*Brisbane City Council’s Tender Manager - Internal QA signature: \_\_\_\_\_\_\_\_*

**Brisbane City Council**

**CONTRACT**

**LOW RISK WORKS**

**CONSTRUCT TO DESIGN**

|  |  |
| --- | --- |
| **Contract title:** | {insert} |
| **Contract number:** | {insert} |
| **Contractor:** | {insert} |
| **Contract RM ref:** | {insert} |
| **Made under Panel:** | {insert title of panel contract is made under or 'N/A'} |
| Template version: | 9.0 (released May 2024) RM: CA13/297107 |
| Security label: | Template – **PUBLIC**  Information inserted – **SENSITIVE: COMMERCIAL-IN CONFIDENCE** |

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FORMAL INSTRUMENT OF AGREEMENT

1. Recitals
   * 1. Council wishes to engage the Contractor to provide the Works.
     2. The Contractor agrees to provide the Works for the Contract Price in accordance with the terms and conditions of this Contract.
2. Composition of Contract

The documents listed below comprise the Contract between the parties and in the case of any ambiguity, discrepancy or inconsistency, the documents will apply in the order of precedence as listed (with a document first listed having priority over a document later listed):

* + 1. this Formal Instrument of Agreement;
    2. Schedule B – General Conditions;
    3. Schedule A – Contract Particulars;
    4. Schedule D – Specifications for the Works (including all attachments or annexures and any other documents referred to by that Schedule D in the order they appear);
    5. Schedule C – Contract Price (including all attachments or annexures and any other documents referred to by that Schedule C);
    6. Schedule E – Statutory Declaration – Payment Claims; and
    7. any other document incorporated by express reference as forming part of the Contract.

1. Counterparts

This Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of the Contract and all together constitutes one Contract.

1. Electronic signatures
   * 1. This Contract may be executed electronically and the parties agree that the electronic execution of this Contract will have the same force and effect as a wet ink witnessed signature.
     2. To the extent that any party executes this Contract by an electronic execution method, each party agrees that they have consented to the use of the relevant electronic execution method and may not subsequently challenge the validity of this Contract on the ground of consent or the effectiveness of the relevant electronic execution method.
     3. Where the Contractor executes this Contract electronically, each director or secretary (as applicable) consents to the electronic execution of this Contract (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary (as applicable) to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.
2. – CONTRACT PARTICULARS
3. Contract Particulars

These Contract Particulars set out details of the Contract for the purposes of the General Conditions.

|  |  |  |  |
| --- | --- | --- | --- |
|  | Council's Representative:  *[Clause 1]* | Name: {Insert} | |
| Position: {Insert} | |
| Address: {Insert} | |
| Email: {Insert} | |
| Tel: {Insert} | |
|  | Contractor:  *[Clause 1]* | Company/entity name: {Insert} | |
| ABN: {Insert} | |
| ACN: {Insert} | |
| QBCC licence no.: {Insert} | |
| Address: {Insert} | |
|  | Contractor's Representative:  *[Clause 1]* | Name: {Insert} | |
| Position: {Insert} | |
| Email: {Insert} | |
| Tel: {Insert} | |
|  | Site:  *[Clause 1]* | {Insert details or title and date of site plan (and attach document)} | |
|  |  |  | |
|  | |
|  | Commencement Date and   Date for Practical Completion:  *[Clause 1]* | The Commencement Date is: {insert a specific date or 'the date the last party executes this Contract'} | |
| The Date for Practical Completion is: {insert a specific date or 'within X weeks from the Commencement Date'} | |
|  | Work hours and working days  *[Clause 4(b)]* | Working hours mean: {Insert times: e.g. 8am until 5pm} | |
| Working days mean: {Insert days: e.g. Monday to Friday excluding public holidays} | |
|  | Time for submitting Payment Claims:  *[Clause 27]* | The dates as follows:   * + - 1. except for the month of December, the last day of each month for Works done to the 25th day of that month; and       2. for the month of December, the 20th of December for Works done to the 18th of that month. | |
|  | Time for payment:  *[Clause 29]* | Progress payment must be made within 15 Business Days of Council's Representative’s receipt of the Payment Claim. | |
|  | WHS Requirements – Contractor to:  *[Clause 17(f)]*  *[****Note:*** *Cross/tick all applicable boxes]* |  | Prepare work health and safety management plan |
|  | Manage Site risks |
|  | Ensure amenities meet WHS Requirements |
|  | Provide safe work method statements for applicable project tasks |
|  | Other Works specific WHS Requirements: {Insert. e.g. Contractor to maintain WHS system as set out in the Specifications} |
|  | Public liability Insurance  *[Clause 8]*  *[****Note:*** *Cross/tick applicable box]* |  | Contractor to obtain |
|  | Council to obtain  *[****Note****: Select Council to insure when the Contract Price is more than $50,000]* |
|  | Construction works insurance  *[Clause 8]*  *[****Note:*** *Cross/tick if applicable]* |  | Council to obtain  *[****Note****: Select Council to insure when the Contract Price is more than $50,000]*  *[****Note****: Whilst the Contractor is not contractually required to obtain construction works insurance, the Works are at the Contractor's risk]* |
|  | Defects Liability Period  *[Clause 1]* | The Defects Liability Period is {insert number of weeks or months} from the Date of Practical Completion. | |

EXECUTION

1. **Executed as an Agreement:**

|  |  |  |
| --- | --- | --- |
| **Executed** by **[Name of Contractor]** ACN [ACN of Contractor] in accordance with section 127 of the *Corporations Act 2001* (Cth) |  |  |
|  |  |  |
|  |  |  |
| Signature of director |  | Signature of director/company secretary  (Please delete as applicable) |
|  |  |  |
| Name of director (print) |  | Name of director/company secretary (print) |
|  |  |  |
|  |  | Date |

|  |  |  |
| --- | --- | --- |
| **Signed** for **Brisbane City Council** by its authorised representative in the presence of: |  |  |
|  |  |  |
|  |  |  |
|  |  | Signature of authorised representative |
|  |  |  |
| Signature of witness |  | Name of authorised representative (print) |
|  |  |  |
| Name of witness (print) |  | Date |

1. **System identifiers**

|  |  |  |
| --- | --- | --- |
| 2.1 | Council Purchase Order number: | {Insert} |
| 2.2 | Council Supplier number: | {Insert} |

1. – GENERAL CONDITIONS

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**GENERAL CONDITIONS**

1. Definitions and interpretation
   1. Definitions

In this Contract:

|  |  |
| --- | --- |
| 1. Approval | means all authorities, certificates, consents, licences, permits, notifications, exemptions, registrations, accreditations and approvals required by any Legislative Requirements or lawfully required by any Authority; |
| 1. Authority | means any Commonwealth, State or local government department, body, or instrumentality or any other authority, or body (public, statutory or otherwise) which has jurisdiction over the Work or any utility (including overhead utility lines, underground pipes, conduits or cables) in connection with the Work; |
| 1. Business Day | means a day which is not:   * + 1. a Saturday or Sunday;     2. a public holiday, bank holiday or special holiday in Brisbane; or     3. a day occurring on or within the period of 22 December to 10 January; |
| 1. Claim 2. Commencement Date | * 1. includes any entitlement, claim, action, suit, cause of action, defence, set-off, demand or proceeding arising out of, or in any way in connection with the Contract, the Works or either party’s conduct prior to the Contract, whether under contract (including under indemnity), in equity (including for restitution or unjust enrichment), by statute, in tort (including negligence) or otherwise, including for any adjustment to the Contract Price(including any Variation), for payment of money (including damages) or for anyextension of time*,* delay, disruption acceleration or other time related damages, cost or compensation claim;   2. means the date or period as specified at Item 5; |
| 1. Confidential Information | means all information disclosed by or on behalf of the Council to the Contractor in connection with this Contract (including the contents of this Contract) or is created or derived from the Council’s information, which is confidential in nature or designated as confidential, or which a reasonable person would realise is confidential, excluding information which:   * + 1. is or becomes public without a breach of confidence;     2. the Contractor can demonstrate was already in its possession or was independently developed by the Contractor; or     3. the Contractor receives from another person on a non‑confidential basis without a breach of confidence; |
| 1. Contract | * 1. is as defined in clause 2 of the Formal Instrument of Agreement; |
| 1. Contract Particulars | * 1. means the information stated in clause 1 of Schedule A; |
| 1. Contract Price | * 1. means the Contract Price set out in Schedule C as adjusted from time to time in accordance with the Contract; |
| 1. Contractor | * 1. means the person(s) specified at Item 2 that has been engaged to carry out and complete the Works:      1. irrespective of whether that person is an individual or a body corporate; and      2. where two or more persons have engaged to provide the Works, “Contractor” includes each entity both jointly and severally; |
| 1. Contractor’s Personnel | * 1. means each and every officer, employee, agent, contractor or subcontractor of the Contractor, and any other person for whom the Contractor is responsible, who is used by the Contractor to provide the Works; |
| 1. Contractor’s Representative | * 1. means the person specified at Item 3; |
| 1. Council | * 1. means Brisbane City Council (ABN 72 002 765 795), a body corporate pursuant to the *City of Brisbane Act 2010* and whose principal offices are situated at 266 George Street, Brisbane 4000, and its successors and assigns; |
| 1. Council's Representative | * 1. means the person specified at Item 1 and any replacement who is appointed by Council; |
| 1. Date for Practical Completion | * 1. means the date or period as specified at Item 5; |
| 1. Date of Practical Completion | * 1. means the date certified by Council's Representative to be the date on which Practical Completion was achieved; |
| 1. Defects | includes:   * + 1. a defect, shrinkage, movement, deficiency, subsidence, fault or omission in the Works, whether in respect of, or arising from any cause, including materials or workmanship or any physical damage to the Works as a result thereof; or     2. any other aspect of the Works which is not in accordance with the requirements of this Contract; |
| 1. Defects Liability Period | * 1. means such period as specified at Item 12; |
| 1. Formal Instrument of Agreement | * 1. means the document titled “Formal Instrument of Agreement” signed by or on behalf of the parties in relation to the Works and which expressly applies the General Conditions; |
| 1. General Conditions | * 1. means these terms and conditions in this Schedule B; |
| 1. Good Industry Practice | * 1. means that degree of skill, care, prudence of a skilled and experienced contractor, engaged in the construction of works similar to the Works; |
| 1. GST | * 1. means the tax on the provision or supply of goods and services (or similar tax) imposed under GST Laws; |
| 1. GST Laws | means the GST law (as defined by *A New Tax System (Goods and Services Tax) Act 1999* (Cth) together with all associated legislation and any additional or substituted legislation:   * + 1. providing for any value added tax, consumption tax, retail sales tax or other goods or services tax; or     2. dealing with price exploitation and excessive profit taking prohibited by those laws; |
| 1. Insolvency Event | * 1. means an event where:      1. a person makes a statement, or conducts itself in a manner from which it may reasonably be deduced that the person is insolvent;      2. a person stops or suspends payment of all or a class of its debts, or threatens to stop or suspend payment of all or a class of its debts;      3. a party is insolvent or informs the other party in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the Contract;      4. execution is levied against a party by a creditor;      5. a party is an individual person or a partnership including an individual person, and if that person:         1. commits an act of bankruptcy;         2. has a bankruptcy petition presented against him or her or presents his or her own petition;         3. is made bankrupt;         4. makes a proposal for a scheme of arrangement or a composition; or         5. has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor’s petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the Contract; or      6. in relation to a party being a corporation:         1. notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;         2. it enters a deed of company arrangement with creditors;         3. a liquidator, controller, external manager or administrator is appointed (whether or not on a provisional basis);         4. a meeting of creditors is called with a view to:            1. entering a scheme of arrangement or composition with creditors; or            2. appointing a controller, external manager or administrator to the party;         5. a receiver of the property or part of the property of the corporation is appointed;         6. it takes or commences or has taken, commenced or instituted against it any process, action or proceeding, whether voluntary or compulsory, which has an object or may result in the winding up of the corporation, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or a controller, external manager or administrator is appointed or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on the corporation’s business for the benefit of the creditors or any of them;         7. a winding up order is made in respect of it;         8. execution is levied by creditors, debenture holders or trustees or under a floating charge; or         9. a controller or administrator (each, as defined in the *Corporations Act 2001* (Cth)) (‘**External Controller**’) is appointed in respect of the party and fails to provide written confirmation to the other party, within 10 Business Days of a written request from the other party, that the party will perform all of its obligations under the Contract; or      7. any event analogous to the above events occurs; |
| 1. Intellectual Property Rights | * 1. means all copyright (including future copyright) and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets) and all rights of a similar nature in any part of the world together with any application or right to apply for the registration of an intellectual property right; |
| 1. Item | * 1. means an Item in the Contract Particulars; |
| 1. Latent Condition | means a Site condition (other than weather or the effects of weather) that differs materially from what should have been anticipated, at the time of the Contractor's quote or tender, by a competent contractor who had:   * + 1. examined the Contract documents, information provided by Council and any additional information relevant to the risks, contingencies and other circumstances having an effect on the tender known to the Contractor or obtainable by the making of reasonable enquiries; and     2. carried out all reasonable inspections and investigations of the Site (including all physical conditions and characteristics, facilities, services and access); |
| 1. Legislative Requirements | * 1. means all Commonwealth, State and local laws (including all applicable regulations, instruments, by-laws issued under those laws), licences, industrial awards, permits and all other lawful requirements applicable to the proper provision of the Works by the Contractor and the Contractor's Personnel, including the Work Health and Safety Law, the Modern Slavery Laws and the *Environmental Protection Act* *1994* (Qld); |
| 1. Modern Slavery Laws | * 1. means:      1. Division 270 and 271 of the *Criminal Code Act 1995* (Cth);      2. the *Modern Slavery Act 2018* (Cth); and      3. any other Legislative Requirement which prohibits exploitation of a worker, human trafficking, slavery, slavery-like behaviour, servitude, forced labour, child labour, debt bondage or deceptive recruiting for labour or services (or similar), or requires reporting or any other action in relation to the risks of those activities, and applies in the jurisdiction in which Council and the Contractor are registered or conduct business or in which activities relevant to the Works are to be performed; |
| 1. Payment Claim | * 1. means a claim for payment made by the Contractor in accordance with the Contract (including clause 27) and is a “payment claim” for the purposes of the Security of Payment Act; |
| 1. Payment Schedule | * 1. means a payment schedule issued by Council's Representative in accordance with clause 28 and is a "payment schedule" for the purposes of, and issued pursuant to, the Security of Payment Act; |
| 1. Personal Information | * 1. is information or an opinion, whether or not true or in a material form, about an individual whose identity is apparent or can reasonably by ascertained from the information or opinion; |
| 1. Practical Completion | * 1. means the Works have been completed in accordance with this Contract (other than minor or immaterial defects which can be conveniently rectified without interfering with the normal use of the Works) and that:      1. the Works are fit for use; and      2. any other conditions which the Contract requires to be satisfied prior to Practical Completion, have been satisfied; |
| 1. Security of Payment Act | * 1. means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld); |
| 1. Site | * 1. is as described or specified in Item 4; |
| 1. Specifications | * 1. means all documents relevant to the carrying out and completion of the Works as listed in and attached to Schedule D of this Contract, as amended (if applicable) under clause 24; |
| 1. Supplier Registration Terms | * 1. has the meaning given in clause 47; |
| 1. Variation | * 1. means any direction to vary the Works which may include any one or more of the following which is of a character and extent contemplated by, and capable of being carried out under, the provisions of the Contract:      1. increase, decrease or omit any part;      2. change the character or quality;      3. change the levels, lines, positions or dimensions;      4. carry out additional work; and      5. demolish or remove material or work no longer required by Council; |
| 1. WHS Requirements | * 1. means the work health and safety requirements set out in clause 17(f) (and the Contract Particulars) and the Work Health and Safety Law; |
| 1. Work Health and Safety Law | * 1. means any Legislative Requirement, principle of law or equity established by decisions of Australian Courts or requirements of persons acting in the exercise of statutory powers relating to health and safety, including the *Work Health and Safety Act 2011* (Qld), the *Work Health and Safety Regulation 2011* (Qld), industry standards, codes, practices or guidelines and any other provision of these General Conditions relating to health and safety; and |
| 1. Work or Works | * 1. means the work to be carried out by the Contractor under this Contract and all the labour, materials, work, plant and/or services (including any installation services to be undertaken by the Contractor) to be provided and/or undertaken by the Contractor and which is more particularly described in the Specifications and includes all Variations and any work carried out before the Commencement Date. |

* 1. Interpretation

In this Contract and unless the context indicates a contrary intention:

* + 1. clause headings and subheadings of this Contract will not form part of the General Conditions and will not be used in the interpretation of this Contract;
    2. a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
    3. a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
    4. all references to any document, information or material in this Contract includes all documents, information or material that is expressly incorporated in, referred to and/or attached to this Contract irrespective of how that material is stored or reproduced;
    5. a rule of construction or interpretation does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
    6. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
    7. the meaning of general words is not limited by specific examples introduced by “includes”, "including", "for example" or similar expressions and each are to be read as if followed by “without limitation”;
    8. when Council or Council's Representative "may" exercise a right or remedy, Council or Council's Representative (as the case may be) has an absolute discretion whether or not to do so, and is not required to exercise the discretion in good faith or having regard to, or for the benefit of, the Contractor;
    9. where any provision of this Contract requires an “agreement”, “approval”, “consent”, “direction” “notice”, “permission”, “rejection” or “request” by one or more parties, then any such agreement, approval, consent, direction “notice”, permission, rejection or request must be in writing;
    10. where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under this Contract;
    11. all references to “dollars” and “$” are to Australian dollars unless otherwise stated;
    12. all monetary amounts are exclusive of GST unless the context requires otherwise;
    13. a reference to a time and date, is a reference to the time and date in Queensland;
    14. all communications between Council and the Contractor must be in the English language; and
    15. measurements of physical quantity are in Australian legal units of measurement as prescribed under the *National Measurement Act 1960* (Cth), or if any of the Works are imported and do not conform to such legal units, such other unit of measurement as is agreed by Council.

1. Contractor to inform itself

The Contractor acknowledges and agrees that the Contractor has made all reasonable inquiries and inspections to fully inform itself of all of the risks, contingencies and other matters which may impact on the Contractor's performance of its obligations under this Contract.

1. Contractor’s obligations
   * 1. TheContractor must carry out and undertake the Works in accordance with this Contract. In carrying out and undertaking the Works, the Contractor must comply with the obligations set out in this Contract.
     2. Subject to any express term of the Contract to the contrary, the Contractor must, without adjustment to any component of the Contract Price, provide all services, work, labour, materials and construction plant necessary to perform the Works whether or not they are:
        1. expressly mentioned in the Contract; or
        2. anticipated by the Contractor.

Such services, work, labour, materials and construction plant must be undertaken and provided by the Contractor at its own cost and will not constitute a Variation or otherwise entitle the Contractor to make a Claim (including for payment for such services, work, labour, materials and construction plant).

1. Commencement/completion and work hours/days
   * 1. The Contractor must commence the provision of the Works on or before the Commencement Date and achieve Practical Completion on or before the Date for Practical Completion. The Date for Practical Completion can only be extended as expressly provided in clause 25(b).
     2. The Contractor must only carry out the Works on the Site during the working hours and on the working days set out in Item 6 unless the Contractor has obtained prior written approval from Council's Representative.
2. Early Work

The parties agree that to the extent the Contractor has commenced any of the Works prior to the Commencement Date, those works are deemed to form part of the Works and be governed by this Contract, and any payments made by Council are deemed to have been made under this Contract.

1. Contract Price
   * 1. Subject to the Contractor having complied with its obligations under this Contract, Council will pay the Contractor the Contract Price.
     2. The Contractor agrees that, notwithstanding any other provision of the Contract to the contrary, to the maximum extent permitted by law, it will not be entitled to any Claim based on, or arising out of or in connection with, quantum meruit, unjust enrichment or restitution (or similar claims), whether arising out of or in connection with the Contract or any other basis in law or equity.
2. Risk and Indemnity
   * 1. The Contractor accepts the whole risk of executing the Works in accordance with the Contract and:
        1. is responsible for the acts and omissions of all persons working for the Contractor or on the Contractor's behalf, including the Contractor's subcontractors; and
        2. is solely liable for loss of or damage to the Works (from any cause whatsoever), including the rectification in respect of any loss or damage to the Works:
           1. from the Commencement Date until 4:00 pm on the Date of Practical Completion; and
           2. during any period the Contractor is rectifying Defects or undertaking any other Works after the Date of Practical Completion.
     2. The Contractor must fully indemnify Council and Council’s officers, employees and agents:
        1. against any such loss, damage or Claim, to the extent of the Contractor’s liability under clause 7(a);
        2. for any Claims in connection with:
           1. injury or death to any person and/or loss of or damage to any property (including Council’s property and the Works); and
           2. loss or damage resulting from damage to any overhead utility lines, underground pipes, conduits or cables or other public or private utility plant or services,

which arises out of or results from or the Contractor carrying out the Works, except to the extent that such loss or damage, injury or death is caused by the negligence or default of Council or its officers, employees or agents; and

* + - 1. to the maximum extent permitted by law, against all Claims arising from or contributed to by:
         1. the Contractor's acts or omissions or acts or omissions of the Contractor's Personnel (whether wilful, negligent or otherwise) in the carrying out of the Work; and
         2. breach by the Contractor of any of the Contractor's warranties or obligations under clauses 14, 17, 18, 19, or 20.
    1. Unless expressly stated otherwise in this Contract, the rights and remedies under this clause 7 are cumulative and not exclusive of any rights or remedies provided by Legislative Requirements or any other right or remedy.
    2. Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Contract.
    3. It is not necessary for a party to incur expense or to make payment before enforcing a right of indemnity under this Contract.
    4. A party must pay, as a debt due and payable, on demand any amount it must pay under an indemnity in this Contract.
    5. Any amount which the Contractor is expressly liable to pay or reimburse to Council under this Contract will be a debt due and payable to Council in the time expressly provided or otherwise on demand.

1. Insurance
   * 1. At all times during the Contract, the Contractor must effect and maintain the following insurances with reputable insurers authorised and licensed to operate in Australia:
        1. workers' compensation insurance in accordance with all applicable legislation;
        2. motor vehicle legal liability insurance including supplementary bodily injury insurance with a limit of indemnity of not less than $20 million per occurrence; and
        3. if stated in Item 10 that the Contractor is to obtain public liability insurance, public liability insurance with a limit of indemnity of not less than $20 million per occurrence and unlimited in the aggregate, and which notes Council as an interested party.
     2. If stated in Item 10 that Council will effect and maintain public liability insurance, Council will effect and maintain public liability insurance for $50 million per occurrence while the Contractor is carrying out the Works on the Site or rectifying any Defects.
     3. If stated in Item 11 that Council will effect and maintain construction works insurance, Council will effect and maintain construction works insurance for the value of the Works while the Contractor is carrying out the Works on the Site.
     4. The Contractor acknowledges and agrees that:
        1. general information about Council's Principal Arranged Construction Insurance Program is available at: <http://www.brisbane.qld.gov.au/about-council/governance-strategy/economic-development/doing-business-brisbane/business-opportunities/selling-council/how-council-buys/councils-principal-arranged-construction-insurance-program>;
        2. if clause 8(b) or clause 8(c) applies and any claim is to be made under Council’s public liability insurance policy or construction works insurance policy (as applicable):
           1. the Contractor must comply with the claims process set out in the PACI Claims Procedure Manual available by emailing Council at: [CAG-ASES-Insurance@brisbane.qld.gov.au](mailto:CAG-ASES-Insurance@brisbane.qld.gov.au); and
           2. the Contractor is responsible for all uninsured risk and the excess as stated in the public liability insurance policy or construction works insurance policy (as applicable) for the insurance claim and reviewing the policies for details of risks insured and applicable excesses.
     5. If the Contractor fails to effect or maintain any of the insurances required under clause 8(a), then Council may take out the relevant insurance and the cost of the insurance will be a debt due and payable by the Contractor to Council.
     6. If requested by Council, the Contractor must promptly provide Council with certificates of currency for the insurances the Contractor is required to effect under clause 8(a) of this Contract.
2. Standard of work and warranties

The Contractor:

* + 1. must provide all of the labour, materials, plant, services and other things necessary to complete the Works in accordance with this Contract and must ensure all materials and other things used or provided in connection with the Works are new unless:
       1. the Specifications expressly allow an alternative quality; or
       2. Council has agreed to a Variation to this requirement under clause 24; and
    2. warrants that:
       1. the Contractor and the Contractor’s Personnel will at all times be suitably licensed, qualified and experienced, and will exercise due skill, care and diligence expected of a contractor exercising Good Industry Practice in the carrying out and completion of the Works; and
       2. it will perform the works in a timely and efficient manner;
       3. it will carry out and complete the Works in accordance with the Contract so that the Works, when completed, will:
          1. meet the standards of workmanship specified in the Contract, and to the extent that such standards are not specified, then standards commensurate with Good Industry Practice;
          2. comply with all the requirements of the Contract, including the Specifications and will successfully pass all tests as required by the Specifications; and
          3. comply with all Approvals, applicable Legislative Requirements and except to the extent the Contract otherwise expressly provides, comply with Council's policies and procedures as specified in the Specifications.

1. Site
   * 1. The Contractor must ensure, at its cost, that it and the Contractor’s Personnel:
        1. take all necessary measures to prevent any damage, harm or nuisance to persons, property or the environment arising out of or in connection with the performance of the Works;
        2. to the maximum extent practicable in undertaking the Works:
           1. keep the Site clean, tidy and free of rubbish and vermin; and
           2. prevent nuisance and unreasonable disturbance;
        3. do not interfere, make any alterations to, damage or destroy anything in, the Site except as permitted under this Contract and as required to undertake the Works;
        4. not do, omit to do, or permit to be done or omitted anything on the Site which may:
           1. constitute a danger to any person including Council or Council’s officers, employees, agents or contractors or any adjoining owners and other users and occupiers of the Site;
           2. unnecessarily block or restrict access to any part of the Site (including paths, bikeways and roads) except to the extent necessary to perform the Works safely;
           3. breach any Legislative Requirement or Approval; or
           4. contaminate or pollute the Site or the environment; and
     2. except to the extent the Works requires the same, not otherwise interfere with, obstruct access to, damage or overload any utilities.
     3. The Contractor acknowledges and agrees that where Council is in possession or management and control of the Site, the Contractor must coordinate the Works with other works and activities being carried out by Council and Council’s officers, employees, agents and contractors at the Site and the Contract Price is deemed to include a proper allowance for such coordination and all interference from other works and activities at the Site.
2. Damage to Site

At the Contractor’s cost and expense, the Contractor must make good all damage to the Site caused by the Contractor undertaking the Works, remove graffiti, remove all rubbish, debris and waste resulting from the undertaking of the Works and before Practical Completion, leave the Site and all adjacent areas in as good a state of repair as they were in as at the Commencement Date to the satisfaction of Council’s Representative.

1. Reporting
   * 1. Regularly, and if requested by Council, the Contractor must inform and consult with Council about all aspects of the Works including providing reports, recommendations and advice in relation to the performance of the Works and provide any information requested by Council in connection with the Works but any information requested will not comprise part of the Contract and no approval by Council’s Representative in respect of the information requested will:
        1. affect the Contractor's obligations under the Contract (including the obligation to achieve Practical Completion by the Date for Practical Completion) or prejudice any right of Council arising from the Contractor's previous failure to comply with this clause 12(a);
        2. be taken to evidence or constitute a direction to accelerate, delay or suspend the Works or a Variation under clause 24; or
        3. entitle the Contractor to any Claim.
     2. The Contractor must ensure that Council is kept informed of all matters pertaining to the Works of which Council ought reasonably be made aware, or which affects in any manner the way in which Council manages its affairs or conducts its business.
2. Assignment and Sub-contracting
   * 1. The Contractor must not assign, novate, sub-contract or otherwise deal with its rights and obligations under this Contract without the prior written approval of Council. Council may reject any request or impose such conditions as it deems appropriate (in its sole and absolute discretion) to protect its interests. Any approval by Council to allow the Contractor to sub-contract will not relieve the Contractor from any liability or obligation under this Contract.
     2. The Contractor remains vicariously liable to Council for all acts, defaults and omissions of the Contractor’s Personnel (including subcontractors) as if they were the acts, defaults and omissions of the Contractor.
     3. The Contractor must obtain Council’s prior written consent to any change in control of the Contractor (which consent may be given (or subject to any conditions) or withheld by Council in its absolute discretion).
3. Legislative Requirements and Approvals

The Contractor must:

* + 1. fully comply with all Legislative Requirements applicable to the carrying out of the Works;
    2. obtain, at its cost, any Approvals which may be required for the Works to be lawfully undertaken or carried out; and
    3. provide Council with copies of all Approvals and certification documents in connection with the Works.

1. No derogation from approval
   * 1. The Contractor acknowledges and agrees that any delivery or provision to Council of any documentation, materials or Works, or review of, comment on, approval or rejection of any document provided or produced by or on behalf of the Contractor in connection with the Works and any payment given by or on behalf of Council under this Contract will, in relation to such matters, not:
        1. affect or lessen the Contractor's obligations under this Contract including the obligation to achieve Practical Completion by the Date for Practical Completion;
        2. constitute a waiver of the Contractor's obligations nor prejudice any right of Council arising from the Contractor's previous failure to comply;
        3. constitute evidence of acceptance by Council of all or part of such documentation, materials or Works; or
        4. entitle the Contractor to any Claim for additional moneys or extension of time unless otherwise expressly permitted under another clause.
     2. Nothing in this Contract (including the Specifications) or any other agreement (whether oral or in writing) will override this clause unless the parties have expressly agreed to the contrary in writing.
2. Council as an Authority
   * 1. The Contractor acknowledges and agrees that:
        1. nothing in this Contract will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of Council to exercise any of its respective statutory functions or powers; and
        2. anything which Council does, fails to do, or purports to do, pursuant to its statutory functions or powers will be deemed not to be an act or omission by Council under this Contract and will not entitle the Contractor to make any Claim against the Council arising out of the subject matter of this Contract.
     2. The Contractor acknowledges and agrees that:
        1. there may be many Authorities (other than Council) with jurisdiction over aspects of the Works, all or parts of the Site and areas affected by the Work;
        2. such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Work; and
        3. except to the extent this Contract expressly provides otherwise, the Contractor will have no Claim against Council arising out of or in any way in connection with such occurrences.
3. Work Health & Safety

Without limiting clause 14 of these General Conditions, the Contractor must:

* + 1. ensure that all Works are carried out in accordance with the Work Health and Safety Law;
    2. discharge the Contractor's duties under the Work Health and Safety Law;
    3. comply with all directions of, and consult fully with, Council in connection with all matters relating to health and safety;
    4. immediately notify Council of any breach or potential breach by the Contractor any of Work Health and Safety Law;
    5. notify Council's Representative in writing immediately of any safety incidents that occur on the Site or as a result of the performance of any part of the Works;
    6. in accessing and using the Site:
       1. allow Council or such other person in possession or management and control of the Site ("**Site Occupant**"), to maintain its possession or management and control of the Site while the Contractor is carrying out the Works within the Site; and
       2. without limiting clause 17(f)(i) above:
          1. comply with the directions of the Site Occupant (or any person nominated by the Site Occupant as having the authority to give directions) regarding the timing and conditions of the Contractor's access to the Site and health and safety; and
          2. complete any safety or other training or induction required by the Site Occupant before entering the Site; and
       3. comply with the following WHS Requirements where the corresponding box in Item 9 has been checked or ticked:
          1. **Work health and safety management plan** - The Contractor must prepare and have available for inspection at all times, a written work health and safety management plan for the Works, including:

the names, positions and health and safety responsibilities of all persons whose positions or roles involve specific health and safety responsibilities;

the arrangements in place for managing any work health and safety incidents that occur;

any specific health and safety rules, and the arrangements for ensuring that all persons at the Site are informed of these rules; and

the arrangements for the collection and any assessment, monitoring and review of safe work method statements;

* + - * 1. **Site risks** - The Contractor must manage risks to health and safety associated with the following:

the storage, movement and disposal of materials and waste at the Site;

the storage at the Site of plant that is not in use;

traffic in the vicinity of the Site that may be affected by the Works; and

essential utilities at the Site;

* + - * 1. **Amenities** - In relation to any amenities provided at the Site, the Contractor must ensure that such amenities meet the requirements of section 315A, Part 6.4 of the *Work Health and Safety Regulation 2011* (Qld) as if the Contractor were the 'principal contractor' and the Works constituted a 'construction project'; and/or
        2. **Other Works specific health and safety requirements** - As stated in Item 9.

1. Intellectual Property Rights
   * 1. The parties warrant that, unless otherwise provided in the Contract, the design, materials, documents and methods of working, each specified in the Contract or provided or directed by either party or a parties’ Personnel will not infringe any Intellectual Property Right.
     2. The Contractor warrants that it is authorised to grant the rights in clause 18(d).
     3. Council owns all Intellectual Property Rights which may arise in respect of, or as a result of, the completion of the Works or the performance of any work in order to complete the Works.
     4. The Contractor must do everything required to give Council full legal ownership of the Intellectual Property Rights referred to in clause 18(a) or to protect those rights and the Contractor is not entitled to an assignment fee or similar payment other than the Contract Price.
     5. The Contractor consents (and where relevant will procure the Contractor’s Personnel to consent) to Council infringing any moral rights that the Contractor may have or becomes entitled to in any work created, developed, modified or enhanced in the course of performing the Works.
     6. For the purposes of this clause 18, "work" has the meaning given to that term in the *Copyright Amendment (Moral Rights) Act 2000* (Cth) and "moral rights" refers to any right arising under the provisions of that legislation, or similar legislation.
2. Confidentiality and media
   * 1. The Contractor must keep confidential all Confidential Information.
     2. If required in writing by Council, the Contractor must enter into a separate agreement not to disclose to anyone else any confidential matter even after the Date of Practical Completion or earlier termination of this Contract, if applicable.
     3. Without limiting its other obligations under this clause, the Contractor must not:
        1. disclose to any person; or
        2. use for any purpose other than the carrying out of Work,

any of the contents of this Contract or any other information obtained by the Contractor in the course of or in connection with the carrying out of Work where that information is Confidential Information unless:

* + - 1. Council has given its prior consent in writing;
      2. the disclosure is to:
         1. the Contractor's Personnel who have a need to know for the purposes of this Contract and are bound to keep it confidential;
         2. its professional advisors who have a need to know and are bound to keep it confidential; or
         3. enforce this Contract, or to be used in a proceeding arising out of or in connection with this Contract, or to resolve any dispute between the parties under this Contract; or
      3. the Contractor is required to do so by law.
    1. The Contractor's obligations under this clause continue after the Date of Practical Completion or earlier termination of this Contract for any reason, if applicable (whether or not the Contractor signs a separate agreement under this clause).
    2. The Contractor must not, without Council’s prior written approval:
       1. issue any information, document or article for publication relating to the Works or any matter concerning this Contract in any media;
       2. advertise at the Site; or
       3. participate in a media interview or make any statement to the media that mentions or refers to the Works or any matter concerning this Contract.

1. Privacy and Personal information
   * 1. If the Contractor has access to or is provided any personal information (as defined in the *Information Privacy Act 2009* (Qld) (“**the** **IP Act**”)) by Council, the Contractor must, and must ensure that the Contractor’s Personnel:
        1. fully comply with the IP Act and any additional requirements included in the Specifications;
        2. comply with Council's reasonable directions regarding the handling of Personal Information;
        3. only use or disclose that Personal Information to the extent necessary to perform its obligations under this Contract, as required by law, or otherwise in accordance with Council's written instructions;
        4. take all reasonable steps to ensure that Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure;
        5. not transfer or disclose, or permit the transfer or disclosure of, that Personal Information to any location outside of Australia, including for the purposes of storage or backup, unless authorised by Council in writing; and
        6. give Council notice as soon as the Contractor becomes aware that use or disclosure of that Personal Information is required or authorised by or under Legislative Requirements.
     2. If the Contractor becomes aware that it or the Contractor's Personnel (or any of their respective personnel) is using or disclosing, or has used or disclosed, Personal Information in contravention of this clause 20, the Contractor must promptly give Council notice of the full details of the contravention and acts taken to investigate, contain and remedy the contravention.
2. Portable Long Service Leave Levy and other levies
   * 1. Council will pay all levies required by any Legislative Requirement to be paid by a "principal" for a contract for construction or building work (including portable long service leave levy and workplace health and safety levy) (“**Levies**”).
     2. The Contractor warrants that the Contract Price does not include or provide for any allowance in relation to Levies.
     3. The Contractor will not be required to reimburse Council for Levies irrespective of any other provision under these General Conditions to the contrary.
3. Practical Completion

When the Contractor is of the opinion that Practical Completion has been reached, the Contractor may in writing request Council's Representative to issue a certificate of Practical Completion. Within 10 Business Days after receiving the request, Council's Representative will give the Contractor either a certificate of Practical Completion evidencing the Date of Practical Completion or written reasons for not doing so.

1. Defects and Defects Liability Period
   * 1. During the Defects Liability Period, if Council is of the reasonable opinion that any of the Works are defective or not satisfactory, Council's Representative will notify the Contractor’s Representative.
     2. The Contractor must promptly comply with the direction issued by the Council's Representative:
        1. prior to Practical Completion; and
        2. during the Defects Liability Period,

requiring the Contractor to rectify any Defects. The direction will state the Defect to be rectified, whether to repair or replace the Defect and the time period for the rectification.

* + 1. The Contractor must comply with the direction in clause 23(b) within the time specified in the direction and will bear all costs arising from or in connection with the rectification of the Defect.
    2. If the Contractor fails to comply with the direction in clause 23(b), Council may either itself or through engaging a third party undertake the rectification work or accept the Works at a reduced value. Any such additional rectification costs will be a debt due to Council and may be deducted from payments due to the Contractor under this Contract.
    3. If Council agrees to accept the Works at a reduced value, this will be deemed to be on the basis that Council is under no obligation to pay the Contractor any additional monies whatsoever in relation to the Works.

1. Variation
   * 1. The Contractor must not vary the Works except as directed in writing by Council's Representative.
     2. Council’s Representative may direct the Contractor to carry out a Variation. Within two Business Days of receipt of a direction under this clause (or a longer period as stated in the direction), the Contractor must submit a written notice of the Contractor’s anticipated additional costs (if any) to carry out the Variation. The Contractor must take all reasonable steps to minimise the additional costs. Council’s Representative will price the Variation in accordance with clause 24(d) and clause 25(d) (where applicable).
     3. Council's Representative may give the Contractor written notice of a proposed Variation. The Contractor must, as soon as practicable after receiving such notice, notify Council's Representative whether the proposed Variation can be achieved and any:
        1. additional cost (including supporting evidence/cost breakdown) of the proposed Variation; and
        2. amendments to the works and the Date for Practical Completion.

If Council wishes to proceed, Council's Representative will give the Contractor written direction to vary the Works. That written direction will include (for the purposes of clause 24(d)) any agreed additional costs.

* + 1. Council’s Representative will, as soon as possible, price such other valuation as is expressly required by the Contractreferencing this clause, using the following order of precedence:
       1. as agreed in writing between Council and the Contractor;
       2. if no agreement is reached, then to the extent that the Contract sets out rates or prices that are applicable to the Variation, those rates or prices will be used; and
       3. to the extent that clause 24(d)(ii) does not apply, then by Council's Representative, acting reasonably (including a reasonable amount for profit and overheads).

Such price will not include any amount in relation to delay or disruption in circumstances where the Variation (or deemed Variation, if applicable) causes any delay to which clause 25(b) applies (in which case, the Contractor’s entitlement, if any, to delay or disruption costs shall be determined under clause 25(c) and 25(d)).

* + 1. For the avoidance of doubt, the Contractor may only Claim in connection with a valuation which is to be made under clause 24(d) subject to and in accordance with this Contract (including clause 24(b)), as part of a Payment Claim.
    2. Despite any provision of the Contract to the contrary, no Variation will invalidate, or amount to a repudiation of, the Contract. If Council’s Representative directs a Variation omitting any part or all of the Works, Council will not be in breach of the Contract if it thereafter either performs omitted work itself or employs or engages another person to carry out and execute the omitted work. The work which has been omitted shall be valued under clause 24(d)) and the Contractor will have no entitlement to any other Claim against Council.
    3. Despite any other provision of this Contract, the Contractor will not be entitled to any increase in the Contract Price, any Claim for additional costs, an extension of time or delay costs, and Council’s Representative must disregard any entitlements in making an assessment required under this Contract, to the extent any Variation or direction of Council’s Representative has arisen out of (including as a response to overcome, mitigate or prevent future incidents of) either:
       1. a breach of this Contract by the Contractor; or
       2. a negligent act or omission of the Contractor or the Contractor’s Personnel.

1. Extension of time and delay costs
   * 1. The Contractor must take all reasonable steps and precautions to prevent and minimise the risk of any delays to the performance of the Works.
     2. The Contractor is entitled to claim an extension to the Date for Practical Completion, which will be determined by Council (acting reasonably), for any delay beyond the Contractor's reasonable control provided that the Contractor has:
        1. not caused or contributed to that delay and has used all endeavours to minimise the effect of the cause; and
        2. given Council's Representative written notice of both the existence of the cause and the period of delay the Contractor is seeking and the Contractor has done so within 2 Business Days after the Contractor first became aware of the cause.
     3. The Contractor will not be entitled to any increase to the Contract Price for any delay (including delays that are beyond the Contractor's reasonable control) other than a delay due to:
        1. a Latent Condition; or
        2. an act or omission of Council.
     4. The Contractor must submit its claim for delay costs in writing to Council’s Representative promptly (and in any case within five Business Days of becoming aware of the delay). Council’s response will be provided to the Contractor in writing.
     5. An extension of time does not entitle the Contractor to any delay costs nor to any change to the Contract Price unless the conditions of clause 25(b) are met.
     6. Any failure by Council or Council’s Representative to grant or to agree to any extension of time will not set time at large.
2. Latent Conditions
   * 1. Upon becoming aware of the existence of a Latent Condition while undertaking the Works, the Contractor must:
        1. notify Council Representative's in writing immediately;
        2. provide any information as and when reasonably requested by Council's Representative (at the Contractor's cost), such as information to substantiate the existence of the Latent Condition and the additional time and cost (if any) to complete the Works; and
        3. take all reasonable steps to minimise any additional time and costs.
     2. Upon compliance with clause 26(a), Council will determine (acting reasonably) if a Latent Condition has been encountered and if so, any adjustment to the Contract Price and, subject to and in accordance with clause 25, any extension to the Date for Practical Completion.
3. Payment Claim
   * 1. The Contractor must submit Payment Claims to Council's Representative progressively at the times prescribed in Item 8.
     2. Each Payment Claim must:
        1. be given in writing to Council's Representative;
        2. state the Contractor's full legal name and ABN;
        3. state the title and date of this Contract as set out in the Formal Instrument of Agreement;
        4. state the reference number of the Council purchase order issued in relation to this Contract;
        5. identify details of the value of the Works to which the Payment Claim relates and may include details of other moneys then due to the Contractor pursuant to the provisions of the Contract;
        6. state the amount of the payment (excluding GST);
        7. state the GST applicable;
        8. include a completed statutory declaration in the form set out in Schedule E relating to that Payment Claim, together with any supporting evidence which may be reasonably required by Council's Representative, which has been:
           1. declared on the date the relevant Payment Claim was issued; and
           2. declared by a representative of the Contractor who is in a position to know the facts declared;
        9. in respect of the first Payment Claim only, be accompanied by evidence of the Contractor's compliance with its insurance obligations in accordance with clause 8; and
        10. detail such other information and evidence as the Contract requires or Council's Representative has directed the Contractor to deliver in support of its Payment Claim.
     3. The Contractor will not be entitled to submit Payment Claims more frequently or at any time earlier than at the time specified in Item 8. An early Payment Claim will be deemed to have been made on the date permitted for making that Payment Claim in Item 8.
     4. If the time for delivery of any Payment Claim falls due on a day that is not a Business Day, the Contractor must submit the Payment Claim either on the Business Day before that date or on the next following Business Day.
4. Payment Schedule
   * 1. Council's Representative will assess the Contractor's Payment Claim in accordance with this Contract and provide the Contractor with a Payment Schedule, within 10 Business Days of receipt of the Contractor's Payment Claim which identifies the Payment Claim to which it relates, states the amount of payment, if any, due from Council to the Contractor pursuant to the Payment Claim (determined in accordance with clause 29(b) and provides reasons for any difference or withholding of payment in the assessed amount.
     2. If the Contractor does not make a Payment Claim in accordance with the Contract, Council's Representative may issue a Payment Schedule with details of the calculations in accordance with clause 27(a). The Contractor must give Council a tax invoice for the amount of the Payment Schedule issued by Council's Representative pursuant to this clause 28 within 2 Business Days of receipt of that Payment Schedule.
5. Set off and time for payment
   * 1. The Contractor agrees:
        1. Council may set off against any amount assessed by Council's Representative any amount claimed by Council against the Contractor under or in connection with the Contract or otherwise (whether or not the amount is included in a Payment Schedule); and
        2. an election by Council to set off in a progress payment less than the full amount of the Payment Schedule will not prejudice or affect Council’s right to set off or recover from the Contractor the balance of the amount assessed at any time.
     2. Council will pay, or the Contractor will pay, as the case may be, the amount of the Payment Schedule within the time stated in Item 8 after, in the case of Council, setting off such of the Payment Schedule as Council is entitled to set off under this Contract. If that setting off produces a negative balance, the Contractor must pay that balance to Council within 5 Business Days of receiving the Payment Schedule.
     3. Payment by Council is only payment on account. Payment is not:
        1. evidence of the value of Works completed; or
        2. evidence that the Works have been completed in accordance with this Contract; or
        3. an admission by Council of any fact or liability.
6. GST
   * 1. Any terms capitalised in this clause and not already defined in clause 1.1 have the same meaning given to those terms in the GST Laws.
     2. If any Supply is made under this Contract is a Taxable Supply:
        1. The Supplier and Recipient agree that any amounts payable in respect of such Supplies are exclusive of GST; and
        2. the Recipient must pay the Supplier, in addition to and at the same time as the amount payable for the Supply but subject to the Supplier providing a Tax Invoice, an additional amount on account of GST calculated by multiplying the amount payable for the prevailing GST rate.
7. Suspension
   * 1. Council’s Representative may direct the Contractor to suspend carrying out of the whole of part of the Works for such time as Council’s Representative thinks fit, at any time by written notice to the Contractor stating the extent and effective date of such suspension. The Contractor must suspend the Works to the extent specified including any Works in progress by subcontractors.
     2. As soon as Council's Representative becomes aware that the reason for any suspension no longer exists, Council's Representative will direct the Contractor to recommence the suspended Work as soon as reasonably practicable.
     3. Subject to clause 31(e), if the Contractor incurs more or less cost than otherwise would have been incurred by reason of a suspension pursuant to this clause 31, the difference will be assessed by Council’s Representative and added or deducted from the Contract Price except where, or to the extent that the Contractor caused or contributed to the reason for the suspension.
     4. Clause 25(c) will not apply to delay or disruption costs or damages resulting from a suspension under this clause 31.
     5. The Contractor is not entitled to Claim any suspension costs which:
        1. the Contractorhas already recovered under the Contract; or
        2. could reasonably have been avoided by the Contractor.
8. Warranties

Where requested by Council, the Contractor must obtain warranties from all subcontractors under this Contract which must be:

* + 1. procured by the Contractor in Council's name (or otherwise be assigned to, and be capable of being enforced by, Council); and
    2. delivered to Council, identifying the description of the Works to which the warranties relate.

1. Taking Works out of the Contractor's hands

If the Contractor fails to perform any of its obligations under this Contract, by the provision of written notice to the Contractor, Council may take all or part of the Works out of the Contractor's hands and the Contractor will be liable to pay Council for the difference between the costs incurred by Council in having the Works completed and the amount which would have been payable to the Contractor under this Contract.

1. Termination for cause

Council may, in its sole and absolute discretion, terminate this Contract by written notice to the Contractor, if at any time the Contractor:

* + 1. fails to commence the Works on the Commencement Date or such other date as agreed by Council in writing;
    2. fails to complete the whole of the Works by the Date for Practical Completion;
    3. fails to maintain the Contractor’s insurances in accordance with clause 8;
    4. breaches any of the following clauses: 4, 13, 14, 17, or 19;
    5. fails to undertake or complete the whole of the Works (including rectify any defects) in accordance with this Contract;
    6. has received a notice requiring the Contractor to rectify a breach of clause 8, 9 or 11 within a specified time (**Default Notice**) and the Contractor has failed to comply with the Default Notice;
    7. offers or gives any gratuity, bonus, discount or bribe of any sort to any officer, member or agent of Council;
    8. indicates that the Contractor is unwilling or unable to complete the Works by the Date for Practical Completion;
    9. fails to provide a statutory declaration or documentary evidence required under this Contract;
    10. provides a statutory declaration or documentary evidence required under this Contract which contains a statement that is untrue, misleading or deceptive; or
    11. subject to any applicable statutory stay provisions in the *Corporations Act 2001* (Cth), is subject to an Insolvency Event.

1. Termination for convenience
   * 1. Council may at any time terminate this Contract in its absolute discretion, for its convenience (including where there has been no default or insolvency of the Contractor) for any reason (and without obligation to provide any reason), and irrespective of any other prevailing fact, circumstances of events (including the existence of any dispute, Claim or other notice or process under this Contract) immediately by written notice to the Contractor specifying a termination date, in which case the Contractor must, upon receipt of the notice:
        1. cease carrying out the Work, except as otherwise directed by the Contractor;
        2. if directed by Council to do so:
           1. assign or novate in favour of the Contractor any subcontractors (including, without limitation, for the provision of any materials) or rights under any subcontracts obtained by the Contractor in connection with the carrying out of the Work; and
           2. terminate any other outstanding subcontracts and recover from the subcontractor any property, documentation, material or information of Council;
        3. deliver to Council all property, document or information of Council provided to the Contractor in connection with it carrying out the Work; and
        4. deliver to Council any of the materials or Works which under the Contract has become the property of the Council.
     2. Upon termination of this Contract under this clause 35:
        1. if the Contractor:
           1. is subject to an Insolvency Event;
           2. has not provided a statutory declaration in accordance with clause 35;or
           3. has provided a statutory declaration which the Contractor is required to provide in accordance with this Contract and such statements are determined by Council (acting reasonably) to be untrue, false or misleading (as applicable),

Council will not be required to make further payment to the Contractor (except for any unpaid Payment Schedules); or

* + - 1. in all other circumstances:
         1. Council must pay the Contractor:

for all Works carried out in accordance with this Contract up to, but excluding the date the termination becomes effective;

any costs of third party materials that are reasonably incurred by the Contractor in the expectation of completing the Works, and which are not included in any other Payment Claim, provided that unencumbered title to those materials passes to Council upon payment and they are delivered to Council; and

the reasonable costs of demobilising individuals and equipment that are incurred as a direct result of the termination; and

* + - * 1. the Contractor will have no Claim against Council for any overhead, loss of profits, costs, expenses, damages, losses or other liabilities arising from or in connection with the termination.
    1. Termination in accordance with this clause 35 will be effective as of the date of written notice from Council. Council will only be liable to pay the Contractor for those parts of the Works which have been properly performed/delivered up to the date of termination.
    2. Termination or expiration of this Contract will not prejudice any accrued rights or liabilities of a party or excuse any party from a breach of this Contract occurring prior to termination or expiration.

1. Statutory declaration

The Contractor agrees that:

* + 1. at any time, Council may request that the Contractor provides a completed and signed statutory declaration (in a form and containing such detail as reasonably required by Council) from the Contractor's representative who is in a position to know the facts confirming that the Contractor is solvent and not subject to any Insolvency Event; and
    2. the Contractor must provide such completed and signed statutory declaration referred to in clause 36(a) within 2 Business Days of the request from Council.

1. Notification of claims
   * 1. Council will not be liable upon any Claim unless:
        1. if the requirements for notification of the Claim are prescribed elsewhere in this Contract, the Contractor has strictly complied with those requirements; or
        2. if clause 37(a)(i) does not apply, the Contractor has given Council written notice of the Claim within 10 Business Days of when the Contractor should first have become aware of the Contractor's right to make the claim if the Contractor had applied Good Industry Practice.
     2. A notice under clause 37(a)(ii) must be in writing and include:
        1. the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;
        2. the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment; and
        3. details of the quantum of the Claim showing the calculations and their bases.
     3. Failure by the Contractor to comply with this clause 37 is an absolute bar to making the claim and constitutes an irrevocable release of that claim by the Contractor.
2. Disputes
   * 1. Any difference or dispute on any matter arising out of or in relation to this Contract must be resolved in accordance with this clause (**Dispute**).
     2. If a party believes there is a Dispute, it may give written notice to the other party detailing the nature of the Dispute (**Notice of Dispute**).
     3. Each party must refer the Dispute to Council’s Representative and the Contractor’s Representative for consideration who must use their best endeavours to undertake genuine negotiations with a view to resolving the Dispute within 10 Business Days of the date of the Notice of Dispute or such longer period as agreed by the parties.
     4. In the event that Council’s Representative and the Contractor’s Representative fail to resolve the Dispute within the period set out in clause 38(c), then Council may submit the Dispute to mediation, in accordance with the mediation rules of the Resolution Institute.
     5. Mediation will be conducted in Brisbane and the costs of any mediator appointed under clause 38(d) will be borne equally by the parties.
     6. If the parties are unable to agree to a mediator, a mediator will be appointed by the Chairperson of the Resolution Institute.
     7. Each party must continue to perform its obligations under this Contract notwithstanding the existence of any Dispute or any proceeding under this clause 38.
     8. Nothing in this clause 38 will prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek urgent injunctive, declaratory or other interlocutory relief.
3. Notices
   * 1. A notice, request, consent, approval, direction or other communication required or permitted to be given under this Contract must be given by a party to the other party in writing by:
        1. hand;
        2. posting a copy of the notice by registered post, in a sealed envelope with postage prepaid; or
        3. email,

which must be given, addressed or sent to the respective party’s representative at the address specified in Item 1 or Items 2 and 3 (as applicable), or any substitute representative or address as notified in writing by that party from time to time.

* + 1. A notice (and other documents) sent or delivered in a manner provided by clause 39(a), will be deemed to have been given to and received by the party to which it is addressed:
       1. if sent by registered post, on the second Business Day (at the address to which it is posted) after posting;
       2. if sent by email, at the time shown in the delivery confirmation report generated by the sender’s email system (unless an answerback code is received by the sender which indicates the email transmission has not been successful); or
       3. if hand delivered, upon delivery.
    2. If a notice (including a notice given pursuant to clause 39(b)(iii) is received after 5.00pm it will be deemed to have been given and received at 9.00am on the next Business Day.
    3. Any notice given to the Contractor's Representative will be deemed to have been given to the Contractor.
    4. Any notice given to Council must also be copied simultaneously via email to Council's Representative.

1. Applicable Law

This Contract is to be construed and governed according to the laws of Queensland.

1. No representation or reliance
   * 1. Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Contract, except for representations or inducements expressly set out in this Contract.
     2. Each party acknowledges and confirms that it does not enter into this Contractin reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Contract.
2. Relationship between the parties

Nothing in this Contract will be construed as creating a relationship of employer and employee or principal and agent or partnership as between the parties and the Contractor must not represent itself as being in any such relationship with Council.

1. Further acts

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

1. Costs

Except as expressly provided in this Contract, each party bears its own costs in relation to the preparation, negotiation, signing and performance of this Contract.

1. Council approval

Where this Contract requires the approval of Council to be given, unless otherwise provided in this Contract, the giving of any such approval is within the sole and absolute discretion of Council (unless stated to be contrary by this Contract) and Council can impose any conditions it deems appropriate in order to grant the approval.

1. Entire agreement

This Contract represents the entire agreement between the parties about its subject matter and takes effect despite any prior agreement between the parties in relation to the subject matter of this Contract.

1. Supplier Registration Terms

The Contractor agrees to be bound by Council’s “Terms and Conditions – Registration as potential Supplier to Council” as made available by Council through its website or otherwise on request (‘**Supplier Registration Terms’**), including as such terms and conditions apply to define the relevant bank account details and processes which are applicable to facilitate payments to the Contractor from Council.  To the extent the Contractor has not provided the details the subject of the Supplier Registration Terms to Council prior to the entry into this Contract, the Contractor must immediately provide those details in accordance with the Supplier Registration Terms.  The Supplier Registration Terms are deemed to form part of this Contract.

1. Amendment

No variation of extension of the provisions of this Contract will be legally binding upon either party unless it is in the form of a written amendment to this Contract and authorised by both parties.

1. Severability

If the whole or any part of a provision of this Contract is invalid or unenforceable, to the extent it is invalid or unenforceable, that whole of part of the provision will be severed from this Contract and the rest of the Contract will continue to be valid and enforceable to the fullest extent permitted by law.

1. Waiver

A waiver by a party of any default under this Contract will not in any way prejudice the rights of that party and will not be deemed to be a continuing waiver or a waiver of any other default under this Contract.

1. Survival

The obligations contained in clauses 7, 8, 18, 19, 20, 21, 23, 29, 30, 37, 38, 39 and this clause 51 survive the expiry or earlier termination of this Contract.

1. – CONTRACT PRICE

The Contract Price is:

[cross/tick the applicable box]

the lump sum of ${insert amount (amount in figures)} (plus GST).

a schedule of rates which is detailed in the document as attached to this Schedule C and titled “{insert document title ATTACH THE DOCUMENT}”.

being a mixture of lump sum payments and schedule of rates which are detailed in the document as attached to this Schedule C and titled “{insert document title ATTACH THE DOCUMENT}”.

1. – SPECIFICATIONS FOR THE WORKS

To the extent of any inconsistency between the documents listed below, the documents will be given precedence in the order they appear, with the document listed first taking priority.

The Specifications comprise of:

{Insert document title(s) and date. ATTACH THE DOCUMENT(S). When there is more than one document, insert the documents in order of precedence. In general project specific Specification should be listed above general specifications}

1. – STATUTORY DECLARATION – PAYMENT CLAIMS

**Contract Number: #To Be Completed#**

**#Name of project#**

**QUEENSLAND )**

**TO WIT )**

I,

of in the State of Queensland,

do solemnly and sincerely declare that

* + 1. I am the **#Declarant’s Status/Role#** for **#Name and ACN of Contractor#** (**“Contractor”**) engaged by the Brisbane City Council to carry out the works under the Contract No. **#To Be Completed#** (**“the Contract”**) and I am duly authorised to make this declaration on the Contractor's behalf;
    2. the defined terms in this statutory declaration have the same meanings as in the Contract;
    3. all wages and claims of workmen employed on or about the Works, (including all workers employed by subcontractors) which are due and payable have been paid up to the date of this declaration;
    4. all subcontractors, suppliers and consultants of the Contractor have been paid all that has been claimed by them up to the date of this declaration in respect of their part of the Works other than in respect of the following amounts for the following reasons:

**Amount in dispute Reason**

…………………… ……………………………………………………………….

* + 1. the Contractor:
       1. has included in each Payment Claim submitted to the date of this statutory declaration; and
       2. will include in the Payment Claim to which this statutory declaration relates,

details of the value (calculated in accordance with the Contract) of all Works done as at the date of the relevant statutory declaration and the details of all other moneys then due to the Contractor, pursuant to the provisions of the Contract, as at the date of the relevant statutory declaration.

**And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the “Oaths Act of 1867 (Qld)”.**

Signed Date

Taken and Declared before me, at

this day of 20……

Justice of the Peace / Solicitor / Notary public / Conveyancer *(Strikethrough irrelevant options)*