



Kowanyama Aboriginal Shire Council

Request for Tender (RFT)

Title: Kowanyama-based Batching Plant Operator

RFT Reference: KASC-2026-058

Date of Issue: 2 July 2026

Closing Date: 22 July 2026

Request for Tender

The Request for Tender (RFT) comprises of:

- Part A: Tender Information
- Part B: Conditions of Tendering
- Part C: Contract
- Part D: Response Schedules

Council:	Kowanyama Aboriginal Shire Council (KASC)
Council Address:	Lot 30 Chapman Road, Kowanyama 4892
Contact (Principal):	Alan Neilan, Chief Executive Officer
Contact number:	4083 7100
Request for Tender (RFT):	KOWANYAMA BATCHING PLANT OPERATIONS 2026- 2028
RFQ Number:	KASC-2026-058
Closing date and time:	4:00PM, Wednesday 22 July 2026

Instructions for completing this RFT:

- Tenderers should ensure they read all parts of this RFT fully to ascertain the services to be performed and the terms on which the services are to be performed.
- Tenderers must respond to all sections of the Tender and must sign and date the form where indicated.
- Tenderers may provide supplementary material to support their offer. All supplementary material must be cross referenced to the relevant section of this RFT.
- The Council will confirm in writing to suppliers, to advise if their quotation has been accepted or unsuccessful.
- Notification by letter to the successful Tenderer will create a contract between the parties. The contract will consist of the Tenderers Quotation (Response Form) and this document.
- Responses are to be submitted via email to tenders@kowanyama.qld.gov.au and must include the RFT number in the subject line (i.e., KASC-2026-058). Council reserves the right to not consider submissions sent to any other email address. Do not forward enquiries to this email address.

Overview

The Kowanyama Aboriginal Shire Council lies 25 km (as the crow flies) from the east coast of the Gulf of Carpentaria in the south-western region of the Cape York Peninsula, and 600 km northwest of Cairns. The total area equals approximately 4,120 square kilometres. The community has a population of approximately 1200 people.

The community is based on the banks of Magnificent Creek, which joins the South Mitchell River, which in turn forms part of the Mitchell River Delta. Road access is only available four to five months of the year in the dry season. Weekday flights to and from Cairns service the community throughout the year.

Kowanyama has a rich abundance of nature and wildlife. Kowanyama consists mainly of wetlands and delta mangroves in the north, extending to forest country of the central peninsula. These unique natural environments are home to a vast array of bird and animal species.

Kowanyama means “place of many waters” in the Yir Yoront language. The Indigenous inhabitants are the direct descendants of Aboriginal groups who inhabited the Lower Mitchell and Alice Rivers and neighbouring areas. The community includes the Kokoberra, Yir Yoront (or Kokomnjen) and Kunjen clans.

Kowanyama's Aboriginal people continue to identify strongly with their ancestral countries and with the languages, stories, songs, dances, and histories associated with those countries. Language groups associated with countries in the Kowanyama region are Yir Yoront, Yirrk Thangalki, Koko Bera, Uw Oyklangand, and Olkola.

Council Services

The Kowanyama Aboriginal Shire Council is responsible for local government services such as road construction and maintenance, water infrastructure, sewerage infrastructure and maintenance, environmental health, and parks & gardens.

In addition to these primary functions, Council also provides the following services and facilities:

- Enterprises:
 - Post Office and Bank
 - **Batching Plant**
 - Residential and Commercial Rentals
 - Training Centre Offices
 - Airport
 - Centrelink Agency
- Housing
- Local radio station
- Operation and management of the Purchasing Store
- Management of leasehold cattle properties (Oriners and Sefton), including Carbon Farming
- Operation and management of the Aged Care Centre
- Operation and management of the Child Care Centre and Play Group
- Operation and management of the Land & Natural Resources Office (Rangers)
- Aboriginal Community Police Officers, in collaboration with Queensland Police Service
- Sport & Recreation programs and services, including those for young people
- Swimming Pool
- Women's Shelter
- Women's and Men's Groups

Tender Scope

Site

Council owns and operates a concrete batching plant at lot 520 on SP272069 marked with an "X" in the below map:



Map 1: Kowanyama locale map – Batching Plant – Lot 520

Council is seeking a suitably qualified and experienced batching plant operator to manage the batching plant as its agent.

Council publishes its public fees, rates, and charges annually via its website in its Register of Fees and Charges (pricing subject to approval of the budget post June 2026 Ordinary Meeting of Council to be uploaded to Council's website thereafter).

Council presently offers the following services to the public:

BATCHING PLANT MATERIALS - per M3 (Delivery within DOGIT)	Sand - delivered from facility from Mitchell River
	Sand - delivered from facility from Nolan's Quarry
	Aggregate 20 mm from facility
	Aggregate 10 mm from facility
CONCRETE - per M3	Batch and deliver to site 25 MPA - pumpable (inside town boundary) under 3m3 incurs \$50 per metre additional fee
	Batch and deliver to site 32 MPA (inside town boundary)
	Batch and deliver to site 40 MPA (inside town boundary)
	Batch and deliver to Council Owned Site (Internal usage)
	Premix
	Bulk purchases charges to be negotiated with CEO
	Delivery outside of town boundaries surcharge per KM

The successful tenderer will receive and fill batching orders on Council's behalf to the abovementioned specifications.

Purchasing Process

The following process is followed in processing orders at the batching plant:

1. Purchase Order is issued to Council based on the published Register of Fees and Charges rates by the customer
2. Work Order is issued by Council to the batching plant operator to fill the order
3. Batching plant operator provides a dealing docket to Council confirming supply accompanied by an invoice at the operator's rates (as contained in the tender response below)
4. Council pays all invoices on contracted terms to the batching plant operator
5. Council facilitates all debt recovery with customers.

Inclusions/ Exclusions

In its tender pricing, the tenderer must include rates inclusive of provision and maintenance of all plant, equipment and materials required for the supply.

Council will provide complementary use of its onsite batching plant and screen (photographs located at **Annexure 1**); however, the successful tenderer shall agree to maintain this Council plant and equipment at its cost for the duration of this contract and return same to Council at conclusion of the contract in no less favourable condition (fair, wear and tear exempted).

The tenderer should not assume the availability of any additional Council plant, equipment, or materials onsite for the purposes of its pricing.

All tenderer pricing will be inclusive of delivery by the successful tenderer within the Kowanyama township boundaries. The tenderer will provide an addition per km charge for delivery outside the Kowanyama township.

Council agrees to waive its licence fee for commercial use of the site to the successful tenderer, in recognition of competitive pricing provided to Council and the community of Kowanyama by the successful tenderer. The successful tenderer will however be subject to ordinary utility charges on a consumption basis.

The Council compound at the site is fully fenced (as depicted in the **Annexure 1** site photographs). Council takes no responsibility for the security of the site which shall be the sole responsibility of the successful tenderer.

Subject to provision of design details to Council's representative, Council is agreeable to establishment of a temporary mobile administrative office on the site by the successful tenderer, at the successful tenderers' own cost and discretion.

Part A: Tender Information



1. Tender Information

Principal:	Kowanyama Aboriginal Shire Council				
Project Name:	Kowanyama-based Batching Plant Operator				
Scope:	Batching services at the Kowanyama batching plant				
Site:	Various sites within Kowanyama Shire				
Proposed timetable:	Action		Proposed Date		
	Issue of Tender Documents		2 July 2026		
	Tender Close Date		22 July 2026		
	Tender Assessment Completed		24 July 2026		
	Adopted by Council		July / August		
	Issue Letter of Confirmation		July / August		
Tender briefing or site inspection:	Description Time / Date	Place	Maximum Attendees	Mandatory or optional	RSVP
	N/A	N/A	N/A	N/A	N/A
Communication method:	<input type="checkbox"/> via email – tenders@kowanyama.qld.gov.au				
Evaluation criteria:	Criteria		Weighting (%)		
	Mandatory Details (insurances etc)				Mandatory
	Quality Management Plan and OHS Management				10%
	Ability to Meet Contract Timeframes				10%
	Technical Capacity of Tenderer				30%
	Key Personnel of Tenderer				10%
	Price				40%
Tender lodgement:	Tenders must be lodged via email to: tenders@kowanyama.qld.gov.au				
Tender format:	Tenders must consist of: <ul style="list-style-type: none"> • 1x complete copy of the tenderer's tender in a single PDF document; • 1x set of the Response Schedules in the format provided by the Principal File names must include the contract number and a brief description of the document				
Page limit:	No limit				
Tender validity period:	90 calendar days from the Tender Closing Time				
Procurement administrator:	Danae Maltby tenders@kowanyama.qld.gov.au				
Principal complaints Manager:	Name: Chris McLaughlin Email: governance@kowanyama.qld.gov.au				

Part B: Conditions of Tendering



2. Conditions of tendering

1. BACKGROUND

- 1.1 **(Invitation to tender)** The Principal invites tenders from suitably qualified contractors for the provision of the work, services and/or goods detailed in the Scope.
- 1.2 **(Proposed Timetable)** The Principal proposes to adopt the process and timing identified in the Proposed Timetable but may change these in accordance with paragraph 5.1(b).
- 1.3 **(Acceptance of terms)** By submitting a tender, the tenderer will be taken to have accepted and be bound by these conditions of tendering.
- 1.4 **(Interpretation)** Unless otherwise separately defined in these conditions of tendering, capitalised terms used in these conditions of tendering have the meanings given in the Tender Information. References to time are to local time in Queensland.

2. COMMUNICATIONS

- 2.1 **(Communication Method)** Subject to clause 2.5, all communications by the Procurement Administrator to the tenderer or by the tenderer to the Procurement Administrator regarding this tender shall be conducted at first instance using the Communication Method. Where the Communication Method is email, the Procurement Administrator shall direct communications to the email address notified by the tenderer to the Procurement Administrator.
- 2.2 **(Tenderer's responsibility)** The tenderer must ensure that it is capable of receiving and does receive all communications to the tenderer in connection with the request for tender process.
- 2.3 **(Communication Closing Time)** The Principal will not respond to any communication received after the Communication Closing Time. In the event of technical difficulties only, the tenderer may contact the Procurement Administrator directly.
- 2.4 **(No reliance)** The tenderer must not rely on any information which is communicated by a means other than that described in paragraph 2.1 unless and until it is communicated in writing in accordance with paragraph 2.1.
- 2.5 **(Complaints)** Complaints in relation to this process should be directed to the Principal's Complaints Manager.

3. TENDER BRIEFING AND SITE INSPECTION

- 3.1 **(Tender briefing and site inspection)** The tenderer must attend any tender briefings and site inspection that is identified in the Tender Information as mandatory. The tenderer must confirm that it intends to attend a tender briefing or site inspection to the email address and by the time and date stated in the Tender Information.
- 3.2 **(No reliance)** The tenderer must not rely on any verbal statements made during a tender briefing or site inspection unless those statements are confirmed in writing by the Procurement Administrator.

4. **LOGGEMENT OF TENDER**

4.1 **(Method of lodgement)** A tender must be lodged:

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

The Procurement Administrator may, on request by the tenderer, allow a tender to be lodged by an alternative method.

4.2 **(Time of Lodgement)** A document forming part of a tender shall be deemed to have been lodged:

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

4.3 **(Tender opening)** Tenders will not be opened publicly and the tenderer will not be permitted to attend the opening of tenders.

4.4 **(Tender format)** A tender must be lodged in the Tender Format.

4.5 **(Tender Validity Period)** A tender must remain valid and open for acceptance for the Tender Validity Period.

4.6 **(Conforming tender)** A tender is a conforming tender if, in the opinion of the Principal, it:

- (a) is substantially in the form of and contains substantially all information and documentation required by, the response schedules included in Part 6 – Response Schedule;
- (b) is substantially in accordance with the Tender Format;
- (c) does not substantially exceed the Page Limit (if any); and
- (d) contains no significant alternatives, qualifications or amendments to or departures from the Scope or the form of contract contained or referenced in Part 4 – Contract ('the Contract').

4.7 **(Non-conforming tender)** A tender which does not comply with the requirements of paragraph 4.6 is a non-conforming tender ('Non-conforming Tender').

4.8 **(Alternative tender)** A tender which, in the opinion of the Principal contains significant alternatives, qualifications or amendments to or departures from the requirements of the Scope or the Contract but otherwise complies with paragraph 4.6 is an alternative tender ('Alternative Tender').

4.9 **(Late tender)** A tender which is not received in the Tender Box by the Tender Closing Time is a late tender ('Late Tender').

5. **CONDUCT OF PROCESS**

5.1 **(General)** The Principal:

- (a) **(conduct of process)** may conduct the request for tender process in any manner which it sees fit, but will endeavour to do so in a manner which is consistent with this request for tender and the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld) ('sound contracting principles'); and
- (b) **(no representation or undertaking)** makes no representations and provides no undertakings other than to invite the submission of tenders.

5.2 **(Specific rights)** Without limiting clause 5.1, the Principal may do anything which it considers to be prudent or necessary for the proper conduct of the request for tender process at its absolute discretion, without reference to the tenderer and without providing reasons, including, without limitation:

- (a) **(alteration of request for tender documents)** amend, add to or delete any part of this request for tender including:
 - (i) the procedures and timeframes provided in the request for tender;
 - (ii) the evaluation criteria (including weightings); and/or
 - (iii) any document issued by or on behalf of the Principal in connection with the request for tender, including the scope and the Contract;
- (b) **(suspension or termination)** suspend or terminate the request for tender process;
- (c) **(attendances)** request any one or more tenderers to attend a tender briefing, site inspection or other meeting or to make a presentation of their tender in person at the Principal's office at no cost to the Principal;
- (d) **(change or error in request for tender documents)** request any one or more tenderers to change their tender to take account of a change in the scope or other document issued in connection with this request for tender or any error in such documents;
- (e) **(clarification or alteration)** request any one or more tenderers to clarify or alter any aspect of the tenderer's tender;
- (f) **(additional information)** request additional information from one or more tenderers relating to a tender, the request for tender process, the tenderer's compliance with the conditions of tendering or any other matter which the Principal considers relevant to its assessment (including information that should have been, but was not, included in the tenderer's tender);
- (g) **(investigations)** undertake its own investigations, or engage third parties to do so on its behalf, in relation to any aspect of a tender or any other matter which it considers relevant to the conduct of the request for tender process;
- (h) **(negotiation)** negotiate amendments to any aspect of a tender with any one or more tenderers and suspend or terminate such negotiations at any time.

6. **PRINCIPAL'S LIABILITY**

6.1 Neither the Principal nor any of its officers, employees, agents, contractors, consultants, agents, representatives (including elected representatives) or other persons for whom it is vicariously liable shall under any circumstances, whether in tort (including for negligence), contract (including for breach of an express or implied term), statute, equity or otherwise at law be liable to the tenderer for any special, indirect or consequential loss, damage, cost or expense in connection with this request for tender process (including, without limitation, loss of or loss of anticipated profit, income, opportunity or contract).

7. **TENDERER'S WARRANTIES AND REPRESENTATIONS**

7.1 By submitting a tender, the tenderer warrants and represents that:

(a) **(reliance)** the tenderer:

- (i) has received or obtained copies of all of the documents referred to in this request for tender;
- (ii) has not relied on the accuracy, adequacy or completeness of any documents or information provided by or on behalf of the Principal in connection with this request for tender in preparing its tender and has notified the Principal of any ambiguity, inconsistency, uncertainty, error or omission which it has discovered in or from any document supplied by or on behalf of the Principal in connection with the request for tender on which the tenderer intends to rely;
- (iii) has undertaken its own enquiries and investigations to satisfy itself of:
 - A. the nature and extent of the Scope, its contractual obligations and all other risks, contingencies and other circumstances which could have an impact on its ability to carry out and complete the obligations which it will have under the Contract if its tender is accepted for its tendered price; and
 - B. the suitability, appropriateness and adequacy of the Scope (including, in respect of contracts under which the successful tenderer is required to design works, any preliminary design included in the Scope) for the purposes stated in or to be reasonably inferred from the Scope;

(b) **(accuracy of tender)** all information provided in or with the tender is accurate;

(c) **(ability)** the tenderer and to the extent relevant to them, the tenderer's officers, employees, agents, subcontractors, consultants, representatives, and other persons who will carry out an obligation of the tenderer under the Contract in the event that the tenderer's tender is accepted:

- (i) hold (and are compliant with all requirements of) all necessary competencies, licences, accreditations, certifications, permits, clearances and other authorisations which will be required; and
- (ii) have and will maintain the necessary experience, expertise, and skill,

to perform the obligations that the Tenderer will have under the Contract if the tenderer's tender is accepted, in accordance with the requirements of the Contract;

(d) **(price)** the tendered price (along with any rates, sums and prices included in the tender) allows for:

- (i) all of the risks, contingencies and other circumstances which could have an effect on the tenderer's ability to carry out and complete the obligations which it will have under the Contract if its tender is accepted, except to the extent that the Contract expressly allows an adjustment;
 - (ii) the provision of all materials, plant, labour and other services necessary for the proper completion of the obligations it will have under the Contract if its tender is accepted, whether or not those items are expressly mentioned in the Contract; and
 - (iii) unless the Contract expressly allows an adjustment, rise and fall in costs;
- (e) **(conduct of tenderer)** neither the tenderer nor any of its officers, employees, agents, subcontractors, consultants, representatives or other persons for whom it is vicariously liable has:
- (i) engaged in misleading or deceptive conduct in connection with the request for tender process;
 - (ii) engaged 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 request for tender process;
 - (iii) attempted to improperly influence any of the Principal's officers, employees, agents, contractors, consultants or representatives (including elected representatives) or violated any applicable law regarding the offering of inducements in connection with the request for tender process;
 - (iv) accepted or invited improper assistance of any current or former officer, employee, agent, contractor, consultant or representative (including an elected representative) of the Principal, in preparing the tenderer's tender;
 - (v) used any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the tender;
 - (vi) breached any law in connection with the request for tender process;
 - (vii) engaged in any aggressive, threatening, abusive, offensive, or other inappropriate behavior in connection with the request for tender process; or
 - (viii) engaged in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).
- (f) **(Intellectual Property Rights)** the exercise by the Principal of any right provided in these conditions of tendering will not infringe the Intellectual Property Rights of a third party in connection with the Tenderer's Tender;
- (g) **(conflicts of interest)** the tenderer has disclosed in its tender any conflict of interest (whether actual, potential or perceived) arising or which is likely to arise as a result of this request for tender process or the performance of the obligations which it will have under the Contract if its tender is accepted; and
- (h) **(competitive neutrality)** if the tenderer is required by law to comply with principles of competitive neutrality, the tenderer has properly considered, assessed and complied with the applicable competitive neutrality principles in relation to the Request for tender process and the acceptance by the Principal of the tenderer's tender will not breach those principles.

8. **ASSESSMENT OF TENDER**

8.1 **(Criteria)** The Evaluation Criteria will be considered but not necessarily exclusively in assessing tenders.

8.2 **(Considerations)** In assessing tenders, the Principal may consider any information which the Principal reasonably considers to be relevant to its assessment (however obtained), including:

- (a) information contained in the tender, any amendment to or clarification of a tender or provided at a meeting with or presentation by the tenderer;
- (b) information obtained from the tenderer's referees (if any);
- (c) information obtained pursuant to clause 5.2(g);
- (d) the tenderer's past performance under other contracts with the Principal or third parties; and
- (e) the reasonably held subjective opinions of the persons appointed by the Principal to evaluate tenders or any advisor to such persons.

8.3 **(Uncertainties)** The Principal may ignore any part of a tender which is ambiguous, uncertain, unclear or illegible without seeking clarification from the tenderer and may assess the balance of the tender.

8.4 **(Right to exclude)** The Principal may, but shall not be obliged to, reject or exclude from assessment any tender including:

- (a) a Non-conforming Tender, an Alternative Tender or a Late Tender;
- (b) a tender, in respect of which the Principal reasonably believes that:
 - (i) the tenderer has failed to comply with these conditions of tendering or any request made by or on behalf of the Principal pursuant to them within the time required;
 - (ii) the tenderer has breached a warranty given or representation made pursuant to these conditions of tendering or that a warranty or declaration given or representation made in the tenderer's tender was false or misleading in any material respect;
 - (iii) the tenderer cannot comply with the obligations which it will have under the Contract if its tender is successful for the tendered price;
- (c) a tender which fails to achieve a satisfactory score against any of the Evaluation Criteria, even if the overall score of the tender is satisfactory.

8.5 **(Local preference)** The Principal may accept a tender lodged by a Local Supplier in preference to comparable tenders from Non-Local Suppliers even if the tenders from the Non-Local Suppliers have been assessed as more favourable in terms of one or more criteria, so long as the overall differences are not substantial, and so long as it is clear that the Local Supplier can meet the Principal's requirements at an acceptably high standard which is generally comparable to that of the Non-Local Suppliers. In this clause:

- (a) Local Supplier has the same meaning as in the Principal's published procurement policy or where the Principal does not publish such a policy, or the policy does not contain a definition of 'local supplier', means a supplier that:

- (i) is beneficially owned and operated by persons who are residents or ratepayers of the local government area of the Principal has determined under the *Local Government Regulation 2012* (Qld); or
 - (ii) has its principal place of business within that local government area; or
 - (iii) otherwise has a place of business within that local government area that solely or primarily employs persons who are residents or ratepayers of that local government area; and
- (b) Non – Local Supplier means a supplier that is not a Local Supplier.

9. ACCEPTANCE OF TENDER

- 9.1 **(No obligation)** The Principal is not bound to accept the tender with the lowest price, or the tender with the highest score against the Evaluation Criteria, or any tender but will, if it accepts a tender, accept the tender which is most advantageous to the Principal having regard to the sound contracting principles, to the extent that they are applicable and relevant to the request for tender process.
- 9.2 **(Form of acceptance)** A tender will not be taken to be accepted, and no contract for the provision of any work, services and/or goods will exist, unless and until the successful tenderer receives written confirmation of the acceptance from the Principal.
- 9.3 **(Form of Contract)** If a tender is accepted, the tenderer will be required to enter into a contract with the Principal in the form contained in Part 4 – Contract as amended, if at all, by agreement between the parties. The contract will not include any alternative terms, conditions or qualifications which the tenderer submits with a tender unless specifically and expressly accepted in writing by the Principal.
- 9.4 **(Unsuccessful tenderers)** Unsuccessful tenderers will be notified after a tender has been accepted. The Principal may provide feedback to unsuccessful tenderers if requested to do so, but such feedback, if given, may be general in nature and limited to the tenderer's tender only.

10. DOCUMENTS AND INFORMATION

- 10.1 **(Ownership of tender)** The tender will become the property of the Principal upon submission.
- 10.2 **(Intellectual Property Rights)** All rights of intellectual property, including copyright, in documents and information provided on behalf of a party in connection with this request for tender remain, as between the parties, with the party on whose behalf they were provided. The tenderer grants to the Principal irrevocable, perpetual, non-exclusive, royalty free licence to exercise the rights provided to it in clause 10.5 and the Principal grants the tenderer a revocable, non-exclusive, royalty free licence to exercise the rights provided to it in clause 10.5.
- 10.3 **(Information Privacy Act)** If the tenderer collects or has access to 'Personal Information' as that term is defined in the *Information Privacy Act 2009* (Qld) in connection with the request for tender process, the tenderer must comply with Parts 1 and 3 of Chapter 2 of that Act in as if the tenderer was the Principal.
- 10.4 **(Confidentiality)** Subject to clause 10.5, each party shall keep confidential the documents and information provided by the other party in connection with this request for tender which are of their nature confidential.
- 10.5 **(Use of documents and information)** Documents and information provided on behalf of a party to the other party in connection with this request for tender (including, if the tenderer's tender is accepted, information relating to the tenderer's price) may be used, copied, modified or disclosed as required by any law and otherwise:

- (a) by the Principal, as the Principal considers to be reasonably necessary to properly conduct the request for tender process and/or to properly carry out its functions as a local government authority;
 - (b) by the tenderer, as is reasonably necessary to enable the tenderer to:
 - (i) prepare the tender;
 - (ii) obtain legal, accounting, or other professional advice; or
 - (iii) comply with the tenderer's corporate governance requirements.
- 8.1. **(Media)** The tenderer 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 request for tender process in any media without the prior approval of the Principal

Part C: Contract



Reference Schedule

Item		Details	
1.	Principal's details	Name:	
		ABN:	
2.	Principal's Representative (Clause 5)	Name:	
		Address:	
		Telephone:	
		Email:	
3.	Contractor's details	Name:	
		ABN:	
4.	Contractor's representative's details	Name:	
		Address:	
		Telephone:	
		Email:	
5.	Warranty Period (Clauses 6 and 21)	12 months after the date on which the last of the Goods are Delivered to the Principal.	
6.	Security (Clause 7)	<i>Intentionally left blank</i>	
7.	Deliverables (Clause 10)	Deliverable	Time for provision per Works Order
		Contract end date	
8.	Liquidated damages (Clause 13)	<i>Intentionally left blank</i>	
9.	Payment Claims: (Clause 15)	May be submitted on:	As required
		Should be emailed to:	Principal's Representative (or delegate)
10.	The Principal's liability is limited to: (Clause 19)	<i>If nothing stated, the Principal's liability is limited to the Price.</i>	
11.	The Contractor's liability is limited to: (Clause 19)	<i>If nothing stated, the Contractor's liability is not limited.</i>	
12.	The Contractor must effect the following insurances: (Clause 20)	<ul style="list-style-type: none"> ⦿ 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 ⦿ Material loss or damage insurance at least to the full replacement value of the Goods (including during transit); ⦿ Third party and comprehensive motor vehicle insurance for each vehicle used by the Contractor in performing its obligations under this Contract ⦿ Workers' compensation insurance in respect of the Contractor's Personnel as required by law <p>If not selected, the Contractor is not required to effect the insurance</p>	

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 and/or Services 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 and/or Services to the Principal

The Parties agree:

1. CONTRACT

- 1.1. (Documents comprising Contract) The Contract comprises:
 - a) the Reference Schedule;
 - b) Tender documents KAC-2026-058;
 - c) the Contractor's Tender Response (including Pricing Schedule);
 - d) these General Conditions;
 - e) Schedule 1 – Special Conditions; and
 - f) Schedule 2 – Contractor's Statutory Declaration.
- 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

- 2.1. **(Performance)** Subject to clause 5.1, the Contractor must, at the Contractor's expense:
 - a) supply and deliver the Goods and/or Services 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.

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

3. NO EXCLUSIVITY

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

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 way 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

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

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, 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/or Services 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 a Works Order issued by the Principal;
 - B. 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
 - C. 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;

- 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;
 - e) **(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;
 - f) **(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;
 - g) **(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),
 - e) 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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8. KEY PERSONNEL

- 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.

Conduct of Contractor and personnel

- 8.3. **(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.
- 8.4. **(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).
- 8.5. **(Conflict)** Where there is any conflict between any standard or obligation described in clause 8.3 or 8.4, the Contractor and its Personnel must adopt the higher standard or more onerous obligation unless directed otherwise by the Principal.
- 8.6. **(Industrial relations)** The Contractor remains solely responsible for the management of industrial relations relating to its Personnel. The Contractor must promptly inform, and keep informed, the Principal in relation to any potential or actual industrial relations issues which could affect the ability of the Contractor to comply with its obligations under the Contract.

9. SUBCONTRACTING AND ASSIGNMENT

- 9.1. **(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.
- 9.2. **(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.

10. DELIVERABLES

- 10.1. **(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.
- 10.2. **(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 24 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.

11. DELIVERY OF GOODS

- 11.1. **(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 by Work Order.
- 11.2. **(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 each Work Order. Otherwise, the Contractor shall comply with a direction to change the Delivery Details at its expense.
- 11.3. **(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.
- 11.4. **(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.
- 11.5. **(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.

12. TITLE AND RISK IN GOODS

- 12.1. **(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, the Goods shall be at the risk of the Contractor from the time that the Principal gives notice of the rejection by the Principal.
- 12.2. **(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.
- 12.3. **(No acknowledgement)** Taking possession of Goods shall not constitute an admission by the Principal that those Goods comply with the Contract.

13. TIMING

- 13.1. **(Timing of delivery)** The Contractor must ensure that the Goods are Delivered at the Delivery Place(s) by the Delivery Time(s).
- 13.2. **(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.
- 13.3. **(Prevention and Mitigation)** The Contractor shall take all reasonable steps to prevent the occurrence and to mitigate the effects of a delay.
- 13.4. **(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.
- 13.5. **(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.

14. VARIATIONS

- 14.1. **(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.
- 14.2. **(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.
- 14.3. **(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 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.

15. PAYMENT CLAIMS

- 15.1. **(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.
- 15.2. **(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.

15.3. **(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.

15.4. **(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.

15.5. **(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;

15.6. **(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. GOODS AND SERVICES TAX

16.1. **(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.

16.2. **(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.

17. PROTECTION OF PEOPLE, PROPERTY AND THE ENVIRONMENT

17.1. **(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.

- 17.2. **(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.

- 17.3. **(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.

18. INDEMNITY

- 18.1. 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.

- 18.2. **(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.

19. LIMITATION OF LIABILITY

- 19.1. **(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.
- 19.2. **(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.
- 19.3. **(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.

20. INSURANCE

- 20.1. **(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.
- 20.2. **(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.
- 20.3. **(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.
- 20.4. **(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

21. NON-PERFORMANCE

- 21.1. **(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.
- 21.2. **(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.

- 21.3. **(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.
- 21.4. **(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.
- 21.5. **(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.

22. SUSPENSION

- 22.1. **(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.
- 22.2. **(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 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.

23. FORCE MAJEURE

- 23.1. **(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.
- 23.2. **(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.
- 23.3. **(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.

23.4. **(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.

- 23.5. **(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.

23.6. **(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.

24. TERMINATION

24.1. **(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.

24.2. **(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 24.5; 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.

24.3. **(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.

24.4. **(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.

24.5. **(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 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.

- 24.6. **(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.
- 24.7. **(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.

25. HANDLING OF INFORMATION

- 25.1. **(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.
- 25.2. **(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.
- 25.3. **(Return of Confidential Information)** The Disclosee of Confidential Information must return or destroy (at the Discloser's discretion) material containing Confidential Information when it is no longer required by the Disclosee or when otherwise directed by the Discloser, subject to any record keeping requirements at law.
- 25.4. **(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.
- 25.5. **(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 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.
- 25.6. **(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.

26. INTELLECTUAL PROPERTY

- 26.1. **(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.
- 26.2. **(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.

- 26.3. **(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.
- 26.4. **(Indemnity)** Each Party indemnifies the other in respect of breach of a warranty given or representation made in this clause 25.

27. DISPUTE RESOLUTION

- 27.1. **(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).
- 27.2. **(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.
- 27.3. **(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.
- 27.4. **(Urgent relief)** This clause **Error! Reference source not found.** 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.

28. NON-CONFORMING BUILDING PRODUCTS

- 28.1. **(General)** If the Contractor is a person in the chain of responsibility, then the Contractor:
- 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.
- 28.2. **(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.
- 28.3. **(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.

29. CLAIMS

- 29.1. 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.

30. DEFINITIONS

- 30.1. In this Contract, unless inconsistent with the context or subject matter:

1. **Affected Party** has the meaning given in clause 23.1;
2. **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
3. **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;
4. **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;
5. **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;
6. **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);
7. **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;
8. **Contract** means this document and all schedules attached to this document;
9. **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);
10. **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;
11. **Delivery Details** means the quantity, time and place for delivery or collection of the Goods as stated in a Work Order or otherwise directed by the Principal;
12. **Delivery Place** means the place(s) stated in the Work Order at which the Goods are to be Delivered, as amended by the Principal's direction;

13. **Delivery Time** means the time(s) and date(s) stated in the Work Order as the time(s) and date(s) on which the Goods are to be Delivered, as amended pursuant to the Principal's direction;
14. **Discloser and Disclosee** have the meanings given in clause 7;
15. **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;
16. **Force Majeure means:**
- 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;
17. **General Conditions** means these general conditions;
18. **Goods** means the goods described in the Tender Documents and priced in the Contractor's Tender Response and any other goods which may be ordered by the Principal pursuant to the Contract and includes goods that are not specifically mentioned in the abovementioned but that are obviously and indispensably necessary for the supply of the goods that are mentioned;
19. **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;
20. **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
21. **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* and/or associated Commonwealth legislation, regulations and publicly available rulings;

22. **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;
 - 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).
23. **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;
24. **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;
25. **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
26. **Party or Parties** means one or both of the Principal and the Contractor as the context requires;
27. **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;
28. **Price** means the amount payable for the Goods Delivered in accordance with the Contract as determined in accordance with Schedule 1;
29. **Principal** means the person or entity identified in the Reference Schedule;
30. **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the Contractor pursuant to clause 5;
31. **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;
32. **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;

33. **Qualifying Cause of Delay** means:
- 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;
34. **QBCC Act** means the Queensland Building and Construction Commission Act 1991 (Qld);
35. **Reference Schedule** means the schedule of that name included in this Contract;
36. **Services** means the provision of concrete batching and associated services.
37. **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;
38. **Contractor** means the person or entity identified in the Reference Schedule;
39. **Variation** means any material increase, decrease or change to the Goods or the Delivery Details described in the Contract;
40. **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
41. **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.

31. General Provisions

- 31.1. **(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;
- 31.2. **(Headings)** Headings are for reference purposes only and must not be used in interpretation;
- 31.3. **(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;
- 31.4. **(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.

- 31.5. **(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.
- 31.6. **(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.
- 31.7. **(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.
- 31.8. **(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.
- 31.9. **(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.
- 31.10. **(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.
- 31.11. **(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.
- 31.12. **(Binding on successor)** This Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.
- 31.13. **(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.
- 31.14. **(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.
- 31.15. **(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.
- 31.16. **(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.
- 31.17. **(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.
- 31.18. **(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.
- 31.19. **(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.
- 31.20. **(Clauses to survive termination)** Clauses f), 17, 19, 24.3 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 authorised representative

Full name of authorised representative

Signature of witness

Signature of authorised representative

Name of witness (block letters)

Full name of authorised representative

Date

EXECUTED BY THE CONTRACTOR

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

Signature of authorised representative

Full name of authorised representative

Signature of witness

Signature of authorised representative

Name of witness (block letters)

Full name of authorised representative

Date

Schedule 1 – Special Conditions

1. Extent of contract

The Contractor has included its rates inclusive of provision and maintenance of all plant, equipment and materials required for the supply.

The Principal will provide complementary use of its onsite batching plant and screen, however the Contractor agrees to maintain the Principal's plant and equipment at its cost for the duration of this contract and return same to the Principal at conclusion of the contract in no less favourable condition (fair, wear and tear exempted).

The Contractor has not assumed the availability of any additional Council plant, equipment or materials onsite for the purposes of its pricing.

All Contractor pricing will be inclusive of delivery by the Contractor within the Kowanyama township boundaries. The Contractor has provided an addition per km charge for delivery outside the Kowanyama township.

The Principal has agreed to waive its licence fee for commercial use of the site to the Contractor, in recognition of competitive pricing provided to Council and the community of Kowanyama by the Contractor I this contract. The contractor will however be subject to ordinary utility charges on a consumption basis.

The Principal's compound at the site is fully fenced, however the Principal takes no responsibility for the security of the site which shall be the sole responsibility of the Contractor.

Subject to provision of design details to the Principal's representative, the Principal is agreeable to establishment of a temporary mobile administrative office on the site by the Contractor, at the Contractor's own cost and discretion.

The Contractor will be responsible for managing all aspects of coordination for access to and delivery of material resources to and from the site.

Material Supply and Use Control (Concrete)

The Contractor must ensure that all concrete supplied under this Contract is produced, delivered and placed strictly in accordance with the relevant Work Order issued by the Principal, including the approved quantity and location.

The Contractor must not:

- supply quantities in excess of those reasonably required for the approved works;
- divert, transfer, or reallocate concrete to any other site, job or purpose; or
- use surplus concrete for any Council or non-Council works,

without the prior written approval of the Principal.

The Contractor is responsible for accurately determining the volume of concrete required for each pour. Any over-supply shall be at the Contractor's risk and cost, and the Principal is not obliged to pay for quantities not required for or not used in the approved works.

All deliveries must be supported by delivery dockets clearly identifying:

- Work Order reference
- location of pour
- quantity supplied
- date and time of delivery

Payment will be made only for quantities verified by the Principal as placed within the approved works. The Principal reserves the right to adjust or reject any claimed quantities not used in accordance with this clause

2. Nature of contract

The Contract Sum shall be fixed and not subject to Rise and Fall.

The Schedule of Tendered Rates forms part of the Contract only to the extent that it will be used as a guide for the assessment of the progress payments and variations, if appropriate. Council reserves the right to negotiate any additional works not detailed in this contract.

3. Location of site

The site is located at lot 520 on SP272069 (Kowanyama in the State of Queensland).

4. Travel and Accommodation

The Contractor must source accommodation and make independent travel arrangements to enable its key personnel to attend site, at its own cost. It is expected that all Contractor pricing is inclusive of all accommodation, travel allowances, flights and any other outlays and disbursements required to enable personnel to attend site and supply the Goods and/or Services.

5. Materials to be Provided by Principal

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6. Valuation of dayworks

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7. 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.

8. 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.

9. 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 always worn on job sites.
- c) Approved safety footwear will be always worn 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 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 any time.
- j) All equipment and vehicles when operating shall display at least one serviceable 360-degree orange flashing light clearly visible day or night.

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

- a) Any accident incurred because 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 because 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.

10. 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.

11. Construction management

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12. Environmental

The contractor shall prepare a Site Environmental Management Plan as approved by Council 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 consideration given to nearby residents and businesses.

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:

- Cause any pollution to air, water and land;
- Conduct any clearing of flora and fauna without prior approval by Superintendent
- 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 clean-up, remediation and/or disposal because of any environmental incidents/accidents which result from the Contractor's actions which are outside Superintendent's instructions. The Contractor must pay the associated costs.

13. Works program

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14. Nature on ground

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15. 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 Schedule of Rates.

The rates tendered shall be deemed to include allowances for site establishment, materials, management, supervision, travel, wages, locality allowances, overtime costs, materials and other overheads including but not limited to fuel and other plant hire and operating costs.

16. 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 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.

17. 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.

18. Work hours

The hours of work shall be 06:00 am to 6.00 pm. Normal workdays are Monday to Friday unless otherwise amended and approved in writing by the Superintendent.

19. Publicity

The works under the contract are a confidential matter between the Principal and the Contractor. The Contractor shall not make any media release or other public statement without written approval from the Principal.

20. Payment

Payment will be made monthly, and contractors are required to lodge a detailed Progress Claim based on the Work Orders. Progress claims shall be submitted to the Superintendent's Representative for approval, a payment certificate will be issued to the contractor and contractor will issue invoice for the approved payment amount.

All invoices shall have detailed Council Project Name & Number, Valid Purchase Order Number & Cost Code. These will be provided to the successful contractor for inclusion on their invoices.

Payment will only be made after the work is completed to the satisfaction of the Superintendent and on receipt of quality testing confirming concrete design strength meets specification requirements.

21. Public liability and risk insurance

The Contractor, at their expense, is required to have and keep current a \$20,000,000 public liability insurance policy, with Kowanyama Aboriginal Shire Council noted as the Principal during any works performed under this contract.

A copy of the certificate of currency of this policy is to be provided to the Superintendent prior to any works under the contract commencing

22. Workers' compensation

Tenderers shall, at their own expense, insure and keep insured their employees under an insurance policy pursuant to the Workcover Queensland Act 1996 and any other Act amending that Act.

23. Principal contractor

The Contractor shall be appointed as a Principal Contractor in accordance with the Workplace Health and Safety Act.

24. Documentation from contractor

The Contractor shall provide all quality testing records for the source gravel & sand to the superintendent for review and approval prior to production of any concrete.

Deliveries of concrete shall include daily delivery records of all materials delivered to site. The delivery docket is to include note of source lot number.

25. Quality testing requirements

Work covered in this section of the Specification includes all requirements for supply of concrete.

All concrete supplied will be generally in accordance with the provisions of Australian Standards:

- AS 1379 Specification and supply of concrete; and
- AS 3600 Concrete structures.

The concrete product shall also be in accordance with any other Australian Standard specifically related to Class S40/20 mix design.

The Contractor is to arrange/coordinate suitable concrete testing of the concrete. All testing shall be carried out & reported by a NATA certified laboratory.

Lot sizes and testing frequencies shall be in accordance with the standards or otherwise as directed by the Superintendent.

All concrete aggregate (Fine and Coarse) shall be supplied with testing records verifying suitability for the concrete proposed mix design.

GP Cement/Fly Ash blend shall be supplied by an approved supplier.

All Admixtures shall be supplied by an approved supplier.

All admixture metres and weigh cells to be calibrated.

Copies of all testing records shall be made available to council and will be required to be submitted to council with progress claim.

Part D: Response Schedules



Schedule A: Tenderers Information

Business Name:	
ACN:	
ABN:	
Type of business (partnership, public company, private company, etc):	
Address:	
Telephone:	
Facsimile:	
Date incorporated:	
Names of Directors or Partners:	
Authorised signatory:	
Name / Position:	
Accountant:	
Name:	
Contact Phone No:	
Bank Details:	

Please attach additional information if space is insufficient space.

Schedule D: Safety and insurance information

The Tenderer shall provide details of Workplace Health and Safety Act Requirements.

Number of Full time and Part time employees:	
Worker's Compensation Policy No:	
Details of previous accident / incidents: (Attach details if insufficient room).	
Public Liability Insurer:	
Amount of Public Liability Insurance: (Minimum \$20,000,000).	
Motor vehicle and third-party liability insurer:	
Amount of motor vehicle third party; liability insurance (including statutory cover): (minimum \$20,000,000).	

Please attach additional information if space is insufficient space.

NOTE: Attach certificates of currency for each category above. Kowanyama Aboriginal Shire Council be named as "Principal"

Schedule E: Works procedures and methodology

The Tenderer is to provide with its Tender a statement of its proposed arrangements, procedures and methodologies to be adopted by it in carrying out the Scope. In doing so, this statement is to address the following points:

- a) a brief overview of methodology proposed by the Tenderer for the execution of the Scope;
- b) an understanding of the project objectives and deliverables;
- c) a proposed program that identifies the timing of works in accordance with the priorities outlined in this tender.
- d) how it will identify potential problems that may arise during performance of the Scope and how it will overcome any such problems. Provide potential solutions to those problems;
- e) identify project risks and strategies for management and mitigation of these risks;
- f) non-conformance management proposed.

Schedule F: Management systems**Schedule F1 – Work Health and Safety**

This Schedule forms part of the tender evaluation and is to be completed by the Tenderer. Upon contract award, the successful Tenderer may be required to verify their responses noted in this Schedule, by providing copies of relevant policies, procedures, certificates etc. that provides evidence of their ability and capacity to effectively manage their WHS responsibilities for the contract.

Item	Tick Yes or No
1. Does your business or organisation have third party certification for Work Health and Safety, e.g. to AS/NZS 4801 or other?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If Yes, by whom: Certificate Number: (Attach a copy of your Accreditation Certificate)	
2. Does your business or organisation have a Random Drug and Alcohol Policy? (Attach a copy of your Policy)	Yes <input type="checkbox"/> No <input type="checkbox"/>
IF TENDERER HAS ANSWERED 'YES' TO QUESTIONS 1 AND 2, TENDERER IS NOT REQUIRED TO COMPLETE QUESTIONS 3 TO 9.	
3. Does the Tenderer have an internal Work Health and Safety Management System or Plan (not third party certified)? (If yes, attach evidence such as a copy of the manual)	Yes <input type="checkbox"/> No <input type="checkbox"/>
4. Does your business or organisation have documented Safe Work Methods Statements (SWMS) and other procedures for all identified high-risk work?	Yes <input type="checkbox"/> No <input type="checkbox"/>
5. Does your business or organisation have appropriate systems and/or documented procedures for reporting of incidents and hazards?	Yes <input type="checkbox"/> No <input type="checkbox"/>
6. Is there a person appointed to look after Health and Safety in the workplace?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If Yes, state person's name and position: Name: Position:	
7. Are all employees aware of their obligations for Personal Protective Equipment (PPE)?	Yes <input type="checkbox"/> No <input type="checkbox"/>
8. Does your business or organisation have current and appropriate qualifications, licences to undertake each task?	Yes <input type="checkbox"/> No <input type="checkbox"/>
9. Does your business or organisation undertake appropriate on-site induction and training relevant to each task?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Schedule F2 – Environmental Management

The Tenderer is to complete and attach this Schedule to its Tender. The purpose of this Schedule is to provide an overview of the status of the Tenderer's construction environmental management plan (EMP) documents and procedures.

The successful Tenderer, upon contract award, will be required to verify their responses noted in this Schedule by providing copies of the project site specific environmental management plan, site-specific cultural heritage protection searches and any other documented evidence on request by the Principal.

Tenderers must provide details of Environmental Management Systems, or processes and procedures. Please answer (YES or NO). Supporting evidence and copies of relevant documentation must be attached with Tender response.

Item	Tick Yes or No
1. Has your business or organisation been third party certified for Environmental Management Systems e.g. ISO 14000 series or other?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, by whom: Certificate Number: <i>(Attach a copy of Accreditation Certificate)</i>	
2. Does the Tenderer have an internal Environmental Management System? <i>(If yes, attach evidence such as a copy of the manual)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. The Tenderer is aware of the relevant provisions within the Principal's environmental policy and will commit to the requirements of the environmental policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Is the Tenderer aware of the Environmental & Cultural Heritage Protection Requirements relevant to this project?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Schedule F3 – Quality Assurance

The Tenderer is to complete and attach this Schedule to its Tender. Upon contract award, the successful Tenderer may be required to verify their responses noted in this Schedule, by providing copies of relevant quality policies, procedures, certificates etc. that provides evidence of their quality requirements for the contract.

Item	Tick Yes or No
1. Does your business or organisation have third party certification for Quality, e.g., to ISO 9001 series or other?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If Yes, by whom: Certificate Number: (Attach a copy of your Accreditation Certificate)	
IF TENDERER HAS ANSWERED 'YES' TO QUESTIONS 1, TENDERER IS NOT REQUIRED TO COMPLETE QUESTIONS 2 TO 6.	
2. Does the Tenderer have an internal Quality System or Plan (not third party certified)? <i>(If yes, attach evidence such as a copy of the manual)</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>
3. Does the Tenderer have a Quality Policy? <i>(If yes, attach evidence of the Policy)</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>
4. Does the Tenderer have documented Quality procedures? <i>(If yes, attach evidence or copy of the procedures)</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>
5. Are records of Inspection, Test and other Quality Assurance or Quality Control activities maintained, and quality records kept for each specific project?	Yes <input type="checkbox"/> No <input type="checkbox"/>
6. Does the Tenderer undertake internal Quality Audits on a project or contract specific basis?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Schedule G: PRICING SCHEDULE

Item	Unit	Rate per Unit (\$) GST Excl
Sand [^]	m3	
Aggregate (10mm) [^]		
Aggregate (20mm) [^]		
25mpa concrete [^]		
32mpa concrete [^]		
40mpa concrete [^]		
Delivery outside of Kowanyama township boundary	per km	

[^] All m3 pricing to include delivery within the Kowanyama township boundary. Delivery outside of the Kowanyama township boundary will attract an additional per km fee noted in the above pricing schedule.

Annexure 1: Batching Plant Site Photographs

1.1 Screen Plant



1.2 Screen Plant



1.3 Screen Plant – (inc 22kw electric motor)



1.4 Batching Plant – 1



1.5 Batching Plant – 2



1.6 Batching Plant – 3



1.7 Compound - 1



1.8 Compound - 2

