supply for Contract Term

- (a) If Schedule 1 sets out Supply for a Contract Term (Option 1 is marked 'Yes') then this clause 4.1 applies.
- (b) The Contractor must commence the Supply on the Commencement Date and, subject to clause 4.1(c), cease the Supply on the last day of the Contract Term.
- (c) Council, in its absolute discretion, may by notice in writing to the Contractor not later than 2 weeks before the last day of the Contract Term, extend the Contract Term once by the additional period set out in Schedule 1. The terms of the Contract will continue to apply during the extended period.

### 4.2 Supply required by a Completion Date

- (a) If Schedule 1 sets out the Supply is required by a Completion Date (Option 2 is marked 'Yes') then this clause 4.2 applies.
- (b) The Contractor must commence the Supply on the Commencement Date and must achieve Completion of the Supply by the Completion Date.

### 4.3 Key Supply Dates

If Schedule 1 sets out that any part of the Supply has been allocated a Key Supply Date, then the Contractor must achieve Completion of the relevant part of the Supply by the applicable Key Supply Date.

#### 4.4 Time for Performance

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

#### 4.5 Nature of the Contract between the Principal and the Contractor

- (a) The Contractor acknowledges and agrees that the Principal may, during the contract term:
  - (i) issue no Purchase Orders to the Contractor at all;
  - (ii) issue Purchase Orders for any one or more types of Supply;
  - (iii) issue Purchase Orders for the Supply in a single lot or instalments and in such quantities as may be required from time to time;
  - (iv) procure Supply of the same kind of Supply under this Goods and Services Contract from other contractors as set-out in clause 4.5.(d); and
  - (v) the Contractor will have no claim against the Principal in connection with those acts or omissions.
- (b) A contract is formed only when the Principal issues a Purchase Order with the Contractor for the Supply, and the Contractor accepts the Purchase Order. The Contractor must provide the Supply in accordance with this Goods and Services Contract and the Purchase Order.
- (c) Nothing in the Goods and Services Contract creates any obligation on the Contractor to Supply to the Principal, or gives rise to a contract for the Supply until a Purchase Order has been issued by the Principal to the Contractor.
- (d) The Principal may, in its absolute discretion and at any time, enter into a contract with other contractors to provide the Supply which are identical or similar to the Supply under this Goods and Services Contract without consultation or communication to the Contractor.

### 5 Delays

#### 5.1 Contractor to notify of delays

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

#### 5.2 Extension of time

- (a) This clause 5.2 will only apply to any Supply that has a Key Supply Date or Completion Date.
- (b) If:
  - (i) an Excusable Delay will delay the Contractor's completion of the Supply, or part of the Supply by the relevant Key Supply Date or Completion Date;
  - (ii) the Contractor has strictly complied with clause 5.1;
  - (iii) the Supply is not concurrently delayed (in whole or to the extent of any part) by a cause that is not an Excusable Delay; and
  - (iv) the Contractor has, by notice in writing to Council, requested an extension of time to the affected Key Supply Date or Completion Date within five Business Days of the earlier of it first learning of the Excusable Delay or of when it should reasonably have first learnt of it,
 then Council must grant the Contractor by notice in writing a reasonable extension to all affected Key Supply Dates and the Completion Date (as applicable).
- (c) Council may grant the Contractor an extension to any Key Supply Date or Completion Date at any time, and from time to time, in its sole and unfettered discretion. This right is solely for Council's benefit and may be granted even if the Contractor is not eligible for an extension to a Key Supply Date or Completion Date.
- (d) Except to the extent that the Contract expressly provides to the contrary, the Contractor will have no other Claim in connection with the granting of any extension of time.

#### 5.3 Liquidated damages

- (a) This clauses 5.3 will only apply if Schedule 1:
  - (i) sets out a Completion Date or one or more Key Supply Dates; and
  - (ii) specifies a rate for liquidated damages to apply to the Completion Date or Key Supply Date.
- (b) If the Contractor fails to achieve Completion by the Completion Date or fails to complete a Supply by the relevant Key Supply Date (if applicable), the Contractor will be liable to Council for liquidated damages at the rate stated in Schedule 1, for every day after the Completion Date or Key Supply Date (as applicable) up to and including the date that Completion is achieved or the relevant Supply is completed by the Contractor (as determined by Council's Representative acting reasonably) or the date that the Contract is terminated pursuant to clause 28, whichever is sooner.
- (c) Council and the Contractor agree that all liquidated damages which may be payable by the Contractor to Council pursuant to this clause 5.3:
  - (i) are a genuine pre-estimate of the damages likely to be suffered by Council if the Contractor does not achieve Completion by the relevant Completion Date or complete a

- Supply by the relevant Key Supply Date (as applicable);
- (ii) do not limit Council's other rights under the Contract or at law for any other breach of the Contract; and
- (iii) do not relieve the Contractor from any of its obligations or liabilities under the Contract, including its obligations to achieve Completion and meet any Key Supply Dates.
- (d) If the liquidated damages are for any reason found to be void or unenforceable, the Contractor indemnifies Council for damages at common law for the Contractor's failure to achieve Completion by the Completion Date or complete a Supply by the relevant Key Supply Date.

#### 5.4 Actions to rectify delays

- (a) If the Contractor has failed to, or will be unable to, complete the Supply, or any relevant part of the Supply, by the applicable Key Supply Date or Completion Date (as applicable), then the Contractor must, if requested by Council, at its own cost promptly provide to Council a plan that sets out a range of reasonable actions that the Contractor has available to it to expedite the Supply achieving Completion as soon as possible, and the cost of each of those actions (**Recovery Plan**). The Contractor agrees that such actions may include engaging additional Personnel and other resources and expending funds.
- (b) The Contractor must immediately carry out any one or more actions from the Recovery Plan that Council directs, or any other reasonable action directed by Council. The Contractor will not be entitled to any Claim in connection with carrying out any such action except to the extent that:
  - (i) the action was required due to an Excusable Delay; and
  - (ii) it can reasonably demonstrate that incurring extra expense is unavoidable,
 in which case the Contractor's only Claim in connection with the direction is for payment of an amount valued in accordance with clause 20.3.
- (c) The Contractor will not be relieved of any liability under the Contract, and Council's remedies under any applicable contract or otherwise will not be prejudiced, as a result of the Contractor taking any actions directed under this clause 5.1.

## 6 Obligations of the Contractor

### 6.1 Contractor's warranty

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

- (a) the Supply will:
  - (i) comply with all applicable requirements of the Contract and Industry Practice (but only to the extent that Industry Practice is not inconsistent with any express requirements of the Contract);
  - (ii) comply with all applicable Legislative Requirements and Policies and Plans;

- (iii) be fit for the purpose or purposes set out in, or reasonably inferred from, the Contract; and
- (iv) be performed by appropriately qualified and experienced Personnel.

### 6.2

#### General obligations

The Contractor must:

- (a) maintain from the Commencement Date until Completion of all of the Supply or expiry of the Contract Term (as applicable) all accreditations and qualifications required:
  - (i) under Industry Practice and applicable Legislative Requirements to carry out Supply of the kind described in Schedule 1 and Schedule 2; and
  - (ii) under the Contract;
- (b) co-ordinate the performance of the Supply with Council and its Personnel and otherwise consult regularly with Council; and
- (c) carry out the Supply in such a way as to:
  - (i) prevent any harm to, or contamination of, the natural environment;
  - (ii) without limiting paragraph (i), comply with the requirements of all Environmental Laws and
  - (iii) avoid causing any damage, harm, interference, nuisance or disturbance that has not been agreed to in advance, to any persons.

### 6.3

#### 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).

## 7

### Safety obligations

### 7.1

#### 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 WH&S Law at any site where the Contractor's Personnel must attend to perform the Supply (**Site Safety Officer**);
- (b) carry out the Supply and all obligations under the Contract safely, so as to prevent harm to persons or property;

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

- (d) at the time of dispatch of the Goods to the Site, notify Council of the Contract number, and the description and quantity of Goods dispatched;
- (e) package the Goods safely and securely so as to prevent damage during transit, and in all other respects in accordance with the carrier's requirements;
- (f) clearly label all Goods as the property of Council, so that it is visible to any person without having to remove any packaging; and
- (g) include a delivery docket with each package that details the description and quantity of Goods and the relevant Contract number.

Any terms or conditions included in a delivery docket or other document provided by the Contractor or its Personnel, and signed by or on behalf of Council at Delivery, will have no application to either the Contract or Council.

#### 8.4 Acceptance

- (a) The Contractor maintains risk in the Goods until Council is deemed to have accepted the Goods, which will occur on the earlier of:
  - (i) the date Council gives written notice to the Contractor that the Goods have been accepted; or
  - (ii) 20 Business Days after the date the Goods are Delivered, provided that during that 20 Business Day period Council did not notify the Contractor that any of the Goods were Defective.
- (b) Acceptance of the Goods by Council under this clause 8.4 is merely a record that Delivery has occurred and does not constitute declaration, approval or acceptance from Council that the Goods are free of Defects, nor does it affect the Contractor's obligations or Council's rights under the Contract including, but not limited to, obligations and rights during the Defects Liability Period.

#### 8.5

#### Title, risk and warranties

- (a) Risk in the Goods passes to Council upon acceptance by Council in accordance with clause 8.4. The Contractor indemnifies Council against any loss of or damage to the Goods from Delivery until the Goods are accepted by Council in accordance with clause 8.4.
- (b) Title in the Goods passes to Council on the earlier of Delivery or payment for the Goods. If, prior to Delivery, title to the Goods passes to Council, the Contractor must set the relevant Goods aside and clearly mark them as being the property of Council, in a manner reasonably required by Council.
- (c) If the Contractor is not the manufacturer, the Contractor must, at its own cost, obtain and provide Council with any warranties available for the relevant Goods from the relevant manufacturer (**Manufacturer Warranties**) no later than upon Completion of the Supply.
- (d) The Contractor must give Council's Representative, and any other person authorised in writing by Council, reasonable access to any premises or facilities occupied by the Contractor or its Personnel where the Goods are being manufactured or stored to inspect or test any Goods or other material related to the Goods.

## 8 Rights and Obligations Specific to Goods

### 8.1 Application

Clause 8 will only apply to the extent that the Supply includes Goods.

### 8.2 Warranty

The Contractor warrants that any Goods supplied will:

- (a) be new, except to the extent expressly stated otherwise in Schedule 1 or Schedule 2 ;
- (b) be of merchantable quality;
- (c) be free from Defects; and
- (d) comply with the requirements set out in clause 6.2(c), so as to not cause the Contractor or Council to be in breach of any requirements set out in clause 6.2(c).

### 8.3 Delivery

The Contractor must:

- (a) Deliver and unload the Goods at the location at the Site or as otherwise directed by Council's Representative;
- (b) if Schedule 1 states that a Completion Date applies, not Deliver the Goods earlier or later than the Completion Date, except:
  - (i) with the consent of Council; or
  - (ii) if the Contractor is required to install or commission the Goods;
- (c) if the carrier of the Goods is not the Contractor, without limiting the Contractor's obligations under clauses 7.1, 10 and 12.1, engage the carrier on terms that comply with all applicable Legislative Requirements (including, without limitation, the Heavy Vehicle Safety Law) and ensure that the carrier complies with Industry Practice;

- (e) Council's Representative, and any other person authorised in writing by Council, must, when attending the Contractor's premises or facilities, comply with all reasonable rules, directions and procedures as notified by the Contractor, including those relating to work health and safety that are in effect at the premises or facilities.
- (f) On completion of the inspections or tests, the Contractor must promptly rectify any Defects in the Goods identified in the inspection or tests.

## 9 Quality of Supply

### 9.1 Contractor's warranty

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

- (a) the Supply will:
  - (i) comply with all applicable requirements of the Contract and Industry Practice (but only to the extent that Industry Practice is not inconsistent with any express requirements of the Contract);
  - (ii) comply with all applicable Legislative Requirements;
  - (iii) be fit for the purpose or purposes set out in, or reasonably inferred from, the Contract; and
  - (iv) be performed by appropriately qualified and experienced Personnel.

### 9.2 Compliance with demonstrated Supply

Without limiting clause 8.1 (if applicable) and 9.1, if the Contractor:

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

## 10 Site matters

- (a) This clause 10 will apply to the extent that any Supply is carried out at or on any Site (including the Contractor's Delivery at a Site).
- (b) Council will give the Contractor sufficient access to the Site to reasonably enable the Contractor to perform that part of the Supply required to be performed on the Site. The Contractor may only use the Site for the purpose of performing that part of the Supply required to be performed on the Site.
- (c) The Contractor may not have exclusive access to the Site or any part of it and must coordinate that part of the Supply required to be performed on the Site with activities of Council, Council's Personnel and any other contractors (**Separate Operators**).
- (d) The Contractor must:
  - (i) permit the concurrent execution of work on the Site by any Separate Operators, and provide reasonable access for, and cooperate with such persons in the execution of that work to the extent necessary;

- (ii) ensure that all of the Supply, the completion of which is necessary to allow any Separate Operators to commence work, has been completed,

and will have no entitlement to Claim for doing so or for any impact of any interference caused to the Contractor or that part of the Supply required to be performed on the Site by any person on the Site (including Separate Operators).

- (e) The Contractor must avoid any disruptions or inconvenience to:
  - (i) the usual and safe operations of the Site; or
  - (ii) the users of the Site,
 except to the extent expressly permitted by the Contract.
- (f) The Contractor must:
  - (i) regularly remove from the Site all rubbish and debris arising from the performance of the Supply;
  - (ii) immediately remove from the Site any surplus plant and equipment belonging to the Contractor or its Personnel, that is used in performance of the Supply, but which is not intended to be transferred to Council; and
  - (iii) if performing Services at the Site, keep the relevant parts of the Site clean and secure at all times.
- (g) Without limiting any other provision of the Contract, the Contractor must take all necessary steps to:
  - (i) prevent damage to property on or near the Site (including existing utility services (including water, electricity, gas, telecommunications, drainage, stormwater, sewerage services and supporting infrastructure) and assets of Council and work previously performed at the Site by another party);
  - (ii) prevent harm to any persons on or near the Site;
  - (iii) avoid unnecessary interference with the passage of people and vehicles on or near the Site; and
  - (iv) prevent nuisance and unreasonable noise and disturbance on or near the Site.
- (h) If any damage, harm, interference, nuisance or disturbance is caused by the Contractor or its Personnel, the Contractor must:
  - (i) remedy, at its own cost and risk, the damage, harm, interference, nuisance or disturbance as soon as possible to the satisfaction of Council; and
  - (ii) indemnify Council for any damage, loss, cost or expense suffered by Council in connection with the damage, harm, interference, nuisance or disturbance.
- (i) If the Contractor fails to comply with its obligations in clause 10(h), Council may perform those obligations itself or through others and all costs, damages and expenses incurred by Council in performing those

obligations will become a debt due and payable to Council from the Contractor.

- (j) Subject to any Legislative Requirements that require otherwise, the Contractor must only access the Site, and perform any part of the Supply required to be performed on the Site, during the hours of work set out in the Contract unless directed otherwise by Council.

## 11 Defects

### 11.1 Contractor to notify

- (a) Where Council becomes aware of any Defect during the carrying out of the Supply or during the Defects Liability Period (if applicable), it may direct the Contractor by notice to, at its own cost and risk, rectify the Defect (by any one or more of repair, replacement or re-performance as determined by Council).

### 11.2 Rectification of Defects

- (a) The Contractor must, at its cost, rectify any Defect during the carrying out of the Supply or the Defects Liability Period (if applicable). The Contractor is responsible for all work and liable for all costs associated with the rectification of the Defect.
- (b) If any Defect is not rectified within 5 Business Days (or such longer time as agreed in writing) of a direction by Council under clause 11.1(a), Council may itself or by others, rectify the Defect and the cost of remedying the Defect will become a debt due and payable to Council from the Contractor.
- (c) Instead of exercising its rights under clauses 11.1(a) and 11.2(b), but without limiting Council's other rights, if before Completion or the expiry of the Contract Term (as the case may be), or otherwise during the Defects Liability Period, Council discovers any Defects in any Goods (**Defective Goods**), Council may:
  - (i) notify the Contractor that Council rejects the Defective Goods, in which case the Contractor must, at its cost and risk, collect the Defective Goods within 5 Business Days of Council's notice; or
  - (ii) if the Contractor fails to collect the Defective Goods in accordance with the preceding sub-clause, return the Goods to the Contractor at the Contractor's cost and risk,

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

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

### 11.3 Contractor's obligations not affected

Any action taken by Council under clause 11.2 will not relieve the Contractor of any of its obligations or liabilities under the Contract, but may be taken into account in the calculation of any applicable damages award.

## 12 Quality assurance, meeting and reporting

### 12.1 Quality assurance and record keeping

During the period from the Commencement Date until:

- (a) the expiry of the last Defects Liability Period under the Contract; or
- (b) where Schedule 1 states that no Defects Liability Period applies, Completion of all of the Supply or expiry of the Contract Term (as applicable),

the Contractor must:

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

### 12.2 Inspections and audits

- (a) From time to time until the expiry of the period set out in clause 12.1, the Contractor must, after reasonable notice by Council:
  - (i) at its own cost, provide Council with documentation that describes its QA System and copies of any records relating to the Supply, in the format reasonably requested by Council; and
  - (ii) allow Council and its representatives access to the Contractor's premises, and the premises of any relevant subcontractors, to do any one or more of:
    - (A) inspect the performance of the Supply; and
    - (B) audit records relating to the QA System, the conformance of applicable processes to the QA System and the conformance of the Supply to the Contract.
- (b) Council must reimburse the Contractor its direct costs reasonably incurred as a result of an audit under clause 12.2(a), unless the audit discloses any material non-conformances under the QA System or any breach of the Contract.

### 12.3 Contractor not relieved of obligations

The Contractor is not relieved of any of its obligations under the Contract by any audit or inspection under clause 12.2(a) or by the maintenance of the QA System.

### 12.4 Meetings and reports

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

## 13 Representatives

### 13.1 Council's representatives

- (a) Council must appoint a person to be Council's Representative for the purposes of the Contract.
- (b) Council may at any time and from time to time by written notice to the Contractor replace the representative described in clause 13.1(a).
- (c) The Contractor and Council agree that Council's Representative acts at all times as Council's agent for the purposes of the Contract, is subject to the directions of Council and will act solely in the interests of Council.
- (d) Council's Representative is authorised to give any direction to the Contractor for the purposes of the Contract. The Contractor must comply with all lawful directions of the Council's Representative.

### 13.2 Contractor's representatives

- (a) The Contractor must appoint a Contractor's Representative who is in a position to promptly attend meetings upon reasonable request by Council.
- (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.
- (d) The Contractor may at any time and from time to time by written notice to Council replace its representative described in clause 13.2(a), provided that any replacement satisfies the applicable requirements of clause 13.2(a) and 13.2(b).

## 14 Personnel

### 14.1 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 Policies and Plans.
- (b) If the behaviour described in clause 14.1(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.

## 15 Contractor's resources and Council property

### 15.1 Contractor to supply all necessary resources

The Contractor must supply at its own expense all plant, equipment, vehicles, appliances and other property and items the Contractor requires to fulfil its obligations under the Contract, except to the extent expressly stated otherwise.

### 15.2 Council property

- (a) Any plant, equipment, tools, appliances or other property and items that Council provides to the Contractor to enable it to comply with its obligations under the Contract remain Council's property and must only be used for complying with its obligations under the Contract.

- (b) The Contractor must keep Council's property in good order and condition, subject to fair wear and tear.

## 16 Subcontracting

### 16.1 No subcontracting allowed without approval

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

### 16.2 Liability of Contractor for subcontracted Supply

If the Contractor subcontracts any of its obligations pursuant to clause 16.1, the Contractor:

- (a) remains fully responsible for the performance of those obligations; and
- (b) will be vicariously liable to Council for the acts and omissions of its subcontractors and their employees as if they were acts or omissions of the Contractor.

## 17 Invoicing and payment

### 17.1 Price

- (a) Subject to Council's rights under the Contract, Council must pay the Contractor the Price in consideration of the Contractor performing the Supply in accordance with the Contract.
- (b) Neither the Price nor the Pricing Schedule (if applicable) are subject to any rise and fall, currency fluctuation or other adjustment, other than any adjustment permitted by clause 20.3 or Schedule 3.

### 17.2 When payment claims may be issued

- (a) The Contractor must issue payment claims to Council:
  - (i) at the times set out in, or calculated in accordance with, Schedule 1 (**Invoice Date**); and
  - (ii) in accordance with this clause 17.
- (b) A payment claim submitted earlier than the Invoice Date will be deemed to have been submitted on the Invoice Date, but if the Invoice Date is not a Business Day, then the payment claim will be deemed to have been submitted on the next Business Day.
- (c) If the Contract stipulates that the Contractor may not claim payment of the Price until a condition has been satisfied or an event has occurred, including those in clause 17.2 (**Claim Preconditions**), then the only date that the Contractor will be entitled to submit a claim for payment will be the later of:
  - (i) the date that the last of the Claim Preconditions applicable to it has been satisfied; and
  - (ii) the date calculated under clauses 17.2(a) and 17.2(b).

### 17.3 Information to include in payment claims

The Contractor must ensure that each claim for payment:

- (a) identifies the contract number applicable to the Contract;
- (b) is in the form of a Tax Invoice;
- (c) includes the Contractor's name, ABN and the name of the Council's Representative;

- (d) sets out the Contractor's calculation of the amount due to the Contractor by Council in accordance with the Contract;
- (e) sets out any deductions in respect to amounts owed to Council by the Contractor; and
- (f) includes any other information or documentation reasonably requested by Council.

#### 17.4 Payment Schedule

Within the time set out in Schedule 1 of receipt of a payment claim, Council will issue to the Contractor a payment schedule stating:

- (a) the payment claim to which the payment schedule applies;
- (b) the amount of the payment claim which in the opinion of Council (subject to clause 17.6), is payable by Council; and
- (c) if the amount in the payment schedule is less than that in the payment claim, the reasons why,

(Payment Schedule).

#### 17.5 Payment

- (a) Subject to clause 17.6 and any other rights Council may have, Council will pay the amount in the Payment Schedule within the time frame stated in Schedule 1 after receipt of a payment claim which complies with clause 17.3.
- (b) Payments by Council are on account only and are neither evidence of Council's acceptance that the Supply have been performed in accordance with the Contract nor an admission of liability.

#### 17.6 Deductions

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

### 18 Security of Payment

- (a) This clause applies to the extent that any part of the Supply is subject to the Security of Payment Act.
- (b) The Contractor must:
  - (i) ensure that any written communication it delivers or arranges to deliver to Council of whatever nature in relation to the Security of Payment Act is delivered to the address for service of notices set out in Schedule 1; and
  - (ii) promptly give Council a copy of any written communication of whatever nature in relation to the Security of Payment Act, which the Contractor receives from another party (excluding any 'payment claims' or

'payment schedules' as defined under the Security of Payment Act).

- (c) If the Contractor suspends the whole or part of the Supply pursuant to the Security of Payment Act:
  - (i) the suspension will not affect the Completion Date or relevant Key Supply Date; and
  - (ii) subject to any payment owed under the Security of Payment Act, Council shall not be liable for any costs, expenses, damages, losses or other liability whatsoever suffered or incurred by the Contractor as a result of the suspension.

### 19 GST and Tax

#### 19.1 Definitions

Any terms capitalised in clause 19 and not already defined in clause 1.1 have the same meaning given to those terms in the GST Act.

#### 19.2 GST exclusive

Except under clause 19, the consideration for a Supply made under or in connection with the Contract does not include GST.

#### 19.3 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.

#### 19.4 Later GST change

For clarity, the GST payable under clause 19.3 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.

#### 19.5 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).

#### 19.6 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.

#### 19.7 Progressive or Periodic Supplies

Where a Supply made under or in connection with the Contract is a Progressive or Periodic Supply, clause 19.3 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

## 19.8 Other Taxes, Duties and Charges

Except as provided in this clause 19 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.

## 20 Variations

### 20.1 Council directed variations

- (a) Council may direct the Contractor to:
  - (i) increase, decrease or omit any part of the Supply (including omission for the purpose of performing that Supply itself or by engagement of a third party);
  - (ii) change the nature or quality of the Supply; or
  - (iii) perform additional Supply,**(Variation)**
- (b) Unless Council and the Contractor agree on the price for a Variation, Council must determine the value of a Variation in accordance with clause 20.3.
- (c) If the Contractor is of the opinion that any direction or instruction is a Variation even though it was not expressed as such, the Contractor must notify Council's Representative within three Business Days of receipt of the direction or instruction and before giving effect to the direction or instruction. If the Contractor fails to notify Council in accordance with this clause, the Contractor will not be entitled to make any Claim with respect to the instruction or direction.
- (d) No Variation or combination of Variations shall invalidate the Contract or give rise to any repudiatory conduct and Council will not be in breach of the Contract if it omits any part or all of the Supply and thereafter either carries out such Supply itself or employs or engages another person to carry out the omitted Supply.

### 20.2 Variation proposal

- (a) Council may issue a proposal to the Contractor for a Variation and direct the Contractor to notify Council, within a reasonable time nominated by Council, of:
  - (i) the applicable rates and total price to effect the Variation; and
  - (ii) the time frame to perform the Variation, the effect of the Variation on the other Supply and any alternatives to that Variation that may satisfy Council's aims.

### 20.3 Valuation

If the Contract states that a valuation is to be made under this clause, then the valuation must be undertaken as follows:

- (a) if the Contract contains applicable rates or prices, then those rates or prices are to be used;
- (b) to the extent clause 20.3(a) does not apply, then the Pricing Schedule is to be used to the extent it is applicable;
- (c) to the extent that neither clauses 20.3(a) nor 20.3(b) apply, then Council must determine reasonable rates and prices to be used; and

- (d) if the valuation concerns a change to, or the imposition of a new, fee or charge, then only the actual amount of the fee or charge is to apply,

## 21 Suspension

### 21.1 Council's right to suspend the Supply

- (a) The Contractor must suspend the whole or any part of the Supply that Council directs it in writing to suspend, in Council's sole and unfettered discretion, for such periods directed by Council from time to time.
- (b) The Contractor must re-commence the Supply as soon as reasonably possible after receiving a written direction from Council to do so.

### 21.2 Consequences of suspension

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

## 22 Confidentiality

### 22.1 Information to be kept confidential

- (a) The Contractor must keep confidential, and not use for any purpose other than performing its obligations under the Contract, any Confidential Information of Council, except for the following disclosures:
  - (i) to its Personnel to the extent necessary to complete the Supply;
  - (ii) to its professional advisors; or
  - (iii) with Council's prior written permission, which may be given subject to reasonable conditions, and the Contractor agrees to comply with those conditions.
- (b) If Confidential Information is disclosed in accordance with clauses 22.1(a)(i) or 22.1(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.

### 22.2 Survival

The obligations in this clause 22 survive for a period of three years from the expiry or earlier termination of the Contract.

## 23 Privacy

### 23.1 General obligations

The Contractor must:

- (a) process all Personal Information relating to the Contract in accordance with the Privacy Laws (regardless of whether or not the Contractor is otherwise obliged to comply with the Privacy Laws) and only for the purposes of performing its obligations under the Contract;
- (b) comply with all reasonable requests or directions of Council in connection with the obligations of Council under the Privacy Laws or in connection with Policies and Plans relating to compliance with the Privacy Laws;

- (c) not disclose Personal Information collected for the purposes of the Contract (**Contract PI**) without the prior authority of Council unless the disclosure is required:
  - (i) for the purposes of performing its obligations under the Contract; or
  - (ii) by Legislative Requirements;
- (d) not transfer outside Australia Contract PI, or allow parties outside Australia to have access to Contract PI, without the prior written consent of Council; and
- (e) take all necessary steps to ensure that Contract PI is protected against:
  - (i) misuse, loss or interference; or
  - (ii) access, use, modification, or disclosure that is unauthorised,
 and that only those of its Personnel authorised by Council have access to Contract PI.

### 23.2 Notification

The Contractor must notify Council immediately if it becomes aware:

- (a) of a breach of any of clause 23.1 by the Contractor or any of its Personnel; or
- (b) that a disclosure of Contract PI may be required by Legislative Requirements.

## 24 Intellectual Property

### 24.1 Licence

- (a) The Contractor grants Council an irrevocable, royalty free, fully assignable licence, including a right to sublicense, to use the Intellectual Property Rights in the Supply, including any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material or Goods provided to Council in connection with the Contract for any purpose associated with the Supply.
- (b) The Contractor warrants to Council that the carrying out of the Supply, and any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material or Goods provided to Council in connection with the Contract, will not infringe the Intellectual Property Rights of any third party.
- (c) If the Contractor suspects or becomes aware that any part of the Supply will infringe any third party's Intellectual Property Rights then the Contractor must:
  - (i) immediately notify Council of that infringement; and
  - (ii) take any action required by Council in connection with the infringement or suspected infringement of that third party's Intellectual Property Rights.
- (d) The Contractor is liable for, and indemnifies Council from and against, all loss or damage (including legal costs) incurred or suffered by Council in connection with a breach of this clause 24.1.

### 24.2 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.

### 24.3 Survival of obligations

The obligations of the Contractor, and the Intellectual Property Rights granted, under this clause 24 continue after the expiry or termination of the Contract for any reason.

## 25 Parties' relationship

### 25.1 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.

### 25.2 No relationship between Council and Contractor's Personnel

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

## 26 Insurance

### 26.1 Requirement to maintain insurances

As a minimum, the Contractor must procure and maintain the insurances set out in Schedule 1 until:

- (a) the later of the end of the last Defects Liability Period or the period stated in Schedule 1; or
- (b) if paragraph (a) is not applicable, Completion of the Services or expiry of the Contract Term (as applicable).

### 26.2 Insurer requirements

The insurances required under clause 26.1 must be taken out and maintained with an insurer that is authorised under applicable Legislative Requirements to carry on an insurance business in Australia and complies with all applicable prudential and other requirements prescribed under applicable Legislative Requirements.

### 26.3 Evidence of insurance

- (a) The Contractor must provide to Council certificates of insurance for all insurances it is required to effect under clause 26.1, 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 26.1 with an insurer that complies with clause 26.2:
  - (i) Council may direct the Contractor to procure the prescribed insurance with an insurer that complies with clause 26.2, within the time directed by Council; and

- (ii) if the Contractor fails to strictly comply with clause 26.3(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.

## 26.4 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 26.1 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.

## 26.5 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 26.

## 26.6 Subcontractors

Before they commence any Supply, the Contractor must ensure that each of its subcontractors is covered by or takes out and maintains policies of insurance of the types and for the amounts set out in clause 26.1 (to the extent that they are applicable to the functions performed by that subcontractor).

## 27 Indemnity

### 27.1 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.

### 27.2 Effect of indemnities

Council need not incur any cost before enforcing an indemnity under clause 27.1.

### 27.3 Survival

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

## 28 Default and Termination

### 28.1 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) breaches any term of the Contract in such a way as to pose an unacceptable risk of harm to any person or the natural environment, as determined by Council in its sole and unfettered discretion;
- (c) 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; or
- (e) suffers an Insolvency Event,

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

- (f) 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
- (g) take out of the hands of the Contractor the whole or part of the Supply remaining to be completed (which may include all of the Supply within one or more Requests for Supply),

by notice in writing to the Contractor.

### 28.2 Taking Supply out of Contractor's hands

- (a) When Supply which is taken out of the hands of the Contractor under clause 28.1 is completed, the Council's Representative must ascertain the cost incurred by Council in completing the Supply and must issue a certificate to Council and the Contractor certifying the amount of that cost.
- (b) If the cost incurred by Council is greater than the amount which would have been paid to the Contractor if the Supply had been completed by the Contractor, the difference will be a debt due from the Contractor to Council. If the cost incurred by Council is less than the amount that would have been paid to the Contractor if the Supply had been completed by the Contractor, the difference will be a debt due to the Contractor from Council.

### 28.3 Council's right to terminate for convenience

- (a) Council may at any time in its sole and unfettered discretion terminate the Contract or one or more of the Requests for Supply for its convenience and without reason by giving three Business Days' notice in writing to the Contractor.
- (b) Subject to clause 28.3(c), if Council terminates the Contract or one or more Requests for Supply under clause 28.3(a), the Contractor's sole entitlement to Claim in relation to that termination will be for payment of:
  - (i) all Supply carried out in accordance with the Contract or the relevant Requests for Supply (as applicable) up to, but excluding,

- the date that the termination becomes effective;
- (ii) items validly ordered by the Contractor prior to the date of termination which would have formed part of the Supply, provided that title in such items will transfer to Council upon payment for the item;
  - (iii) any costs reasonably incurred by the Contractor in the expectation of completing the Supply, and which are not included in any other claim for payment; and
  - (iv) reasonable costs of demobilising individuals and equipment that are incurred as a direct and unavoidable result of the termination,
- provided that:
- (v) a claim for payment under this clause 28.3 is subject to clause 17; and
  - (vi) the Contractor may not claim payment for any amounts that have been the subject of a previous payment claim.
- (c) If Council terminates the Contract or one or more Requests for Supply under clause 28.3(a) and at the time of termination the Contractor:
- (i) is subject to an Insolvency Event;
  - (ii) has not provided a statutory declaration in accordance with clause 28.7 (if requested); or
  - (iii) has provided a statutory declaration which required under the Contract and such statements are determined by Council (acting reasonably) to be untrue, false or misleading,
- Council shall not be required to make further payment to the Contractor.
- (d) If Council terminates one or more Requests for Supply, but does not terminate the Contract, all Requests for Supply other than those specified by Council as being terminated will continue in force.
- (e) For the avoidance of doubt, if Council terminates the Contract, all Requests for Supply will terminate as of the same date and time as the date and time for termination of the Contract.

#### 28.4 Termination not valid

- (a) If Council terminates, or purports to terminate, under clause 28.1 or otherwise at law and it is subsequently held to be invalid, void or otherwise unenforceable then Council will be deemed to have terminated for Council's convenience under clause 28.3 as at the same date and time as the original notice of termination.
- (b) The Contractor waives any Claim the Contractor has or would have had, but for this clause 28.4, arising out of or in connection with any termination, or purported termination, by Council under clause 28.1, or otherwise at law being subsequently held to be invalid, void or otherwise.

#### 28.5 Actions following termination or expiry of Contract

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

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

#### 28.6 Termination reference date

- (a) This clause shall only apply to the extent that the Security of Payment Act applies to the Contract
- (b) Despite anything else in the Contract to the contrary or which would otherwise limit the operation of this clause, in the event of termination of the Contract for any reason, the Contractor is entitled to make a single claim for payment in accordance with clause 17 (whether or not the Contractor has satisfied the Claim Preconditions which would otherwise apply in respect of that claim for payment) on and from the termination date, such termination date being considered a 'reference date' for the purposes of the Security of Payment Act (**Termination Reference Date**). For clarity, nothing prevents the Council's Representative or Council setting off or withholding any amount arising out of, or in connection with, a failure of the Contractor to satisfy any Claim Preconditions, where such failure is also a breach of the Contract or results in any other claim of Council against the Contractor.
- (c) The Contractor may only include in the claim for payment contemplated by this clause, any amount which is due and payable to the Contractor under the Contract in respect of Supply properly undertaken prior to or on the Termination Reference Date.
- (d) Unless otherwise instructed by Council, the Council's Representative must not assess any other amounts and Council shall have no obligation to pay another amount, including additional amounts contemplated under clause 28, until such time as the claim for payment contemplated by this clause has been made and assessed in a payment schedule by the Council's Representative (or the time for making such a payment claim has elapsed under the Security of Payment Act).
- (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 claim for payment contemplated by this clause, Council may request the Council's Representative to issue a payment schedule, including to assess any amounts owing either to Council from the Contractor, or to the Contractor from Council, as the case may be.
- (g) Within 15 Business Days of receipt of such a request, the Council's Representative must issue a payment schedule to Council and the Contractor. Any amount owing under the payment schedule must be paid by the Contractor to Council, or Council to the Contractor, as the case may be, within 15 Business Days of the date of the payment schedule.

## 28.7 Statutory declaration

The Contractor agrees that:

- (a) at any time, the Council's Representative may request the Contractor to provide a completed and signed statutory declaration (in a form and containing such detail as reasonably required by the Council's Representative) from a representative of the Contractor who is in a position to know the facts confirming that:
  - (i) the Contractor is solvent and not subject to any Insolvency Event; and
  - (ii) the Contractor is not seeking, to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the *Corporations Act 2001* (Cth); and
- (b) the Contractor must provide such completed and signed statutory declaration within 2 Business Days of the request from the Council's Representative.

## 29 Notification of claims

### 29.1 Conditions for making claims

The Contractor is not entitled to make any Claim against Council unless:

- (a) if the requirements for notification of the Claim are prescribed elsewhere in the Contract, the Contractor has strictly complied with those requirements; or
- (b) if clause 29.1(a) does not apply, then the Contractor has given Council written notice of the intent to Claim within 15 Business Days of when the Contractor should reasonably first have become aware of the occurrence of the event giving rise to the Claim.

### 29.2 Requirements for notice

A notice under clause 29.1(b) must be in writing and include:

- (a) the legal basis for the Claim, and if based on a term of any contract, clearly identify which contract and the specific term;
- (b) the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment; and
- (c) details of the quantum of the Claim showing the calculations and their bases.

### 29.3 Non-compliant Claims barred

Failure by the Contractor to comply with this clause 29 is an absolute bar to making the Claim.

## 30 Personal Property Securities Act

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

notification in accordance with the *Personal Property Securities Act 2009* (Cth) (**PPSA**); or

- (iii) enabling Council to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- (b) The Contractor waives each right to receive any notice from Council under the PPSA (including notice of a verification statement) that can be waived.
- (c) Except as expressly agreed in writing to the contrary, the Contractor:
  - (i) acknowledges that neither the Contract nor a transaction in connection with it is intended to provide a Security Interest in favour of the Contractor; and
  - (ii) agrees that it will not register or otherwise perfect (or seek to perfect) any Security Interest, and will remove any registration in respect of the Contract or a transaction in connection with it.
- (d) The Contractor must promptly notify Council if it knows or becomes aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has or claims a Security Interest over a product of the Supply:
  - (i) owned by Council;
  - (ii) supplied or to be supplied by the Contractor to Council; or
  - (iii) in which Council has an interest.
- (e) The Contractor must, on request by Council, use best endeavours to ensure that the third party:
  - (i) discharges any such Security Interest, and does not register or otherwise perfect (or seek to perfect), and removes any registration, in respect of any such Security Interest; or
  - (ii) subordinates any such Security Interest to the interest of Council, by an agreement in form and substance satisfactory to Council.
- (f) At any time when title to or ownership of any product of the Supply, is passed to Council, the Contractor must ensure that title or ownership is passed free of any Security Interest of the Contractor or any other person.
- (g) The Contractor must ensure that each subcontract has, for the benefit of Council, a clause that reflects this clause 30.
- (h) Without limiting clause 22, neither Council nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. However, this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

## **31 Dispute resolution**

### **31.1 Dispute resolution process**

- (a) Either party may at any time by notice in writing to the other, refer any disagreement or dispute that has arisen between the parties in relation to the Contract or the formation, validity or subject matter of the Contract (**Dispute**), to dispute resolution in accordance with this clause 31.
- (b) A party that issues a notice of Dispute under clause 31.1(a) must include in that notice reasonable details of the legal and factual basis of the Dispute.
- (c) Except to the extent:
  - (i) permitted by clause 31.6; or
  - (ii) that this clause 31 would be in breach of any applicable Legislative Requirement,
 if either party refers a Dispute to resolution in accordance with this clause 31, then completion of the process set out in this clause 31 will be a condition precedent to the initiation of any proceeding or action in a Court or otherwise regarding that Dispute.

### **31.2 Negotiation**

- (a) If a party receives notice of a Dispute under clause 31.1(a), then, within 10 Business Days of receipt of that notice of Dispute, or such longer time as the parties may agree in writing, both parties must have their representatives meet in an effort to negotiate a resolution of the Dispute.
- (b) At any meeting under clause 31.2(a), the parties must:
  - (i) each be represented by at least one person with authority to resolve the Dispute on their behalf; and
  - (ii) ensure that their representatives make genuine efforts to understand the other party's position, to clearly articulate their position, and to identify and put forward any matters on which Contract can be reached.

### **31.3 Mediation**

If the Dispute is not resolved within 5 Business Days of occurrence of the meeting under clause 31.2(a), or such longer period as the parties may agree in writing, then the parties must refer the Dispute to mediation in accordance with, and subject to, the most current version of the Resolution Institute's Mediation Rules.

### **31.4 Litigation**

If the Dispute is not resolved in accordance with clause 31.3, then either party may commence Court proceedings to resolve the Dispute.

### **31.5 Continued performance required**

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

### **31.6 Urgent interlocutory relief**

A party may commence Court proceedings relating to any Dispute at any time if that party seeks urgent interlocutory relief.

## **31.7 Survival**

The obligations in this clause 31 survive the expiry or termination of the Contract.

## **32 General**

### **32.1 Amendments**

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

### **32.2 Assignment and novation**

- (a) The Contractor may only assign its rights under the Contract or novate this Contract with the written consent of Council, whose consent may be withheld, or given subject to conditions, in its sole and unfettered discretion.
- (b) Council may at any time in its sole and unfettered discretion assign any or all of its rights under the Contract to a third party by notice in writing to the Contractor or novate this Contract.
- (c) Council may at any time in its sole and unfettered discretion novate all of its rights and obligations under the Contract to any third party that is carrying out work or Supply related to the Supply. The Contractor must execute any deed or Contract that Council reasonably requires to effect that novation.

### **32.3 Counterparts**

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

### **32.4 No merger**

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

### **32.5 Entire Contract**

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

### **32.6 Further assurances**

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

### **32.7 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.

### 32.8 Governing law and jurisdiction

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

If a notice is	It is given and received on
	(b) the next Business Day, in any other case.
Sent by post	(a) three Business Days after posting, if sent within Australia; or (b) seven Business Days after posting, if sent to or from a place outside Australia.

### 32.9 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.

- (c) A person's address, email address, email size limit and fax number for notices issued under the Contract are as set out in Schedule 1, or as the person notifies the sender.

### 32.10 Notice

- (a) A notice, consent or communication under the Contract is only effective if it is:
- (i) in writing, in English, signed by or on behalf of the person giving it;
  - (ii) addressed to the person to whom it is to be given; and
  - (iii) given as follows:
    - (A) delivered by hand to that person's address;
    - (B) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas;
    - (C) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission was made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or
    - (D) sent by email to that person's email address, except where the sender receives a response (including an automated response) indicating that the email was not properly sent or received.
- (b) A notice, consent or communication given under clause 32.10(a) is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by fax or email	(a) that day, if delivered by 5.00pm on a Business Day; or

# Schedule 1

## Contract Particulars

Details		
<b>Council:</b>	Maranoa Regional Council ABN 99 324 089 164 of 1 Cartwright Street, Roma QLD 4455	
<b>Contractor:</b>	[#insert legal name and ACN or ABN] of [#Insert address]	
<b>Commencement Date:</b>	[#insert]	
Nature of Contract (Note: Council to select 'Yes' and complete only one this section)		
Option 1 – Supply for a Contract Term (clause 4.1 applies)		
<b>Is the Supply for a Contract Term:</b> (clause 4.1)	[#Yes / No]	
<b>If Yes, the Contract Term for the Supply is:</b>	[#insert period Contract Term.]	
<b>Extension of Contract Term:</b> (clauses 4.1(c))	[#insert additional period by which the Contract Term may be extended e.g. "12 months" or mark as 'N/A']	
Option 2 – Supply required by a Completion Date (clause 6.2 applies)		
<b>Is the Supply required by a Completion Date:</b> (clause 4.2)	[#Yes / No]	
<b>If Yes, the Completion Date is:</b>	[#insert the date for Completion.]	
<b>Liquidated damages applying to the Completion Date:</b> (clause 5.3)	[#\$_____ per day (exc GST)] <b>OR</b> [#No liquidated damages apply but Council's right to claim general law damages is preserved]	
Supply		
<b>Goods to be supplied (if any):</b>	[#insert]	
<b>Extent to which the Goods (if any) may not be new</b> (clause 8.2(a)):	[#insert]	
<b>Services to be supplied (if any):</b>	[#insert]	
<b>Site:</b>	[#insert]	
Details for notices under Contract		
<b>Council's Representative:</b>	Name:	[#insert]
	Postal address:	[#insert]
	Telephone:	[#insert]

	Fax:	[#insert]
	Email address:	[#insert]
<b>Contractor's Representative:</b>	Name:	[#insert]
	Postal address:	[#insert]
	Telephone:	[#insert]
	Fax:	[#insert]
	Email address:	[#insert]
<b>Security of Payment notices (clause 18(b))</b>	Address / email address:	[#insert]
<b>Key Supply Dates</b>		
<b>Key Supply Dates (clause 4)</b>	[#insert]	
<b>Liquidated damages applying to the Key Supply Dates: (clause 5.3)</b>	[#\$_____ per day (exc GST)] <b>OR</b> [#No liquidated damages apply but Council's right to claim general law damages is preserved]	
<b>Defects Liability Period</b>		
<b>Defects Liability Period (clause 11)</b>	[#insert] (If nothing is stated, then the period of 12 months)	
<b>Payment</b>		
<b>Price</b>	[#Means the lump sum amount of \$[#insert] (ex GST).] <b>OR</b> Means the lump sum amount and rates as identified in the Pricing Schedule. <b>OR</b> Means the rates, as identified in the Pricing Schedule.	
<b>Invoice Date (clause 17.2(a))</b>	The later of the dates worked out as follows: (a) the [#insert] date of each month; and (b) the date of satisfaction of the last Claim Precondition.	
<b>Time for payment schedule (clause 17.4)</b>	[#insert]	
<b>Payment terms (clause 17.5)</b>	Within [#insert] days of the last day of the month in which the invoice is received.	
<b>Quality</b>		
<b>Quality assurance system: (Clause 12.1(c))</b>	[#Is / is not] required to be accredited.	
<b>Insurances</b>		
<b>General third party liability insurance</b>		
Minimum requirements for cover	[#insert minimum coverage required]	
Additional requirements	[#insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]	
<b>Workers' compensation and employer's liability insurance</b>		
Minimum requirements for cover	[#insert minimum coverage required]	
Addition requirements	[#insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]	
<b>Motor vehicle insurance</b>		
Minimum requirements for cover	[#insert minimum coverage required]	

Additional requirements	[#insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]
<b>Professional indemnity insurance</b>	
Minimum requirements for cover	[#insert minimum coverage required]
Additional requirements	[#insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]
<b>Goods insurance</b>	
Minimum requirements for cover	[#insert minimum coverage required]
Additional requirements	[#insert any additional requirements e.g. scope of coverage, maximum deductibles]
<b>Transit insurance</b>	
Minimum requirements for cover	[#insert minimum coverage required]
Additional requirements	[#insert any additional requirements e.g. scope of coverage, maximum deductibles]
<b>[#insert details of any other insurances required to be maintained]</b>	
Limit of cover	[#insert minimum coverage required]
Additional requirements	[#insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]

## Schedule 2

### Scope of Supply

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

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## Schedule 3

### Pricing Schedule

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[#Insert as required.]

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## Execution

EXECUTED as an Contract

Signed by Maranoa Regional Council ABN 99 324 089 164  
on / /20 by its duly authorised officer in the presence  
of:

Signature of Authorised Officer

Signature of witness

Full Name of Authorised Officer

Name of witness (print)

Office Held

**[#Alternative execution clause: If Contractor is a company. Delete if it is not applicable]**

Executed by  
[#insert Contractor's name] ACN [#insert Contractor's ACN]  
on / /20 by:

Director

Director/Secretary

Full name of Director

Full name of Director/Secretary

**[#or]**

Executed pursuant to s 127 *Corporations Act 2001* (Cth) by  
[#insert Contractor's name] ACN [#insert Contractor's ACN] on  
/ /20

Signature of [#insert name of sole director or sole  
secretary] who signs in the capacity of sole secretary  
and sole director

**[#Alternative execution clause: If Contractor is an individual. Delete if it is not applicable]**

Executed by [#insert name] on / /20 in the  
presence of:

Signature of [#insert name]

Signature of witness

Name of witness (print)

[#Alternative execution clause: If Contractor is a partnership. Delete if it is not applicable]

Executed for and on behalf of [#insert full name of all partners] )  
 on / /20 by being signed by [#insert name] who )  
 certifies that he/she is duly authorised to sign this Contract in )  
 the presence of: )  
 )

^ \_\_\_\_\_  
 Signature of witness

^ \_\_\_\_\_  
 Signature of [#insert name]

^ \_\_\_\_\_  
 Name of witness (print)

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