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

**Brisbane City Council**

**CONTRACT**

**MEDIUM 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) CA13/297112 |
| Security label: | Template – **PUBLIC**  Information inserted – **SENSITIVE: COMMERCIAL-IN CONFIDENCE** |

[FORMAL INSTRUMENT OF AGREEMENT 2](#_Toc144220490)

[Schedule A – CONTRACT PARTICULARS 6](#_Toc144220491)

[EXECUTION 10](#_Toc144220492)

[Schedule B – GENERAL CONDITIONS 11](#_Toc144220493)

[Schedule C – SPECIAL CONDITIONS 66](#_Toc144220494)

[Schedule D – CONTRACT PRICE 67](#_Toc144220495)

[Schedule E – SPECIFICATIONS FOR THE WORKS 68](#_Toc144220496)

[Schedule F – APPROVED FORM OF UNCONDITIONAL UNDERTAKING 69](#_Toc144220497)

[Schedule G – STATUTORY DECLARATION – PAYMENT CLAIMS 70](#_Toc144220498)

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):

**[#OPTION 1 (FULL DOCUMENT SIGNING) – This Option 1 may only be used if all of the documents listed below are physically attached to a complete final version of this Formal Instrument of Agreement. For example, all of the documents are included in a printed and bound version of the Contract. The list of documents may need to be edited on a project by project basis.]**

* + 1. this Formal Instrument of Agreement;

* + 1. Schedule C – Special Conditions;
    2. Schedule B – General Conditions;
    3. Schedule A – Contract Particulars;
    4. Schedule E – Specifications for the Works (including all attachments or annexures and any other documents referred to by that Schedule E);
    5. Schedule D – Contract Price (including all attachments or annexures and any other documents referred to by that Schedule D);
    6. Schedule F – Approved Form of Unconditional Undertaking; and
    7. Schedule G – Statutory Declaration – Payment Claims.

[#OPTION 2 (PART DOCUMENT SIGNING / ELECTRONIC SIGNATURES) – This Option 2 must be used if any of the documents listed below are not physically attached to a complete final version of this Formal Instrument of Agreement. For example, it is not possible to upload all of these documents onto an electronic signature platform (e.g. size limitations prevent it). In this case, the completing Council officer must ensure they sight all of the relevant documents as exchanged in completing this table. The Council officer is responsible for ensuring the accuracy of the table with fully detailed references. The reference to ‘*as attached to this document’* may only be used where the document is physically attached and visible. In the event of electronic signatures, that means the document accompanies this Formal Instrument of Agreementand the relevant signature blocks (i.e. it is uploaded and in the final signed PDF). If that is not the case, the full details of the exchange must be provided. The list of documents may need to be edited on a project by project basis.]

| **Contract Document** | **Name, version number and other identifiers** | **Date, time and details of exchanged document** |
| --- | --- | --- |
| * + 1. this Formal Instrument of Agreement; | means this document. | means this document. |
| * + 1. Schedule C – Special Conditions; | [#insert, for example: ‘Special Conditions – for Project X, PDF, version 3’ **OR ‘**asattached to this document’] | [#insert, for example: Sent 3 March 2033, at 3:33pm by Harriet Smith, Project Manager, Brisbane City Council to Bob Rogers, Construction Manager, Bob’s Builders Pty Ltd via InEight / Aconex / email Reference No. ABC12345 OR ‘as attached to this document’] |
| * + 1. Schedule B– General Conditions; | [#insert, for example: ‘Special Conditions – for Project X, PDF, version 3’ **OR ‘**asattached to this document’] | [#insert, for example: Sent 3 March 2033, at 3:33pm by Harriet Smith, Project Manager, Brisbane City Council to Bob Rogers, Construction Manager, Bob’s Builders Pty Ltd via InEight / Aconex / email Reference No. ABC12345 OR ‘as attached to this document’] |
| * + 1. Schedule A– Contract Particulars; | [#insert, for example: ‘Special Conditions – for Project X, PDF, version 3’ **OR ‘**asattached to this document’] | [#insert, for example: Sent 3 March 2033, at 3:33pm by Harriet Smith, Project Manager, Brisbane City Council to Bob Rogers, Construction Manager, Bob’s Builders Pty Ltd via InEight / Aconex / email Reference No. ABC12345 OR ‘as attached to this document’] |
| * + 1. Schedule E– Specifications for the Works (including all attachments or annexures and any other documents referred to by that Schedule E); | [#insert, for example: ‘Special Conditions – for Project X, PDF, version 3’ **OR ‘**asattached to this document’] | [#insert, for example: Sent 3 March 2033, at 3:33pm by Harriet Smith, Project Manager, Brisbane City Council to Bob Rogers, Construction Manager, Bob’s Builders Pty Ltd via InEight / Aconex / email Reference No. ABC12345 OR ‘as attached to this document’] |
| * + 1. Schedule D– Contract Price (including all attachments or annexures and any other documents referred to by that Schedule D); | [#insert, for example: ‘Special Conditions – for Project X, PDF, version 3’ **OR ‘**asattached to this document’] | [#insert, for example: Sent 3 March 2033, at 3:33pm by Harriet Smith, Project Manager, Brisbane City Council to Bob Rogers, Construction Manager, Bob’s Builders Pty Ltd via InEight / Aconex / email Reference No. ABC12345 OR ‘as attached to this document’] |
| * + 1. Schedule F– Approved Form of Unconditional Undertaking; and | [#insert, for example: ‘Special Conditions – for Project X, PDF, version 3’ **OR ‘**asattached to this document’] | [#insert, for example: Sent 3 March 2033, at 3:33pm by Harriet Smith, Project Manager, Brisbane City Council to Bob Rogers, Construction Manager, Bob’s Builders Pty Ltd via InEight / Aconex / email Reference No. ABC12345 OR ‘as attached to this document’] |
| * + 1. Schedule G– Statutory Declaration – Payment Claims. | [#insert, for example: ‘Special Conditions – for Project X, PDF, version 3’ **OR ‘**asattached to this document’] | [#insert, for example: Sent 3 March 2033, at 3:33pm by Harriet Smith, Project Manager, Brisbane City Council to Bob Rogers, Construction Manager, Bob’s Builders Pty Ltd via InEight / Aconex / email Reference No. ABC12345 OR ‘as attached to this document’] |

1. QBCC Act
   1. **Section 67K(2) of the QBCC Act not to apply**

The Contractor acknowledges that to the extent that the QBCC Act otherwise applies to the Contract, the Contract is not subject to the condition mentioned in section 67K(2) of the QBCC Act which would otherwise limit the total value of the security held prior to Practical Completion to an amount not more than 5% of the Contract Price. It is expressly agreed between the parties that the Contract is not subject to the condition mentioned in section 67K(2).

Initialled: ……………………………. Initialled: …………………………..

Print Name: …………………………. Print Name: ………………………...

[By Contractor] [By Council]

* 1. **Security during Defects Liability Period**

Notwithstanding any other provision of the Contract, the parties agree that to the extent that:

* + 1. the QBCC Act applies to the Contract; and
    2. the Contract provides for the total of all Security held by Council to exceed 2.5% of the Contract Price (which under the QBCC Act includes adjustments for Variations) after Practical Completion of building work (within the meaning of the QBCC Act) has been reached,

the amount of the excess does not relate to the need to correct defects in building work under the Contract identified in the Defects Liability Period, but instead relates to the recovery by Council of any moneys that may become payable to Council by the Contractor under or in connection with the Contract, the Contractor's performance of the Contract or any breach of the Contract by the Contractor.

1. Counterparts
   * 1. This Contract may be executed in any number of counterparts, with signatures appearing on different counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Contract.
     2. Without limiting the foregoing, if any of the signatures on behalf of one party are on different counterparts of this Contract, this will be taken to be, and have the same effect as if, the signatures were on the same counterpart of this Contract. A party who has executed a counterpart of this Contract may exchange it with the other party by emailing a pdf (portable document format) copy of, or posting or hand delivering a copy of, the executed counterpart to the other party. 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 constitute one Contract.
2. 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.
3. – CONTRACT PARTICULARS
4. Contract Particulars

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

| **Item** | **Item Description** | **Item Particulars** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Council's Representative:  *[Clause 2.6]* | Name: {Insert} | | | | | | |
|  |  | Position: {Insert} | | | | | | |
|  |  | Address: {Insert} | | | | | | |
|  |  | Email: {Insert} | | | | | | |
|  |  | Tel: {Insert} | | | | | | |
|  | Contractor:  *[Clause 1.1]* | Company/entity name: {Insert} | | | | | | |
|  |  | ABN: {Insert} | | | | | | |
|  |  | ACN: {Insert} | | | | | | |
|  |  | QBCC licence no.: {Insert} | | | | | | |
|  |  | Address: {Insert} | | | | | | |
|  | Contractor's Representative:  *[Clause 2.5]* | Name: {Insert} | | | | | | |
|  |  | Position: {Insert} | | | | | | |
|  |  | Address: {Insert} | | | | | | |
|  |  | Email: {Insert} | | | | | | |
|  |  | Tel: {Insert} | | | | | | |
|  | Site:  *[Clause 1.1]* | {Insert details or title and date of site plan (and attach document)} | | | | | | |
|  | Commencement Date and Date for Practical Completion:  *[Clause 2.2(a)]* | The Commencement Date is: {insert a specific date or 'within X days of written notification by Council's Representative'} | | | | | | |
|  |  | The Date for Practical Completion is: {insert a specific date or 'within X weeks from the Commencement Date'} | | | | | | |
|  | Work hours and working days  *[Clause 2.2(b)]* | Working hours mean: {Insert times: e.g. 8am until 5pm} | | | | | | |
|  |  | Working days mean: {Insert days: e.g. Monday to Friday excluding public holidays} | | | | | | |
|  | Works program  *[Clause 5.1]*  *[****Note****: Cross/tick applicable box]* |  | Program is attached and titled: {Insert title} and dated: {date} | | | | | |
|  |  |  | To be provided to Council's Representative prior to commencement of Work. | | | | | |
|  | Time for submitting Payment Claims:  *[Clause 7.3]* | The dates as follows:   * + - 1. except for the month of December, the last day of each month for Work done to the 25th day of that month; and       2. for the month of December, the 20th of December for Work done to the 18th of that month. | | | | | | |
|  | Time for payment  *[Clause 7.7]* | Progress payment must be made within 15 Business Days of Council's Representative’s receipt of the Payment Claim. | | | | | | |
|  | Maintenance Services:  *[Clause 6]*  *[****Note****: Cross/tick applicable box]* |  | No Maintenance Services are to be provided under this Contract. | | | | | |
|  |  |  | Maintenance Services are being provided under this Contract. The details are as contained in the Specifications. | | | | | |
|  |  |  | 1. Maintenance Services are to commence on the **Maintenance Commencement Date** which is: {specify date the Maintenance Services are to commence} | | | | | |
|  |  |  | 1. **Maintenance Expiry Date:** {specify the date} | | | | | |
|  |  |  | 1. **Maintenance Renewal Date:** {specify whether it is the 1st, 2nd or other anniversary of the Maintenance Commencement Date} | | | | | |
|  |  |  | 1. **Additional Maintenance Period(s):** {specify number of Additional Maintenance Periods and the length of each - eg. there are 2 Additional Maintenance Periods of 1 year each} | | | | | |
|  |  |  | 1. **Maximum Maintenance Period:** Commences on the Maintenance Commencement Date and is a period of {specify period. It is the original term + all possible Additional Maintenance Periods} | | | | | |
|  |  |  | 1. **Service Fee:** {specify amount to be paid each invoice OR state "As per Schedule D" and include at Schedule D} | | | | | |
|  |  |  | 1. **Service Payment Times:** Invoices are to be provided:    1. Timeframes: {insert time frame in which invoices are to be provided + whether they are in advance or in arrears}.    2. To: {insert who or where invoices are to be provided eg 'Council's Representative'} | | | | | |
|  | Design Work:  *[Clause 2.14]*  *[****Note****: Cross/tick applicable box]* |  | None required. Clause 2.14 does NOT apply. | | | | | |
|  |  |  | Required. Clause 2.14 DOES apply. The Design Work is as described and/or specified in the attached Specifications.  The Contractor must holder professional indemnity insurance of: ${insert amount} per claim | | | | | |
|  | Liquidated damages:  *[Clause 5.4]*  *[****Note****: Cross/tick applicable box]* |  | No liquidated damages apply but Council's right to claim general law damages is preserved. | | | | | |
|  |  |  | Applicable. Rate is {insert $ amount AND specify if it is an hourly, daily, weekly or monthly amount} | | | | | |
|  | Security:  *[Clauses 1.1, 2.4, 7.5]*  *[****Note****: Cross/tick applicable box]* |  | None Required. | | | | | |
|  |  |  | **Bank Guarantees:**  Security in the form of 2 Bank Guarantees in the amount of ${insert amount} each  *[****Note:*** *Each guarantee should be 2.5% of the Contract Price at the date of Contract execution]* | | | | | |
|  |  |  | **Retentions:**  Applicable – the following also applies:   1. 5% of the value of Work completed (excl GST) will be retained as Retention Moneys; and 2. the percentage by which Retention Moneys are to be reduced upon Practical Completion is: 3. nil – Retention Moneys are only to be returned after the end of the Defects Liability Period; or 4. 50%. | | | | | |
|  | Defects Liability Period:  *[Clause 5.3]*  *[****Note****: Cross/tick applicable box]* |  | Not applicable. | | | | | |
|  |  |  | Applicable. Defects Liability Period is {insert number of weeks or months} from Date of Practical Completion.  *[****Note****: Any special goods or plant warranty requirements are to be included in the Specifications]* | | | | | |
|  | Principal Contractor Site and Non Principal Contractor Site:  *[Clauses 2.15, 3.2]*  *[****Note****: Cross/tick applicable box]* |  | **Principal Contractor Site:**  {insert eg "All of the Site as identified at Item 4 of the Contract Particulars". Note: This is the area for which the Contractor will be 'Principal Contractor' for WHS purposes} | | | | | |
|  |  |  | **Non Principal Contractor Site:**  {insert details of the Non Principal Contractor Site (if any). Note: This is the area for which the Contractor will NOT be 'Principal Contractor' for WHS purposes} | | | | | |
|  | Contractor Reliance Information:  *[Clause 2.11]*  *[****Note****: Cross/tick applicable box]* |  | Not applicable. | | | | | |
|  |  |  | Applicable: *[****Note:*** *This is information that the Contractor is entitled to rely on. Refer to definition of Contractor Reliance Information in clause 1.1. The Contractor does not need to list the Specifications here]* | | | | | |
|  |  |  | **Document:**  {To be completed} | | | **Purpose and extent to which the document may be relied:**  {To be completed} | | |
|  | Additional Obligation Documents:  *[Clause 2.12]*  *[****Note****: Cross/tick applicable box]* |  | Not applicable. | | | | | |
|  |  |  | Applicable: {insert title of document(s) and attach them}  *[****Note****: These documents include requirements which are now requirements on the Contractor]* | | | | | |
|  | Council Supplied Material  *[Clause 2.13]* | {insert any plant, material or equipment to be provided by Council to the Contractor} | | | | | | |
| 18A. | Delivery dates and times for the Council Supplied Material  *[Clause 2.13(a)(ii)(A)]* | {insert the dates and times the Council Supplied Material is to be collected by the Contractor by} | | | | | | |
|  | Delay costs, other Compensable Causes  *[Clauses 1.1 and 5.9]* | Nil  *[Note: Council’s default position is for no compensable causes, other than Council caused delay, which is already covered by the definition of ‘Compensable Cause’. If any ‘Compensable Cause’ is added, it must be a ‘Qualifying Cause’ and the drafting here must be identical to the cause of delay as described in the definition of ‘Qualifying Cause’.]* | | | | | | |
|  | Delay cost cap  *[Clause 5.9]* | $#(To be advised by Contractor)# per day | | | | | | |
|  | Excluded Latent Conditions  *[Clauses 1.1, 5.10]* | {insert any other excepted latent conditions}  *[****Note:*** *Excluded Latent Conditions are Latent Conditions for which the Contractor accepts the risk]* | | | | | | |
|  | Separate Contractors  *[Clause 2.16]* | {insert any Separate Contractors known at the time of Contract execution} | | | | | | |
|  | Payment for facilities and services provided to Separate Contractors  *[Clause 2.16(b)(vi)]* | {insert if any compensation will be provided} | | | | | | |
|  | Insurance:  *[Clause 4.2]*  *[****Note****: Cross/tick applicable box]* | Type of insurance | | Policy No | Valid to | | Amount | Party to insure |
|  |  | Workers Compensation Insurance to the extent required by the laws of the State of Queensland | | {insert policy no.} | {insert date} | | Statutory limits | Contractor |
|  |  | Public liability insurance: | | {insert policy no.} | {insert date} | | ${insert amount} per occurrence | Council  Contractor |
|  |  | Works Insurance: | | {insert policy no.} | {insert date} | | ${insert amount} per claim | Council  Contractor |
|  |  | Motor vehicle legal liability insurance including supplementary bodily injury: | | {insert policy no.} | {insert date} | | {insert amount - see CRM website if unsure} | Contractor |
|  |  | {insert additional type of insurance} | | {insert policy no.} | {insert date} | | ${insert amount} | Contractor |
|  |  | {insert additional type of insurance} | | {insert policy no.} | {insert date} | | ${insert amount} | Contractor |
|  | Email file size  *[Clause 11.2]* | 10 mb | | | | | | |

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

**CONTENTS**

1. Definitions and interpretation 14

1.1 Definitions 14

1.2 Interpretation 24

2. Performance of the Works 25

2.1 Contractor's obligations 25

2.2 Time for commencement and completion of Works and work hours/days 25

2.3 Standard of work and warranties 25

2.4 Security 26

2.5 Contractor's Representative 27

2.6 Council's Representative 27

2.7 Protection of person and property 27

2.8 Risk and reinstatement 27

2.9 Site 27

2.10 Condition of Site 27

2.11 Council-Supplied Information 27

2.12 Additional Obligation Documents 28

2.13 Council Supplied Material 29

2.14 Design Work 30

2.15 Principal Contractor Site and Non Principal Contractor Site 30

2.16 Separate Contractors 31

2.17 Advertising and Signage 32

2.18 Graffiti removal 32

2.19 Testing 33

2.20 Purpose and effect of review of documents 34

3. Legislative Requirements 34

3.1 Legislative Requirements 34

3.2 Work Health and Safety 34

3.3 Confidentiality and media 37

3.4 Privacy and Personal Information 37

3.5 Environmental Protection 38

3.6 Labour Hire Licencing 39

3.7 Heavy Vehicle National Law 39

3.8 Modern Slavery 40

3.9 Contractor’s legal and ethical obligations 40

3.10 Personal Property Securities Act 40

3.11 Intellectual Property Rights 41

3.12 Portable Long Service Leave Levy and other levies 42

3.13 Non-Conforming Building Products 42

3.14 Council as an Authority 42

4. Risk, indemnity and insurance 42

4.1 Risk and indemnity 42

4.2 The Contractor's insurance obligations 43

4.3 Council’s insurance obligations 44

4.4 Council insurance policies 44

4.5 Claims process 44

4.6 Uninsured risk and insurance claim deductibles 44

5. Variations, Extensions of Time and Claims 44

5.1 Works Program 44

5.2 Practical Completion 44

5.3 Defective Work 44

5.4 Liquidated damages 45

5.5 Variation to the Works 45

5.6 Extension of Time 46

5.7 Emergency work 47

5.8 Changes to progress of the Works 47

5.9 Delay Costs 48

5.10 Latent Conditions 48

6. Maintenance Services 49

6.1 Maintenance Services 49

6.2 Maintenance Term 51

6.3 Defects and Maintenance 51

7. Payment 51

7.1 Contract Price 51

7.2 Provisional sums 51

7.3 Payment Claims 52

7.4 Calculation 52

7.5 Retention Moneys 53

7.6 Payment Schedules 53

7.7 Time for Payment 53

7.8 Application of section 67J QBCC Act 54

7.9 Final Payment Claim and Final Certificate 54

7.10 Set off by Council 54

7.11 Effect of Payment 54

7.12 Correction of Payment 55

7.13 GST 55

7.14 Security of Payment Act 55

8. Suspension 56

8.1 Council's Representative's suspension 56

8.2 Contractor’s suspension 57

8.3 Recommencement 57

8.4 Cost 57

9. Termination 57

9.1 Without prior notice 57

9.2 Show Cause Notice 58

9.3 Termination 59

9.4 Termination for convenience 59

9.5 Engagement of third parties 60

9.6 Statutory declaration 60

9.7 Termination not valid 60

9.8 Termination remedies 60

10. Dispute Resolution 61

10.1 Notification of Claims 61

10.2 Notice of dispute 61

10.3 Conference 61

10.4 Expert Determination 61

10.5 Litigation 62

10.6 Summary relief 62

11. General 62

11.1 Notices 62

11.2 Deemed service 62

11.3 Assignment and sub-contracting 63

11.4 Relationship of the parties 63

11.5 Council approvals 63

11.6 Entire Agreement 63

11.7 Supplier Registration Terms 63

11.8 Amendments to the Contract 64

11.9 Waiver 64

11.10 Severability 64

11.11 Rights, remedies and indemnities 64

11.12 Effect of Contract 64

11.13 Costs 64

11.14 Applicable Law 64

11.15 No representation or reliance 64

11.16 Survival 65

**TERMS AND CONDITIONS**

1. Definitions and interpretation
   1. Definitions

In this Contract:

|  |  |
| --- | --- |
| **Additional Maintenance Period** | * 1. is the period (if any) specified in Item 10; |
| **Additional Obligation Documents** | * 1. means the agreements, licences, approvals or other documents referred to as Additional Obligation Documents in Item 17; |
| **Approvals** | * 1. 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 | * 1. 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. Bank Guarantee | * 1. means the form of unconditional undertaking set out in Schedule F, as required by clause 2.4; |
| 1. Business Day | * 1. means a day which is not:      1. a Saturday or Sunday; or      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. Change in Control | means a change in control which occurs where, at any time, any person alone or together with any associate (as defined in the *Corporations Act 2001* (Cth)), ceases or commences having control of a party, whether directly or indirectly and including any change in the composition of the board or any change of directors or other officers of a party. For the purposes of this definition, control means, in relation to a party:  (a) having control or influence over, or the capacity to control or influence, the composition of the board or the decision making process in relation to the financial and operating policies (whether directly or indirectly);  (b) being in a position to cast, or control the casting of, more than 20% of the maximum number of votes that may be cast at a general meeting; or  (c) having a relevant interest in more than 20% of the securities (as defined in the *Corporations Act 2001* (Cth)); |
| 1. Claim | 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; |
| 1. Commencement Date | * 1. means the date or period as specified at Item 5; |
| 1. Compensable Cause | means:   * + 1. any act, default or omission of Council's Representative, Council (in its capacity as a party to this Contract) or its consultants, agents or subject to clause 2.16, Separate Contractors, whether occurring before or after the Date for Practical Completion but excluding:        1. where the party acts in any capacity under, or pursuant to, a Legislative Requirement or exercises any right, power, authority or discretion under, or pursuant to, a Legislative Requirement; and        2. any of Council's Representative's cost or delay assessments under the Contract; and     2. any causes listed in Item 19; |
| 1. Confidential Information | * 1. 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 D 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 Work:      1. irrespective of whether that person is an individual or a body corporate; and      2. where the persons(s) are either a partnership, an unincorporated consortium, an unincorporated joint venture or simply 2 or more persons contracting with Council under this Contract, then all references to “**Contractor**” means all partners, members, joint venture partners or persons both jointly and severally; |
| 1. Contractor Reliance Information | * 1. means the factual data included in the documents listed at Item 16 (and excludes any opinion, recommendation or interpretation set out in those documents whether or not based on the factual data); |
| 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 and any replacement who is appointed in accordance with clause 2.5; |
| 1. Council | * 1. means Brisbane City Council (ABN 72 002 765 795), a body corporate pursuant to the *City of Brisbane Act 2010* (Qld) 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 in accordance with clause 2.6; |
| 1. Council's Safety and Health Management System | * 1. mean Council's policies and systems with respect to health, safety and the environment as described in this Contract or otherwise notified by Council to the Contractor; |
| 1. Council-Supplied Information | * 1. means any information (whether documented or otherwise) supplied or made available to the Contractor by or on behalf of Council before or after the Date of Contract Execution. It does not include information in documents forming part of the Contract; |
| 1. Council Supplied Material | * 1. has the meaning given in clause 2.13(a); |
| 1. Data | * 1. for the purpose of clause 3.5 includes data, information, records, reports, and notices; |
| 1. Date for Practical Completion | * 1. means the date or period as specified at Item 5; |
| 1. Date of Contract Execution | * 1. means the date the last party executed the Formal Instrument of Agreement; |
| 1. Date of Practical Completion | * 1. means the date certified by Council to be the date on which Practical Completion was achieved; |
| 1. Defects | * 1. 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 14; |
| 1. Design Work | * 1. has the meaning given in clause 2.14(a)(i); |
| 1. Emissions and Energy Data | * 1. has the meaning given to it in clause 3.5; |
| 1. Environment | * 1. includes all aspects of the surroundings of human beings including:      1. the physical characteristics of those surroundings such as the land, the waters and the atmosphere;      2. the biological characteristics of those surroundings such as the animals, plants and other forms of life; and      3. the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures,   2. and "**Environmental**"and "**Environmentally**" have the same meaning; |
| 1. Environmental Harm | * 1. has the meaning given to it in the *Environmental Protection Act 1994* (Qld) and includes damage to the Environment; |
| 1. Environmental Law | * 1. means any Legislative Requirement which has as its object, purpose or effect:      1. the protection of the Environment;      2. the storage, handling or transportation of any waste, dangerous goods or hazardous materials (being any substance, emission or material regulated by an Authority, or any substance, emission or material deemed dangerous to health, safety or the Environment);      3. the prevention, control, abatement or investigation of pollution (being harm to the Environment either directly or indirectly, including contamination, pollution, the release of hazardous materials or toxic substances or emissions (including noise and dust emission) and other similar matters) or its effect;      4. the carrying out of works on, in or under, the subdivision of, the use of, or the execution of any structure on, in or under the land and the rehabilitation of land; or      5. the prosecution of any person in connection with the use or occupation of land or activities on that land; |
| 1. Excluded Latent Condition | * 1. means:      1. those Site conditions (if any) described in Item 21; and      2. any and all risks, matters and things the subject of, or arising from, or in connection with, Contractor Reliance Information,   except to the extent of any inaccuracy in the Contractor Reliance Information as provided for in clause 2.11(f)and which has been notified by the Contractor in accordance with clause 2.11(f)(iii); |
| 1. Final Certificate | * 1. has the meaning in clause 7.9(b); |
| 1. Final Payment Claim | * 1. means the final payment claim referred to in clause 7.9(a); |
| 1. Force Majeure | * 1. means any of the following events:      1. an earthquake, natural disaster, landslide or mudslide;      2. a cyclone that has been named by the Bureau of Meteorology;      3. explosion, malicious damage, sabotage, riots or a "terrorist act" (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth));      4. substantial flood or inundation to the extent that this prevents the carrying out of the WUC on a substantial part of the site for a continuous period of greater than 2 Business Days;      5. war, invasion, act of a foreign enemy, hostilities between nations (whether war is declared or not), civil war, rebellion, revolution or military or usurped power, martial law or confiscation by order of any Authority;      6. ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;      7. a state-wide strike, boycott or other industrial dispute; or      8. directions or delays caused by any Authority(acting in its capacity as an Authoritypursuant to LegislativeRequirements), but not where the direction or delay arose from the failure of the Contractor to comply with a LegislativeRequirement,   but only if and to the extent that:   * + 1. the event directly affects the Site;     2. the event first arises after the Date of Contract Execution;     3. the event could not have been prevented, avoided, remedied or overcome by taking those steps which a prudent, experienced and competent person in the position of the Contractor would have taken in exercising reasonable diligence;     4. the event prevents or materially delays the Contractor’s ability to perform its obligations under the Contract;     5. the Contractor has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of the event on its ability to perform its obligations under the Contract (and to mitigate the consequences of it); and     6. the event is not the direct or indirect result of:        1. the Contractor’s failure to perform any of its obligations under the Contract; or        2. a strike, boycott, industrial dispute or other industrial action that is caused, or contributed to, by the Contractor or the Contractor's Personnel; |
| 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 the GST Laws; |
| 1. GST Laws | * 1. 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. Inclement Weather | * 1. means inclement weather but only if and to the extent that inclement weather prevents the carrying out of the Works on a substantial part of the Site for a continuous period of at least 4 working hours on any one working day (as such working hours and working days are determined in accordance with clause 2.2(b)); |
| 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;         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 | * 1. 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/tender, by a competent contractor who had:      1. examined the Contract documents, Council Supplied Information and all 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),   but despite the above, in no circumstance will it include any Excluded Latent Conditions; |
| 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; |
| 1. Maintenance Conditions | * 1. has the meaning given in clause 6.1(a); |
| 1. Maintenance Commencement Date | * 1. is the date (if any) specified in Item 10; |
| 1. Maintenance Expiry Date | * 1. is the date (if any) specified in Item 10; |
| 1. Maintenance Renewal Date | * 1. is the date (if any) specified in Item 10; |
| 1. Maintenance Services | * 1. means the maintenance services (if any) specified in Item 10 (or any document referred to by the Contract Particulars); |
| 1. Maintenance Term | * 1. means the period commencing on the Maintenance Commencement Date and expiring upon the Maintenance Expiry Date, unless the period is extended under clause 6.2or this Contract is terminated at any earlier date; |
| 1. Maximum Maintenance Period | * 1. is the period (if any) specified in Item 10; |
| 1. Non-Conforming Building Product | * 1. has the meaning given to that term in section 74AB(2) of the QBCC Act; |
| 1. Non Principal Contractor Site | * 1. means those parts of the Site (if any):      1. described in the Contract Particulars to be a Non Principal Contractor Site (if any);      2. directed by Council's Representative to be a Non Principal Contractor Site at any time before or after they are made available to the Contractor under the Contract; or      3. which have previously been handed over to Council following Practical Completion of the Works within or upon those parts of the Site; |
| 1. Payment Claim | * 1. means a claim for payment made by the Contractor in accordance with the Contract (including clause 7) 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 7.6 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. PPSA | * 1. means the *Personal Property Securities Act 2009* (Cth); |
| 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;      2. those tests which are required to be carried out and passed before the Works reaches Practical Completion have been carried out and passed in accordance with clause 2.19; and      3. any other conditions which the Contract requires to be satisfied prior to Practical Completion, have been satisfied; |
| 1. Principal Contractor Site | * 1. means those parts of the Site:      1. not comprising any Non Principal Contractor Site; and/or      2. described in Item 15 to be a Principal Contractor Site (if any); |
| 1. Privacy Laws | * 1. means the *Information Privacy Act 2009* (Qld) and the Information Privacy Principles in that Act, the *Privacy Act 1988* (Cth) and the Australian Privacy Principles in that Act, any codes or guidelines approved under those Acts, and all other Legislative Requirements that apply to the privacy protection and handling of any Personal Information from time to time; |
| 1. Qualifying Cause | * 1. means:      1. any act, default or omission of Council's Representative, Council (in its capacity as a party to this Contract) or its consultants, agents or subject to clause 2.16, Separate Contractors, whether occurring before or after the Date for Practical Completion but excluding:         1. where the party acts in any capacity under, or pursuant to, a Legislative Requirement or exercises any right, power, authority or discretion under, or pursuant to, a Legislative Requirement; and         2. any of Council's Representative's cost or delay assessments under the Contract;      2. subject to and in accordance with clause 5.10, Latent Conditions;      3. changes in Legislative Requirements pursuant to clause 3.1;      4. subject to the provisions of the Contract, including clause 5.5, a Variation;      5. a suspension directed by Council's Representative pursuant to clause 8.1;      6. an event of Force Majeure occurring before the Date for Practical Completion; and      7. Inclement Weather occurring before the Date for Practical Completion;   but in each case, only to the extent that the cause including the underlying basis for any direction (including a suspension or a Variation) is not due to the negligent act, or omission of the Contractor or the Contractor's Personnel or the breach of this Contract by the Contractor and excludes the following:   * + 1. any cause of delay within the reasonable control of the Contractor or the Contractor's Personnel;     2. any cause of delay which does not, or the effects of it do not, affect the Contractor's critical path for completion of the Works; and     3. any cause of delay which the Contract expressly excludes the Contractor's entitlement to a Claim or an extension of time; |
| 1. QBCC Act | * 1. means the *Queensland Building and Construction Commission Act 1991* (Qld); |
| 1. Retention Moneys | * 1. means the monetary amount or the percentage amount as specified in Item 13 (if at all) as Retention Moneys; |
| 1. Security | * 1. means either Retention Moneys or the unconditional undertaking required (if at all) by Item 13 and otherwise provided in accordance with clause 2.4; |
| 1. Security Interest | * 1. includes any mortgage, pledge, encumbrance, lien or charge or any security or preferential interest or arrangement of any kind. It includes:      1. anything which gives a creditor priority to other creditors with respect to any asset;      2. any assignment by way of security, hypothecation, option, lease, trust or assignment;      3. retention of title;      4. any 'security interest' under the PPSA; and      5. any agreement to create or give an arrangement to effect any of the above; |
| 1. Security of Payment Act | * 1. means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld); |
| 1. Separate Contractors | * 1. has the meaning in clause 2.16; |
| 1. Service Fee | * 1. is the fee for the Maintenance Services (if any) specified in Item 10; |
| 1. Service Payment Times | * 1. are the times for payment for the Maintenance Services (if any) specified in Item 10; |
| 1. Show Cause Notice | * 1. is as defined by clause 9.2; |
| 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 E of this Contract. If the document(s) forming the Specifications are comprised (in whole or in part) of:      1. specifications, drawings, samples or other descriptions of the Works as provided by Council when seeking pricing from the Contractor in relation to the Works to be provided under this Contract (“**Council’s Specifications**”);      2. specifications, drawings, samples or other descriptions of the Works as submitted by the Contractor in or in relation to this Contract (“**Contractor's Specifications**”); and/or      3. any further specifications agreed to by Council and the Contractor in the performance of each party’s respective obligations under and in accordance with the terms of this Contract (“**Additional Specifications**”),   then, subject to clause 1.2(a), Council’s Specifications, Contractor's Specifications and the Additional Specifications will collectively form the “Specifications” for the purposes of this Contract; |
| 1. Subcontractor | * 1. means any person engaged by the Contractor to perform any part of the Works and includes consultants; |
| 1. Supplier Registration Terms | * 1. has the meaning given in clause 11.7; |
| 1. Variation | * 1. means any direction to vary the Works by any one or more of the following which is nevertheless 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. Work Health and Safety Law | * 1. means any Legislative Requirement, principles 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) and the *Work Health and Safety Regulation 2011* (Qld); |
| 1. Work Health and Safety Requirements | * 1. means:      1. any Work Health and Safety Law; and      2. the requirements of:         1. Additional Obligation Documents;         2. the Contractor's management plans (including work methodology statements and the like);         3. any manufacturer's recommendations associated with any equipment or materials to be used for the purposes of carrying out the work or to be installed as part of the Works;         4. industry standards, codes, practices and guidelines; or         5. any other provisions of the Contract,   2. 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:      1. all Variations;      2. all Design Work; and      3. any work carried out before the Commencement Date. |

* 1. Interpretation

In this Contract:

* + 1. where Council’s Specifications, the Contractor's Specifications and the Additional Specifications will collectively form the “Specifications” for the purposes of this Contract, this will be on the conditions that: to the extent that there is any conflict or inconsistency between any or all of the above specifications, the documents will be given precedence in the order that they appear in the definition of Specifications in clause 1.1, with the document listed first taking priority;
    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. unless the context otherwise requires, words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. The 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. Any one gender includes all genders;
    4. 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;
    5. a reference to a document (including this Contract) is to that document as varied, novated, ratified or replaced from time to time;
    6. 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;
    7. 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;
    8. 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;
    9. if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
    10. the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
    11. unless stated otherwise, the word "loss" means all loss of any nature whatsoever and howsoever arising, and the word "liability" means all liability of any nature whatsoever (including negligence) and howsoever arising;
    12. 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;
    13. 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;
    14. where a party comprises 2 or more persons, each person will be jointly and severally bound by the party's obligations under this Contract;
    15. all references to “dollars” and “$” are to Australian dollars and all monetary amounts are exclusive of GST unless the context requires otherwise;
    16. a reference to a time and date is a reference to the time and date in Queensland, and a reference to days means calendar days;
    17. all references to a “Schedule” are references to a Schedule to this Contract;
    18. all communications between Council and the Contractor must be in the English language; and
    19. 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. Performance of the Works
   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. Time for commencement and completion of Works and work hours/days
     1. The Contractor must commence the provision of the Works on or before the Commencement Date and achieve Practical Completion by the Date for Practical Completion. The Date for Practical Completion can only be extended as expressly provided in clause 5.6.
     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. 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 5.5; 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 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. Security

Where Security is specified as being required by Item 13:

* + 1. within 10 Business Days of the Commencement Date of this Contract, the Contractor must lodge with Council's Representative a Security that:
       1. is unconditional in nature and in the form in Schedule F (or such other form as is acceptable to Council's Representative);
       2. is for the amount specified in the Contract Particulars; and
       3. does not include any expiry date;
    2. subject to Council’s rights of recourse:
       1. Council will reduce the amount of Security specified in the Contract Particulars by 50% within 10 Business Days of the Date of Practical Completion; and
       2. Council will release and return the balance of the Security then held within 10 Business Days after the Final Certificate;
    3. Security will be subject to recourse by Council for any:
       1. debt or other moneys due from the Contractor to Council under or in connection with the Contract where at least 5 Business Days have elapsed since Council has notified the Contractor of intention to have recourse; or
       2. bona fide Claim which Council may have against the Contractor includingfor money, damages (including liquidated damages), under an indemnity or otherwise, arising out of or in connection with the Work;
    4. despite any other provision of this Contract:
       1. Council may continue to hold Security where the Contract may otherwise require it to be released or after termination of the Contract for any reason, to the extent of any amount claimed by Council under or in connection with this Contract;
       2. where the Contract is terminated by reason of the Contractor repudiating the Contract, being in substantial breach of the Contract or having an event referred to in clause 9.1(a)(i) occurs in respect of it, Council may have immediate recourse to security after termination for any Claim to money which Council may have against the Contractor under or in connection with the Contract; and
       3. where the Contract is terminated in circumstances other than those referred to in clause 2.4(d)(ii), Council may have recourse to security after termination where the Contractor fails to pay any amount which becomes due to Council within the specified period for payment or, if no period is specified, within 5 Business Days;
    5. subject to clause 2.4(d), Council's entitlement to Security will cease within 10 Business Days of the later of:
       1. if there is no Defects Liability Period under the Contract, the provision of the Final Certificate; and
       2. if there is a Defects Liability Period under the Contract, the expiration of the last Defects Liability Period; and
    6. Council is not liable to pay any amount to the Contractor until the Contractor has fully complied with its obligations to lodge security under clause 2.4(a).
  1. Contractor's Representative

The Contractor agrees that the Contractor's Representative is as specified in Item 3. The Contractor may at any time replace the person with such other person as the Contractor may from time to time nominate by written notice to Council. Further, the Contractor must:

* + 1. ensure that at all times while the Works are being carried out:
       1. the Contractor has a Representative appointed; and
       2. the Contractor's Representative is present at the Site(s) to personally supervise the Works being carried out; and
    2. be taken to have authorised the Contractor's Representative to:
       1. receive any directions or notices;
       2. give any notices; and
       3. negotiate and agree any matter or thing,

under or in connection with the Contract on the Contractor's behalf.

* 1. Council's Representative
     1. At any time during this Contract, Council may replace Council's Representative with another person and will advise the Contractor of the change (including all relevant contact details) by written notice. The replacement will be effective as of the date of the written notice.
     2. Council's Representative is authorised to administer this Contract on behalf of Council.
     3. The Contractor agrees that Council's Representative is not independent of Council and does not exercise any functions, roles or duties as an independent assessor, arbiter or certifier.
  2. Protection of person and property

The Contractor must take all measures necessary to protect all people from death or injury and all property (including the Works) from loss or damage.

* 1. Risk and reinstatement

The Contractor must make good any loss or damage to the Works prior to Practical Completion and do so at the Contractor's own cost and expense.

* 1. Site

The Contractor must access the Site in accordance with the Contract and all directions given by Council's Representative and ensure that the carrying out of the Works does not interfere with others or cause any unreasonable noise and disturbance.

* 1. Condition of Site

The Contractor must keep the Site safe, clean and tidy and before Practical Completion, clean up and make good fencing, roads, footpaths and surfaces on or adjacent to the Site and do so to the satisfaction of Council's Representative.

* 1. Council-Supplied Information

The Contractor agrees:

* + 1. unless Council expressly agrees otherwise in writing, or in respect of Contractor Reliance Information, any Council-Supplied Information:
       1. has been or will be provided to the Contractor only for the Contractor's convenience; and
       2. has not been and will not be relied upon by the Contractor for any purpose (including subject to clause 2.11(b), entering into the Contract or performing the Contractor's obligations under the Contract);
    2. that the Contractor may rely on the Contractor Reliance Information only to the extent and for the purposes expressly stated in Item 16;
    3. Council does not:
       1. assume any responsibility or duty of care in respect of; or
       2. warrant, guarantee or make any representation as to,

the Council-Supplied Information (including its accuracy, completeness or adequacy for the purposes of the Contract);

* + 1. Council will not be liable to the Contractor in contract, tort, equity, under statute or otherwise arising from or in connection with the Council-Supplied Information, the provision of the Council-Supplied Information or the non-provision of any other information by Council;
    2. except as expressly provided by the Contract, the Contractor is not entitled to any Claim arising from or in connection with the inaccuracy, incompleteness or inadequacy of the Council-Supplied Information;
    3. if, and to the extent that:
       1. the Contractor has relied on the Contractor Reliance Information for the purposes stated in the Contract Particulars; and
       2. such documents set out data that was factually inaccurate or substantially unfit for satisfying that purpose,

then:

* + - 1. the Contractor must promptly (and within 5 Business Days) after becoming aware of the inaccuracy, notify Council's Representative of the inaccuracy; and
      2. subject to and in accordance with clause 5.10, the inaccuracy must be taken into account by the Council's Representative in determination of any Latent Condition under clause 5.10; and
    1. that its compliance with clause 2.11(f) is a condition precedent to any entitlement to Claim under clause 5.10 in connection with any inaccuracy in Contractor Reliance Information.
  1. Additional Obligation Documents

The Contractor agrees that:

* + 1. it has had the opportunity to satisfy itself as to and will satisfy the requirements of, the Additional Obligation Documents;
    2. to the extent Council is a party to an Additional Obligation Document, or is obliged to do anything or refrain from doing anything under or in accordance with an Additional Obligation Document, then the Contractor must ensure that it does not, in connection with this Contract, by any act or omission, cause or contribute to a breach of the Additional Obligation Document by Council or a failure of Council to do a thing or refrain from doing a thing it is required to do under or in accordance with an Additional Obligation Document; and
    3. any failure by the Contractor to comply with the requirements of this clause 2.12 will be a breach of this Contract; and
    4. without limiting the Contractor’s entitlements to be paid the Contract Price, the Contractor will not be entitled to any other Claim arising from or in connection with the matters or requirements disclosed in or which could have been anticipated from information in the Additional Obligation Documents or its requirements to comply with this clause2.12.
  1. Council Supplied Material
     1. Where the Contract requires (including as set out in Item 18), or Council's Representative otherwise directs, the Contractor to use, in carrying out the Work, any plant, equipment or materials (whether or not new) supplied by or on behalf of Council ("**Council Supplied Material**"):
        1. Council gives no warranty and makes no representation to the Contractor as to the Council Supplied Material (including its availability or quality);
        2. the Contractor will not be liable to Council for, and may Claim an extension of time in accordance with clause 5.6for delay caused by:
           1. the Council Supplied Material not being supplied or made available to the Contractor in accordance with subclause 2.13(a)(iii) by the date and times specified in Item 18A18A to the extent that:

the Contractor’s entitlement to make a Claim for an extension of time shall be limited to the period of the delay between the date and times specified in Item 18A and the dates on which the relevant Council Supplied Material is made available to the Contractor only; and

no acts or omissions of the Contractor or any of the Contractor’s Personnel caused or contributed to the delay in the supply of the Council Supplied Material by the date and times specified in Item 18A;

* + - * 1. a Defect in the Council Supplied Material to the extent that:

the Defect existed at the time the Council Supplied Material was supplied to the Contractor and the Defect in the Council Supplied Material could not have been ascertained from the Contractor's proper and reasonable inspection of the Council Supplied Material at the time the Council Supplied Material was supplied to the Contractor; and

no acts or omissions of the Contractor or any of the Contractor's Personnel caused or contributed to the Defect in the Council Supplied Material,

and the Contractor will have no other Claim arising from or in connection with the Council Supplied Material. The parties further agree that if no date or times are specified in Item 18A, then subclause 2.13(a)(ii)(A) does not apply and is of no effect;

* + - 1. unless otherwise agreed, the Contractor must collect the Council Supplied Material when directed to collect it by Council from Council's nominated premises in the Contract or any notice in writing to the Contractor;
      2. from the date the Council Supplied Material is made available to the Contractor:
         1. the Council Supplied Material will be taken to form part of the Works;
         2. the Contractor will be responsible for the care of the Council Supplied Material; and
         3. the Contractor will bear the risk of and be liable for reinstatement of loss or damage to the Council Supplied Material from any cause;
      3. unless the parties agree otherwise, the Council Supplied Material will be supplied by Council at no charge to the Contractor; and
      4. the Contractor must:
         1. notify Council's Representative immediately if it becomes aware that any of the Council Supplied Material is for any reason not suitable for its intended purpose or if the Contractor identifies any damage or Defect;
         2. ensure the safe and secure use and storage of the Council Supplied Material at all times;
         3. ensure that the Council Supplied Material is not used otherwise than for the Work and in accordance with the Contract;
         4. not substitute any plant, equipment or materials for the Council Supplied Material without Council's Representative's prior written consent;
         5. comply with any lawful direction of Council's Representative as to the use of the Council Supplied Material; and
         6. unless Council's Representative directs otherwise, ensure any Council Supplied Material that is not used up in the Works (including all unused materials) is promptly returned to Council at Council's premises.
  1. Design Work
     1. The Contractor will be subject to the obligations of this clause where Item 11 specifies that Design Work is applicable to this Contract. If Design Work is applicable, the Contractor must:
        1. undertake and complete all work specified in the Specifications associated with the design, specification and documentation of the Works, including the design, specification and documentation of any Variation at any time (“**Design Work**”);
        2. ensure that the Design Work will enable the Works to meet the requirements of the Specifications and this Contract, and the Works are fit for its purpose (which includes the purposes, if any, set out in this Contract);
        3. undertake and complete the Design Work so that the Works achieve Practical Completion by the Date for Practical Completion specified in Item 5; and
        4. not infringe the Intellectual Property Rights of any person when undertaking the Design Work.
     2. Any acceptance by Council of the Design Work will not relieve the Contractor of the Contractor's obligations under this Contract nor transfer risk in the Design Work to Council.
     3. To the extent Design Work is to be undertaken by the Contractor, the Contractor must effect professional indemnity insurance covering the Contractor and its employees and ensure that each consultant engaged in connection with the Design Work effects a policy of professional indemnity insurance, which must be:
        1. for an amount of no less than the amount specified in Item 11;
        2. effected with an insurer and on terms and conditions a prudent and competent contractor would obtain, taking into account the methods of the Works and the Contractor's obligations and liabilities under or arising out of the Contract; and
        3. effected before any of the Design Work is commenced and maintained at least for the period of 6 years commencing from the end of the last Defects Liability Period.
     4. The liabilities and obligations of the parties will not be limited by the effecting of any professional indemnity insurance under this clause 2.14.
  2. Principal Contractor Site and Non Principal Contractor Site
     1. Where the Contractor is given access to the Principal Contractor Site under the Contract or where clause 3.2(d) applies, the Contractor must:
        1. assume full responsibility for and full management and control of the Principal Contractor Site while the Contractor is the 'person with management or control' of the Principal Contractor Site under clause 3.2(j); and
        2. without limiting clause 2.15(a)(i):
           1. ensure the Principal Contractor Site is kept secure at all times (including against entry by any unauthorised person);
           2. ensure that any person entering the Principal Contractor Site completes adequate safety or other training or induction before entering the Principal Contractor Site; and
           3. ensure that any person entering the Principal Contractor Site complies with all requirements that may arise in connection with the Contractor ensuring the Contractor's full compliance with the Contract.
     2. Where the Contractor is given access to a Non Principal Contractor Site, or are no longer the 'person with management or control' of the Principal Contractor Site under clause 3.2(j) (unless the Contractor has otherwise been directed under clause 3.2(d) that it is still to carry out the obligations as if it was the 'principal contractor'), the Contractor must:
        1. allow Council or other 'person with management or control' of the Non Principal Contractor Site ("**Non Principal Contractor Site Occupant**") to maintain its possession or management and control of the Non Principal Contractor Site while the Contractor is carrying out the work within the Non Principal Contractor Site; and
        2. without limiting clause 2.15(b)(i):
           1. comply with the directions of the Non Principal Contractor Site Occupant regarding the timing and conditions of the Contractor's access to the Non Principal Contractor Site; and
           2. complete any safety or other training or induction required by the Non Principal Contractor Site Occupant before entering upon the Non Principal Contractor Site.
  3. Separate Contractors
     1. The Contractor agrees that Council is entitled to arrange for separate contractors or Council’s staff to carry out works (other than the Works) on the Site on behalf of Council ("**Separate Contractors**") concurrently with the execution by the Contractor of the Works.
     2. In respect of Separate Contractors:
        1. Council’s Representative will notify in writing the Contractor of the identity of Separate Contractors (including those set out in Item 20);
        2. the Contractor must ensure that the work of Separate Contractors is co-ordinated with the Works as a whole and must facilitate the execution of the work by Separate Contractors;
        3. the Contractor will be responsible for any damage to the Works caused by an act or default of Separate Contractors to the extent the Contractor has failed to comply with its obligations in relation to Separate Contractorsunder this Contract (including this clause 2.16);
        4. to the extent Council’s Representative informs the Contractor of a Separate Contractor not otherwise identified in Item 20, then Council’s Representative must use reasonable endeavours to ensure the Separate Contractor’s work is undertaken at reasonable times and in reasonable places to mitigate any material adverse impacts on the Contractor’s own performance of the Works;
        5. the Contractor acknowledges that it will not be entitled to any Claim arising out of, or as a result of, any requirement to (including a failure to) co-ordinate the Works with the work performed by Separate Contractors, except and unless the Contractor has complied with this Contract (including this clause 2.16) in connection with Separate Contractors and:
           1. a Separate Contractor causes damage to property (including the Works) which has a material adverse impact on the Contractor’s performance of the Works;
           2. a Separate Contractor has not complied with a prior written understanding to coordinate its work with the Contractorby undertaking work by a certain time, and is late in undertaking that workand such delay causes a material adverse impact on the Contractor’s performance of the Works; or
           3. for a Separate Contractor who is not listed inItem 20, Council’s Representative is unable to mitigate any material adverse impact on the Contractor’s performance of the Works as contemplated under clause 2.16(b)(iv),

in which case the Contractor’s sole entitlement will be to Claim, subject to and in accordance with the Contract, an extension of time in accordance with clause 5.6 and delay costs for the material adverse impacts caused by the Separate Contractor on the Contractor’s performance of the Works; and

* + - 1. the Contractor must for the consideration set out in Item 21 (if any) make available for use by Separate Contractors all facilities and services which are otherwise provided by the Contractor in connection with the Works and the Contractor must co-operate with Council’s Representative and Separate Contractors in the use of such facilities.
  1. Advertising and Signage
     1. The Contractor must not permit on the Site, and must remove from the Site, any form of advertising or signage which has not been approved in writing by Council's Representative (which may be withheld at Council’s absolute discretion).
     2. Clause 2.17(a) does not apply to any signage that the Contractor is required to erect on the Site pursuant to the Legislative Requirements (including the Work Health and Safety Requirements or the QBCC Act)*.*
  2. Graffiti removal
     1. The Contractor must remove all graffiti from all construction plant, buildings, edifice or any structures, including fencing, located on Site and do so in accordance with this clause.
     2. The Contractor must remove:
        1. all offensive graffiti immediately upon the Contractor becoming aware of the offensive graffiti; and
        2. all graffiti which is not offensive graffiti within 24 hours of the Contractor becoming aware of the graffiti,

at the Contractor's own cost.

* + 1. Where the Contractor has failed to comply with this clause 2.18, then Council may, without notice to the Contractor (and at the Contractor's cost):
       1. enter the Site to remove the graffiti; or
       2. engage a third party to enter the Site to remove the graffiti.
    2. The Contractor must not hinder or obstruct the removal of the graffiti by Council or any third party engaged by Council.
    3. The Contractor is liable for all reasonable costs incurred by Council in having the graffiti removed and further, those costs will be deemed to be moneys due from the Contractor to Council and capable of either recovery in full or set off against other moneys Council may owe the Contractor under this Contract.
    4. For the purposes of this clause:
       1. the term “**construction plant**” means all appliances and things used in the carrying out of the Works but not forming part of the Works;
       2. the term “**graffiti**” includes illegal or unauthorised paintings, words, figures or other disfigurement that is written, sprayed, etched, pasted or otherwise affixed to any surface of public or private property; and
       3. the term “**offensive graffiti**” is graffiti which contains, but is not limited to, racist, sexist, sexual, political or explicit language or symbols.
  1. Testing
     1. The Contractor must successfully undertake the tests and at such times as specified by the Specifications at any time before Practical Completion or the expiry of the last Defects Liability Period (whichever is the last to occur). However, if no form of testing is required under the Specifications, this clause will not apply. If the Specifications require any form of testing, then in addition to the requirements of the Specifications, the Contractor must:
        1. provide Council with the test results;
        2. co-operate with Council and give assistance to Council as will enable Council to be satisfied that the tests have been undertaken as required. This includes giving Council notice of when the tests are to be conducted;
        3. undertake additional tests at the Contractor's own cost and expense if directed to do so by Council and where Council is reasonably satisfied that:
           1. the Contractor has not properly undertaken the test(s) as required by the Specifications; and/or
           2. all or part of the Works does not successfully pass the prescribed tests,

and Council will also determine the nature and scope of all additional tests (including, but not limited to, which part(s) of the Works are to be re-tested);

* + - 1. not cover up or make inaccessible any Works which:
         1. are to be tested under the Specifications; or
         2. Council requires under clause 2.19(b); and
      2. upon completion of the tests as required by this clause, make good any part(s) of the Works which have failed the test(s) so that it fully complies with this Contract.
    1. If however, the Contractor either delays conducting the test(s) or fails to conduct the test(s):
       1. Council may conduct the test(s) after giving the Contractor reasonable written notice. Such written notice must specify the date, time and place of the test;
       2. the Contractor is entitled to attend the test(s) but must not interfere with or do anything to obstruct or prevent the test(s) taking place;
       3. if the Contractor does not attend, Council will nevertheless be entitled to proceed with the test(s);
       4. within a reasonable time after receiving the result(s) of the test(s), Council will give the Contractor a copy of the result(s); and
       5. all costs in connection with testing pursuant to this clause will be borne by Council except where a test reveals a failure by the Contractor to comply with the Contract (including this clause) in which case the Contractor will be liable to pay Council an amount equivalent to the cost to Council of conducting the test(s).
  1. Purpose and effect of review of documents
     1. The Contractor acknowledges and agrees that any act or omission of Council or Council’s Representative, including any payment given by or on behalf of Council under this Contract, in any way arising out of or in connection with the review of, approval of, comment on, or inspection of, any document provided by the Contractor under or in connection with this Contract (including any work program, plan, resourcing or methodology document or quality system) does not:
        1. relieve the Contractor from or otherwise affect the Contractor’s responsibility under any provision of this Contract;
        2. affect any liability under the indemnities the Contractor provides in favour of Council;
        3. constitute any acceptance by Council or Council’s Representative of any liability or that the Contractor has properly fulfilled its obligations under this Contract; or
        4. constitute any waiver of any of the Contractor’s obligations under this Contract or operate as any other form of estoppel or restriction on Council’s rights under this Contract, at law or in equity.
     2. Neither the opportunity for Council or Council’s Representative to undertake, the actual undertaking nor the failure to undertake the review of, approval of, comment on, or inspection of, any document provided by the Contractor under or in connection with this Contract (including any construction program, plan, resourcing or methodology document or quality system) is intended to create any duty of care owed by Council or Council’s Representative to the Contractor or any other person.
     3. Council and Council’s Representative are entitled to rely solely on the Contractor having produced and provided all documents in accordance with the requirements of this Contract, regardless of any right of review, approval, comment or inspection and for the avoidance of doubt, the Council and Council’s Representative may raise any issue identified with any document provided by the Contractor (including any Defect identified) at any time it is identified under this Contract.

1. Legislative Requirements
   1. Legislative Requirements
      1. The Contractor must fully comply with all applicable Legislative Requirements. This includes, but is not limited to, paying all fees, obtaining licences and obtaining consents to the extent specified by the Contract or a Legislative Requirement as being the Contractor's responsibility.
      2. If a Legislative Requirement:
         1. necessitates a change to the design or nature of the Works;
         2. comes into effect after the Commencement Date but could not reasonably then have been anticipated by a competent contractor; and
         3. causes the Contractor to incur more or less cost than otherwise would have been incurred,

the difference will be reasonably assessed by Council and added to or deducted from the Contract Price in accordance with clause 5.5(d). In all other respects, the Contractor will bear the cost of complying with any such changes to the Legislative Requirements.

* + 1. The Contractor must notify Council’s Representative immediately in writing in the event of change contemplated under clause 3.1(b)and must provide any information requested by Council’s Representative in connection with any change contemplated under clause3.1(b).
  1. Work Health and Safety
     1. The Contractor must ensure that the Work is carried out in accordance with the Work Health and Safety Requirements.
     2. Without limiting clause 3.2(a), the Contractor must at all times:
        1. discharge its duties under Work Health and Safety Law; and
        2. ensure the Contractor's Personnel discharge their respective duties under Work Health and Safety Law,

in connection with the Work.

* + 1. The parties agree:
       1. subject to clause 3.2(c)(iii), that Council appoints the Contractor as the 'principal contractor' (as defined by Work Health and Safety Law) in respect of the 'construction project' (as defined by Work Health and Safety Law) and the Contractor will have specific safety obligations under the Work Health and Safety Law as the ‘principal contractor’;
       2. the Contractor accepts this appointment under clause 3.2(c)(i);
       3. the 'construction project' in respect of which the Contractor is appointed 'principal contractor' under clause 3.2(c)(i) includes:
          1. all Work (other than Work carried out upon a Non Principal Contractor Site); and
          2. all works (whether or not Works) carried out or to be carried out upon a Principal Contractor Site (including work carried out by Separate Contractors); and
       4. that Council authorises the Contractor to:
          1. assume management and control of the Principal Contractor Site; and
          2. carry out and discharge the duties given to the 'principal contractor' under Chapter 6 of the *Work Health and Safety Regulation 2011* (Qld),

for the period during which the Contractor is the 'person with management or control' (as defined by Work Health and Safety Law) of the Principal Contractor Site (as referred to in clause 3.2(j) below), unless and to the extent that such authorisation is withdrawn by Council in writing prior to the end of that period.

* + 1. To the extent that the Contractor is not validly engaged as 'principal contractor' or the Work does not constitute a 'construction project', the Contractor will discharge its safety obligations as though it was 'principal contractor' and will be the 'person with management or control' of the Principal Contractor Site.
    2. The Contractor must ensure that the Contractor and the Contractor's Personnel:
       1. subject to clause 3.2(c), comply with the directions of Council (or any person nominated by Council as having the authority to give directions) in connection with health and safety;
       2. consult fully with Council's Representative in respect of:
          1. any matter relevant to health and safety; and
          2. without limiting clause 3.2(e)(ii)(A), how the Work can be undertaken in a way which prevents or minimises all risks to health and safety of all persons including identifying potential hazards associated with the Work;
       3. comply strictly with the Work Health and Safety Requirements;
       4. throughout the period of the Contract maintain all qualifications, competencies and licences:
          1. held at the commencement of the Work; or
          2. required by Work Health and Safety Requirements;
       5. consult fully with Council's Representative in respect of, and demonstrate to Council, compliance by the Contractor and the Contractor's Personnel with the requirements of this clause 3.2 and Work Health and Safety Requirements;
       6. maintain adequate records of all health and safety matters (including in accordance with the Work Health and Safety Requirements);
       7. audit the Contractor's health and safety records and compliance with the Work Health and Safety Requirements regularly and whenever requested by Council's Representative and provide to Council a copy of the findings of that audit; and
       8. satisfy themselves as to, and only treat as minimum requirements, those Work Health and Safety Requirements prepared or provided by or on behalf of Council.
    3. Council may at any time conduct its own checks and observations of the Contractor's performance of its obligations under this Contract and audit of the Contractor's health and safety records and compliance with the Work Health and Safety Requirements (including any of the Contractor's safety management systems) and the Contractor will:
       1. co-operate fully with Council in connection with its checks, observations or audit (including by providing all necessary access, relevant documents or other information); and
       2. immediately address and ensure the Contractor's Personnel address any issues identified by Council from its checks, observations or audit and notified to the Contractor.
    4. The Contractor must immediately notify Council's Representative of:
       1. any breach or potential breach by the Contractor or any of the Contractor's Personnel of the Work Health and Safety Requirements;
       2. any injury, accident or safety related incident on or adjacent to the Site arising out of or as a consequence of carrying out Work that is notifiable under the Work Health and Safety Law; or
       3. any notice or direction received by the Contractor or any of the Contractor's Personnel under or in connection with the Work Health and Safety Law (including by providing a copy of the notice or direction to Council's Representative),

and must do all things reasonably necessary to assist Council in relation to any investigation or legal proceedings concerning any incident.

* + 1. Despite any other provision of the Contract, the Contractor agrees that Council's rights under the Contract relating to health and safety (including without limitation the rights under this clause 3.2, to give directions to the Contractor, carry out an audit of the Contractor's records or practices, provide or review any plan or other document to be implemented or relied upon by the Contractor (including any Work Health and Safety Requirements) or exercise rights of suspension or termination under the Contract):
       1. are for the benefit of Council;
       2. may be exercised by Council in its absolute discretion (without Council being under any obligation to do so); and
       3. do not prejudice or otherwise affect the Contractor's full responsibility and liability for ensuring strict compliance with all of the Contractor's obligations under the Contract and under the Work Health and Safety Requirements.
    2. The Contractor must provide to Council and also to any person who the Contractor is aware has been or will be engaged by Council to undertake any activities relating to the Work, all information relevant to the Work:
       1. required to be disclosed by the Contractor in the discharge of its duties under the Work Health and Safety Law; or
       2. received (or which should have been received) by the Contractor or any Subcontractors from any other person required to disclose the information to the Contractor or any Subcontractor in the discharge of that person's duties under the Work Health and Safety Law.
    3. The Contractor is, for the purposes of the Work Health and Safety Law, the 'person with management or control' of the Site and all things on the Site:
       1. from the Commencement Date until the Date of Practical Completion; and
       2. during the time of, and for so long as that part of the Site is affected by, the carrying out of Works during the Defects Liability Period.
  1. 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 or the expiry of the Term, 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 apply after the Date of Practical Completion or earlier termination of this Contract for any reason or the expiry of the Term, if applicable (whether or not the Contractor signs a separate agreement under this clause).
    2. The Contractor must not make any statement to the media concerning the Works or the Contract without first obtaining the written consent of Council's Representative. The Contractor will refer to Council any enquiries from any media concerning the Works or the Contract.
  1. Privacy and Personal Information
     1. The Contractor agrees to:
        1. (without limiting clause 3.1) comply with all applicable Privacy Laws:
        2. be bound by the Information Privacy Principles in the *Information Privacy Act 2009* (Qld) with respect to any act done or practice engaged in by the Contractor for the purposes of this Contract in the same way and to the same extent as Council would have been bound by them in respect of that act or practice had it been directly done or engaged in by Council;
        3. provide reasonable assistance to Council upon request to enable Council to meet any obligations imposed on Council by the Privacy Laws; and
        4. so far as possible, take any necessary steps to ensure Council can handle Personal Information about the Contractor's Personnel for the purposes of the Contract without breaching Privacy Laws, including by informing relevant Contractor's Personnel that Council may handle their Personal Information for the purposes of the Contract.
     2. Without limiting clause 3.4(a), the Contractor must (and must ensure that the Contractor's Personnel) comply with Council's reasonable directions regarding the handling of Personal Information.
     3. Upon request, the Contractor must provide Council details of its procedures for complying with this clause 3.4.
     4. If the Contractor handles Personal Information in connection with this Contract or the Works, the Contractor must:
        1. 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;
        2. take all reasonable steps to ensure that Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure;
        3. provide appropriate training to the Contractor's Personnel with respect to the correct handling of that Personal Information;
        4. ensure that it only permits properly authorised Contractor's Personnel to access that Personal Information;
        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.
     5. 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 3.4, the Contractor must promptly give Council notice of the full details of the contravention and acts taken to investigate, contain and remedy the contravention.
     6. The Contractor must, to the extent permitted by law, provide Council with all information it reasonably requests about the contravention and comply with Council's reasonable directions in relation to the contravention, including containment, remediation, harm mitigation, notification and prevention of similar events.
     7. Council's knowledge of, or response to, any such notice or information does not affect any other rights of Council under this Contract.
  2. Environmental Protection
     1. The Contractor:
        1. must take all action necessary to protect and preserve the Environment from harm or damage arising from or in connection with the carrying out of the Works (including Environmental Harm);
        2. must comply with all:
           1. Environmental Laws; and
           2. Environmental management plans provided by or on behalf of Council to the Contractor or provided by the Contractor and approved by Council;
        3. must maintain adequate records of all Environmental matters related to the carrying out of the Works, allow Council to inspect these records, and provide copies of these records, to Council promptly on demand;
        4. must, without limiting clause 3.5(a)(iii), immediately notify Council of any Environmental Harm arising from or contributed to by any acts or omissions of the Contractor or the Contractor's Personnel (whether wilful, negligent or otherwise), and any correspondence with an Authority about that Environmental Harm, including providing copies of relevant documents or other information, and promptly:
           1. rectify (at the Contractor’s own cost) any Environmental Harm; and
           2. provide a report (as to the Environmental Harm and its rectification) to Council whenever requested and otherwise within 5 Business Days of the completion of the rectification detailing the rectification carried out and any other matters requested by Council.
     2. The Contractor must obtain all approvals or licences required and pay and indemnify Council against all fees, fines or other amounts payable under all Environmental protection or preservation Legislative Requirements (including in connection with any applicable approvals or licences).
     3. The Contractor must promptly provide to Council any Data in relation to emissions (including greenhouse gas or other environmental emissions, concentrations, pollutants or contaminants) or energy production, use, consumption or efficiency in connection with the work or the Works (collectively "**Emissions and Energy Data**") which:
        1. any person (whether or not the Contractor) may be required to keep or to provide as part of any Legislative Requirement (which is to be provided by the Contractor within 10 Business Days after it is prepared or provided); or
        2. is requested by Council so that Council may:
           1. comply with its obligations under any Legislative Requirement or to enable Council to obtain the benefit of any rights, protections or other interests under any Legislative Requirement; or
           2. determine whether the Contractor is complying with the Contractor's obligations under the Contract,

and the Contractor agrees that Council may use the Emissions and Energy Data for any purpose as it sees fit.

* 1. Labour Hire Licencing

If any of the Works includes labour hire services (as defined in the *Labour Hire Licensing Act 2017* (Qld)), the Contractor must maintain (and ensure that its labour hire service providers maintain) a current licence to provide these labour hire services.

* 1. Heavy Vehicle National Law
     1. In relation to the transport of goods or equipment by heavy vehicle in connection with the Works, the Contractor is required to be identified as the consignor or consignee in transport documentation and discharge the duties under the *Heavy Vehicle National Law (Queensland)* in connection with the chain of responsibility.
     2. To the extent the Contractor is required to deliver any part of the Works by a particular time, including to achieve Practical Completion by the Date for Practical Completion, in planning, resourcing and programming that Work, including in the development of the work program, whenever such planning, resourcing and programming is done, including whether on or after the Commencement Date, the Contractor must at all times ensure it has had regard to the duties under the *Heavy Vehicle National Law (Queensland)* and planned, resourced and programmed the Work in a manner that is compliant with the *Heavy Vehicle National Law (Queensland)*. This obligation applies despite Council or Council’s Representative having any input or providing any direction as to the time for the Contractor’s performance of the Work (including any Date for Practical Completion).
     3. To the extent the Contractor fails to comply with its obligations under this clause 3.7, Council will not be liable for any Claim, including the need to re-plan, engage additional resources or re-program the Work to ensure compliance with this clause 3.7.
  2. Modern Slavery
     1. For the purpose of this clause, "**Modern Slavery Laws**" 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 performance of the Works.
     2. The Contractor must comply with its obligations under the Modern Slavery Laws.
     3. Where the Contractor delegates or subcontracts any of its duties or obligations under this Contract, the Contractor will ensure that any subcontract must include an obligation to comply with the Modern Slavery Laws.
     4. The Contractor will until the Date of Practical Completion or the expiry of the Maintenance Term, if applicable, and for the period of 7 years thereafter maintain such records relating to the Works, as may be necessary to trace the supply chain of the goods, materials, services and equipment provided in relation to the Works, and to enable Council to determine:
        1. the Contractor's compliance with the Modern Slavery Laws; and
        2. the steps taken by the Contractor to ensure that slavery and human trafficking is not taking place in any part of its own business or supply chain.
  3. Contractor’s legal and ethical obligations
     1. The Contractor warrants it has not:
        1. provided any false or misleading information to Council that is likely to influence Council's decision about entering into the Contract;
        2. colluded with or accepted any consideration from or offered any consideration to any other contractor in connection with the tender for the Works;
        3. entered into any improper or anticompetitive contract, arrangement or understanding with any other party in connection with the tender for or provision of the Works; and
        4. offered or provided to any agent or employee of Council any consideration or other benefit in connection with the tender for or provision of the Works.
     2. The Contractor agrees that a breach of any of the warranties in clause 3.9(a) constitutes a substantial breach of Contract by the Contractor.
  4. Personal Property Securities Act
     1. If Council determines that this Contract (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) as Council may reasonably require for the purposes of:
        1. ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
        2. enabling Council to apply for, and obtain, any registration or providing any notification in accordance with the PPSA; and
        3. enabling Council to exercise any right in connection with the Security Interest or the property the subject of the Security Interest in accordance with this Contract.
     2. The Contractor waives each right to receive any notice from Council under the PPSA (including notice of a verification statement) that can be waived.
     3. Except as expressly agreed in writing to the contrary, the Contractor:
        1. acknowledges that neither this Contract nor a transaction in connection with it is intended to provide for a Security Interest in favour of the Contractor; and
        2. accordingly, agrees that the Contractor will not register or otherwise perfect or seek to perfect any Security Interest, and will remove any registration, in respect of this Contract or a transaction in connection with it.
     4. The Contractor must:
        1. promptly notify Council if the Contractor knows or becomes aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has or claims a Security Interest in any goods or materials:
           1. owned by Council; or
           2. supplied or to be supplied by the Contractor to Council; or
           3. in which Council has an interest;
        2. give Council any information reasonably required by Council in relation to any such Security Interest or claim; and
        3. on request by Council, use best endeavours to ensure that the third party:
           1. discharges any such Security Interest, and does not register or otherwise perfect or seek to perfect, and removes any registration, in respect of any such Security Interest; or
           2. subordinates any such Security Interest to the interest of Council, by an agreement in form and substance satisfactory to Council.
     5. Without limiting clauses 3.10(c) and (d), at any time when title to or ownership of any plant, goods or materials is passed to Council, the Contractor must ensure that title or ownership is passed free of any Security Interest held by the Contractor or any other person.
     6. The Contractor must ensure that each subcontract has, for the benefit of Council, a clause that reflects this clause 3.10.
     7. Without limiting clause 3.3, neither Council nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. However this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
  5. Intellectual Property Rights
     1. The Contractor warrants that it is authorised to grant the rights in subclause 3.11(b) in relation to the Design Documents, materials, documents and methods of working provided by the Contractor, and the use thereof by Council, will not infringe any Intellectual Property Right.
     2. The Contractor grants to Council, and will ensure that the person legally entitled to do so grants to Council and will do all reasonable things necessary to give effect to the grant to Council of, no less than an irrevocable, perpetual, royalty free, worldwide and fully assignable (and sublicensable) licence to exercise all Intellectual Property Rights in the Design Documents, materials, methods of working and other documents or information (from the time it is first created or used) provided by the Contractor for the Site. Such licence will also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Works and the copying of the documents for such purposes. The licence will continue after, and for the avoidance of doubt survives, the termination of this Contract (and whether the termination is for the default of either party, for convenience or for any other reason).
  6. 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).
     2. The Contractor warrants that the Contract Price does not include or provide for any allowance in relation to such levies.
     3. The Contractor will not be required to reimburse Council for such levies irrespective of any other provision under this Contract.
  7. Non-Conforming Building Products

If the Contractor acquires any items, products or materials for use or incorporation into the Works, it must ensure that:

* + 1. none of the items, products or materials are a Non-Conforming Building Product; and
    2. without limiting clause 3.13(a), it promptly notifies Council if it becomes aware, or reasonably suspects, that any item, product or materials used in connection with the Works is a Non-Conforming Building Product for that particular use.
  1. 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.

1. Risk, indemnity and insurance
   1. Risk and indemnity

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 Subcontractors;
    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 4:00pm 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;
    3. must fully indemnify Council against any such loss, damage or Claims, to the extent of the Contractor's liability under clause 4.1(b);
    4. indemnifies Council and Council’s officers, employees and agents 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. must, to the maximum extent permitted by law, indemnify and keep indemnified Council and its officers, employees and agents 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) the carrying out of the Work; and
       2. breach by the Contractor of any of the Contractor's warranties or obligations under clauses 3.2, 3.3, 3.4, 3.5 or 3.11.
  1. The Contractor's insurance obligations
     1. The Contractor must:
        1. at all times during the Contract, keep and maintain appropriate insurance policies of the types and to the values as stated in Item 24; and
        2. promptly provide Council with evidence of the insurance within 10 Business Days of the Commencement Date of this Contract and otherwise if and when requested by Council's Representative.
     2. Each insurance policy must:
        1. except for workers’ compensation insurance:
           1. be in the joint names of the parties; and
           2. cover the:

respective rights and interests; and

liabilities to third parties (as applicable),

of the parties from time to time;

* + - 1. in respect of public liability insurance, cover the parties’ respective liability to each other for loss or damage to property and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy); and
      2. be with an insurer and otherwise in terms both approved in writing by the Council (which approvals must not be unreasonably withheld).
  1. Council’s insurance obligations

Council will keep and maintain appropriate insurance policies of the types and to the values as stated in the Contract Particulars while:

* + 1. in respect of the Works insurance, the Contractor has an interest in the Works, up until the Date of Practical Completion; and
    2. in respect of public liability insurance, while the Contractor is carrying out the Works on the Site.
  1. Council insurance policies

General information about Council's Principal Arranged Construction Insurance Program can be found 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>

* 1. Claims process

If any claims are to be made under any of the insurance policies that Council keeps and maintains under clause 4.3, the Contractor must comply with the claims process 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)

* 1. Uninsured risk and insurance claim deductibles

The Contractor is responsible for all uninsured risk and the excess as stated in the policy for any insurance claims. Refer to the policies for details of risks insured and applicable excesses.

1. Variations, Extensions of Time and Claims
   1. Works Program

The Contractor must prepare and obtain Council's Representative's approval to a work program before commencing the Works and the Contractor must:

* + 1. promptly update and obtain Council's Representative's further approval to the work program whenever necessary to ensure the work program remains current; and
    2. carry out the Work in accordance with the approved work program;

but the work program will not comprise part of the Contract and no approval by Council's Representative in respect of the work program 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 the work program;
    2. be taken to evidence or constitute a direction to accelerate, delay or suspend the Works or a Variation under clause 5.5; or
    3. entitle the Contractor to any Claim.
  1. 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. Defective Work
     1. The Contractor must promptly comply with every written direction by Council's Representative issued:
        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 5.3(a) 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 5.3(a), 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. Liquidated damages
     1. If the Works do not reach Practical Completion by the Date for Practical Completion, the Contractor will be liable to Council, as a debt due and payable from the Contractor to Council, for liquidated damages (as specified in Item 12)) for every day after the Date for Practical Completion to and including the earliest of Practical Completion or termination of the Contract.
     2. Council's Representative, when issuing a Payment Schedule or exercising any set off rights, may include a provisional assessment of the amount then provisionally due by way of liquidated damages.
     3. If an extension of time is directed after the Contractor has paid Council or Council has set off liquidated damages, Council will repay to the Contractor such of those liquidated damages as represent the working days that are the subject of the extension of time.
     4. For the purposes of the Contract, the parties:
        1. agree that the amount of liquidated damages in Item 12) constitutes reasonable and good faith pre-estimates of the anticipated or actual loss or damage that will be incurred by Council as a result of the Contractor failing to achieve Practical Completion by the Date for Practical Completion;
        2. desire to avoid the difficulties of proving damages in connection with such failure and agree that the amount of liquidated damages payable by the Contractor in accordance with clause 5.4 are reasonable and do not constitute and are not intended to be a penalty; and
        3. agree that if clause 5.4 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle Council from recovering liquidated damages, Council will be entitled to recover common law damages as a result of the Contractor failing to achieve Practical Completion by the Date for Practical Completion.
  2. Variation to the Works
     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 2 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 5.5(d)and clause 5.9 (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 work program 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 5.5(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 5.5(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 5.6 applies (in which case, the Contractor’s entitlement, if any, to delay or disruption costs shall be determined under clause 5.9).

* + 1. For the avoidance of doubt, the Contractor may only Claim in connection with a valuation which is to be made under clause 5.5(d) subject to and in accordance with this Contract (including clause 5.5(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 5.5(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
     1. The Contractor is onlyentitled to an extension of time where the delay is due to a Qualifying Cause and further, the Contractor has:
        1. not contributed to the cause and has used all endeavours to minimise the effect of the cause; and
        2. given Council's Representative both written notice of 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.
     2. Council's Representative will grant the Contractor a reasonable extension of the Date for Practical Completion and do so within a reasonable period after receiving the Contractor's Claim.
     3. An extension of time does not entitle the Contractor to any delay or disruption costs nor to any change to the Contract Price unless the conditions of clause 5.9 are met.
     4. 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. Emergency work
     1. If Council's Representative is of the reasonable opinion that urgent action is required to ensure that:
        1. the Works, other property (including Council’s property) or people are protected; or
        2. any Environmental Harm is avoided or minimised,

Council may take necessary action including the engagement of third parties without being obliged to give the Contractor any notice. Any such action by Council will not entitle the Contractor to Claim for either:

* + - 1. any adjustment to the Contract Price;
      2. any adjustment to the Date for Practical Completion; or
      3. other costs and/or expenses of any nature.
    1. If the action taken by Council was action the Contractor should have taken under this Contract:
       1. the costs incurred by Council will be a debt due and owing by the Contractor to Council; and
       2. Council’s actions will not derogate from or lessen in any way, the Contractor's obligations or liability (whether under law, this Contract) in connection with the required action.
  1. Changes to progress of the Works
     1. Council's Representative may at any time give the Contractor a written direction to:
        1. accelerate or delay the progress of the Works;
        2. suspend the Works for any period;
        3. change the order or sequence in which the Works are to be carried out; or
        4. change the days or hours during which the Works are to be carried out.
     2. If Council's Representative gives the Contractor a direction under clause 5.8(a):
        1. the Contractor will comply with Council's Representative's direction to the extent that the Contractor can do so. If the Contractor cannot comply, the Contractor must give Council's Representative written notification:
           1. within 5 Business Days after Council's Representative's direction; and
           2. stating that the Contractor cannot comply and provide all reasonable reasons why not; and
        2. the Contractor will not be able to Claim any extension of time, any delay costs, any other adjustment to the Contract Price nor have any other Claim as a result of any such direction from Council's Representative if:
           1. Council's Representative's direction has been requested by the Contractor;
           2. Council's Representative's direction is required because of any breach of the Contract by the Contractor; or
           3. the direction involves or constitutes a Variation for which the Contractor has a Claim for adjustment to the Contract Price elsewhere in the Contract,

and if none of the circumstances in clauses (A) to (C) apply, the Contractor may be entitled to Claim an extension to the Date for Practical Completion (subject to the terms of the Contract) and if the Contractor incurs extra costs, the Contractor may Claim an adjustment to the Contract Price (subject to the terms of the Contract).

* 1. Delay Costs
     1. Subject to clause 5.9(b), the Contractor will only be entitled to delay or disruption costs (through a Claim for damages or costs resulting from delay) where:
        1. Council's Representative has granted the Contractor an extension of time to the Date for Practical Completion for a period of delay due to a Compensable Cause;
        2. as a direct result of the delay during that period the Contractor has incurred additional costs (other than loss of profit); and
        3. the Contractor has:
           1. complied with the notice requirements under clause 5.6; and
           2. within 10 Business Days of the extension of time being granted provided any information and evidence reasonably required by Council's Representative to substantiate the delay and its cause (within the timeframe reasonably requested by Council's Representative).
     2. The Contractor is not entitled to Claim any delay or disruption costs which:
        1. the Contractor has already recovered under the Contract;
        2. could reasonably have been avoided by the Contractor; or
        3. exceed the daily delay costs cap specified in Item 20.
     3. Except to the extent expressly set out in clause 5.9, the Contractor will not be entitled to Claim any costs, expenses, damages or other amounts resulting from any delay or disruption arising from any cause (including breach by Council).
  2. Latent Conditions
     1. Upon becoming aware of the existence of a Latent Condition, the Contractor must:
        1. advise Council's Representative in writing of the existence of that Latent Condition within 2 Business Days;
        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. If the Latent Condition is not an Excluded Latent Condition, subject to the Contractor having complied with the Contractor's obligations under clause 5.10(a):
        1. the Latent Condition will be a deemed Variation to the Works;
        2. if, as result of the Latent Condition, the Contractor will:
           1. be prevented from reaching Practical Completion by the Date for Practical Completion the Contractor is entitled to Claim an extension of time; and/or
           2. incur additional costs,

then subject to the Contract, the Contractor is entitled to Claim the effect of a Latent Condition as a deemed Variation (and clause 5.5(d), clause 5.6 and clause 5.9 may apply accordingly).

1. Maintenance Services
   1. Maintenance Services

The Contractor will be subject to the obligations of this clause where Item 10 specifies that Maintenance Services are applicable to this Contract. If Maintenance Services are applicable, the Contractor must provide the Maintenance Services on the following conditions:

* + 1. the Maintenance Services must be provided by the Contractor in accordance with:
       1. the terms of this clause 6; and
       2. the following provisions of this Contract:
          1. clauses 1, 2.1, 2.3, 2.5, 2.6, 2.7, 2.9, 2.112.12, 2.13, 2.16, 2.17, 2.20, 3.1, 3.2(a), 3.2(b), 3.2(e), 3.2(f), 3.2(g), 3.2(h), 3.2(i), 3.3 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.13, 3.14, , 5.5, 5.7, 7.11, 7.13, 8, 9, 10and 11; and
          2. all Contract schedules as are required to give effect to the above clauses,

and are deemed to apply as if references to:

* + - * 1. the “Works”, "Work" and “works” were references to the “Maintenance Services”; and
        2. the “Contract Price” was a reference to the “Service Fee”,

to the extent related to determining the rights and obligations of the parties in connection with Maintenance Services (and without limitation to how those provisions are to be read, where they apply in connection with the “Works”, "Work" and “works” or “Contract Price”, which remain unaffected by this clause 6),

(“the **Maintenance Conditions**”);

* + 1. the Contractor must provide the Maintenance Services for the Maintenance Term to the service levels specified in the Specifications and otherwise carry out any and all Maintenance Services in a proper and workmanlike manner and in accordance with Good Industry Practice; and
    2. in relation to the calculation of Service Fee(s) for the Maintenance Services, the Contractor will provide the Maintenance Services for the Service Fee as specified in Item 10 as follows:
       1. the Contractor must submit invoices for the Maintenance Services at such Service Payment Times specified in Item 10;
       2. the Service Fee will either be:
          1. where Item 10 specifies it to be a lump (or fixed) sum – that amount;
          2. where Item 10 specifies it to be a schedule of rates (whether for time and materials or on some other basis) – the Service Fee will be calculated using the schedule of rates at Schedule D;
          3. where Item 10 specifies it to be both:

a lump (or fixed) sum for certain level(s) of Maintenance Services; and

a schedule of rates (whether for time and materials or on some other basis) for any additional Maintenance Services,

the Service Fee will be calculated accordingly;

* + - 1. the Service Fee (including any component of the Service Fee) can only be adjusted in accordance with express provisions of Schedule D which deal with adjustments to the Service Fee (including any component of the Service Fee). In the absence of any express provision, the Service Fee (including any component of the Service Fee) will remain fixed and unchanged for the full Maintenance Term;
      2. the Contractor must rectify any:
         1. defect, shrinkage, movement, deficiency, subsidence, fault or omission in the Maintenance Services, whether in respect of, or arising from any cause, including materials or workmanship or any physical damage as a result thereof; or
         2. any other aspect of the Maintenance Services which is not in accordance with the requirements of this Contract,

(“**Maintenance Defect**”);

* + - 1. Council may issue a direction to the Contractor identifying any Maintenance Defects and the Contractor must rectify such Maintenance Defects in accordance with the requirements of Council which are set out in the direction, including within the time specified in the direction, and the Contractor will have no Claim and will bear all costs arising from or in connection with the rectification of the Maintenance Defect; and
      2. if the Contractor fails to comply with the direction in clause 6.1(c)(v), Council may either itself or through engaging a third party, undertake the rectification work or accept the Maintenance Services at a reduced value and any such additional rectification costs will be a debt immediately due and owing to Council and may be deducted from payments due to the Contractor under this Contract;
      3. the Contractor will only be entitled to payment where the Contractor has:
         1. fully complied with its obligations under the Maintenance Conditions in relation to the provision of the Maintenance Services; and
         2. provided Council's Representative with a properly rendered invoice and all the information or evidence reasonably required by Council's Representative to verify the Maintenance Services Claimed under the invoice. For the purposes of this clause, a "**properly rendered invoice**" is an invoice that:

specifies the title and contract number of this Contract and is sent to Council's Representative;

provides such details of the Service Fee invoiced as Council's Representative may from time to time require (which may include the attachment of receipts, the number of hours involved and the amounts of GST (if any) that are applicable to the invoiced Maintenance Services (or part thereof));

where the Maintenance Services are charged on a time basis, records the number of hours and days spent by individual persons on the Maintenance Services with such records must be verified by a competent officer of the Contractor; and

is a tax invoice as may be required under the GST Laws; and

* + - 1. in relation to the payment of Service Fee(s) due and payable in accordance with this clause 6, or otherwise as required under the Contract, Council will pay all properly rendered invoices within 30 days of receipt and notwithstanding any other provision of the Contract, if any Maintenance Services have not been properly performed, Council will be under no obligation (whether legal or equitable) to pay for any Maintenance Services until such time as they have been properly performed; and
      2. the Contractor agrees:
         1. Council may set off against any amount otherwise payable to the Contractor for the Maintenance Services any amount claimed by Council against the Contractor in connection with any Claim under or in connection with the Contract or otherwise; and
         2. an election by Council to set off against any invoice less than the full amount of any Claim, will not prejudice or affect Council’s right to set off or recover from the Contractor the balance of the amount at any time.
  1. Maintenance Term

Where the Contract Particulars require the Contractor to provide Maintenance Services, if the Contract is terminated prior to the Maintenance Commencement Date, the Contractor will not be obliged to undertake the Maintenance Services and the Contractor has no Claim in connection with the Maintenance Services (including that the Contractor will not be entitled to any loss of opportunity or loss of potential profit in connection with the Maintenance Services not being required under this Contract).

From and including a Maintenance Renewal Date, the Maintenance Term can be extended for an Additional Maintenance Period provided that:

* + 1. before the relevant Maintenance Renewal Date, both parties have agreed to the extension in writing;
    2. any extension must remain on the same terms and conditions as this Contract, being for the Maintenance Services, the Maintenance Conditions (including this clause 6.2); and
    3. nothing in this clause will enable the Maintenance Term to be extended beyond the Maximum Maintenance Period.
  1. Defects and Maintenance

To the extent the Contractor is providing Maintenance Services in respect of the Works:

* + 1. the Contractor is responsible for identifying any Defect and giving notice of that Defect to Council;
    2. will not be entitled to any Claim which arises out of or is in connection with a Defect, including any increase in the Service Fee or increase in the amount or level of Maintenance Services required; and
    3. without limitation, the Contractor will remain liable for the Defect and must comply with all of its obligations under this Contract in connection with the Defect, including any direction given under clause 5.3.

1. Payment
   1. Contract Price
      1. Subject to the other provisions of this Contract, Council will pay the Contractor the Contract Price which is:
         1. the lump sum specified in Schedule D for the whole of the Works or, to the extent that the Contract Price is to be calculated using a schedule of rates, the amount calculated in accordance with clause 7.4(b); and
         2. not subject to any rise and fall or other adjustment for any reason, except as expressly provided in the Contract.
      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 (including clause 9.8) or any other basis in law or equity.
   2. Provisional sums

If the Contract Price includes provisional sums, the provisional sum will not be payable to the Contractor unless:

* + 1. Council's Representative directs the Contractor to complete those particular Works to which the provisional sum relates; and
    2. the Works to which the provisional sum relates is carried out by the Contractor.
  1. Payment Claims
     1. The Contractor must submit Payment Claims to Council's Representative:
        1. progressively at the times prescribed by Item 8; and
        2. at the time for making the Final Payment Claim under clause 7.9(a).
     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 G 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:
           1. evidence that the Contractor has fully complied with its obligations to provide security (if any) under clause 2.4; and
           2. evidence of the Contractor's compliance with its insurance obligations in accordance with clause 4.2; 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.
  2. Calculation

Despite any other provision of the Contract, a Payment Claim will be calculated by reference to the value of all or part of the Works completed in accordance with the Contract less the aggregate of any amounts specified in in the Contract that are not to be included or are to be deducted, including under clause 7.10, provided always that:

* + 1. where the Contract Price is a fixed or lump sum, the Payment Claims do not exceed that fixed or lump sum; and
    2. where all or part of the Contract Price to be calculated by applying a schedule of rates:
       1. unless otherwise specified in Schedule D, the amount payable will be the actual quantity of an item multiplied by the rate applying to that item;
       2. those rates:
          1. as specified in the Contract Price will apply; and
          2. will apply despite there being any difference between actual quantities required to complete the Works and any quantities set out in a schedule of rates or elsewhere in the Contract (including differences arising from Variations); and
       3. if there is no rate applying to any item of work, the item will be taken to be included in the items for which rates have been included,

and if the amount to be deducted is insufficient to cover and discharge the Contractor's liability, Council may have recourse to the Retention Moneys.

* 1. Retention Moneys

If Item 13 requires the retention of moneys, Council may retain the Retention Moneys and hold them for its own benefit and use until such time as the Contractor is able to Claim those moneys under this Contract. The Contractor will be able to Claim:

* + 1. after Practical Completion – the percentage or amount of the Retention Moneys held by Council as specified in the Contract Particulars; and
    2. after the end of the Defects Liability Period – the balance of the Retention Moneys held by Council.
  1. Payment Schedules
     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:
        1. 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 7.4) and provides reasons for any difference or withholding of payment in the assessed amount; and
        2. a certificate evidencing Council's Representative's assessment of Retention Moneys and debts and other moneys due from the Contractor to Council pursuant to the Contract.
     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 and the certificate in clause 7.6(a).
     3. The Contractor must give Council a tax invoice in accordance with clause 7.13 for the amount of the Payment Schedule issued by Council's Representative pursuant to this clause 7.6 within 2 Business Days of receipt of that Payment Schedule.
  2. Time for Payment

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 9 after, in the case of Council, deducting Retention Moneys and setting off such of the Payment Schedule as Council elects to set off pursuant to clause 7.10. 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.

* 1. Application of section 67J QBCC Act

The parties agree that for the purposes of section 67J of the QBCC Act (“**Relevant Section**”) to the extent that it applies:

* + 1. Council authorises Council's Representative to give on behalf of Council the notices referred to in the Relevant Section;
    2. the Contractor accepts that any Payment Schedule issued by Council's Representative which refers to an amount owed by the Contractor to Council will be taken to be advice from Council of the proposed use of security (as defined in the QBCC Act) held by Council to obtain the amount owed; and
    3. to the extent required by the Relevant Section, Council's Representative will give to the Contractor any notice required pursuant to the Relevant Section to ensure Council’s rights to use security (as defined in the QBCC Act) are not prejudiced.
  1. Final Payment Claim and Final Certificate
     1. Within 20 Business Days after the expiry of the Defects Liability Period, the Contractor must give Council's Representative a final Payment Claim endorsed ‘Final Payment Claim’ being a Payment Claim made in accordance with the applicable requirements in clause 7.3, together with all other claims whatsoever in connection with the subject matter of the Contract ("**Final Payment Claim**").
     2. Within the 10 Business Days after receipt of the Contractor’s valid Final Payment Claim, Council's Representative will issue to both the Contractor and Council a final Payment Schedule evidencing the moneys finally due and payable between the Contractor and Council on any account whatsoever in connection with the subject matter of the Contract ("**Final Certificate**").
     3. If the Contractor fails to lodge a Final Payment Claim, Council's Representative may, in its discretion, issue a Final Certificate in accordance with this clause 7.9.
     4. If the Final Certificate shows an amount owing to the Contractor, the Contractor must give Council a tax invoice in accordance with clause 7.13 for the amount within 2 Business Days of receipt of the Final Certificate.
     5. The amount certified as due and payable on the Final Certificate must be paid by Council or the Contractor, as the case may be, within 5 Business Days after the date of the Final Certificate and the parties agree that Council will only pay the Contractor upon receipt of a tax invoice notwithstanding that this payment may be made more than 5 Business Days after the date of the Final Certificate.
  2. Set off by Council

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.
  1. Effect of Payment

Payment other than the final payment of the Final Certificate is only payment on account of the Contract Price. No payment or Payment Schedule will be taken to evidence:

* + 1. acceptance by Council as to the value of work done;
    2. approval by Council that the Contractor has satisfactorily performed the Contractor's obligations under the Contract; or
    3. an admission of liability by Council for the amount Claimed.
  1. Correction of Payment

Council will be entitled to notify the Contractor of Council's correction of any payment made by it at any time and either party will pay to the other the amount necessary to correct the error within 10 Business Days of Council's notice.

* 1. 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. The consideration for a Supply made under or in connection with this document includes GST unless provided otherwise in the Contract.
     3. If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time the consideration for the Supply is payable the Supplier must give the Recipient a Tax Invoice for the Supply.
     4. Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
     5. Where:
        1. the Contractor is registered as a supplier under the GST Laws and has provided an ABN to Council; and
        2. the Contractor and Council are not bound by a Voluntary Agreement,

despite any other provision of the Contract:

* + - 1. Council will not be obliged to pay the Contractor any amount certified by Council's Representative (or otherwise determined) to be payable in respect of a Taxable Supply, until 5 Business Days after the Contractor provides to Council's Representative a Tax Invoice in respect of the amount payable containing the relevant purchase/blanket order number issued by Council to the Contractor for the Contract;
      2. within 20 Business Days after Council's Representative certifies (or an alternative determination is made) any amount to be payable by the Contractor to Council in respect of a Taxable Supply, Council will provide to the Contractor a Tax Invoice in respect of the payment; and
      3. until Council notifies the Contractor otherwise, Council appoints Council's Representative as its agent for the purposes of issuing or providing to or receiving from the Contractor Tax Invoices on Council’s behalf.
  1. Security of Payment Act

If the Security of Payment Act applies:

* + 1. the time prescribed in clause 7.3(a)(i) for Council's Representative to receive a Payment Claim is the "reference date" within the meaning and for the purposes of the Security of Payment Act;
    2. the date of termination of the Contract is the final "reference date" for the purposes of the Security of Payment Act;
    3. Council's Representative is authorised to receive Payment Claims and the Final Payment Claim, and issue Payment Schedules and the Final Certificate, and carry out all other functions of Council under the Security of Payment Act as the agent of Council;
    4. for the purposes of section 102 of the Security of Payment Act:
       1. any notice, document or claim under the Security of Payment Act (including Payment Claims, Payment Schedules, the Final Payment Claim and the Final Certificate under clause 6.1(a)), may be served on the parties by email to the email addresses specified in Item 1 and Item 3; and
       2. any adjudication applications and adjudication responses under the Security of Payment Act, must be delivered to Council at the address specified in Item 1 and to the Contractor at the address specified in Item 2;
    5. payment of moneys for which Council has become liable to pay to the Contractor by reason of the Security of Payment Act (including amounts which have been determined by an adjudicator or which are the subject of an adjudication under the Security of Payment Act) will not be evidence of the value of the Work or an admission of liability or evidence that the Work has been executed satisfactorily, but will be a payment on account only;
    6. where Council has paid the adjudicated amount to the Contractor pursuant to an adjudication under the Security of Payment Act, if the adjudicator’s determination is quashed, overturned or declared to be void, the adjudicated amount will become a debt due and payable on demand from the Contractor to Council;
    7. in determining the value of the Work carried out by the Contractor in the performance of the Contract pursuant to clause 6.1(a), Council's Representative may determine a value which is less than the amount previously paid or payable to the Contractor (including any amount which Council has become liable to pay the Contractor by reason of the Security of Payment Act);
    8. if Council receives a payment withholding request under section 97B of the Security of Payment Act from a subcontractor, Council is entitled to withhold the amount in the request from any payment due to the Contractor without any obligation on Council to consider whether the notice is valid and whether section 97C of the Security of Payment Act applies;
    9. the Contractor must, promptly and without delay, give Council's Representative a copy of any written communication of whatever nature in relation to the Security of Payment Act that the Contractor receives from a Subcontractor, including in connection with any potential or actual suspension of work forming part of the Works;
    10. if any Subcontractor at any time suspends the provision by it of work, services, materials or other things (which form part of the Works) pursuant to the Security of Payment Act, despite any other provision of the Contract, the Contractor will not be relieved of any of its obligations under the Contract and the suspension by the Subcontractor will not entitle the Contractor to any claim; and
    11. where any person at any time lodges, or purports to lodge, a charge over any moneys (including security) payable under the Contract by Council to the Contractor under Chapter 4 of the Security of Payment Act, any costs (including legal costs on a solicitor and own client basis), expenses, damages or other liability which Council suffers or incurs arising from or in connection with the lodgement of the charge (including without limitation in responding to any notice of charge or paying any moneys into court) will be a debt immediately due and payable to Council from the Contractor under the Contract, whether or not the charge is validly lodged or any action taken by the person lodging the charge is successful.

1. Suspension
   1. Council's Representative's suspension

Council's Representative may direct the Contractor to suspend the carrying out of the whole or part of the Work for such time as Council's Representative thinks fit, if Council's Representative is of the opinion that it is necessary:

* + 1. because of an act, default or omission of:
       1. Council's Representative, Council or its employees, consultants, agents or other contractors (not being employed by the Contractor); or
       2. the Contractor or any of the Contractor’s Personnel;
    2. for the protection or safety of any person or property or for the protection of the Environment;
    3. to comply with a court order; or
    4. if required by Council for its convenience.
  1. Contractor’s suspension

If the Contractor wishes to suspend the carrying out of the whole or part of the Work, the Contractor must obtain Council's Representative's prior written approval. Council's Representative may approve the suspension and may impose conditions on the approval. The Contractor will not be entitled to any extension of time in connection with a suspension approved by Council's Representative under this clause.

* 1. Recommencement
     1. 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.
     2. The Contractor may recommence Work suspended pursuant to clause 8.2 at any time after providing reasonable notice to Council's Representative.
  2. Cost
     1. Subject to clause 8.4(c)**,** if the Contractor incurs more or less cost than otherwise would have been incurred by reason of a suspension pursuant to this clause 8, the difference will be assessed by Council's Representative and added to or deducted from the Contract Price except where, or to the extent that:
        1. the Contractor caused or contributed to the reason for the suspension; or
        2. it is a suspension under clause 8.2,

in which case, the cost will be borne by the Contractor.

* + 1. Clause 5.9 will not apply to delay or disruption costs or damages resulting from a suspension under this clause 8.
    2. The Contractor is not entitled to Claim any suspension costs which:
       1. the Contractorhas already recovered under the Contract;
       2. could reasonably have been avoided by the Contractor; or
       3. exceed the daily delay costs cap specified in Item 20.

1. Termination
   1. Without prior notice
      1. At any time, Council may in its sole and absolute discretion, determine to terminate all or part of this Contract immediately and without prior notice to the Contractor if during the term of this Contract:
         1. subject to any applicable statutory stay on the exercise of rights, including sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth) (as applicable), the Contractor is subject to an Insolvency Event; and
         2. the Contractor commits a breach of:
            1. any of the Contractor's obligations relating to safety including without limitation the obligations contained in clause 3.2 or any Additional Obligation Documents relating to safety;
            2. any Work Health and Safety Requirements; or
            3. clause 11.3.
      2. Termination under this clause 9.1 will be effected by Council giving the Contractor a written notice terminating this Contract (a “**Termination Notice**”) and specifying the date of termination (“**the Termination Date**”).
      3. The effect of a Termination Notice is that:
         1. those parts of the Contract to which the Termination Notice relates will terminate on the Termination Date; and
         2. Council will only be liable to pay the Contractor for those parts of the Works which have been properly performed/delivered up to the Termination Date. If the Contractor continues to undertake the Works after that date, the Contractor is only entitled to payment if that supply is not affected by the Termination Notice.
   2. Show Cause Notice
      1. Notwithstanding clause 9.1, if the Contractor has committed a substantial breach of the Contractor's obligations under this Contract, Council may give the Contractor written notice (“**Show Cause Notice**”) stating:
         1. the alleged breach;
         2. that the Contractor is required to show cause as to why Council should not exercise its rights under clause 9.3;
         3. the date and time by which the Contractor must show cause (which will not be less than 5 Business Days after the Show Cause Notice is received by the Contractor); and
         4. the place and/or to whom the Contractor is to respond.
      2. Substantial breaches include:
         1. the Contractor (or any member of the Contractor's Personnel):
            1. has breached any Legislative Requirements applicable to the provision of the Works or has infringed the Intellectual Property Rights of any third party;
            2. has engaged in any conduct or practice that is detrimental or harmful to the good name, reputation or interests of Council;
            3. is found to have offered or given any gratuity, bonus, discount or bribe of any sort to any member of Council or any officer, employee or agent of Council (whether in relation to this Contract or not);
            4. has breached the provisions of clause 2.14;
            5. has failed to provide a statutory declaration or documentary evidence required under this Contract;
            6. has provided a statutory declaration or documentary evidence required under this Contract which contains a statement that is untrue, misleading or deceptive;
            7. the Contractor has failed to provide Security in accordance with clause 2.4 (if applicable);
            8. the Contractor has breached any of the following: clause 2.2, 2.3, 2.7, 2.8, 2.9, 3.2, 3.3, 3.5 or 11.3; and
            9. Council is of the opinion that the Contract either no longer satisfactorily meets Council’s current or future business requirements in relation to the Works or no longer provides Council with value for money in relation to the provision of the Works. In forming such an opinion, Council will have regard to:

whether there have been changes in the market for the provision of the Works; and/or

any other factors or issues which Council believes causes the Contract to no longer delivers value for money to Council in relation to the provision of the Works.

* 1. Termination

If the Contractor fails to show reasonable cause by the date specified in a Show Cause Notice, then Council can by written notice to the Contractor:

* + 1. subject to any applicable statutory stay on the exercise of rights, including sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth) (as applicable), terminate this Contract; and/or
    2. exercise its rights under clause 9.5.
  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 or events (including the existence of any Dispute, Claim or other notice or process under this Contract) immediately by 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 entered into 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 9.4:
        1. if the Contractor:
           1. is subject to an Insolvency Event;
           2. has not provided a statutory declaration in accordance with clause 9.6; 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. Engagement of third parties
     1. In the event that the Contractor fails to comply with the Contractor's obligations under the Contract, and has failed to rectify such breach as and when required by Council, Council has the right to either:
        1. complete the whole or remaining part of the Works; and/or
        2. engage a third party to do so;

and may (without payment of compensation to the Contractor) take possession of any constructional plant and other things on or in the vicinity of the Site as are owned by the Contractor.

* + 1. Where the reasonable costs incurred by Council of either completing the Works or engaging a third party to do so exceeds the amount which would have been payable to the Contractor had the Contractor properly completed the Works, the difference will be a debt due and owing to Council and this amount can be set off against moneys Council otherwise owes the Contractor under this Contract.
  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 within 2 Business Days of the request from Council.
  1. Termination not valid
     1. If Council terminates, or purports to terminate, under this clause 9 or otherwise at law and it is subsequently held to be invalid, void or otherwise unenforceable then Council will be deemed to have terminated for convenience under clause 9.4 as at the same date and time as the original notice of termination.
     2. The Contractor waives any Claim the Contractor has or would have had, but for this clause 9.7, arising out of or in connection with any termination, or purported terminated, by Council under this clause 9, or otherwise at law being subsequently held to be invalid, void or otherwise unenforceable.
  2. Termination remedies

If the Contract is terminated pursuant to clause 9.1 or 9.3(a), Council’s remedies, rights and liabilities will be the same as they would have been under the law governing the Contract had the Contractor repudiated the Contract and Council elected to treat the Contract as at an end and recover damages.

1. Dispute Resolution
   1. Notification of Claims

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 10.1(a) 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.

A notice under clause 10.1(b) 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.

Failure by the Contractor to comply with this clause 10.1 is an absolute bar to making the Claim and constitutes an irrevocable release of that Claim by the Contractor.

* 1. Notice of dispute
     1. If a difference or dispute (together called a "**dispute**") between the parties arises in connection with the subject matter of the Contract, including a dispute concerning:
        1. a Council's Representative's direction; or
        2. a Claim,

then either party must, by hand, certified mail or email, give the other party and Council's Representative a written notice of dispute adequately identifying and providing details of the dispute.

* + 1. Notwithstanding the existence of a dispute, the parties must, subject to clause 9 and clause 10.6, continue to perform their respective obligations under the Contract.
  1. Conference
     1. Within 10 Business Days after receiving a notice of dispute, the parties must meet at least once to attempt to resolve the dispute. At every conference each party will be represented by a person having authority to agree to such resolution. The parties acknowledge and agree that all conferences are held on a without prejudice basis and that all aspects of the conferences, except for the fact of the occurrence of the conferences, must be kept confidential.
     2. If the dispute has not been resolved within 20 Business Days of service of the notice of dispute, that dispute must be resolved in accordance with clause 10.4.
  2. Expert Determination
     1. Where any dispute is not resolved in accordance with clause 10.3 and Council has, in its absolute discretion, elected by notice in writing to the Contractor (within 10 Business Days after the conclusion of the time period as specified in clause 10.3(b)) to refer the dispute to expert determination, the dispute will be referred for determination to an expert agreed by the parties or if the parties are unable to agree to an expert, to an expert nominated by the Chairperson of the Resolution Institute (the "**Expert**").
     2. Unless the parties agree otherwise, the parties will instruct the Expert to determine the dispute in accordance with the following:
        1. the Expert will, subject to the provisions of this clause 10.4(b), determine and notify the parties of the rules to apply to its determination;
        2. each party is entitled to lodge written submissions with the Expert on the dispute;
        3. the Expert may, after receiving written submissions from the parties and before making any determination, require the parties to attend a conference and to address at the conference such matters as the Expert decides;
        4. the Expert must make a determination in respect of the dispute and provide the parties with written advice as to that determination within 20 Business Days after the date of the appointment of the Expert;
        5. each party must bear its own costs and share equally the costs of the Expert or the process of expert determination, unless the Expert determines otherwise;
        6. the Expert must, in conducting the process of expert determination, ensure procedural fairness and is not bound by the rules of evidence;
        7. the Expert’s decision will be final and binding on the parties, unless there is a manifest error of law; and
        8. where the Expert’s decision results in a party becoming entitled to be paid or repaid any amount under or in connection with the Contract, the other party must pay or repay such amount as a debt due and payable within 10 Business Days of the date of the Expert's decision being made.
  3. Litigation

Either party may commence court proceedings in connection with a dispute if and only if:

* + 1. a notice of dispute has been delivered in accordance with clause 10.2;
    2. the dispute has not been resolved in accordance with clause 10.3 and, if applicable, clause 10.4; and
    3. if clause 10.4 is applicable, the party reasonably considers that the Expert's decision is not final and binding pursuant to clause 10.4(b)(vii).
  1. Summary relief

Nothing in this clause 10 will prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

1. General
   1. Notices

A notice, request, consent, approval, direction or other communication under or for the purposes of this Contract must be:

* + 1. in writing, in English and addressed to the receiving party; and
    2. either:
       1. sent by registered post to, or left at, the address specified in the Contract Particulars (or last communicated in writing to the person giving the notice);
       2. handed to the other party and/or the party's representative; or
       3. sent by email to the email address of the party specified in the Contract Particulars (or last communicated in writing to the person giving the notice), except for notices and other documents pursuant to clause 9.
  1. Deemed service
     1. A notice (and other documents) will be deemed to have been given and received:
        1. if hand delivered, upon delivery;
        2. if sent by registered post, on the second Business Day after posting (or the 10th Business Day if posted to or from a place outside of Australia); and
        3. if sent by email:
           1. on a Business Day, on dispatch of the transmission; or
           2. on a day other than a Business Day, on the next business day,

unless:

* + - * 1. the sender's server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission; or
        2. the sender transmits or attempts to transmit any email that is a file size greater than that set out in Item 25,

but if a notice is received after 5.00pm it will be deemed to have been given and received at 9.00am on the next Business Day.

* + 1. Any notice given to the Contractor's Representative will be deemed to have been given to the Contractor.
    2. Any notice given to Council must also be copied simultaneously via email to Council's Representative.
  1. Assignment and sub-contracting
     1. The Contractor must not assign or sub-contract any of the Contractor's rights under this Contract without the prior written consent 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 will be vicariously liable to Council for the 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 Councilin its absolute discretion).
  2. Relationship of 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. Council approvals

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 the contrary by this Contract) and Council can impose whatever conditions it deems appropriate in order to grant the approval.

* 1. Entire Agreement

This Contract:

* + 1. represents the entire agreement between the parties; and
    2. takes effect despite any prior agreement between the parties,

in relation to the provision of the Works.

* 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 to the Contractor 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. Amendments to the Contract

No variation or 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. 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. Severability

If any terms of this Contract are invalid or unenforceable, to the extent they are invalid or unenforceable, they 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. Rights, remedies and indemnities

The parties agree:

* + 1. unless expressly stated otherwise in this Contract, the rights and remedies under any indemnity or otherwise provided under this Contract are cumulative and not exclusive of any rights or remedies provided by law or equity or any other right or remedy;
    2. the rights and obligations of the parties under the Contract do not merge on completion of any transaction contemplated by this Contract;
    3. 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. It is not necessary for a party to incur expense or to make payment before enforcing a right of indemnity under this Contract. A party must pay, as a debt due and payable, on demand any amount it must pay under an indemnity in this Contract; and
    4. any amount which the Contractor are 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. Effect of Contract

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

* 1. Costs

Each party bears its own costs in relation to the preparation, negotiation and signing and performance of this Contract.

* 1. Applicable Law

The applicable law of this Contract is the law 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. Survival

The obligations contained in clauses 2.4(d), 2.14(c), 3.3, 3.4, 3.8(d), 3.11, 3.12, 4, 5.3, 5.4, 7.5, 7.9, 7.13, 10, 11.1, 11.2 and this clause 11.16 will survive the expiration or early termination of this Contract.

1. – SPECIAL CONDITIONS

**[*Schedule C to include any special conditions from clause bank, as required*]**

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 D 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 D and titled “{insert document title ATTACH THE DOCUMENT}”.

For each schedule of rates attached:

* + 1. the schedule must expressly specify for an item that the relevant item is an 'estimated quantity' to ensure that clause 7.4(b)(i) applies, otherwise the item is deemed to be a 'priced' item and paragraph (b) will apply; and
    2. where the schedule specifies a 'priced' item or a 'priced' item is deemed under paragraph (a), the specified amount for that item is a lump sum price for the work the subject of the item and the Contractor must carry out the item and the actual quantities required to comply with the Contract for that price without being entitled to any other Claim (including where the quantities differ or additional work is required to complete the item except to the extent due to a Variation directed under clause 5.5).

{Delete sentence if not applicable} A schedule of rates (titled '{insert title}') is attached in order to calculate Variations and/or delay costs under the General Conditions.

{Leave blank. Or, if milestone payment plan to be used (instead of monthly progress payment), insert details here}

{NOTE: consider profit and overhead for variations}

|  |  |  |  |
| --- | --- | --- | --- |
| *Item* | *Definition* | *Maximum Rate* | *Application* |
| Profit | The Contractor’s profit margin excluding on-site and off-site overheads (as defined below) | **#To be Completed#** | Profit only to be applied to the reasonable direct cost of the relevant Variation directed under clause 5.5 (excluding any amount on account of profit, on-site or off-site overheads and not applying to the Contractor’s rates or prices that include any amount for profit, on-site or off-site overheads). |
| On-site overheads | All on-site and other project-related overheads (including supervision, preliminaries and attendances), excluding off-site overheads (as defined below), but including the following items or costs [#insert] | **#To be Completed#** | On-site overhead only to be applied to the direct cost of the relevant Variation directed under clause 5.5 (excluding any amount on account of profit, on-site or off-site overheads and not applying to the Contractor’s rates or prices that include any amount for profit, on-site or off-site overheads). |
| Off-site overheads | All non-project related and corporate overheads, including the following items or costs [#insert] | **#To be Completed#** | Off-site overhead only to be applied to the direct cost of the relevant Variation directed under clause 5.5 (excluding any amount on account of profit, on-site or off-site overheads and not applying to the Contractor’s rates or prices that include any amount for profit, on-site or off-site overheads). |

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. – APPROVED FORM OF UNCONDITIONAL UNDERTAKING

**To: Brisbane City Council (“Council”)**

At the request of **#Name and ACN of Contractor#** (the “**Contractor**”) and in consideration of Council accepting this undertaking in respect of a contract between Council and the Contractor dated **#date of Contract#** (the “**Contract**”) for the **#description of the Works#** (the "**Project**"), #**Name of Bank#** (the “**Bank**”):

* + 1. unconditionally undertakes and covenants to pay to Council on demand any sum or sums which may from time to time be demanded in writing by Council to a maximum aggregate sum of AUD $#amount of bank guarantee#;
    2. unconditionally agrees to make the payment or payments to Council:
       1. without reference to the Contractor; and
       2. notwithstanding any notice given by the Contractor to the Bank not to pay;
    3. acknowledges the Bank's liability under this undertaking is a continuing and irrevocable liability and will continue in full force and effect until the earlier of:
       1. payment of the maximum aggregate sum is made to Council;
       2. Council notifies the Bank in writing that this undertaking is no longer required; or
       3. Council returns this undertaking to the Bank for cancellation; and
    4. agrees that Council may assign or transfer this undertaking to any entity which takes an assignment or novation of Council's rights under the Contract or takes a transfer of or otherwise becomes the owner of the land the subject of the Project.

This undertaking is governed by the laws of the State of Queensland and the Bank submits to the non-exclusive jurisdiction of the Courts in the State of Queensland.

**Dated** this …………. day of ………………………

|  |  |  |
| --- | --- | --- |
| **SIGNED, SEALED and DELIVERED** by its duly constituted attorneys  ………………………………………………  and  ………………………………………………  in the presence of:  ………………………………………………  (Witness) | )  )  )  )  )  )  ) |  |

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 meaning 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)*