

Conditions of Contract for Minor Goods and/or Services

DEFINITIONS

In the Contract:

'Business Day' means a day which is not:

- (a) a Saturday or Sunday;
- (b) a public holiday, bank holiday or special holiday in the place in which the Site is located; or
- (c) a day occurring on or within the period of 22 December to 10 January.

'Claim' means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Contract, the Supply or either party's conduct under the Contract before it came into force, whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence), including any claim, notice, demand, debt, account, lien, liability, action, proceeding or suit:

- (a) for the payment of money (including damages);
- (b) for an adjustment to the Price; or
- (c) for delay, disruption, acceleration or other time-based claim.

'Commencement Date' means:

- (a) the date or dates specified in the Quotation Form; or
- (b) the date agreed in writing between the parties.

'Completion' means the stage of the Supply when:

- (a) all applicable Goods, if any, have been Delivered to the appropriate location at the Site and installed and commissioned at the Site, as applicable, in accordance with the Contract and have been accepted by the Principal in accordance with Clause A.5.4;
- (b) all applicable Services have been completed in accordance with the Contract;
- (c) any documents or other information relating to the Completion of the Supply or any other obligations of the Contractor which the Contract requires or which the Principal requires to be provided to the Principal; and
- (d) all applicable conditions required by the Contract to be satisfied before Completion have been satisfied.

'Completion Date' means the date or dates specified in the Quotation Form, if any, by which:

- (a) the Supply must achieve Completion; or
- (b) a nominated part of the Supply must achieve Completion, as may be adjusted by Clause A.15 and A.16.

'Conditions of Contract' means these Conditions of Contract for Short Form Goods and/or Services, copies of which can be located on the Principal's website at cityofgoldcoast.com.au.

'Contract' means the legally binding agreement between the Principal and the Contractor, comprising the documents specified in the Quotation Form.

'Contractor' means the party stated in the Quotation Form (initially referred to as the 'Tenderer') and responsible for carrying out and completing the Supply in accordance with the Contract.

'Contract Term' means, subject to earlier termination of the Contract in accordance with Clause A.20:

- (a) the term specified in the Quotation Form (if any); and
- (b) any extension of that term under Clause A.2.2.

'Council Contract Representative' means the Principal's Nominated Representative specified in the Quotation Form (if any) to exercise the functions of the Principal relating to the Contract or other person from time to time appointed in writing by the Principal to be the Council Contract Representative and Notified as such to the Contractor by the Principal.

'Defect' means any part of the Goods and/or Services which does not comply strictly with the requirements of the Contract or is otherwise unsatisfactory to the Principal and includes any omissions.

'Defects Liability Period' means the period stated in the Quotation Form and which commences on:

- (a) if the Quotation Form sets out one or more Completion Dates, the date that Completion of the Supply is achieved by the Contractor (as determined by the Principal's Nominated Representative acting reasonably); or
- (b) if the Quotation Form states that the Contractor is to perform the Supply for a Contract Term, the expiry of the Contract Term.

'Delivery' means the transfer of possession of the Goods to the Principal, at the Principal's Site or other delivery address notified by the Principal to the Contractor in writing.

'Goods' means the goods specified in the Quotation Form.

'Good Industry Practice' means the standards (including any relevant Australian Standard), practices, policies, methods, acts and procedures generally followed or approved by relevant industries and contractors in Australia with respect to the Supply, and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a prudent, experienced, competent and skilled contractor for a project of a similar nature to the Supply.

'Insolvency Event' means any of the following events:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the Contractor;
- (b) the Contractor is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth), or is presumed to be insolvent under the *Corporations Act 2001* (Cth);
- (c) an application or order is made for the liquidation of the Contractor or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Contractor, otherwise than for the purpose of an amalgamation or reconstruction;
- (d) the Contractor ceases to carry on business;

- (e) the Contractor or the Contractor's property or undertaking becomes subject to a personal insolvency arrangement under Part X of the *Bankruptcy Act 1966* (Cth) or a debt agreement under Part IX of the *Bankruptcy Act 1966* (Cth); or
- (f) anything analogous to the events described in paragraphs (a) to (e) occurs.

'Intellectual Property Rights' means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

'Legislative Requirements' includes

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, the State or Territory or local government relevant to the matters the subject of the Contract, the Supply or where any part thereof is being carried out;
- (b) certificates, licences, consents, permits, codes, standards, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Contract;
- (c) Australian Standards and any other relevant standards; and
- (d) fees and charges payable in connection with the foregoing.

'Lump Sum Fixed Fee' means a single fee that includes all costs associated with the Supply as set out in the Quotation Form.

'Milestone' means those parts of the Supply (if any) that are nominated in the Quotation Form;

'Milestone Amount' means the amount specified for each Milestone as nominated in the Quotation Form for the relevant Milestone;

'Milestone Completion' of a Milestone is achieved when the Milestone has been fully completed in accordance with the Contract (without defects), as certified by the Principal's Nominated Representative;

'Milestone Completion Acceptance Notice' has the meaning given to it in Clause A.31.2(f);

'Milestone Partial Acceptance Notice' has the meaning given to it in Clause A.31.2(e);

'Milestone Payment Amounts' has the meaning given to it in Clause A.31.2(d);

'Notice' means a notice, consent or communication given in accordance with Clause A.35.

'Payment Claim' has the meaning given to it in Clause A.29.1.

'Payment Claim Date' means the later of the date worked out as follows:

- (a) the last Business Day of each month for Supply done to the 25th day of that month; and
- (b) the date of satisfaction of the last preconditions to be satisfied under Clause A.29.8.

'Personnel' means any officer, employee, agent, subcontractor, supplier or consultant of a party, but the Principal's Personnel do not include the Contractor or the Contractor's Personnel and the Contractor's Personnel do not include the Principal or the Principal's Personnel.

'Policies and Plans' means all requirements, policies, procedures, guidelines and plans of the Principal as may be from time to time, including any Policies and Plans set out or referenced in the Quotation Form.

'Price' means the sum stated in the Quotation Form and comprises either a Lump Sum Fixed Fee or a Schedule of Rates or a combination of these.

'Principal' means the Gold Coast City Council ABN 84 858 548 460 of 8 Karp Court, Bundall Queensland 4217.

'Principal's Nominated Representative' means either the Superintendent or the Council Contract Representative, as specified in the Quotation Form.

'Principal's Requirements' means the specifications or document referred to in the Quotation Form detailing the description of the Principal's requirements under the Contract.

'Qualifying Cause' means

- (a) subject to Clause A.14, delay caused by any act, default or omission of the Principal or the Principal's Personnel (who are not employed by the Contractor) in the Principal's capacity as a party to the Contract; or
- (b) any cause stated in the Quotation Form that is outside the reasonable control of the Contractor.

'Quality Assurance System' means the Contractor's system which establishes the qualities and performance of the Supply including, all quality manuals, plans, management structures and responsibility statements, techniques for identification and management of non-conforming or disputed Supply items and audit and other critical issues relating to quality assurance.

'Quotation Form' means the completed Short Form Goods and/or Services Quotation Form which is executed by the parties to the Contract.

'Schedule of Rates' means the schedule of either or both lump sum prices and rates set out or referenced in the Quotation Form.

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

'Services' means the services specified in the Quotation Form, the Principal's Requirements and any additional services necessary to be carried out in order for the Principal to receive the full benefit of the services specified.

'Site' means the site stated in the Quotation Form.

'Superintendent' means the Principal's Nominated Representative specified in the Quotation Form to be the Superintendent (if any) for the purposes of the Contract or any other person from time to time appointed in writing by the Principal to be the Superintendent and Notified as such in writing to the Contractor by the Principal.

'Supply' means the supply of the Services, if any, and the Goods, if any.

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INTERPRETATION

In the Contract, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) headings are, in the interpretation of the Contract, to be disregarded;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the Contract and references to this Contract include any schedules or annexures;
- (d) a reference to a party to the Contract or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to the Contract) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (h) if any day on or by which a person must do something under the Contract is not a Business Day, then the person must do it on or by the next Business Day;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (j) wherever the words 'include', 'included' or 'including' (or similar expressions) are used in the Contract, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative;
- (k) no provision of the Contract is to be construed against the interests of the Principal because the Principal prepared or relies on the Contract; and
- (l) the review, perusal, comment by the Principal of any document or information submitted by the Contractor does not relieve the Contractor of any of its obligations or liabilities, including responsibility for the correctness of information submitted by the Contractor.

If the Contractor finds any ambiguity, discrepancy or inconsistency between or within any document comprising the Contract, it must immediately Notify the Principal describing the ambiguity, discrepancy or inconsistency. If the order of precedence in the Quotation Form cannot resolve the ambiguity, discrepancy or inconsistency, the Principal will then Notify the Contractor of the interpretation to be followed, the Contractor must comply with any such direction and the Contractor will not be entitled to Claim as a result of any ambiguity, discrepancy or inconsistency in the Contract or any Notification by the Principal.

CONDITIONS OF CONTRACT FOR SHORT FORM GOODS AND/OR SERVICES

A.1 GOVERNING LAW

The Contract will be governed by and construed in accordance with the law of Queensland. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.

A.2 TIMEFRAMES

A.2.1 If the Quotation Form states that the Contractor is to carry out the Supply for a Contract Term, then the Contractor must commence the Supply on the Commencement Date and, subject to Clause A.2.2, cease the Supply on the last day of the Contract Term.

A.2.2 The Principal may, in its absolute discretion, extend the Contract Term for the period stipulated in the Quotation Form by giving Notice to the Contractor prior to the expiry of the Contract Term. If the Contract Term is extended in accordance with this Clause A.2.2, then the terms and conditions of the Contract will continue to apply during the extended Contract Term.

A.2.3 If the Quotation Form sets out one or more Completion Dates, then the Contractor must commence the Supply on the Commencement Date and must achieve Completion of the relevant part of the Supply by the applicable Completion Date.

A.2.4 The Principal may, in its absolute discretion, extend the Commencement Date.

A.2.5 The Contract applies to any of the Supply that the Contractor carried out before the Quotation Form was executed by the Parties.

A.3 CONTRACTOR'S GENERAL WARRANTIES

A.3.1 Without limiting any other obligation under the Contract, the Contractor represents and warrants to the Principal that it has:

- (a) carefully examined and acquired actual knowledge of the contents of the documents forming the Contract and any other information made available in writing by the Principal for the purpose of entering into the Contract;
- (b) it has made its own investigation and assessment of the work, risks, contingencies and other circumstances involved in performing the Supply, including in relation to the Site and its surroundings, and it has reviewed all information that the Principal has made available to it, and that otherwise obtainable by making reasonable enquiries, in relation to the Supply, including the Site and its surroundings, and it assumes complete responsibility for carrying out the Supply in accordance with the Contract;
- (c) it has satisfied itself that the Price covers the cost of complying with all the obligations under the Contract; and

- (d) it has the necessary authority and power to enter into the Contract and to perform the obligations under it.

A.3.2 The Contractor acknowledges that the Principal relied on the representations and warranties made in Clause A.3.1 when it entered into the Contract.

A.4 CONTRACTOR'S GENERAL OBLIGATIONS

A.4.1 The Contractor must carry out the Supply in accordance with the Contract.

A.4.2 The Contractor must:

- (a) carry out the Supply and perform all of its other obligations:
 - (i) due care, skill and diligence and Good Industry Practice;
 - (ii) in a thorough, competent and professional manner in accordance with relevant professional principles and standards; and
 - (iii) in accordance with all Legislative Requirements and applicable Policies and Plans;
- (b) must maintain, and ensure its Personnel maintains, at its cost, any licences, accreditations, certificates or registrations the Contractor or its Personnel are required to possess by any Legislative Requirements in order to carry out the Supply;
- (c) supply all labour, plant, tools, equipment, appliances, consumables, spare parts and other property the Contractor requires to fulfil its obligations under the Contract;
- (d) if it learns of anything that may affect, or has affected, the scope or suitability of the Supply, or learns of any Defects, then it must promptly Notify the Principal of that as soon as possible, and to the extent possible include in the Notice details of the relevant matter and its cause;
- (e) co-ordinate the performance of the Supply with the Principal and its Personnel and otherwise consult regularly with the Principal;
- (f) carry out the Supply with due expedition and without delay and in accordance with any directions of the Principal;
- (g) Notify the Principal if the Contractor believes that anything may delay the progress of the Supply (such Notice to include details of the estimated extent of the delay and the cause); and
- (h) without limiting its other obligations under the Contract, apply Good Industry Practice to avoid, mitigate and overcome the effects of any delays to the carrying out of the Supply.

A.5 RIGHTS AND OBLIGATIONS SPECIFIC TO GOODS FORMING PART OF THE SUPPLY

A.5.1 The Contractor warrants that all Goods (if any) will:

- (a) be new, except to the extent expressly agreed otherwise in the Quotation Form;
- (b) be of merchantable quality;
- (c) correspond with any samples or product descriptions which the Contractor provided to, or showed, the Principal prior to the Contract;
- (d) be free from all liens, charges and encumbrances and other Security Interests of any kind at the time that title in them is to pass to the Principal;
- (e) be free from Defects; and
- (f) comply with the National Construction Code performance requirements.

A.5.2 The Contractor must:

- (a) Deliver and unload the Goods at the location at the Site or as otherwise directed by the Principal's Nominated Representative;
- (b) if the Quotation Form states that a Completion Date applies, not Deliver the Goods earlier or later than the Completion Date, except:
 - (i) with the consent of the Principal; or
 - (ii) if the Contractor is required to install or commission the Goods;
- (c) if the Quotation Form states that a Completion Period applies, not Deliver the Goods outside the Completion Period without the consent of the Principal;
- (d) if the carrier of the Goods is not the Contractor, without limiting the Contractor's obligations under Clauses A.11.4 and A.32, engage the carrier on terms that comply with all applicable Legislative Requirements and ensure that the carrier complies with Good Industry Practice;
- (e) at the time of dispatch of the Goods to the Site, notify the Principal of the Contract number and the description and quantity of Goods dispatched;
- (f) package the Goods safely and securely so as to prevent damage during transit, and in all other respects in accordance with the carrier's requirements;
- (g) clearly label all Goods as the property of the Principal, so that it is visible to any person without having to remove any packaging; and

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- (h) include a delivery docket with each package that details the description and quantity of Goods and the relevant Contract number.
- A.5.3 Any terms or conditions included in a delivery docket or other document provided by the Contractor or its Personnel, and signed by or on behalf of the Principal at Delivery, will have no application to either the Contract or the Principal.
- A.5.4 The Principal will be deemed to have accepted the Goods only on the earlier of:
- the date the Principal gives written notice to the Contractor that the Goods have been accepted; or
 - 20 Business Days after the date the Goods are Delivered, provided that during that 20 Business Day period the Principal did not Notify the Contractor that any of the Goods were Defective.
- A.5.5 Risk in the Goods passes to the Principal upon acceptance by the Principal in accordance with Clause A.5.4. The Contractor indemnifies the Principal against any loss of or damage to the Goods from Delivery until the Goods are accepted by the Principal in accordance with Clause A.5.4.
- A.5.6 Title in the Goods passes to the Principal on the earlier of Delivery or payment for the Goods. If, prior to Delivery, title to the Goods passes to the Principal, the Contractor must set the relevant Goods aside and clearly mark them as being the property of the Principal, in a manner reasonably required by the Principal.
- A.5.7 If the Contractor is not the manufacturer, the Contractor must, at its own cost, obtain and provide the Principal with any warranties available for the relevant Goods from the relevant manufacturer (**Manufacturer Warranties**).
- A.5.8 The Contractor must ensure that the Manufacturer Warranties are in favour of the Principal and fully assignable and are provided to the Principal on Completion or before the expiry of the Completion Period (as the case may be).
- A.5.9 The Principal (by itself or by its agents) may at any time, whether at the Contractor's premises or facilities, the Site or any other place where the Goods are being manufactured or stored, test the Goods, or Services being performed, to ensure they comply with the Contract.
- A.5.10 The Contractor must give the Principal's Nominated Representative, and any other person authorised in writing by the Principal, reasonable access to any premises or facilities occupied by the Contractor or its Personnel where the Goods are being manufactured or stored, or the Services are being performed, to inspect or test any Supply or other material related to the Supply.
- A.5.11 The Principal's Nominated Representative, and any other person authorised in writing by the Principal, must, when attending the Contractor's premises or facilities, comply with all reasonable rules, directions and procedures as Notified by the Contractor, including those relating to workplace health and safety that are in effect at the premises or facilities.
- A.5.12 On completion of the inspections or tests, the Contractor must promptly rectify any Defects in the Supply identified in the inspection or tests.
- A.5.13 Costs in connection with testing pursuant to Clause A.5.9 will be paid by the Principal except where the Contract otherwise provides or the test is required because of, or reveals a failure of, the Contractor to comply with the Contract.
- A.6 PERSONNEL**
- A.6.1 If the Supply constitute 'building work' for the purposes of the *Queensland Building and Construction Commission Act 1991* (Qld) (**'QBCC Act'**), the Contractor must supervise and manage the performance of the Supply (including any Supply performed by subcontractors) personally or by a competent representative and must otherwise comply with the requirements in sections 43 and 43A of the QBCC Act.
- A.6.2 The Principal may by Notice direct the Contractor to have removed, within a stated time, from the Site or from any activity in respect to the Supply, any of the Contractor's Personnel employed on the Supply who, in the Principal's opinion, is incompetent, negligent or guilty of misconduct or for any other reason Notified to the Contractor by the Principal.
- A.6.3 The Contractor must ensure its Personnel comply with the requirements of the Contract.
- A.6.4 The Contractor acknowledges that it is responsible for industrial relations involving its Personnel. The Contractor must keep the Principal fully informed of any disputes with or demands by its Personnel or their representatives and any other circumstances which could result in industrial actions affecting the Site or any part of the Supply.
- A.7 SECURITY**
- A.7.1 Clause A.7 will only apply if the Quotation Form has been completed to confirm that Clause A.7 applies.
- A.7.2 The Contractor must, within five Business Days of the execution of the Quotation Form, provide the Principal with two unconditional undertakings (which must be in a form approved by the Principal), each equal to 50% of the maximum percentage specified in the Quotation Form, and given by a financial institution approved by the Principal.
- A.7.3 Except to the extent permitted law, the Principal may have immediate recourse to the security to satisfy any loss, expense or damages the Principal may incur or suffer as a consequence of any act or omission of the Contractor in connection with the Contract or the Supply.
- A.7.4 Subject to any rights it may have under the Contract, the Principal must:
- if the Quotation Form states that the Contractor is to perform the Supply for a Contract Term, and the Quotation Form states that no Defects Liability Period applies to the Contract, then within 20 Business Days of the expiry of the Contract Term, release any security held by the Principal as at the date of expiry of the Contract Term;
 - if the Quotation Form states that the Contractor is to perform the Supply for a Contract Term, and the Quotation Form states that a Defects Liability Period applies to the Contract, then:
 - within 20 Business Days of the expiry of the Contract Term, release 50% of the security held by the Principal as at the date of expiry of the Contract Term; and
 - within 20 Business Days of the expiry of the Defects Liability Period, release the remainder of any security held by the Principal as at the date of expiry of the Defects Liability Period;
 - if the Quotation Form sets out one or more Completion Dates, and the Quotation Form states that no Defects Liability Period applies to the Contract, then within 20 Business Days of Completion be achieved by the Contractor (as determined by the Principal's Nominated Representative acting reasonably), release any security held by the Principal as at the date of Completion; and
 - if the Quotation Form sets out one or more Completion Dates, and the Quotation Form states that a Defects Liability Period applies to the Contract, then:
 - within 20 Business Days of Completion be achieved by the Contractor (as determined by the Principal's Nominated Representative acting reasonably), release 50% of the security held by the Principal as at the date of Completion; and
 - within 20 Business Days of the expiry of the Defects Liability Period, release the remainder of any security held by the Principal as at the date of expiry of the Defects Liability Period.
- A.8 PRICE**
- A.8.1 In consideration of the proper performance of the Supply by the Contractor, the Principal will pay the Contractor the Price.
- A.8.2 The Price and any rates to be applied in calculating the Price (together with any additions or deductions expressly provided for by the Contract):
- includes all costs, expenses, fees and charges incurred by the Contractor in performing all its obligations under the Contract;
 - includes payment for any items or work which are reasonably inferred or are reasonably necessary for the proper performance of the Supply;
 - includes the Contractor's profit, attendance, preliminaries, site allowances, supervision, on-site and off-site overheads in connection with the performance of all of its obligations under the Contract; and
 - will not be subject to any rise and fall or other adjustment for any reason except to the extent expressly provided by the Contract.
- A.8.3 If the Price comprises a Schedule of Rates, and the Schedule of Rates omits an item which should have been included, the item is deemed to have been included in other items in the Schedule of Rates, and the Contractor will have no Claim in connection with the omission.
- A.9 PRINCIPAL-SUPPLIED INFORMATION**
- A.9.1 In this clause "**Principal-Supplied Information**" means any information (whether documented or otherwise) supplied or made available to the Contractor by or on behalf of the Principal before or after the date of accepting the Contractor's offer (even where such documents have been included in the Principal's Requirements, which have been included for identification purposes only). Principal-Supplied Information does not include information in documents forming part of the Contract in accordance with the Quotation Form.
- A.9.2 The Contractor agrees:
- unless the Principal expressly agrees otherwise in writing, any Principal-Supplied Information:
 - has been or will be provided only for the Contractor's convenience; and
 - has not been and will not be relied upon by the Contractor for any purpose (including entering into the Contract or performing its obligations under the Contract);
 - the Principal does not:
 - assume any responsibility or duty of care in respect of; or
 - warrant, guarantee or make any representation as to,

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- the Principal-Supplied Information (including its accuracy, completeness or adequacy for the purposes of the Contract);
- (c) the Principal will not be liable to the Contractor in contract, tort, equity, under statute or otherwise arising from or in connection with the Principal-Supplied Information, the provision of the Principal-Supplied Information or the non-provision of any other information by the Principal; and
- (d) the Contractor will not be entitled to any extension of time, adjustment to the Price or other claim arising from or in connection with the inaccuracy, incompleteness or inadequacy of the Principal-Supplied Information.
- A.10 PRINCIPAL'S NOMINATED REPRESENTATIVE**
- A.10.1 The Principal's Nominated Representative is:
- (a) the primary liaison and point of contact between the Principal and the Contractor in relation to the administration of the Contract;
- (b) responsible for monitoring and evaluating the Contractor's performance under the Contract and otherwise ensuring the Contractor's compliance with all applicable Legislative Requirements; and
- (c) not authorised either actually or ostensibly to amend or vary the Contract or enter into any contract on behalf of the Principal.
- A.10.2 If a Council Contract Representative is specified in the Quotation Form:
- (a) the Council Contract Representative is:
- (i) authorised to act on behalf of the Principal in discharging the Principal's functions under the Contract (including acting as the assessor, valuer or certifier in respect of any matter under the Contract which requires an assessment, valuation or certification by the Principal), except to the extent expressly provided otherwise in the Contract or in any Notice issued by the Principal; and
- (ii) an agent of the Principal and carries out all functions as such; and
- (b) the Contractor must:
- (i) liaise with and report to the Council Contract Representative about the Supply;
- (ii) attend all meetings with, or provide briefings to, the Council Contract Representative, as required by the Principal from time to time;
- (iii) give any Notice that the Contractor is required to give to the Principal under the Contract to the Council Contract Representative; and
- (iv) promptly comply with any request or direction given by the Council Contract Representative, in accordance with the Contract, about the Supply.
- A.10.3 If a Superintendent is specified in the Quotation Form:
- (a) the Principal will ensure that at all times there is a Superintendent for the purposes of the Contract;
- (b) the Superintendent is authorised to act on behalf of the Principal in discharging the Principal's functions under the Contract;
- (c) the Principal will endeavour to ensure that the Superintendent performs reasonably and in good faith its assessment, valuation or certification functions; and
- (d) the Superintendent carries out all of its functions, other than its assessment, valuation or certification functions, as an agent of the Principal.
- A.10.4 The Principal will Notify the Contractor of any change in the identity of the Principal's Nominated Representative.
- A.11 DIRECTIONS**
- A.11.1 The Principal may issue directions to the Contractor in respect of anything under the Contract.
- A.11.2 If a direction is given to the Contractor by a representative (including employee or agent) of the Principal other than the Principal's Nominated Representative, the Contractor must promptly confirm the direction with the Principal's Nominated Representative before acting upon it unless:
- (a) the direction is for urgent action;
- (b) the direction relates to the Principal exercising other rights of the Principal under the Contract; or
- (c) the Principal has provided the direction in writing and notified that confirmation with the Principal's Nominated Representative is not required.
- A.11.3 Directions by the Principal may be given in writing or given orally and later confirmed by Notice. If the Contractor requests confirmation of an oral direction, the Contractor will not be required to comply with an oral direction until such time as the oral direction has been confirmed in a Notice.
- A.11.4 Subject to Clause A.11.2 the Contractor must comply with any direction of the Principal within the time nominated, or if no time is nominated, as soon as reasonably possible. Except where expressly provided in the Contract, the Contractor has no Claim arising from or in connection with any direction.
- A.11.5 The Contractor must attend all meeting requested by the Principal to openly discuss all matters relevant to the Supply and its progress.
- A.12 WORK HEALTH AND SAFETY**
- A.12.1 In this Clause A.12, the terms:
- (a) 'Act' means the *Work Health and Safety Act 2011* (Qld);
- (b) 'Regulation' means the *Work Health and Safety Regulation 2011* (Qld);
- (c) 'Workplace', 'Inspector', 'Notifiable Incident', 'Principal Contractor' and 'Regulator' have the same meaning as in the Act.
- A.12.2 The Contractor will, in performing its obligations under the Contract, take into account and take appropriate action having regard to any information given to the Contractor by the Principal or any other person about hazards and risks at or in the vicinity of the workplace where the Supply is being carried out.
- A.12.3 The Contractor must:
- (a) carry out the Supply in a safe manner;
- (b) take all reasonable care to provide and maintain a Workplace free of accidents and injuries, including carrying out the Supply in a way that is without risk to the health, safety and welfare of any person;
- (c) comply with all Legislative Requirements and Policies and Plans relating to workplace health and safety (including the Act and Regulations);
- (d) comply with all lawful directions issued by any person with control of the applicable part of the Site pursuant to any Legislative Requirements relating to workplace health and safety;
- (e) comply with all Policies and Plans relating to health and safety;
- (f) at all times have documented safe work practices and procedures for the Supply;
- (g) ensure that there are processes in place to identify, assess and proactively control risks at the Workplace at which the Supply is being undertaken;
- (h) cooperate with and do all of the things that are necessary to enable the Principal to comply with all Legislative Requirements relating to workplace health and safety (including the Act and Regulations);
- (i) attend any inductions or such other safety meetings required by the Principal;
- (j) comply with all lawful directions issued by any person with control of the applicable part of the Site pursuant to any Legislative Requirements relating to workplace health and safety;
- (k) provide its Personnel with personal protective equipment, information, instruction, training and supervision to ensure their own health and safety, and to ensure that their acts or omissions do not adversely affect the health and safety of other persons while carrying out the Supply;
- (l) provide, when requested by the Principal, evidence of its compliance with the requirements of any Legislative Requirements relating to workplace health and safety (including the Act and Regulations);
- (m) provide, when requested by the Principal, information about, and verification of, the safety systems in a Workplace at which the Supply is being undertaken, including site specific safe work practices, policies and procedures and how compliance with the safety system is audited and monitored;
- (n) immediately Notify the Principal of any accidents involving the Contractor's Personnel and, within 1 Business Day, give the Principal a detailed report of the circumstances and consequences of the accident;
- (o) immediately Notify the Principal if, as a result of the Supply, the Contractor is required to report a Notifiable Incident to a Regulator;
- (p) take all reasonable practicable steps to secure the area where the Notifiable Incident occurred until an Inspector arrives at the area or any earlier time that an Inspector directs;
- (q) immediately Notify the Principal if an Inspector or any delegate or union representative enters or attends a Workplace in relation to a workplace health and safety matter where the Supply is being carried out; and
- (r) cooperate in any investigations relating to Workplace incidents.
- A.12.4 Without limiting any other obligation under the Contract, if material that might contain asbestos or other hazardous substance is discovered, the Contractor must:
- (a) immediately Notify the Principal; and
- (b) comply with all applicable obligations and restrictions imposed by any applicable Legislative Requirements.
- A.12.5 The Contractor must, at the times specified in the Quotation Form, and at any time upon request by the Principal, provide all assistance and access to its offices, Personnel and records to enable the Principal (which may be the Principal's staff or external contractors) and any

- government agency to conduct audits on the Contractor's compliance with its obligations under this Clause A.12, the Policies and Plans and any Legislative Requirements relating to workplace health and safety (including the Act and Regulations). If any non-conformance is detected, the Contractor must immediately rectify the non-conformance at its own cost.
- A.12.6 The Contractor must Notify the Principal once the non-conformance has been rectified.
- A.12.7 If urgent action is necessary to protect the Supply, other property or people, and the Contractor fails to take the action, in addition to any other remedies of the Principal, the Principal may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the costs incurred by the Principal in performing those obligations will become a debt due and payable to the Principal from the Contractor.
- A.13 ENVIRONMENTAL MANAGEMENT**
- The Contractor must comply with the requirements of the *Environmental Protection Act 1994* (Qld) and any other Legislative Requirement in connection with protection of the environment and implement and maintain measures to preserve and protect the natural environment on and adjacent to the Site.
- A.14 SITE MATTERS**
- A.14.1 The Principal will give the Contractor sufficient access to the Site to reasonably enable the Contractor to perform that part of the Supply required to be performed on the Site. The Contractor may only use the Site for the purpose of performing that part of the Supply required to be performed on the Site.
- A.14.2 The Contractor may not have exclusive access to the Site or any part of it and must coordinate that part of the Supply required to be performed on the Site with activities of the Principal, the Principal's Personnel and any other contractors (**Separate Contractors**).
- A.14.3 The Contractor must:
- (a) permit the concurrent execution of work on the Site by any Separate Contractors, and provide reasonable access for, and co-operate with such persons in the execution of that work to the extent necessary;
 - (b) ensure that all of the Supply, the completion of which is necessary to allow any Separate Contractor to commence work, has been completed,
- and will have no entitlement to Claim for doing so or for any impact of any interference caused to the Contractor or that part of the Supply required to be performed on the Site by any person on the Site (including Separate Contractors).
- A.14.4 The Contractor must avoid any disruptions or inconvenience to:
- (a) the usual and safe operations of the Site; or
 - (b) the users of the Site,
- except to the extent expressly permitted by the Contract.
- A.14.5 The Contractor must:
- (a) regularly remove from the Site all rubbish and debris arising from the performance of the Supply;
 - (b) immediately remove from the Site any surplus plant and equipment belonging to the Contractor or its Personnel, that is used in performance of the Supply, but which is not intended to be transferred to the Principal; and
 - (c) if performing Services at the Site, keep the relevant parts of the Site clean and secure at all times.
- A.14.6 The Contractor must take all necessary steps to:
- (a) prevent damage to property on or near the Site (including existing utility services (including water, electricity, gas, telecommunications, drainage, stormwater, sewerage services and supporting infrastructure) and assets of the Principal and work previously performed at the Site by another party);
 - (b) prevent harm to any persons on or near the Site;
 - (c) avoid unnecessary interference with the passage of people and vehicles on or near the Site; and
 - (d) prevent nuisance and unreasonable noise and disturbance on or near the Site.
- A.14.7 If any damage, harm, interference, nuisance or disturbance is caused by the Contractor or its Personnel, the Contractor must:
- (a) remedy, at its own cost and risk, the damage, harm, interference, nuisance or disturbance as soon as possible to the satisfaction of the Principal; and
 - (b) indemnify the Principal for any damage, loss, cost or expense suffered by the Principal in connection with the damage, harm, interference, nuisance or disturbance.
- A.14.8 If the Contractor fails to comply with its obligations in Clause A.14.7, the Principal may perform those obligations itself or through others and all costs, damages and expenses incurred by the Principal in performing those obligations will become a debt due and payable to the Principal from the Contractor.
- A.14.9 Subject to any Legislative Requirements that require otherwise, the Contractor must only access the Site, and perform any part of the Supply required to be performed on the Site, during the hours of work set out in the Quotation Form unless directed otherwise by the Principal.
- A.15 DELAYS AND EXTENSIONS OF TIME**
- A.15.1 Clauses A.15.3 to A.15.7 (inclusive) will only apply if the Quotation Form sets out one or more Completion Dates.
- A.15.2 If the Contractor believes that anything, including any breach, act or omission of the Principal, may delay the progress of the Supply, the Contractor must Notify the Principal with details of the estimated extent of the delay and the cause.
- A.15.3 Subject to Clauses A.15.4 and A.15.6, the Contractor will only be entitled to an extension of time to the Completion Date where:
- (a) the Supply is delayed by a Qualifying Cause which will prevent the Contractor from achieving Completion by the Completion Date;
 - (b) the Supply is not concurrently delayed (in whole or to the extent of any part) by a cause that is not an Qualifying Cause;
 - (c) within 5 Business Days after the commencement of the Qualifying Cause, the Contractor gives Notice to the Principal setting out the Qualifying Cause, the particular activities that are delayed and the extension of time to the Completion Date that is claimed; and
 - (d) if the delay continues beyond the extension of time claimed by the Contractor under Clause A.15.3(c), the Contractor gives the Principal an updated Notice every 5 Business Days that satisfies the requirements of Clause A.15.3(c) until the delay ends.
- A.15.4 The Contractor is not entitled to an extension of time for delays caused by it whether occurring before or after the Completion Date, nor for delays due to inclement weather or industrial conditions occurring after the Completion Date.
- A.15.5 Provided that the requirements of Clause A.15.3 are satisfied, the Principal will determine (acting reasonably) the period of the delay to the Supply caused by the Qualifying Cause referred to in a Notice given by the Contractor under Clause A.15.3(c) or A.15.3(d) and extend the Completion Date by that period. If an extension of time is granted, the Principal will Notify the Contractor of the revised Completion Date.
- A.15.6 The Principal may (without being obliged to do so) at any time and for any reason it thinks fit, extend the Completion Date. This right is solely for the benefit of the Principal and may be exercised in its absolute discretion, even if the Contractor is not entitled to an extension of time or has not claimed an extension of time.
- A.15.7 If the Contractor does not make any Claim for an extension of time within the time or in the form specified in Clause A.15.3, the Contractor is not entitled to an extension of time, or to later Claim an extension of time, for that delay.
- A.15.8 Any principle of law or equity (including those which might otherwise entitle the Contractor to relief and the "prevention principle") which might otherwise cause the Completion Date to be set at large and liquidated damages unenforceable, will not apply.
- A.15.9 For the avoidance of doubt, a delay caused by any act or omission of the Principal or any failure by the Principal to comply with this Clause A.15 will not cause the Completion Date to be set at large.
- A.15.10 Notwithstanding any delays to the carrying out of the Supply or any extension of time granted, nothing in this Clause A.15 extends the Contract Term or will entitle the Contractor to an extension of the Contract Term.
- A.16 VARIATIONS**
- A.16.1 The Contractor must not vary the Supply except as directed by written Notice by the Principal under this Clause A.16.
- A.16.2 The Principal may, at any time, direct the Contractor by written Notice to amend, increase, decrease or omit any part of the Supply (including omission for the purpose of or with the intention of contracting with another person to perform that part of the Supply) or change the quality, character or extent of any Goods and/or Services to be carried out as part of the Supply or to carry out or supply additional Goods and/or Services. No variation directed by the Principal will invalidate the Contract.
- A.16.3 Within 5 Business Days of receiving a direction under Clause A.16.2, and before carrying out the variation, the Contractor must provide to the Principal a detailed quotation for the variation supported by measurements or other evidence of cost. If the Principal and the Contractor fail to agree upon the value of a variation, the value of the variation will be a reasonable amount as determined by the Principal's Nominated Representative.
- A.16.4 If the Contractor is of the opinion that any direction or instruction is a variation even though it was not expressed as such, the Contractor must Notify the Principal within 3 Business Days of receipt of the direction or instruction and before giving effect to the direction or instruction. If the Contractor fails to Notify the Principal in accordance with this clause, the Contractor will not be entitled to make any Claim with respect to the instruction or direction.
- A.16.5 Except as provided in this Clause A.16, the Contractor has no Claim against the Principal arising out of or in connection with any variation directed by the Principal.
- A.17 LIQUIDATED DAMAGES**
- A.17.1 Clauses A.17.1 to A.17.3 (inclusive) will only apply if:

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- (a) the Quotation Form sets out one or more Completion Dates; and
(b) the Quotation Form specifies a rate for liquidated damages.
- A.17.2 If the Contractor fails to achieve Completion by the Completion Date, the Contractor will be liable to the Principal for liquidated damages at the rate stated in the Quotation Form (if any), for every day after the Completion Date up to and including the date that Completion is achieved by the Contractor (as determined by the Principal's Nominated Representative acting reasonably) or the date that the Contract is terminated pursuant to Clause A.20, whichever is sooner.
- A.17.3 The Principal and the Contractor agree that all liquidated damages which may be payable by the Contractor to the Principal pursuant to this Clause A.17:
- (a) are a genuine pre-estimate of the damages likely to be suffered by the Principal if the Contractor does not achieve Completion by the Completion Date;
(b) do not limit the Principal's other rights under the Contract or at law for any other breach of the Contract; and
(c) do not relieve the Contractor from any of its obligations or liabilities under the Contract, including its obligations to achieve Completion.
- A.17.4 If the Quotation Form does not provide for any liquidated damages, or the liquidated damages are for any reason found to be void or unenforceable, the Contractor indemnifies the Principal for damages at common law for the Contractor's failure to achieve Completion by the Completion Date.
- A.17.5 Except to the extent that the Contract otherwise expressly provides, the Contractor will not be entitled to any additional payment or to any Claim as a result of the granting of an extension of time or a Qualifying Cause.
- A.18 DEFECTS**
- A.18.1 The Contractor must, at its cost, rectify any Defect during the carrying out of the Supply or the Defects Liability Period (if applicable). The Contractor is responsible for all work and liable for all costs associated with the rectification of the Defect.
- A.18.2 Without limiting Clause A.18.1, where the Principal becomes aware of any Defect during the carrying out of the Supply or during the Defects Liability Period (if applicable), it may direct the Contractor by Notice to, at its own cost and risk, rectify the Defect (by any one or more of repair, replacement or re-performance as determined by the Principal).
- A.18.3 If any Defect is not rectified within 5 Business Days of a direction by the Principal under Clause A.18.2, the Principal may itself or by others, rectify the Defect and the cost of remedying the Defect will become a debt due and payable to the Principal from the Contractor.
- A.18.4 Instead of exercising its rights under Clause A.18.1 to A.18.3, but without limiting the Principal's other rights, if before Completion or the expiry of the Contract Term (as the case may be), or otherwise during the Defects Liability Period, the Principal discovers any Defects in any Goods, the Principal may:
- (a) Notify the Contractor that the Principal rejects the Defective Goods, in which case the Contractor must, at its cost and risk, collect the Defective Goods within 5 Business Days of the Principal's Notice; or
(b) if the Contractor fails to collect the Defective Goods in accordance with preceding sub-clause, return the Goods to the Contractor at the Contractor's cost and risk,
and the Principal may recover from the Contractor all expenses incurred by the Principal arising from the return of the Defective Goods as a debt due and payable by the Contractor to the Principal.
- A.18.5 Any repairs or replacement Goods provided by the Contractor will be subject to the same warranties as the original Goods, from the date of repair or replacement and the Defects Liability Period will recommence from the date of repair or replacement.
- A.18.6 The Contractor is not relieved from any of its obligations under the Contract as a result of the Principal exercising its rights under Clause A.18.
- A.19 SUSPENSION**
- A.19.1 The Principal may, at any time and for any reason, direct the Contractor to suspend the Supply or any part thereof by Notice to the Contractor and the Contractor must immediately comply.
- A.19.2 The Contractor has no Claim arising out of a suspension (including for loss of profits) other than an extension of time under Clause A.15, except that the Contractor will have no entitlement to an extension of time if the suspension was caused or contributed to by the Contractor or its Personnel.
- A.19.3 The Principal may at any time direct the Contractor to resume the Supply or any part thereof by Notice to the Contractor and the Contractor must promptly comply with such a direction at its cost.
- A.20 DEFAULT AND TERMINATION**
Termination without cause
- A.20.1 The Principal may, at any time, terminate the Contract for any reason in its absolute discretion by giving 5 Business Days Notice to the Contractor.
- A.20.2 If the Principal exercises its rights under Clause A.20.1, the Principal will pay in accordance with the Contract to the Contractor for the work completed up to the date of termination in accordance with the Contract:
- (a) any part of the Supply properly carried out and completed in accordance with the Contract up to the date of termination (on the basis of a prorata of the Price as determined by the Principal's Nominated Representative (acting reasonably)); and
(b) direct, necessary and reasonably incurred actual costs and expenses caused by the termination.
- A.20.3 The Contractor will have no other Claim as a consequence of the termination, including for loss of profit, revenue, goodwill or business opportunities, damage to reputation or for any indirect or consequential loss or for any other reason in relation to termination.
- Immediate termination**
- A.20.4 The Principal may, without limiting its rights at law, immediately terminate the Contract by Notice to the Contractor if the Contractor:
- (a) breaches any part of Clause A.12 or Clause A.22;
(b) is subject to an Insolvency Event;
(c) breaches any applicable Legislative Requirements;
(d) is unable to carry out any part of the Supply which requires a licence under a Legislative Requirement because it has failed, refused or been unable to obtain a licence of the appropriate class under the Legislative Requirement, or its licence has been cancelled or suspended;
(e) fails to comply with a written Notice from the Principal or the Principal's Nominated Representative, or any other direction properly given, within the timeframe required by the Principal or the Principal's Nominated Representative;
(f) breaches a term of the Contract and that breach cannot be remedied; or
(g) breaches any term of the Contract and fails to remedy that breach within 5 Business Days of being directed by written Notice to do so by the Principal or the Principal's Nominated Representative.
- A.20.5 If the Principal exercises its rights under Clause A.20.4, the Principal will not be liable to make any further payment to the Contractor for the Supply.
- Rights on termination**
- A.20.6 Upon termination of the Contract, the Contractor must immediately, or on such later date as specified in the Notice of termination:
- (a) cease carrying out the Supply;
(b) terminate any outstanding subcontracts and recover from the subcontractor any property, documentation, material or information of the Principal;
(c) remove any rubbish or debris and leave the whole of the Site in a clean and safe condition; and
(d) deliver to the Principal the parts of the Supply executed by the Contractor up to the date of termination.
- A.20.7 Termination of the Contract will not affect or prejudice any rights or liabilities of the parties that accrued prior to termination.
- A.21 RISK AND INDEMNITY**
- A.21.1 The Contractor releases, discharges and indemnifies the Principal and its Personnel (**Indemnified Persons**) from and against all Claims, expenses, losses and damages incurred in connection with:
- (a) any negligent or unlawful act or omission by the Contractor or its Personnel;
(b) any breach of the Contract by the Contractor;
(c) any loss of or damage to real or personal property caused by the Contractor or its Personnel;
(d) personal injury or death caused by the Contractor or its Personnel;
(e) a breach of any Legislative Requirement; or
(f) the infringement of the Intellectual Property Rights of any third party,
except to the extent caused by the negligent or unlawful act or omission of the Indemnified Persons.
- A.21.2 The indemnities in the Contract are continuing obligations, independent from the other obligations of the parties under the Contract. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under the Contract. A party must pay on demand any amount it must pay under an indemnity in the Contract.
- A.22 INSURANCE**
- A.22.1 Before commencing any of the Supply, the Contractor must, at its cost, take out and maintain the following insurances from the Commencement Date until the expiry of the Defects Liability Period, or if no Defects Liability Period applies to the Contract, until the Completion Date or the expiry of the Contract Term (as the case may be):
- (a) public liability insurance for the amount specified in the Quotation Form;
(b) workers' compensation insurance (Workcover) as required by law;

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- (c) insurance of any plant and equipment used to carry out the Supply for an amount at least equivalent to the replacement value of the plant and equipment;
 - (d) Professional indemnity insurance for the amount specified in the Quotation Form for each and every claim, which must be maintained from the Commencement Date to six years after the latter of Completion or the expiry of the Contract Term (as the case may be) or termination of the Contract, unless otherwise specified in the Quotation Form;
 - (e) third party comprehensive motor vehicle insurance; and
 - (f) any other insurance specified, and for the amounts specified, in the Quotation Form.
- A.22.2 The insurances required under Clause A.22.1 must be effected and maintained with an insurer that is authorised and licensed to operate in Australia and otherwise on terms and conditions that a prudent and competent contractor would insure with and obtain, as the case may be (taking into account the methods of carrying out the Supply and the Contractor's obligations and liabilities under or arising out of the Contract).
- A.22.3 The Contractor must provide a certificate of currency for each insurance policy required under Clause A.22.1 prior to commencing any part of the Supply and at any time upon request by the Principal.
- A.22.4 If any insurance policy required by Clause A.22.1 is materially modified or cancelled, the Contractor must immediately Notify the Principal.
- A.22.5 The Contractor must pay any excesses for claims made under any policy of insurance effected by the Principal or the Contractor, which relate to the Contractor or the Supply.
- A.23 CONFIDENTIALITY**
- A.23.1 The Contractor must not:
- (a) disclose to any person; or
 - (b) use for any purpose other than carrying out the Supply, the contents of the Contract and any other document or information obtained by the Contractor in the course of or in connection with carrying out the Supply (including any business related information, data or application systems, code and documentation) (**Confidential Information**):
 - (c) without the prior written consent of the Principal; or
 - (d) unless required by law.
- A.23.2 The Contractor must immediately Notify the Principal if the Contractor becomes aware of any unauthorised disclosure or use of the Confidential Information.
- A.23.3 The Contractor must return any Confidential Information (including copies) on the written request of the Principal.
- A.24 PRIVACY**
- A.24.1 If the Contractor collects or has access to Personal Information (as defined in the *Information Privacy Act 2009* (Qld) (**IPA**)) in order to carry out the Supply, the Contractor must:
- (a) if the Principal is an 'agency' within the meaning of the IPA, comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Contractor was the Principal;
 - (b) not use Personal Information other than in connection with carrying out the Supply, unless required or authorised by law;
 - (c) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law;
 - (d) ensure that its Personnel do not access, use or disclose Personal Information other than in connection with carrying out the Supply;
 - (e) ensure that its Personnel who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this Clause A.24;
 - (f) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints; and
 - (g) comply with such other privacy and security measures as the Principal may reasonably require from time to time.
- A.24.2 On request by the Principal, the Contractor must obtain from its Personnel carrying out the Supply, an executed deed of privacy in a form acceptable to the Principal.
- A.24.3 In relation to any Personal Information (as defined in the *Privacy Act 1988* (Cth) (**Privacy Act**)) provided or to be provided by the Contractor in connection with the Supply (whether as part of its offer or otherwise), the Contractor warrants to the Principal:
- (a) the Contractor has obtained and will obtain the consent of each individual about whom any Sensitive Information (as defined in the *Privacy Act*) is provided; and
 - (b) the Contractor has or will within the time required by the *Privacy Act* ensure that each individual about whom any Personal Information is provided has received or will receive a written statement setting out all of the matters required by National Privacy Principle 1.3:
- (i) in relation to disclosure of Personal Information to the Principal, the Principal's Nominated Representative and any consultant of the Principal requiring the information for the purposes set out in Clause A.24.3(b)(ii); and
 - (ii) disclosing that the entities referred to in Clause A.24.3(b)(i) will use the Personal Information for the purposes of reviewing and assessing matters relevant to the work under the Contract from time to time.
- A.24.4 The Contractor will comply with the provisions of the Privacy Act in relation to any Personal Information provided to the Contractor by the Principal, the Principal's Nominated Representative and any consultant of the Principal.
- A.24.5 The Contractor must immediately Notify the Principal on becoming aware of any breach of this Clause A.24.
- A.25 ASSIGNMENT AND SUBCONTRACTING**
- A.25.1 The Contractor must not subcontract any part of the Supply or assign the Contract, or any part thereof, or any right, benefit or interest under the Contract without the prior written approval of the Principal.
- A.25.2 The Contractor must, with a request for approval to subcontract under Clause A.25.1, Notify the Principal of the work to be subcontracted, the name and address of the proposed subcontractor (including details confirming compliance with Clause A.5.2) and the value of the proposed subcontract.
- A.25.3 The Principal may, in its absolute discretion and without giving reasons, reject any requests for approval to subcontract under Clause A.25.1 or impose conditions on any approval given. No approval given by the Principal under Clause A.25.1 (or failure to do so) will relieve the Contractor of its obligations under the Contract and the Contractor will be vicariously liable to the Principal for the acts, defaults and omissions of subcontractors, and employees and agents of subcontractors, as if they were those of the Contractor.
- A.25.4 The Principal may assign or novate the Contract, or assign a right, benefit or interest under the Contract, by Notice to the Contractor. The Contractor must execute any document reasonably required by the Principal to affect its rights under this clause.
- A.26 INTELLECTUAL PROPERTY RIGHTS**
- A.26.1 The Contractor grants the Principal an irrevocable, royalty free, fully assignable licence, including a right to sublicense, to use the Intellectual Property Rights in any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material provided to the Principal in connection with the Contract for any purpose associated with the Supply.
- A.26.2 The Contractor warrants to the Principal that the carrying out of the Supply, and any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material provided to the Principal in connection with the Contract, will not infringe the Intellectual Property Rights of any third party.
- A.27 PERSONAL PROPERTY SECURITIES ACT**
- A.27.1 If the Principal determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed, and supplying information) as the Principal may reasonably require for the purposes of:
- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
 - (b) enabling the Principal to apply for, and obtain, any registration or providing any notification in accordance with the *Personal Property Securities Act 2009* (Cth) (**PPSA**); or
 - (c) enabling the Principal to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- A.27.2 The Contractor waives each right to receive any Notice from the Principal under the PPSA (including notice of a verification statement) that can be waived.
- A.27.3 Except as expressly agreed in writing to the contrary, the Contractor:
- (a) acknowledges that neither the Contract nor a transaction in connection with it is intended to provide a Security Interest in favour of the Contractor; and
 - (b) agrees that it will not register or otherwise perfect (or seek to perfect) any Security Interest, and will remove any registration in respect of the Contract or a transaction in connection with it.
- A.27.4 The Contractor must:
- (a) promptly Notify the Principal if it knows or becomes aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has or claims a Security Interest a product of the Supply:
 - (i) owned by the Principal;
 - (ii) supplied or to be supplied by the Contractor to the Principal; or
 - (iii) in which the Principal has an interest;
 - (b) give the Principal any information reasonably required by the Principal in relation to any such Security Interest or claim; and

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- (c) on request by the Principal, use best endeavours to ensure that the third party:
- (i) discharges any such Security Interest, and does not register or otherwise perfect (or seek to perfect), and removes any registration, in respect of any such Security Interest; or
 - (ii) subordinates any such Security Interest to the interest of the Principal, by an agreement in form and substance satisfactory to the Principal.
- A.27.5 Without limiting Clauses A.27.3 and A.27.4, at any time when title to or ownership of any product of the Supply, is passed to the Principal, the Contractor must ensure that title or ownership is passed free of any Security Interest of the Contractor or any other person.
- A.27.6 The Contractor must ensure that each subcontract has, for the benefit of the Principal, a clause that reflects this Clause A.27.
- A.27.7 Without limiting Clause A.23, neither the Principal 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.
- A.28 DISPUTES**
- A.28.1 If any dispute between the parties arises from or in connection with the Contract (whether before or after termination of the Contract) (**Dispute**), the parties agree to resolve it in the manner set out in this Clause A.28, and a party may not commence court proceedings concerning the Dispute unless the party has complied with this Clause A.28 or the party seeks urgent injunctive or declaratory relief.
- A.28.2 A party claiming that a Dispute has arisen must Notify the other party of the Dispute and specify the nature of the claim (**Dispute Notice**).
- A.28.3 A party served with a Notice of Dispute may give a written response to the Notice of Dispute to the other party within 28 days of the receipt of the Notice.
- A.28.4 Within 42 days of service of a Notice of Dispute, or within 14 days of the receipt a written response to the Notice of Dispute, whichever is the earlier, the Principal and the Contractor must confer at least once to attempt to resolve the Dispute. At any such conference, each party must be represented by a person having authority to agree to a resolution of the Dispute.
- A.28.5 If the Dispute is not resolved under Clause A.28.4 within 56 days after the date of the Dispute Notice, then either party may refer the Dispute to mediation in accordance with, and subject to, the Resolution Institute's Mediation Rules. The parties must agree on the identity of the mediator, failing which, a mediator must be appointed by the Chairman of the Queensland Chapter of the Resolution Institute. The place of mediation will be the Gold Coast. Each party will bear its own costs and share equally the costs of the mediator or the process of mediation.
- A.28.6 If the Dispute is not resolved under Clause A.28.5 within 30 days of the appointment of a mediator, or the parties do not submit the Dispute to mediation within 70 days after the date of the Dispute Notice, either party may commence litigation.
- A.28.7 Each party must continue to perform its obligations under the Contract despite the existence of a Dispute.
- A.29 PAYMENT**
- A.29.1 The Contractor must submit in hardcopy to the Principal's Nominated Representative and electronically to the Principal at the email address nominated in the Quotation Form, on the Payment Claim Date, its claims for payment (**Payment Claim**) for the Supply properly performed since the last Payment Claim Date less any amounts to which the Principal may deduct, withhold or set-off and less any amounts not due and payable under the Contract, which must include:
- (a) the calculations substantiating the amount which it claims; and
 - (b) any other information which the Principal and the Principal's Nominated Representative may reasonably require.
- A.29.2 The Principal's Nominated Representative will assess the Payment Claim and issue the Contractor a payment schedule stating the amount of the Payment Claim which in the opinion of the Principal's Nominated Representative (having regard to Clauses A.29.7, A.29.8 and A.29.9), is payable by the Principal (**Payment Schedule**) within 10 Business Days of the receipt of a Payment Claim. The Payment Schedule must also state:
- (a) the Payment Claim to which the Payment Schedule applies; and
 - (b) if the amount in the Payment Schedule is less than that in the Payment Claim, the reasons why.
- A.29.3 At any time up to the expiry of the Defects Liability Period, the Principal's Nominated Representative may, by the issue of a Payment Schedule, correct an error in an earlier Payment Schedule or previous payment.
- A.29.4 Subject to Clauses A.29.7, A.29.8 and A.29.9, the Principal will pay the Contractor, or the Contractor will pay to the Principal, as the case may be, the amount of the Payment Schedule within 5 Business Days of the date of the Payment Schedule. Any payment by the Principal is on account only, and is not evidence of any part of the Supply having been carried out in accordance with the requirements of the Contract.
- A.29.5 The Principal will issue tax invoices and adjustment notes in respect of the Supply carried out by the Contractor under or in association with the Contract, and the Contractor will not issue tax invoices in respect of the Supply.
- A.29.6 The Contractor must Notify the Principal immediately if it becomes aware of an adjustment event occurring.
- A.29.7 The Contractor will not be entitled to claim payment for:
- (a) Goods which have not been Delivered to the Site in accordance with the Contract, unless the parties otherwise agree in writing; and
 - (b) any part of the Supply that is Defective.
- A.29.8 Without limiting the Principal's other rights, a Payment Claim Date will not occur unless the Contractor has:
- (a) returned a signed copy of the Quotation Form;
 - (b) fully complied with its obligations to provide security (if any) under Clause A.7;
 - (c) provided certificates of currency in accordance with Clause A.22.3; and
 - (d) provided the Principal with a statutory declaration (in a form required by the Principal), 1 Business Day prior to the submission of the Payment Claim, which states that no wages or other monies are due and owing by the Contractor to its Personnel up to and including the date of the statutory declaration and which is not misleading or deceptive in any way.
- A.29.9 The Principal may set off against and deduct from any monies due to the Contractor, any debt, costs, damages, loss or expense due to or claimed by the Principal from the Contractor arising from or in connection with the Contract or the Supply. If no monies are due to the Contractor, or if the monies due to the Contractor are insufficient to discharge the debt, costs, damages, loss, expense or Claim, the Principal may have recourse to the security.
- A.30 GST**
- A.30.1 In this Clause A.30, the terms 'GST', 'Recipient', 'Supplier', 'Supply' and 'Taxable Supply' have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- A.30.2 The consideration for a Supply made under or in connection with the Contract includes GST (including the Price).
- A.30.3 If the Quotation Form has been completed to confirm that this Clause A.30.3 applies, the parties agree that for a Taxable Supply made by the Contractor as Supplier under the Contract, the Recipient will issue a Recipient Created Tax Invoice.
- A.30.4 If the Quotation Form has been completed to confirm that Clause A.30.3 applies, the Contractor and the Recipient confirm that:
- (a) both parties are registered for GST;
 - (b) if either party deregisters for GST, they will Notify the other party immediately;
 - (c) the Recipient will issue a Recipient Created Tax Invoice in respect of the Supply made by the Contractor; and
 - (d) the Contractor will not issue a Tax Invoice in respect of the Supply made by the Contractor.
- A.30.5 If the Quotation Form has been completed to confirm that Clause A.30.3 applies, the Recipient agrees to comply with the applicable requirements imposed by the Australian Taxation Office for it to be able to issue a Recipient Created Tax Invoice for that Supply.
- A.30.6 If a Supply made under or in connection with the Contract is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- (a) the Recipient must pay the Contractor an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under the Contract for that Supply; and
 - (b) if:
 - (i) the Quotation Form has been completed to confirm that Clause A.30.3 applies, the Recipient must give the Contractor a Recipient Created Tax Invoice; or
 - (ii) otherwise, the Contractor must give the Recipient a Tax Invoice for the Supply.
- A.30.7 For clarity, the GST payable under Clause A.30.6 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- A.30.8 Where a Tax Invoice is given by the Contractor, the Contractor warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- A.30.9 Where a Supply is made under or in connection with the Contract is a Progressive or Periodic Supply, Clause A.30.6 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.
- A.30.10 If a Supply made under or in connection with the Contract 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.

Conditions of Contract for Minor Goods and/or Services

- A.30.11 Each party warrants that it was registered for GST when it entered into the Contract and agrees to Notify the other party immediately if it becomes aware of it ceasing to be registered for GST.
- A.30.12 Where the Principal is obliged under any Legislative Requirements to withhold any amount on account of tax or other imposts from any amount payable to the Contractor under or in connection with the Contract unless certain conditions are satisfied, the Principal may withhold the amount required to be withheld under the Legislative Requirement until the Principal is satisfied in its reasonable opinion that all the relevant conditions have been satisfied.
- A.30.13 The parties agree to exchange with each other such information as may be necessary to enable each party to accurately assess its rights and obligations under this Clause A.30.

A.31 MILESTONES

- A.31.1 Clause A.31 will only apply if the Quotation Form has been completed to confirm that Clause A.31 applies.
- A.31.2 The parties agree that:
- (a) the Price includes all of the Milestone Amounts;
 - (b) the Milestone Amount is the only amount able to be claimed by the Contractor in respect of the Supply and the Supply comprising the relevant Milestone;
 - (c) the Milestone Amounts are only payable in accordance with this Clause A.31;
 - (d) despite anything in the Contract to the contrary:
 - (i) each Milestone has only two milestone payments (each being a 'Milestone Payment Amount') that, together, total to the Milestone Amounts:
 - (A) the first Milestone Payment Amount equals 80% of the relevant Milestone Amount; and
 - (B) the second Milestone Payment Amount equals 20% of the relevant Milestone Amount;
 - (ii) to the extent that a variation directly affects the Supply comprising a Milestone, the Principal's Nominated Representative must adjust the Milestone Amount by the amount priced for the variation and payable in accordance with the Contract but only to reflect the extent that the variation directly affects the Milestone;
 - (iii) the Contractor must separately itemise in a Payment Claim each Milestone and the amount claimed in respect of such Milestone; and
 - (iv) except to the extent expressly provided for in paragraphs (e) and (f) below, achieving Milestone Completion for a Milestone is a condition precedent to the Contractor's entitlement to submit a claim for payment, and to be paid, for the Supply comprising the relevant Milestone;
 - (e) if the Contractor notifies the Principal's Nominated Representative in writing that it has completed no less than 80% of the Supply comprising a Milestone and the Principal's Nominated Representative, in its sole and unfettered discretion, accepts in writing that the Contractor has achieved that level of completion for the Milestone (Milestone Partial Acceptance Notice), then the Contractor is entitled to deliver a Payment Claim in accordance with Clause A.29 claiming the payment of the first Milestone Payment Amount for the relevant Milestone; and
 - (f) if the Contractor notifies the Principal's Nominated Representative in writing that it has achieved Milestone Completion of a Milestone and the Principal's Nominated Representative, in its sole and unfettered discretion, accepts in writing that the Contractor has achieved Milestone Completion for a Milestone (Milestone Completion Acceptance Notice), the Contractor is entitled to deliver a Payment Claim in accordance with Clause A.29 claiming payment of the second Milestone Payment Amount for the relevant Milestone.

A.32 QUALITY ASSURANCE

- A.32.1 The Contractor must:
- (a) implement and carry out the Supply in accordance with the Quality Assurance System; and
 - (b) allow the Principal and its nominees access to the Contractor's Quality Assurance System at all reasonable times for the purposes of quality monitoring and auditing.
- A.32.2 The Contractor's implementation of, or compliance with, the Quality Assurance System does not relieve the Contractor of its obligations under the Contract.

A.33 RECORDS

- A.33.1 The Contractor must keep and maintain, and ensure that its subcontractors keep and maintain, accurate accounts, records and information (including information stored by or accessible by computer or other electronic means or technology) relating to the Supply.
- A.33.2 At all reasonable times, the Principal (by itself or by its agents) will have the right to inspect and review the carrying out of the Supply and the accounts, records and information created by the Contractor in carrying out the Supply, and on request by the Principal, the Principal may itself

(or may require the Contractor to) take or arrange for copies of any such accounts, records and information.

A.34 GENERAL

- A.34.1 The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- A.34.2 The Contract may only be amended by written agreement between all parties.
- A.34.3 The Contract (including the Quotation Form) may be executed in any number of counterparts. All counterparts together make one instrument.
- A.34.4 The Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in the Contract.
- A.34.5 Each party must do all things reasonably necessary to give effect to the Contract and the transactions contemplated by it.
- A.34.6 A right under the Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- A.34.7 A clause or part of a clause of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining clauses or parts of the clause of the Contract continue in force.
- A.34.8 If the Contractor comprises two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons), the obligations and liabilities of those persons is joint and several, and any rights of those persons can only be exercised jointly.
- A.34.9 Clauses A.21, A.23, A.24, A.26, A.27 (and any other clauses which by their nature are capable of surviving) survive the expiration or termination of the Contract.
- A.35 NOTICE**
- A.35.1 A Notice under the Contract is only effective if it is:
- (a) in writing, signed by or on behalf of the person giving it;
 - (b) addressed to the person to whom it is to be given; and
 - (c) given by hand to that person's address, sent by registered mail to that person's address or sent by email to that person's email address.
- A.35.2 A Notice delivered under Clause A.35.1 is given and received:
- (a) if it is hand delivered or sent by email by 5.00pm (local time in the place of receipt) on a Business Day, on that day;
 - (b) if it is hand delivered or sent by email after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day, on the next Business Day; and
 - (c) if it is sent by post, 5 Business Days after posting.
- A.35.3 A party's address and email address are those set out in the Quotation Form, or as one party may Notify the other of a change of such address or email address.