

# CONTRACT

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Kowanyama Sealed DRFA Works

CONTRACT NO.: KASC-2022-008

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## Reference Schedule

Item	Details	
1. <b>Principal's details</b>	Name:	Kowanyama Aboriginal Shire Council
	ABN:	86 255 216 480
2. <b>Principal's Representative (Clause 5)</b>	Name:	
	Address:	
	Telephone:	
	Email:	
3. <b>Contractor's details</b>	Name:	
	ABN:	
4. <b>Contractor's representative's details</b>	Name:	
	Address:	
	Telephone:	
	Email:	
5. <b>Warranty Period (Clauses 6 and 21)</b>	months after the date on which the last of the Goods are Delivered to the Principal.	
6. <b>Security (Clause 7)</b>	Amount:	5% <i>If nothing stated, 5% of the Price.</i>
	To be returned:	a.) 2.5% of security to be returned within 10 Business Days after the last of the Goods to be delivered under the Contract have been Delivered b.) balance of security to be returned within 10 Business Days after the end of the Warranty Period.
7. <b>Deliverables (Clause 11)</b>	Deliverable	Time for provision
	Entirety of Scope	1 December 2022
8. <b>Liquidated damages (Clause 13)</b>	Liquidated damages, rate per calendar day	\$1000 <i>If nothing stated, the Contractor is liable for general, but not liquidated damages</i>
	Limit on liquidated damages	\$ <i>If nothing stated, there is no limit</i>
9. <b>Payment Claims: (Clause 15)</b>	May be submitted on:	21 <sup>st</sup> day of each month
	Should be emailed to:	
10. <b>The Principal's liability is limited to: (Clause 19)</b>	<i>If nothing stated, the Principal's liability is limited to the Price.</i>	
11. <b>The Contractor's liability is limited to: (Clause 19)</b>	<i>If nothing stated, the Contractor's liability is not limited.</i>	
12. <b>The Contractor must effect the following insurances: (Clause 19.3(a))</b>	<input checked="" type="checkbox"/> Public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims <input checked="" type="checkbox"/> Material loss or damage insurance at least to the full replacement value of the Goods (including during transit); <input checked="" type="checkbox"/> Third party and comprehensive motor vehicle insurance for each vehicle used by the Contractor in performing its obligations under this Contract <input checked="" type="checkbox"/> Workers' compensation insurance in respect of the Contractor's Personnel as required by law If not selected, the Contractor is not required to effect the insurance	

**Parties:**

**Kowanyama Aboriginal Shire Council** of PO Box 30 Kowanyama in the State of Queensland

**(Principal)**

**[Insert Contractor's Name]** of [Insert Contractor's address].

**(Contractor)**

**Background:**

- A. The Contractor has offered to provide goods to the Principal in accordance with the Contract.
- B. The parties wish to enter into this Contract to record the terms on which the Contractor will provide the Goods to the Principal.

**The Parties agree:**

**1. CONTRACT**

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1.1 **(Documents comprising Contract)** The Contract comprises:

- (a) the Reference Schedule;
- (b) these General Conditions;
- (c) Schedule 1 – Special Conditions and Specifications;
- (d) Schedule 2 – Contractor's Statutory Declaration; and
- (e) Schedule 3 – QRA Treatment Guide
- (f) Schedule 4 – Personnel & Plant
- (g) Schedule 5 – Indicative Locality Sketches
- (h) Schedule 6 – Dayworks Charges
- (i) Schedule 7 – Pricing

1.2 **(Final agreement)** The Contract constitutes the entire, final and concluded agreement between the Parties as to its subject matter. It supersedes all prior representations, agreements, statements and understandings between the Contractor and the Principal (whether oral or in writing).

1.3 **(Order of precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1, then the documents will take precedence in the order set out in clause 1.1 with the Reference Schedule being the highest in the order.

**2. PERFORMANCE AND PAYMENT**

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2.1 **(Performance)** Subject to clause 5.1, the Contractor must, at the Contractor's expense:

- (a) supply and deliver the Goods in accordance with the Contract and the directions of the Principal given under the Contract; and
- (b) otherwise comply with its other obligations under this Contract.

## General Conditions

2.2 **(Payment)** The Principal must pay the Contractor the Price for Goods Delivered in accordance with the Contract and the directions of the Principal given under the Contract.

### 3. NO EXCLUSIVITY

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3.1 The Contractor is not the exclusive supplier of the Goods, or of goods of the same or a similar type to the Goods. The Principal may engage other contractors to provide goods of the same or a similar type to the Goods. The Principal shall not be liable upon any Claim by the Contractor in connection with the quantity or value of Goods for which the Principal engages the Contractor or other contractors to supply.

### 4. NATURE OF RELATIONSHIP

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4.1 The Contractor is an independent contractor of the Principal. The Contractor is solely responsible for payments required to be made to its Personnel for the performance of services in connection with this Contract and solely responsible for determining the manner in which it complies with its obligations under this Contract. The Contractor must provide such materials, equipment, knowledge and Personnel as the Contractor deems necessary to comply with its obligations and under this Contract.

### 5. REPRESENTATIVES

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5.1 **(The Principal's Representative)** The Principal's Representative is appointed as the Principal's agent to exercise any of the Principal's rights or functions under this Contract. The Principal's Representative is not an independent certifier or valuer. No other person is permitted to exercise any right or function of the Principal without the express written consent of the Principal or the Principal's Representative. The Contractor must notify the Principal immediately if it receives a purported direction in connection with the Contract from any person other than the Principal's Representative. The Principal shall not be liable upon any Claim relating to a direction given to the Contractor by any person other than the Principal's Representative.

5.2 **(Contractor's representative)** The Contractor must nominate an authorised representative for the purpose of managing the Contract and must notify the Principal in writing of the details of the nominated representative. Matters which are in the knowledge of the Contractor's representative are deemed to be within the knowledge of the Contractor. If the Principal reasonably objects to the nominated representative, the Contractor shall nominate another representative.

5.3 **(Change of representative)** Either Party must notify the other of a change in representative prior to effecting the change. If the Principal reasonably objects to the representative nominated by the Contractor, the Contractor shall nominate another representative.

### 6. WARRANTIES, REPRESENTATIONS AND ACKNOWLEDGEMENTS

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6.1 **(Contractor Warranties)** The Contractor warrants and represents that:

- (a) **(Improper Conduct)** neither the Contractor nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Contractor acknowledges that it must not, and must ensure that its Personnel do not, engage in any Improper Conduct in connection with the Contract;
- (b) **(ability)** the Contractor and, to the extent applicable to them, its Personnel:
  - (i) have the experience, skills, expertise, resources and judgement;
  - (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

which are required for the Contractor to comply with its obligations under this Contract and will maintain such competencies, licences, accreditation, qualifications, permits,

## General Conditions

clearances or other authorisations at all times until its obligations under the Contract are complete;

- (c) **(investigations)** the Contractor has carefully reviewed the Contract (including the all information contained or referenced in Schedule 1) and is satisfied that the information is appropriate and adequate to enable the Contractor to comply with its obligations under the Contract;
- (d) **(legal capacity)** the Contractor has the full power, authority and capacity to enter into this Contract and that the Contractor's obligations under this Contract are valid and binding on it, and enforceable against it;
- (e) **(standard)** the Contractor will, and to the extent applicable to them, will ensure that its Personnel provide the Goods and carry out its other obligations in connection with the Contract:
  - (i) to the standard of skill, care and diligence expected of a skilled and competent contractor engaged in the business of providing goods similar to the Goods or to such higher standard as the Contractor has represented in writing to the Principal in relation to the Contract; and
  - (ii) in accordance with Goods Industry Practice;
- (f) **(Deliverables)** all Deliverables will:
  - (i) comply with the requirements of the Contract and applicable law;
  - (ii) be consistent with or exceed applicable industry standards;
  - (iii) be of a standard and quality expected of a skilled and competent contractor experienced in the preparation of documents similar to the Deliverables using Good Industry Practice; and
  - (iv) be fit for the purpose or purposes stated in or to be reasonably inferred from the Contract;
- (g) **(condition of Goods)** the Goods shall:
  - (i) at the time at which they are Delivered:
    - A. comply with any applicable requirement, code, guideline, policy, drawing or specification included or incorporated by reference into the Contract or directed by the Principal prior to the Delivery of the Goods, or if none is included, incorporated or directed, any Australian standards applicable to the Goods and any applicable law; and
    - B. where goods are manufactured, be new; and
  - (ii) at the time at which they are Delivered and for the duration of any applicable Warranty Period:
    - A. be free from defects and of merchantable quality;
    - B. comply in all respects with the Contract including as to quality, quantity, performance, functionality and description;
    - C. conform to any sample goods approved by the Principal;

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- D. be fit for the purposes stated in or to be reasonably inferred from the Contract or otherwise made known to the Contractor prior to the date of the Contract;
  - (h) **(intellectual property)** except to the extent that Goods or Deliverables are manufactured or prepared strictly in accordance with technical plans or drawings provided to the Contractor by the Principal, the Goods and Deliverables do not, and the Principal's use of the Goods and Deliverables for a purpose stated in or to be reasonably inferred from the Contract or otherwise made known to the Contractor prior to the date of the Contract will not, infringe any Intellectual Property Rights;
  - (i) **(encumbrances)** when title passes, the Goods will not be subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a law that cannot be excluded by agreement;
  - (j) **(Price)** the rates and prices in Schedule 1 include the supply, delivery, insurance stage and packaging of the Goods and compliance with all of the Contractor's other obligations under this Contract;
- 6.2 **(Notice of breach)** The Contractor must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Contractor has breached a warranty given or representation made in clause 6.1.
- 6.3 **(Warranties unaffected)** The warranties, representations and acknowledgements in clause 6.1 remain unaffected notwithstanding:
- (a) that any description of Goods was prepared by the Principal;
  - (b) any Variation;
  - (c) any receipt, inspection, testing, comment, review, or direction on the Goods or Deliverables by the Principal or its Personnel; or
  - (d) the adoption or incorporation into the Deliverables by the Contractor of any applicable industry standard or work carried out by others (including work carried out by or on behalf of the Principal),

except to the extent that, the Contractor has given the Principal prior written notice expressly stating that the Variation, inspection, test, receipt, review, comment, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

- 6.4 **(Third party warranties)** The Contractor shall obtain and provide to the Principal, the warranties required elsewhere in the Contract. Unless otherwise directed by the Principal, the Contractor shall also obtain a warranty from each subcontractor, retailer or manufacturer on terms commonly provided by those subcontractors, retailers or manufacturers for their parts of the Goods, in the name of both the Principal and the Contractor.

## 7. SECURITY

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- 7.1 **(Form of security)** Within 10 Business Days after the date of the Contract, the Contractor shall provide security in the form of unconditional bank guarantee(s) reasonably acceptable to the Principal, in the amount(s) stated in the Reference Schedule.
- 7.2 **(Recourse to security)** The Principal may have recourse to the security where the Contractor fails to pay an amount due under the Contract, within the time required by the Contract and 5 days has elapsed after the Principal has given the Contractor notice of its intention to have recourse.

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- 7.3 **(Return of security)** Subject to the Contract security will be returned at the times stated in the Reference Schedule. If the Contract is terminated by the Principal, other than for its convenience, the Principal may continue to hold the security and exercise its right to have recourse until such time as all accounts in connection with the Contract are finally settled between the Parties.

### 8. KEY PERSONNEL

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- 8.1 **(Provision of Key Personnel)** The Contractor must ensure that only Key Personnel perform the roles identified in the Reference Schedule.
- 8.2 **(Change in Key Personnel)** The Contractor may seek the approval of the Principal to change the role of any Key Personnel or to engage additional persons as Key Personnel. The Contractor must provide any information reasonably required by the Principal in connection with such a request. The Principal cannot unreasonably refuse to approve a replacement person that is of equal or greater skill, experience and competency to the person being replaced.

### 9. CONDUCT OF CONTRACTOR AND PERSONNEL

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- 9.1 **(General)** The Contractor must, and must ensure that to the extent applicable to them its Personnel:
- (a) act professionally and courteously in all dealings with the Principal and the Principal's officers, employees and contractors and the general public in connection with the Contract;
  - (b) comply with:
    - (i) any law, standards and codes of practice applicable to the Contractor, the Contractor's business or the Contractor's obligations under this Contract;
    - (ii) all directions of the Principal given pursuant to this Contract;
    - (iii) any applicable policies, guidelines, procedures and codes of the Principal which are made known to the Contractor from time to time;
  - (c) do not either directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the Delivery Place, or to the public generally.
- 9.2 **(Local Government Worker)** The Contractor must ensure that when acting as a Local Government Worker, the Contractor's Personnel:
- (a) have all appropriate qualifications, skills and training to exercise a power or perform a responsibility under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009* (Qld);
  - (b) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Personnel are authorised as Local Government Workers by the Principal; and
  - (c) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).
- 9.3 **(Conflict)** Where there is any conflict between any standard or obligation described in clause 9.1 or 9.2, the Contractor and its Personnel must adopt the higher standard or more onerous obligation unless directed otherwise by the Principal.
- 9.4 **(Industrial relations)** The Contractor remains solely responsible for the management of industrial relations relating to its Personnel. The Contractor must promptly inform, and keep



## General Conditions

informed, the Principal in relation to any potential or actual industrial relations issues which could affect the ability of the Contractor to comply with its obligations under the Contract.

### 10. SUBCONTRACTING AND ASSIGNMENT

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- 10.1 **(General)** The Contractor must not subcontract or assign the whole or any part of its obligations under this Contract without the prior written consent of the Principal. Subcontracting of the Contractor's obligations shall not relieve the Contractor from any liability or obligation under the Contract.
- 10.2 **(Warranties)** The Contractor shall obtain the warranties required elsewhere in the Contract. Unless otherwise directed by the Principal, where Goods are manufactured the Contractor shall also obtain a warranty from each manufacturer (if that is not the Contractor) on terms commonly provided by the manufacturer, in the name of both the Principal and the Contractor.

### 11. DELIVERABLES

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- 11.1 **(Provision of copies)** The Contractor must create and provide the Principal with copies of the Deliverables at the times required by the Reference Schedule or where no time is stated, promptly whenever requested by the Principal.
- 11.2 **(Updated Deliverables)** Where directed by the Principal to do so, as a requirement of Completion (or where the Contract is earlier terminated, no later than 10 Business Days after the notice of termination under clause 25 is given), the Contractor must provide the Principal with a complete updated copy of the Deliverables accompanied by a statutory declaration in the form contained in Schedule 2.

### 12. DELIVERY OF GOODS

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- 12.1 **(Delivery)** The Contractor shall comply with all requirements relating to delivery which are stated in the Contract or which are otherwise reasonably directed by the Principal. Unless otherwise agreed by the Principal, the Goods shall only be Delivered to the Delivery Place when a representative of the Principal is present at the Delivery Place.
- 12.2 **(Change to delivery details)** The Principal may vary the Delivery Details at its discretion and the Contractor shall comply with the varied requirements unless it cannot reasonably do so. A direction to change the Delivery Details will constitute a variation pursuant to clause 14 only to the extent that it represents a material departure from the Delivery Details described in Schedule 1. Otherwise, the Contractor shall comply with a direction to change the Delivery Details at its expense.
- 12.3 **(Delivery dockets)** The Contractor must provide a true and correct delivery docket to the Principal at the time at which the Goods are Delivered. The delivery docket must contain any details required elsewhere in the Contract. The signing of a delivery docket by or on behalf of the Principal shall be evidence only that Goods have been received and not that those Goods comply with the Contract.
- 12.4 **(Acceptance of Goods)** Neither the physical receipt of the Goods, the signing of a delivery docket nor any representation made by the Principal or any of the Principal's Personnel in respect of the Goods (whether at or after the time at which the Goods are Delivered) shall evidence that the Contractor has complied with the requirements of the Contract or constitute any waiver by the Principal of its rights under the Contract, including its rights under clause 21.
- 12.5 **(Inability to perform)** The Contractor must immediately after receiving an order for Goods from the Principal, notify the Principal if it cannot comply with the relevant Delivery Details. On receipt of such a notice the Principal may agree to change the Delivery Details or may withdraw the order. The Principal may also engage a third party to supply any part of the Goods.

## General Conditions

### 13. TITLE AND RISK IN GOODS

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- 13.1 **(Title and risk)** Title to and property in the Goods shall pass immediately to the Principal upon payment. Risk in the Goods shall remain with the Contractor until the Goods are received by the Principal. If Goods are rejected pursuant to clause 21.2(c), the Goods shall be at the risk of the Contractor from the time that the Principal gives notice of the rejection by the Principal.
- 13.2 **(Security Interest)** The Contractor acknowledges that the Principal has a security interest in the Goods and the proceeds of the Goods for the purpose of the *Personal Property Securities Act 2009* (Cth) and agrees to provide all reasonable assistance to the Principal in order to perfect and enforce that security interest.
- 13.3 **(No acknowledgement)** Taking possession of Goods shall not constitute an admission by the Principal that those Goods comply with the Contract.

### 14. TIMING

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- 14.1 **(Timing of delivery)** The Contractor must ensure that the Goods are Delivered at the Delivery Place(s) by the Delivery Time(s).
- 14.2 **(Delay)** The Contractor must promptly notify the Principal if the Contractor is or will be delayed in providing the Goods. The Contractor shall take all reasonable steps to prevent the occurrence and to mitigate the effects of a delay. Where the Goods are not Delivered by the Delivery Time because of:
- (a) a Qualifying Cause of Delay, the Principal shall grant a reasonable extension of the Delivery Time;
  - (b) any other cause of delay, the Principal may, but shall not be obliged to, grant an extension of the Delivery Time.
- 14.3 **(Prevention and Mitigation)** The Contractor shall take all reasonable steps to prevent the occurrence and to mitigate the effects of a delay.
- 14.4 **(No monetary compensation)** The Contractor shall not be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Contractor's obligations under this Contract however caused.
- 14.5 **(Liquidated damages)** If the Goods or any part of the Goods is not Delivered to the Delivery Place by the Delivery Time (as extended if at all by the Principal), then the Contractor shall be indebted to the Principal for liquidated damages at the rate stated in the Reference Schedule for each calendar day from the Delivery Time until the date on which the Goods are Delivered, up to the limit (if any) stated in the Reference Schedule. The Principal shall be entitled to deduct liquidated damages from payments to the Contractor and recover any balance as a debt due and owing.

### 15. VARIATIONS

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- 15.1 **(Direction for Variation)** The Principal may at any time and for any reason direct a Variation by giving written notice to the Contractor but cannot direct a Variation which is outside the general scope of Schedule 1. The Contractor cannot carry out a Variation without a written direction to do so from the Principal.
- 15.2 **(Adjustment of Price)** The Price shall be adjusted for each Variation directed by the Principal in accordance with clause 14.1 by the amount agreed by the Parties or failing agreement by a reasonable amount determined by the Principal. The Contractor shall not otherwise be entitled to any payment in connection with a Variation.
- 15.3 **(Omissions)** Where the Principal directs a Variation omitting or reducing any part of the Goods, then the Principal may subsequently provide the omitted or reduced Goods itself or engage

## General Conditions

others to do so on its behalf. The Contractor shall not be entitled to any monetary compensation in connection with an omission or reduction, and such omission or reduction shall not invalidate or constitute repudiation of the Contract.

### 16. PAYMENT CLAIMS

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- 16.1 **(Submission of payment claims)** The Contractor may submit payment claims to the Principal for Goods Delivered in accordance with this Contract at the times stated in the Reference Schedule. The claim must be accompanied by a valid tax invoice and any other documentation which the Contract elsewhere requires to be provided with a claim for payment, or which the Principal reasonably directs prior to the time for submission of the claim and, subject to clause 16.2, a valid tax invoice. Unless otherwise directed, claims should be made promptly and, in any event, no later than 5 Business Days of the date on which Goods required under the Contract are Delivered.
- 16.2 **(Amount due)** The Principal may deduct any amount due and owing by the Contractor to the Principal and any amount which the Principal reasonably claims is or will become due and owing by the Contractor to the Principal (whether under this Contract or otherwise) from any amount claimed by the Contractor under or in connection with this Contract (including for a breach of the Contract). The balance remaining after such a deduction shall be due by the Principal to the Contractor or by the Contractor to the Principal as the case may be.
- 16.3 **(Payment)** Subject to this Contract, the Principal shall pay the amount due to the Contractor (if any) including any applicable GST by electronic transfer to the Contractor's nominated bank account within 15 Business Days of receipt by the Principal of the claim. If an amount is due from the Contractor to the Principal, the Contractor must pay that amount including any applicable GST within 15 Business Days of receiving written notification to this effect from the Principal. Interest shall be payable on late payments at a rate of 5% per annum from and including the day after the payment is due until and including the day on which payment is made.
- 16.4 **(Payment)** Subject to this Contract, the Principal shall pay the amount due to the Contractor (if any) including any applicable GST by electronic transfer to the Contractor's nominated bank account:
- (a) if the contract is a 'building contract' as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), within 15 Business Days of receipt by the Principal of the claim;
  - (b) otherwise, within 25 Business Days of receipt by the Principal of the claim.
- If an amount is due from the Contractor to the Principal, the Contractor must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from the Principal.
- 16.5 **(No admission)** Payments made by the Principal to the Contractor are made on account only and do not constitute an admission that the Contractor is entitled to the payment made or that the Goods the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract;
- 16.6 **(Sole entitlement)** Payment of the Price shall be the Contractor's only entitlement to monetary compensation for the provision of the Goods and compliance with the Contractor's other obligations under this Contract.
- 16.7 **(Final payment claim)** Where directed to do so by the Principal, as a pre-condition to entitlement to payment of its final payment claim, the Contractor must provide to the Principal a statutory declaration in the form contained in Schedule 2, dated after all Goods have been Delivered.

## General Conditions

### 17. GOODS AND SERVICES TAX

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- 17.1 **(Liability for GST)** If GST is imposed on any supply made pursuant to this Contract, the amount payable for the supply is to be increased by the amount of that GST. Subject to clause 16.2, the Party seeking payment must provide a tax invoice in the form required by the GST Law.
- 17.2 **(Recipient created tax invoices)** Where the Principal is the recipient of a taxable supply under this Contract the Principal may issue recipient created tax invoices or recipient created adjustment notes in respect of these supplies in accordance with the GST Law and direct the Contractor not to issue tax invoices or adjustment notes in respect of the same supplies.

### 18. PROTECTION OF PEOPLE, PROPERTY AND THE ENVIRONMENT

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- 18.1 **(General)** The Contractor must:
- (a) perform its obligations under the Contract and ensure that its Personnel perform their part of those obligations safely and in a manner that will prevent pollution, contamination or damage to property; and
  - (b) take all measures necessary to protect people and property in the performance of its obligations under the Contract.
- 18.2 **(Rectification of damage)** The Contractor must promptly rectify:
- (a) any damage to any property which is caused by the Contractor;
  - (b) any damage to any property, which occurs whilst the Contractor is responsible for its care (whether or not due to any act or omission of the Contractor).
- The Contractor shall be entitled to claim the cost which it reasonably and necessarily incurs in making good any such damage to the extent that the damage was caused by the negligent act or omission or Wilful Misconduct of the Principal or the Principal's Personnel caused or contributed to the damage and/or the Principal failed to act reasonably to mitigate the damage.
- 18.3 **(Urgent action)** If urgent action is necessary to protect persons, property or the environment and the Contractor has not taken that action, the Principal may take such action itself or have it undertaken by others without prior notice to the Contractor. The cost incurred by the Principal in doing so shall be a debt due and owing by the Contractor to the Principal and may be deducted from any payments otherwise owing to the Contractor, or if such moneys are insufficient, from any security held under the Contract.

### 19. INDEMNITY

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- 19.1 To the extent permitted by law, the Contractor indemnifies the Principal and the Principal's Personnel against:
- (a) loss of or damage to property of the Principal; and
  - (b) Claims by any person against the Principal in respect of personal injury or death, or loss of or damage to property of any party,
- arising out of or in connection with the performance of the Contractor's obligations under this Contract, but the indemnity will be reduced to the extent that the negligent act or omission or Wilful Misconduct of the Principal or the Principal's Personnel caused or contributed to the loss, damage, injury or death and/or the Principal failed to act reasonably to mitigate the liability loss, damage cost, expense or Claim.
- 19.2 **(Acceptance of benefit)** The Principal has informed its Personnel and communicates acceptance on behalf of its Personnel, of the Contractor's undertaking to indemnify under clause 18.1.

## General Conditions

### 20. LIMITATION OF LIABILITY

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- 20.1 **(Limit of liability)** To the extent permitted by law, the aggregate liability of each party to the other in respect of any Claim will not exceed the amount specified in the Reference Schedule, as the case may be. Where no limits of liability are stated in the Reference Schedule, the liability of the Principal shall be limited to the Price and the liability of the Contractor shall not be limited.
- 20.2 **(Consequential loss)** To the extent permitted by law, neither Party, shall, under any circumstances, be liable to the other for any loss of profits, loss of opportunity, loss of agreement, loss of business or any other special, indirect or consequential cost, loss, expense or damage in connection with this Contract.
- 20.3 **(Exceptions)** Clauses 19.1 and 19.2 do not apply to:
- (a) liability of the Principal to pay the Price;
  - (b) liability of either Party in connection with personal injury, or death or damage to property,
  - (c) liability of either Party arising under an indemnity given under the Contract or as a result of an infringement of confidentiality or intellectual property rights, a deliberate breach or abandonment of the Contract, Wilful Misconduct, gross negligence or fraud or other criminal conduct;
  - (d) liability of either party to the extent that the party is entitled to be indemnified under a policy of insurance required to be effected under the Contract or would have been so entitled if this clause 19 did not form part of the Contract, the party had effected and maintained the insurance policy in accordance with the Contract, complied with its obligations under the Contract, lodged and diligently pursued a claim under the policy and complied with the terms of, and any other obligation or duty in connection with, the policy and the insurer had remained solvent;
  - (e) liability of either Party incurred because of a breach of any law by the other party;
  - (f) liability of the Contractor to the extent that the Contractor is entitled to recover that liability from any other third party (including any subcontractor, consultant or subcontractor of the Contractor) or would have been entitled to recover that liability but for any act or omission of the Contractor,

and amounts referred to in subclauses (a), (b), (c), (d), (e) and (f) shall not be included in calculating whether the limit of liability of a Party in clause 19.1 has been reached.

### 21. INSURANCE

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- 21.1 **(Insurances to be effected and maintained)** The Contractor must effect and maintain at all times when performing its obligations under this Contract, the insurance policies stated in the Reference Schedule on terms and with an insurer reasonably acceptable to the Principal and any other insurance which the Contractor considers is necessary to protect its.
- 21.2 **(Period of insurance)** The insurance policies required under clause 20.1 must be maintained at all times from the date on which the Contractor commences the performance of its obligations under the Contract until the Contractor's obligations under the Contract are complete.
- 21.3 **(Evidence of insurance)** If requested by the Principal, the Contractor must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by the Principal. The Principal may suspend the Contract or withhold payment from the Contractor until the such evidence is provided.

## General Conditions

21.4 **(No implied limitation)** Nothing in this clause, nor the Contractor's compliance or non-compliance with it, shall be taken to limit or reduce the Contractor's liability under the Contract or at law.

### 22. NON-PERFORMANCE

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22.1 **(Inspections and tests)** The Principal's Representative shall be entitled to inspect and test all Goods provided to ensure that the Goods comply with the Contract and all warranties given and representations made by the Contractor in this Contract. The Contractor shall arrange access to any premises at which the Goods are manufactured or stored to facilitate any such inspection or test (including premises owned or occupied by third parties). Inspection or tests carried out by the Principal or on behalf of the Principal shall not relieve the Contractor of any obligation or liability under the Contract nor limit or waive any right of the Principal. If a test reveals that the Goods do not comply with the Contract, then the costs incurred by the Principal in undertaking the test shall be a debt due and payable by the Contractor to the Principal.

22.2 **(Non-complying Goods)** Where any of part of the Goods is not in accordance with this Contract or the reasonable directions of the Principal, or the Contractor fails to comply with any obligations of the Contractor under the Contract, then the Principal may in its absolute discretion by notice in writing to the Contractor:

- (a) accept the non-conforming Goods in which case the Price of such Goods will be adjusted as if the Principal had directed a Variation for the non-conformance;
- (b) reject the whole of the Goods or the non-conforming part and direct the Contractor to refund all monies paid for the rejected Goods;
- (c) direct the Contractor to:
  - (i) remove, replace or repair the non-conforming Goods or otherwise make the non-conforming Goods compliant with the Contract; and
  - (ii) make good any resultant damage to any other property or work,at the Contractor's expense and within the time directed by the Principal or may take such steps itself without first providing the Contractor with an opportunity to do so;

22.3 **(Timing)** The Principal may exercise its rights under clause 21.2 at any time up to 14 days after the expiry of the Warranty Period, or where there is no Warranty Period, at any time up to 12 months after the Goods are Delivered.

22.4 **(Step-in rights)** If the Contractor fails to comply with a direction under clause 21.2, then the Principal may after giving at least 5 Business Days written notice to the Contractor (except in the case of emergency, in which case no notice is required) carry out that other obligation itself or have it carried out by others.

22.5 **(Costs)** The cost incurred by the Principal in connection with any action taken, or purportedly taken, pursuant to clause 21.2 or 21.4 so shall be a debt due and owing by the Contractor to the Principal.

### 23. SUSPENSION

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

23.2 **(Costs of suspension)** If the suspension is directed due to any act or omission of the Contractor or its Personnel (including a breach of the Contract by the Contractor) then the

## General Conditions

Contractor shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which the Contractor demonstrates it has reasonably, necessarily and not prematurely incurred by the Contractor by reason of the suspension and which the Contractor demonstrates it cannot reasonably mitigate.

### 24. FORCE MAJEURE

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- 24.1 **(Notification of Force Majeure)** If either Party is rendered unable wholly or in part by Force Majeure to carry out any of its obligations under the Contract (other than an obligation to make a payment of monies), that Party ('the Affected Party'), shall give to the other Party prompt written notice of such Force Majeure detailing the particulars of the Force Majeure and to the extent that it is ascertainable at the time of giving the notice, the extent to which it will be unable to perform or be delayed in performing its obligations.
- 24.2 **(Suspension)** On the giving of a notice under clause 23.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.
- 24.3 **(Removal of Force Majeure)** The Affected Party shall use all reasonable diligence to remedy or remove such Force Majeure as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.
- 24.4 **(Industrial relations)** Clause 23.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on terms contrary to its wishes. The manner in which all such difficulties shall be handled shall be entirely within the discretion of the Affected Party.
- 24.5 **(Principal's rights)** Where the Contractor gives a notice under clause 23.1, the Principal may at its election:
- (a) itself perform, or engage others to perform the obligations which the Contractor is unable to perform and may continue to perform such obligations until the later of the time that the Principal is reasonably satisfied that the Contractor is able to resume performance of those obligations and the time at which any interim arrangements put in place by the Principal are able to be reasonably brought to an end;
  - (b) take such other action as the Principal, acting reasonably, considers appropriate.

The cost incurred by the Principal in exercising these rights shall be borne by the Principal.

- 24.6 **(Termination)** If Force Majeure extends for a period of greater than 20 consecutive Business Days then the Principal may terminate the Contract immediately by giving written notice to the Supplier.

### 25. TERMINATION

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- 25.1 **(Termination for convenience)** The Principal may at any time, for any reason in its absolute discretion, terminate this contract at its convenience on the giving of 10 Business Days written notice.
- 25.2 **(Default by Contractor)** Where the Contractor has committed a Substantial Breach or is subject to an Insolvency Event, the Principal may by giving written notice to the Contractor immediately:
- (a) take out of the Contractor's hands the whole or part of the Contractor's obligations remaining to be completed pursuant to the Contract and suspend payment under the Contract unless and until it becomes due and payable under clause 24.6; or
  - (b) to the extent permitted by law, terminate the Contract.

The Principal may itself perform, or engage others to perform the obligations taken out of the hands of the Contractor or which remain unperformed at the time of termination.

## General Conditions

- 25.3 **(Default by Principal)** Where the Principal has committed a Substantial Breach, the Contractor may suspend the performance of its obligations under the Contract by giving written notice to this effect to the Principal. If the default has not been remedied within 20 Business Days after the notice of suspension is given to the Principal, the Contractor may terminate the Contract by giving written notice to this effect.
- 25.4 **(Payment on termination)** If the Contract is terminated by either Party the Principal shall, subject to the Contract and its other rights at law, pay the Supplier:
- (a) the amount which the Contractor is entitled to be paid under the Contract for Goods supplied up to and including the date of termination; and
  - (b) if the termination is solely due to the act or omission of the Principal, without any fault on behalf of the Contractor, the amount of any other direct costs which the Contractor demonstrates it has reasonably, necessarily and not prematurely incurred prior to the termination in the expectation of completing its obligations under the Contract, and which the Contractor demonstrates it cannot reasonably mitigate.
- 25.5 **(Payment on take out)** On completion of the obligations of the Contractor which have been taken out of the hands of the Contractor, the Principal shall determine the cost incurred in completing those obligations and the amount which would have been paid to the Contractor had the Contractor completed those obligations (including any payment suspended under clause 24.2(a)) and the difference shall be a debt due and payable by the Contractor to the Principal or by the Principal to the Supplier as the case may be.
- 25.6 **(No other compensation)** Except to the extent expressly provided in this clause 24, the Contractor shall not be entitled to any monetary compensation in respect of the termination of the Contract by either Party or the Principal taking obligations out of the hands of the Contractor pursuant to this clause 24.
- 25.7 **(Obligations following termination)** Following a termination by either Party, the Principal may engage others to provide the Goods or carry out any unperformed obligation of the Contractor.

## 26. HANDLING OF INFORMATION

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- 26.1 **(Obligation of confidence)** A Party must not use the other Party's Confidential Information for a purpose other than performing the Contract. A Party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.
- 26.2 **(Breach of Confidence)** If a Party becomes aware of a suspected or actual breach of clause 31.6, that Party must immediately notify the other Party and take reasonable steps required to prevent or stop the actual breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.
- 26.3 **(Return of Confidential Information)** The Discloser of Confidential Information must return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Discloser or when otherwise directed by the Discloser, subject to any record keeping requirements at law.
- 26.4 **(Personnel)** The Parties must make every reasonable effort to ensure that its Personnel are aware of and comply with the obligations of confidentiality in this clause 25.
- 26.5 **(Information Privacy Act)** If the Contractor collects or has access to 'Personal Information' as that term is defined in the *Information Privacy Act 2009* (Qld) in order to carry out its obligations under the Contract, the Contractor must comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Contract as if the Contractor was the Principal. Personal information collected by the Principal in connection with the Contract is collected for the purposes of enabling the Principal to properly discharge its functions as a local government authority in connection with the Contract and may be accessible by and disclosed



## General Conditions

to personnel engaged to assist the Principal in doing so. Personal information will otherwise be dealt in accordance with the Principal's privacy policy. The Principal is authorised to collect personal information in accordance with the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) and related legislation.

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

### 27. INTELLECTUAL PROPERTY

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- 27.1 **(Background IP)** Background IP of a Party shall remain the property of that Party. The Principal grants the Contractor a revocable, royalty free, non-exclusive, non-transferable licence to use the Principal's Background IP for the purpose of complying with the Contractor's obligations under the Contract and for no other purpose. The Contractor grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use the Contractor's Background IP for any purpose for which the Goods are provided. Each Party warrants and represents to the other that the use of the Party's Background IP will not infringe any Intellectual Property Rights of a third party.
- 27.2 **(Project IP)** Unless the Contract elsewhere expressly provides otherwise, Project IP vests in the Principal and the Principal grants the Contractor a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Contractor to comply with the Contractor's obligations under the Contract. If the Contract expressly provides that Project IP vests in the Contractor, then Project IP vests in the Contractor and the Contractor grants the Principal a royalty free, non-exclusive, non-transferable licence to use the Contractor's Project IP for any purpose for which the Goods are provided.
- 27.3 **(Warranty and representation by Contractor)** The Contractor warrants and represents that the Contractor has not infringed and will not infringe any Intellectual Property Rights of a third party in connection with the performance of its obligations under the Contract and that, except to the extent that the infringement is caused by the Contractor's incorporation of the Principal's Background IP, the Project IP will not infringe the Intellectual Property Rights of a third party.
- 27.4 **(Indemnity)** Each Party indemnifies the other in respect of breach of a warranty given or representation made in this clause 25.

### 28. DISPUTE RESOLUTION

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- 28.1 **(Initial conference)** If a Party gives written notice to the other of a dispute under this Contract, representatives of the Parties shall promptly confer to attempt to resolve the dispute).
- 28.2 **(Mediation)** If the dispute is not resolved within 10 Business Days after the giving of the notice of dispute (or such longer period as may be agreed by the Parties) a Party may by written notice to the other Party refer the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute. The mediation must be conducted by a mediator to be appointed by agreement of the Parties or in default of agreement to be appointed by the President of the Queensland Law Society or his nominee at the request of a Party.
- 28.3 **(Legal proceedings)** If the dispute is not resolved within 20 Business Days after the appointment of the mediator any Party may take legal proceedings to resolve the dispute.
- 28.4 **(Urgent relief)** This clause 25 does not prevent any Party from taking any steps under any law out of which the parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

### 29. NON-CONFORMING BUILDING PRODUCTS

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- 29.1 **(General)** If the Contractor is a person in the chain of responsibility, then the Contractor:

## General Conditions

- (a) warrants and represents that neither the Goods, nor any part of them will constitute a non-conforming building product for an intended use;
- (b) must not, in the course of carrying out its obligations under the Contract, specify, direct or expressly permit a non-conforming building product to be used in any building in respect of which the Goods are provided; and
- (c) must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract that a non-conforming building product has been used in connection with the Goods or if it receives a notice (including a warning statement) pursuant to the QBCC Act in connection with the Contract.

29.2 **(Indemnity)** The Contractor indemnifies and shall keep indemnified the Principal and the Principal's Personnel against any cost, loss, expense, liability, claim, or damage caused or contributed to by any breach of the Contractor's obligations under this clause 28, or by any failure of the Contractor to comply with its obligations under the QBCC Act in relation to building products.

29.3 **(Meaning of terms)** In this clause, the terms 'building products', 'intended use', 'non-conforming building product' and 'person in the chain of responsibility' each have the respective meanings given to those terms in the QBCC Act.

### 30. CLAIMS

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30.1 The Principal shall not be liable upon any Claim by the Contractor for monetary compensation (other than for the Price) in connection with the Contract unless the Contractor has given the Principal written notice of its intention to make the Claim within 25 Business Days after the direction or other event on which the Claim is based was given or occurred.

### 31. DEFINITIONS

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

- (a) **Affected Party** has the meaning given in clause 23.1;
- (b) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
- (c) **Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality or any other person having jurisdiction over the project;
- (d) **Background IP** of a Party means all Intellectual Property Rights which are made available by a Party in connection with the Contract which are in existence at the date of the Contract or brought into existence after the date of the Contract other than in connection with the Contract;
- (e) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (f) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of the Contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law (including without limitation any claim for an extension of time, Variation or other adjustment to the Price);

## General Conditions

- (g) **Confidential Information** means documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**) in connection with the Contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public domain other than through a breach of clause 25;
- (h) **Contract** means this document and all schedules attached to this document;
- (i) **Deliverables** means those records, reports, designs, specifications, certificates and other documents, whether electronic documents or hard copy format) required by the Contract to be handed over to the Principal by the Contractor (and all information advice, designs, calculations and recommendations in those documents);
- (j) **Delivered** means delivered to the Principal or made available for collection (as the case may be):
  - (i) in the quantity and in a condition which complies with all requirements of the Contract and warranties given and representations made in the Contract;
  - (ii) at the place directed by the Principal;
  - (iii) along with all information and documentation required by the Contract or reasonably directed by the Principal prior to the Delivery Time;
- (k) **Delivery Details** means the quantity, time and place for delivery or collection of the Goods as stated in Schedule 1 or otherwise directed by the Principal;
- (l) **Delivery Place** means the place(s) stated in the Contract as the place(s) at which the Goods are to be Delivered, as amended pursuant to the Contract;
- (m) **Delivery Time** means the time(s) and date(s) stated in the Contract as the time(s) and date(s) on which the Goods are to be Delivered, as amended pursuant to the Contract;
- (n) **Discloser and Disclosee** have the meanings given in clause 30.1(g);
- (o) **Exceptional Circumstances** means disclosure:
  - (i) for the purpose of performing the Contract;
  - (ii) with the other Party's consent;
  - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
  - (iv) to any of its Personnel who are bound to keep the information confidential and to who it is necessary to disclose the information;
  - (v) to comply with the law or a requirement of an Authority (including a stock exchange); and
  - (vi) to the extent necessary to enforce its rights or defend a Claim under the Contract;
- (p) **Force Majeure** means:

## General Conditions

- (i) an act of God, earthquake, lightning, cyclone, tsunami, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;
- (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (iv) embargo;
- (v) State-wide or nationwide industrial action that is not limited to or primarily directed at the Contractor or otherwise caused by or contributed to by the Contractor and which affects an essential portion of the Contractor's obligations under the Contract;

which:

- A. is beyond the immediate or reasonable control of the Affected Party;
  - B. is not directly or indirectly caused or contributed to by the Affected Party or the Affected Party's Personnel;
  - C. cannot reasonably be avoided, remedied or overcome by the Affected Party by a standard of care and diligence expected of a prudent and competent local government or contractor (as the case may be) or the expenditure of a reasonable sum of money;
- (q) **General Conditions** means these general conditions;
- (r) **Goods** means the goods described in Schedule 1 and any other goods which may be ordered by the Principal pursuant to the Contract and includes goods that are not specifically mentioned in Schedule 1 but that are obviously and indispensably necessary for the supply of the goods that are mentioned;
- (s) **Good Industry Practice** means those practices, methods, techniques and acts that, as at the date of this Contract are equal or superior to those utilised by other competent contractors experienced in the provision of goods similar to the Goods;
- (t) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (u) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (v) **Improper Conduct** means:
- (i) engaging in misleading or deceptive conduct in relation to the Procurement Process or the Contract;
  - (ii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the Procurement Process;
  - (iii) attempting to improperly influence any Personnel of the Principal, or violate any applicable law regarding the offering of inducements in connection with the Procurement Process or the Contract;

## General Conditions

- (iv) accepting or inviting improper assistance of employees or former employees of the Principal in preparing its tender or any Claim against the Principal in connection with the Contract;
  - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract;
  - (vi) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
  - (vii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).
- (w) **Insolvency Event** in respect of a Party, means the Party:
- (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
  - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966 (Cth)*, or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
  - (iii) has a receiver or a receiver and manager appointed, or a mortgagee goes into possession of any of its assets;
- (x) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, project management, industrial, scientific, literary or artistic fields, whether foreign or domestic;
- (y) **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
- (z) **Party or Parties** means one or both of the Principal and the Contractor as the context requires;
- (aa) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, suppliers and subcontractors of a Party and any other person or entity for whom that Party is vicariously liable but in respect of the Principal, does not include the Contractor;
- (bb) **Price** means the amount payable for the Goods Delivered in accordance with the Contract as determined in accordance with Schedule 1;
- (cc) **Principal** means the person or entity identified in the Reference Schedule;
- (dd) **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the Contractor pursuant to clause 5;
- (ee) **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;
- (ff) **Project IP** means the Intellectual Property Rights in the Deliverables and all other goods, materials, documents or data created in the performance of the Supplier's obligations under the Contract;
- (gg) **Qualifying Cause of Delay** means:

## General Conditions

- (i) an act or omission of the Principal or the Principal's Personnel; or
  - (ii) any other cause of delay for which the Contract provides the Contractor will be entitled to an extension of time;
- (hh) **QBCC Act** means the *Queensland Building and Construction Commission Act 1991* (Qld);
- (ii) **Reference Schedule** means the schedule of that name included in this Contract;
- (jj) **Substantial Breach** includes:
  - (i) a failure to remedy a breach of a warranty given or representation made, or any other obligation under this Contract within 10 Business Days after being given a written notice to do so;
  - (ii) a breach that is incapable of remedy of an obligation under this Contract, or a warranty given or representation made; or
  - (iii) if the defaulting Party is the Contractor:
    - A. the failure by the Contractor to comply with clause 11.1 on more than two occasions (whether or not the Contractor has given the Principal a notice under clause 11.4 in respect of those failures); or
    - B. the consistent or repeated breach of the Contract by the Contractor, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the defaulting Party;
- (kk) **Contractor** means the person or entity identified in the Reference Schedule;
- (ll) **Variation** means any material increase, decrease or change to the Goods or the Delivery Details described in the Contract;
- (mm) **Warranty Period** means the longer of:
  - (i) the period stated in Item 5 of the Reference Schedule (which may be after the Contract has come to an end); and
  - (ii) such other period required under or implied by any applicable law; and
- (nn) **Wilful Misconduct** means a material breach of a provision of this Contract or a law committed with reckless disregard for the consequences and in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the breach and which is not due to an honest mistake oversight, error of judgement, accident or negligence.

### **32. GENERAL PROVISIONS**

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- 32.1 **(Joint and several obligations)** An obligation of two or more Parties binds them jointly and each of them severally. An obligation incurred in favour of two or more Parties is enforceable by them severally;
- 32.2 **(Headings)** Headings are for reference purposes only and must not be used in interpretation;
- 32.3 **(No limitation)** The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that the Principal 'may' do something the Principal is not obliged to do that thing and is not prevented from doing any other thing;

## General Conditions

- 32.4 **(Grammatical forms)** Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.
- 32.5 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in this Contract expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day. A reference to a day, week or month means a calendar day, week or month.
- 32.6 **(Obligation of confidence)** A Party must not use the other Party's confidential information for a purpose other than performing this Contract, obtaining legal, accounting or other professional advice, to satisfy its corporate governance requirements or as required by law.
- 32.7 **(Law)** A reference to 'law' includes all:
- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of a local government authority, the State of Queensland, the Commonwealth or other Authority having jurisdiction and any related fees and charges; and
  - (b) certificates, licenses, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,
- which are applicable to the Contractor or the Contract or which are otherwise in force at any place where an obligation under this Contract is carried out and a reference to a statute includes all regulations and subordinate legislation and amendments.
- 32.8 **(Governing law)** This Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 32.9 **(Contra proferentem)** The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 32.10 **(Severance)** If a provision of this Contract is void or unenforceable it must be severed from this Contract and the provisions that are not void or unenforceable are unaffected by the severance.
- 32.11 **(Other references)** A reference to:
- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
  - (b) a clause is to a clause in this Contract unless expressly stated otherwise;
  - (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
  - (d) a monetary amount is a reference to an Australian currency amount.
- 32.12 **(Binding on successor)** This Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.
- 32.13 **(Further assurance)** The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under this Contract.

## General Conditions

- 32.14 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the Reference Schedule or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:
- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
  - (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.
- 32.15 **(Waiver)** No waiver by a Party of a provision of this Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.
- 32.16 **(Consent)** Any consent of the Principal under this Contract may be given, withheld or given subject to conditions at the absolute discretion of the Principal.
- 32.17 **(Cumulative rights and obligations)** The rights and remedies of a Party provided in this Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of this Contract will not relieve the Contractor of any other obligation under this Contract, at law or in equity.
- 32.18 **(Counterparts)** This Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by fax or email.
- 32.19 **(Current versions)** Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Contractor must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or prices in the Contract shall be deemed to have allowed for compliance with that version.
- 32.20 **(Clauses to survive termination)** Clauses 6.1(e), 17, 17, 19, 24.4 and 28 survive the expiration or earlier termination of this Contract.



**Executed as an agreement:**

**EXECUTED BY THE PRINCIPAL**

**SIGNED** for and on behalf of the **Principal** )  
in accordance with the Council's local laws )  
and in the presence of: )  
)

\_\_\_\_\_  
Signature of witness )

\_\_\_\_\_  
Name of witness (block letters) )

\_\_\_\_\_  
Date )

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

**EXECUTED BY THE CONTRACTOR**

**SIGNED** for and on behalf of the )  
**Contractor** by its authorised )  
representatives and in the presence of: )  
)

\_\_\_\_\_  
Signature of witness )

\_\_\_\_\_  
Name of witness (block letters) )

\_\_\_\_\_  
Date )

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Full name of authorised representative

## Schedule 1 – Special Conditions and Specifications

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## 1. PRELIMINARIES

### 1.1 Location of Site

The site is located at Kowanyama in Far North Queensland, western side of Cape York. Kowanyama is a community with a population of approximately 1200 people.

### 1.2 Accommodation

Accommodation is available at the Kowanyama Road Camp. The cost for the accommodation is \$150 (excl GST) per person per night and an additional \$50 (excl GST) per person per day for meals. The contractor is to price the above rates into their tender.

### 1.3 Materials to be Provided by Principal

NIL materials will be provided by the Principal free of charge.

### 1.4 Inspection, Testing and Testing Fees

The Contractor shall be responsible for performing all inspections and testing in accordance with the Contractor's Quality Plan. All costs associated with compliance testing in accordance with the Quality Assurance requirements set out in this specification shall be borne by the Contractor.

### 1.5 Quality Assurance

The Contractor shall control the quality of the work and shall fully implement a quality management system under this Contract in accordance with the requirements of the current Australian Standard AS 9001-2000.

### 1.6 Work Health and Safety

Contractors are required to comply with all aspects of the Work Health and Safety Act 2011 (Qld) and associated Regulations and Codes of Practice. You are also required to comply with the KOWANYAMA ABORIGINAL SHIRE COUNCIL, Workplace, Health and Safety Policy and Method of Works Plan.

Listed below are details of matters and/or requirements that particularly relate to you and/or your employees.

- (A) The Contractor and/or its employees on site must have completed an approved safety induction course including an airside induction course and wear the required safety equipment. The contractor shall keep a record of those attending induction courses and submit to the superintendent a copy of an employee signed acknowledgement that they have attended the course.
- (B) It is KOWANYAMA ABORIGINAL SHIRE COUNCIL sun safe policy that covered clothing must be worn at all times on job sites.
- (C) Approved safety footwear will be worn at all times on the job site
- (D) If machinery on site has excessive noise (i.e. greater than 85 DbA or greater), ear protection must be worn.
- (E) A high visibility vest and/or shirt shall be worn when the operator is outside the cabin of the truck or machine.
- (F) A record of safety induction must be registered with the Principal prior to commencement of work. All workers are required to be in possession of a Queensland Workplace Health and Safety Act - White Card (General Industry Safety Induction).
- (G) Only equipment that is fit for duty and safe for use will be allowed to be used on the works. Council reserves the right to remove any item of Plant/Equipment that it deems to pose a risk.
- (H) The Contractor and employees must have the appropriate license or operator's ticket for that item of plant that is on hire. Photocopies of these licenses and/or plant

## Schedule 1 – Special Conditions and Specifications

- operator's tickets must be registered with the Principal prior to the commencement of work.
- (I) Inspectors from the Division of Work Health and Safety can at any time demand these records and if they are not available, can stop works proceeding. The contractor may be required to produce the above mentioned records if any truck or item of plant is involved in an accident. Hence, it is essential that these records be kept and retained ready for inspection at anytime.
  - (J) All equipment and vehicles when operating shall display at least one serviceable 360 degree orange flashing light clearly visible day or night.
  - (K) All vehicles shall be equipped with UHF radio
  - (L) There is a requirement for at least 1 work crew member to have a current First Aid Certificate.

The Contractor shall advise the Superintendent as soon as practicable of the following events;

- a) Any accident incurred as a result of performing works on any site which causes employees or subcontractors to be referred for medical treatment beyond that able to be performed by a qualified first aider.
- b) Any dangerous occurrence or near misses incurred as a result of performing work on any site which results in fires, collisions, falls / rescues from height where its employees or subcontractors are involved.

Any such incidents as mentioned above shall be investigated and a written report shall be prepared by the Contractor and forwarded to the superintendent within 48 hours of the investigation being completed. In addition, the Contractor shall notify the statutory authorities of serious incidents in accordance with the Queensland Workplace Health and Safety Regulation 1997.

The Principal will have the authority to conduct random safety audits of the Contractor's works, to ensure ongoing compliance to their submitted methods of operations and have the authority to cease work, if in the opinion of Superintendent the works are being conducted in an unsafe or dangerous manner.

### **1.7 Portable Long Service Leave Levy**

The Contractor shall pay the Portable Long Service Leave Levy pertaining to the works under this Contract on behalf of the Principal. The Contractor shall notify the Superintendent upon payment of the Levy and provide proof of payment of the Levy within fourteen (14) days of the date of the letter of acceptance.

### **1.8 Construction Management**

The contractor shall prepare a program of works and have this approved by the Principal prior to commencement of works on site. The Contractor is to arrange in close coordination with the Superintendent all activities to be carried out during construction works. All costs for co-ordination and negotiation with the superintendent shall be deemed to be included in the tendered sum.

### **1.9 Environmental**

The contractor shall prepare a Site Environmental Management Plan as approved by the KASC and shall have the plan available for inspection on site by the principal or the Environmental Protection Agency departmental officers.

The Contractor must abide by the Environmental Protection Act 1994 and Regulations including, but not limited to, the general environmental duty and the duty to notify specified sections 36 and 37 of the Environmental Protection Act 1994.

The Contractor must comply with all Queensland and Commonwealth legislation imposing environmental duties and obligations in force during the duration of the Contract, including but not limited to any Environmental Protection Policies.

Plant and equipment must be operated in such a manner as to minimise the production of dust, mud, noise, smoke, odour and noise with particular consideration given to nearby residents and businesses.

## Schedule 1 – Special Conditions and Specifications

The Superintendent may cease operations if the generation of dust, mud, noise, smoke, odour and noise becomes excessive and KOWANYAMA ABORIGINAL SHIRE COUNCIL will not be liable to pay the Contractor for lost time as a result.

The Contractor must not do any of the following:

- a) Cause any pollution to air, water and land;
- b) Conduct any clearing of flora and fauna without prior approval by Superintendent
- c) Burn anything at the job site

If an incident occurs that may have environmental effects, the Contractor must immediately report the incident to the Superintendent.

The Contractor is responsible for the cleanup, remediation and/or disposal as a result of any environmental incidents/accidents which result from the Contractor's actions which are outside Superintendent's instructions. The Contractor must pay any associated costs.

### **1.10 Works Program**

Within 5 days of receiving the Letter of Acceptance or prior to the Contractor commencing works on-site, whichever occurs first, the Contractor shall submit to the Principal a detailed works programme showing production and delivery timeframes.

### **1.11 Site Facilities**

The Contractor shall provide statutory and necessary amenities and sanitary facilities for workers and other persons lawfully on the site. The Contractor shall include all costs for site facilities in their Tendered Lump Sum.

### **1.12 Setting Out**

The Contractor shall be responsible for setting out and confirming location of the works. Locations will be confirmed by the Principal prior to commencement of works.

### **1.13 Public Utilities**

Where overhead public utility lines and surface rehabilitation works and/or underground pipes, conduits, or cables exist in the vicinity of the works, the Contractor shall take care to protect such facilities from damage and, in case of damage occurring to such facilities, the matter shall be reported to the department or company concerning and to the Principal immediately. The cost of necessary repairs or renewals shall be borne entirely by the Contractor.

If it is found to be necessary to alter the location or level of existing mains or services to conform to construction under this Contract then the Contractor shall notify the Superintendent immediately.

Should relocation of existing services be specified or directed by the Superintendent, the Contractor shall arrange for the works to be carried out by the appropriate service authority. Costs incurred by the contractor will be paid as Day-works and any service authority charges will be reimbursed at cost.

The contractor is reminded that services are located in the vicinity of all lots and particular attention will be required by the contractor to locate and identify each service prior to commencement of the works.

### **1.14 Site Meetings**

The Contractor shall provide for and attend meetings between the Contractor, appropriate Subcontractors and the Superintendent for the duration of the Contract. Site meetings shall be scheduled by the Superintendent and shall be held monthly, when and as directed by the Superintendent.

### **1.15 Documentation from Contractor**

The Contractor shall submit all records to the superintendent for review and/or approval as will be confirmed in the pre-start meeting. These will include but may not be limited to design drawings, load tally sheets, water tally sheets, daily plant docket, Safe Work Method Statements, traffic management plans, fuel distribution register.

### **1.16 Code of Conduct**

The Contractor and their Subcontractors, suppliers and agents are to abide by the following

## Schedule 1 – Special Conditions and Specifications

conditions for the duration of the Project.

- There shall be no direct contact or liaison with elected representatives of the Council or Council staff unless initiated by the Council.
- No loan or gift of equipment, vehicles, food or beverages shall occur to any member of the Community (including elected representatives) unless as part of employment by Contractor, under an award or over award conditions.
- Services not included in the contract shall not be provided to a community person, council staff or employee (including elected Council members) without specific prior approval by Council.
- The Contractor shall not seek employment within the Community during the entire term of the contract. The Council may however approach the Contractor to undertake other work upon completion of this Contract.
- There shall be no initiation or maintenance of sexual or close contact relationships by the Contractor, with any community members. In the event of such an occurrence, instant dismissal and/or removal from the site and the Community will occur.
- Any racially discriminatory behaviour by the Contractor will result in dismissal and/or removal from the site and the Community.
- In the event of a dispute arising in relation to the requirements or application of this clause an independent adjudicator, nominated by the Principal, will consider representations from the Contractor and the Council. The determination of the adjudicator shall be adhered to by all parties.
- Neither the Contractor nor his employees or sub-contractors will use or borrow any Council plant, fuel, vehicle, equipment, building materials, car parts without prior approval of the Council in writing. Nor shall the Contractor or his employees or subcontractors enter the Council Industrial Compound area for any reason unless accompanied by the Superintendent or a Council member.
- The costs for removal of Contractor personnel from the site and replacement by other suitable personnel shall be borne by the Contractor.

### 1.17 Community Protocol

All persons visiting or engaged in work activities on communities must abide by all rules, regulations and conventions laid down by the community council and shall endeavour at all times to be aware that the community has long-established traditions, language and codes of behaviour which must be respected. The community rules may include restricted access to designated areas, restrictions on consumption and sale of drugs and alcohol and the like. The Code of Conduct must be adhered to and must be completed before any works begin on site.

**Kowanyama is a dry community and the possession/consumption of alcohol is strictly prohibited with the exception of consumption within community tavern.**

### 1.18 Culture

The Contractor and all personnel involved in the project shall endeavour at all times to be aware that the community has long established traditions, language and codes of behaviour which must be respected.

As a component of Site Establishment, the Contractor is to ensure that all workers have been inducted by a council nominated representative on the customs and traditions that will impact upon their work and which must not be contravened.

Events in the community may occur during the course of the contract such as deaths, tombstone openings, ceremonies, etc. These events are to be respected and may result in disruption to the Contractors normal work activities.

Principal will endeavour to reallocate work sections if the need arises, in such a manner that the contractor maintains a similar work allocation as per original award.

Where work reallocations are required and unable to be resolved as above, the principal reserves the right to negotiate with the contractor, a reasonable rate for stand-down of plant & labour for the duration of the disruption.

# Schedule 1 – Special Conditions and Specifications

## 1.19 Traffic Management

The Contractor is responsible for the control and safety of vehicular and pedestrian traffic affected by its operations on all public and/or trafficked roads within the work site.

The Contractor shall prepare and submit to the Superintendent for review, a Traffic Management Plan that details:

- Provision of traffic control devices complying with the 'Manual of Uniform Traffic Control Devices', issued by Queensland Transport
- Any other measures to ensure minimal delays to traffic and the protection of traffic, workmen, construction plant and other property.

The Traffic Management Plan shall be in accordance with the Department of Transport and Main Roads technical specification – MTS02 'Provision for Traffic'.

The contractor will be required to maintain daily traffic management records including sign type(s), locations and time for each section of work.

## Schedule 2 – Contractor’s Statutory Declaration

***Oaths Act 1867***  
**STATUTORY DECLARATION**

QUEENSLAND  
TO WIT

I, [insert name of person signing] of [insert address] in the State of Queensland, do solemnly and sincerely declare that, in relation to the contract between Kowanyama Aboriginal Shire Council and [insert Contractor's name] (**Contractor**), identified as contract no. [insert contract no.] (**Contract**) for the provision of [describe goods](**Goods**):

4. I hold the position of . Having made all reasonable inquiries, I am in a position to know the facts contained herein. I am duly authorised by the Contractor to make this declaration on its behalf.
5. The Goods provided in connection with the Contract comply in all respects with the requirements of the Contract.
6. All other obligations to be performed pursuant to the Contract have been performed in accordance with the Contract.
7. Each claim for payment which the Contractor has submitted in connection with the Contract and all documentary evidence provided in support of such claims, is true and correct in every material respect.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

Taken and declared at )  
this day of )  
before me: )

\_\_\_\_\_  
 Solicitor  Justice of the Peace  
 Commissioner for declarations