

STANDARD TERMS AND CONDITIONS
SERVICES

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1. DEFINITIONS

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

(a) **Affected Party** has the meaning given in clause 27.1;

(b) **Applicable Standards** means the standards, plans, requirements, codes, guidelines, policies, standard drawings or standard specifications included or incorporated by reference into the Contract, or, if none is included or incorporated, any Australian standards applicable to the Services, as current at the Time for Commencement;

(c) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;

(d) **Authority** means a local government, the State of Queensland, the Commonwealth or any other Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality (including a stock exchange) having jurisdiction over the Contract or the obligations to be performed under the Contract;

(e) **Background IP** of a Party means all Intellectual Property Rights which are:

(i) made available by a Party for the purpose of the provision of the Services; and

(ii) in existence at the date of the Contract or brought into existence after the date of the Contract other than in connection with the Contract;

(f) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made in connection with the Contract;

(g) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law (including without limitation any claim by the Supplier for an extension of time, Variation or other adjustment to the Price);

(h) **Completion** means that stage in the performance of the Supplier's obligations under the Contract at which:

(i) each and every part of the Services has been carried out and completed in accordance with the Contract, except for minor omissions which do not reasonably affect the benefit to the Principal of the Services or prevent the Principal from using the Supplier Documents for the purpose or purposes stated in or to be reasonably inferred from the Contract;

(ii) all Supplier Documents have been updated and provided to the Principal in accordance with the Contract;

(iii) other obligations of the Supplier which are stated in the Contract to be a requirement of Completion, or which are otherwise required to be undertaken prior to Completion have been completed;

(i) **Confidential Information** means the Contract and all documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a Party in connection with the Contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public domain other than through a breach of clause 23;

(j) **Conflict of Interest** means any actual, potential or perceived conflict between the interests of the Supplier and the Supplier's obligations under the Contract;

(k) **Contract** means the contract between the Principal and Supplier comprising the documents described in clause 2.1;

(l) **Data Breach** means either of the following in relation to information Held by the Supplier or the Supplier's Personnel in connection with the Contract:

(i) unauthorised access to, or unauthorised disclosure of, the information;

(ii) the loss of the information in circumstances where unauthorised access to, or unauthorised disclosure of, the information is likely to occur;

(m) **Discloser and Disclosee** have the meanings given in clause 1.1(i);

(n) **Exceptional Circumstances** means disclosure:

(i) for the purpose of complying with the Disclosee's obligations or exercising the Disclosee's rights in connection with the Contract;

(ii) with the Discloser's prior consent;

(iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to whom it is necessary to disclose the information;

(iv) to the extent necessary to comply with the Disclosee's reasonable corporate governance or insurance requirements;

(v) to any of its Personnel who are bound to keep the information confidential and to whom it is necessary to disclose the information;

(vi) to comply with the law or a requirement of an Authority;

(vii) to the extent necessary to enforce its rights or defend a Claim in connection with the Contract;

(viii) by the Principal for the purposes of enabling the Principal to properly discharge its functions as a local government authority; and

(ix) to the extent otherwise expressly permitted by the Contract;

(o) **Force Majeure** means:

(i) an act of God, earthquake, lightning, cyclone, tsunami, flooding, fire emanating from outside the Site, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;

(ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;

(iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;

(iv) embargo;

(v) illness declared by the World Health Organisation to be a pandemic;

(vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the Supplier or otherwise caused by or contributed to by the Supplier

and which affects an essential portion of the Supplier's obligations under the Contract;

which:

(A) is beyond the immediate or reasonable control of the Affected Party;

(B) is not directly or indirectly caused or contributed to by the Affected Party or the Affected Party's Personnel; and

(C) cannot reasonably be avoided, remedied or overcome by the Affected Party by a standard of care and diligence expected of a prudent and competent local government or supplier (as the case may be) or the expenditure of a reasonable sum of money;

(p) **General Conditions** means these standard terms and conditions;

(q) **Good Industry Practice** means:

(i) the standard of skill, care and diligence; and

(ii) practices, methods, techniques and acts,

of a skilled and competent supplier engaged in the business of providing services similar to the Services;

(r) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;

(s) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings;

(t) **Hold** and **Held** have the meaning given to those terms in the *Information Privacy Act 2009* (Qld);

(u) **Improper Conduct** means:

(i) engaging in misleading or deceptive conduct in relation to the Procurement Process or the Contract;

(ii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the Procurement Process;

(iii) failing to disclose a Conflict of Interest in breach of clause 5.3;

(iv) attempting to improperly influence any Personnel of the Principal, or violate any applicable law regarding the offering of inducements in connection with the Procurement Process or the Contract;

(v) accepting or inviting improper assistance of employees or former employees of the Principal in preparing its tender or any Claim against the Principal in connection with the Contract;

(vi) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract;

(vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or

(viii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).

(v) **Insolvency Event** in respect of a Party, means the Party:

(i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or

(ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or

(iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;

(w) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, project management, industrial, scientific, literary or artistic fields, whether foreign or domestic and includes Moral Rights;

(x) **Key Personnel** means the Personnel (if any) nominated as key personnel in the SEO;

(y) **Liability Limit** means:

(i) in respect of the Principal, the sum of:

(A) the amount stated in the SEO or if no such amount is stated, an amount equal to the Price paid to the Supplier under the Contract in the 12 months preceding the relevant Claim; and

(B) the amount of any excess payable under a policy of insurance required to be effected and maintained by the Principal under the Contract;

(ii) in respect of the Supplier, the sum of:

(A) the amount stated in the SEO; and

(B) the amount of any excess payable under a policy of insurance required to be effected and maintained by the Supplier under the Contract,

but if no amount is stated in the SEO as the Supplier's liability limit, then the Supplier's liability is not limited;

(z) **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);

(aa) **Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth);

(bb) **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);

(cc) **National Police Certificate** means a hard copy or digital national police certificate issued by the Queensland Police Service;

(dd) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;

(ee) **Party or Parties** means one or both of the Principal and the Supplier as the context requires;

(ff) **Payment Period** means:

(i) if the Contract is a 'building contract' as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), the period ending 15 Business Days after receipt by the Principal of the claim;

(ii) otherwise, the period ending 25 Business Days after receipt by the Principal of the claim.

(gg) **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld);

(hh) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, suppliers, contractors and subcontractors of a Party and any other person or entity for whom that Party is vicariously liable but in respect of the Principal, does not include the Supplier;

(ii) **Price** means the amount payable for the provision of Services as determined in accordance with the Contract;

(jj) **Principal** means [COUNCIL NAME];

(kk) **Principal's Representative** means the person identified as such in the SEO or otherwise notified to the Supplier pursuant to clause 6.1 and includes, except where the context requires otherwise, a person authorised as a delegate of the Principal's Representative pursuant to clause 6.3;

(ll) **Privacy Complaint** has the meaning given to that term in the *Information Privacy Act 2009* (Qld);

(mm) **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;

(nn) **Project IP** means the Intellectual Property Rights in the Supplier Documents and all other materials, documents or data created in the performance of the Supplier's obligations under the Contract;

(oo) **Qualifying Cause of Delay** means:

(i) an act or omission of the Principal or the Principal's Personnel;

(ii) Force Majeure; or

(iii) any other cause of delay identified elsewhere in the Contract as entitling the Supplier to an extension of the Time for Completion;

(pp) **Regulator** has the meaning given in the WHS Act and WHS Regulation;

(qq) **Scope** means the documents describing the Principal's requirements for the Services which are provided with or as part of, or are identified in, the SEO;

(rr) **SEO (from 'Supplier Engagement Order')** means, unless the Parties expressly agree otherwise:

(i) where a written request or order for Services is issued by the Principal, the written document(s) issued by the Principal to the Supplier which:

(A) detail the Principal's requirements for the provision of Services by the Supplier; and

(B) either request the Supplier to provide, or accept the Supplier's offer to provide, those Services to the Principal,

including all documents attached to or incorporated by reference into those written documents and which may include a request for quotation, quotation, scope, specifications, drawings, product description, price list or other documents; and

(ii) where an oral request or order for Services is made by the Principal, means the information provided by the Principal orally, and the information contained in any documents to which the Supplier's attention is directed by the Principal;

(iii) where a request, whether oral or written, is made pursuant to a register of pre-qualified suppliers or preferred supplier arrangement established under the *Local Government Regulation 2012* (Qld), the documents detailing:

(A) the Supplier's rates and prices for the provision of the Services; and

(B) the Principal's requirements for the provision of the Services,

which the Parties have agreed apply to that register of pre-qualified suppliers or preferred supplier arrangement, as amended or replaced by written agreement between the Parties from time to time; and

(ss) **Services** means the services to be provided by the Supplier as described in the SEO (including the provision of Supplier Documents) and any services not specifically mentioned in the SEO but that are obviously and indispensably necessary for the performance of the services that are mentioned;

(tt) **Site** means the site or sites made available by the Principal to the Supplier for the purpose of the Supplier carrying out its obligations under the Contract;

(uu) **Substantial Breach** includes:

(i) in respect of the Supplier:

(A) a material breach of the Contract including:

I a material breach of clause 8.1;

II the Supplier or any of the Supplier's Personnel engaging in:

(1) any Improper Conduct in connection with the Contract; or

(2) otherwise engaging in any Improper Conduct (whether or not in connection with the Contract) in a manner which, in the Principal's opinion, causes harm to the Principal's reputation;

III failing to make a payment to the Principal within 20 Business Days after the due date for the making of the payment in clause 15.6;

IV failing to effect and maintain the insurance policies required under clause 21;

V failing to comply with a direction given or purportedly given under clause 25;

VI a warranty given or representation made in or pursuant to this Contract is found to be incorrect, false or misleading in any material respect;

VII a material breach of a law in connection with the Contract;

(B) a material departure from any program or schedule included in the Contract without reasonable cause or the Principal's approval or, where there is no program, failing to proceed with due expedition and without delay;

(C) suspending performance of its obligations under the Contract without the prior written consent of the Principal;

(D) the consistent or repeated breach of the Contract by the Supplier, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the Supplier;

(E) anything else which the Contract elsewhere provides is a substantial breach of the Contract;

(ii) in respect of the Principal:

(A) failing to make payment to the Supplier within 20 Business Days after the due date for the making of the payment in clause 15.6 or 15.7 as the case may be; or

(B) otherwise committing a material breach of the Contract; and

(C) anything else which the Contract elsewhere provides is a substantial breach of the Contract;

(vv) **Supplier** means the person or entity to whom the SEO is issued;

(ww) **Supplier Documents** means those records, reports, designs, specifications, certificates, plans and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Supplier (including any WHS documentation and management plans required by the Contract) and all information advice, procedures, undertakings designs, calculations and recommendations in those documents;

(xx) **Supplier's Representative** means the person identified as the Supplier's representative in the SEO or as otherwise approved by the Principal pursuant to clause 7.2;

(yy) **Time for Commencement** means the time stated in the SEO by which the Supplier is required to commence performing its obligations under the Contract (or where no time is stated, as reasonably directed by the Principal) as extended (if at all) by agreement between the Parties;

(zz) **Time for Completion** means the time (if any) stated in a SEO by which the Supplier is required to achieve Completion (or where no time is stated, as reasonably directed by the Principal) as extended (if at all) pursuant to the Contract;

(aaa) **Variation** means any material increase, decrease or change to the Services described in an SEO;

(bbb) **WHS** means work, health and safety;

(ccc) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;

(ddd) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;

(eee) **Wilful Misconduct** means an intentional act or omission by or on behalf of a Party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;

(fff) **Workplace** has the meaning given in the WHS Act and the WHS Regulation.

2. CONTRACT

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

(a) the SEO; and

(b) these General Conditions.

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

2.3 (**Order of precedence**) If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 2.1, then the documents will take precedence in the order set out in clause 2.1 with the document described in clause **Error! Reference source not found.** being the highest in the order.

2.4 (**Early Services**) Where any obligation described in the Contract has been carried out by the Principal or the Supplier prior to the date on which the Contract is executed, that obligation shall be taken to have been carried out pursuant to, and the carrying out of that obligation shall be governed by, the Contract as if the obligation had been carried out after the Contract was executed.

3. PERFORMANCE AND PAYMENT

3.1 (**Performance**) The Supplier must, at the Supplier's expense:

(a) provide the Services described in the SEO; and

(b) perform the Supplier's other obligations under the Contract,

in accordance with the Contract and all directions of the Principal issued pursuant to it.

3.2 (**Payment**) Subject to the Contract, the Principal must pay the Supplier the Price for Services provided in accordance with the Contract.

4. NO EXCLUSIVITY

4.1 The Supplier is not the exclusive supplier of the Services, or of services of the same or a similar type to the Services. The Principal may engage other suppliers to provide services of the same or a similar type to the Services.

5. RELATIONSHIP OF THE PARTIES

5.1 (**Relationship**) The Supplier is an independent contractor of the Principal. The Contract does not create any partnership, joint venture or employment relationship. The Supplier is solely responsible for payments required to be made to its Personnel for the performance of services in connection with the Contract and solely responsible for determining the manner in which it complies with its obligations under the Contract. The Supplier must provide such materials, equipment, knowledge and Personnel as the Supplier deems necessary to comply with its obligations and under the Contract.

5.2 (**Representations**) The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Principal. Except to the extent expressly contemplated in the Contract, the Supplier must not represent itself or allow anyone else to represent that the Supplier is an agent of the Principal.

5.3 (**Conflict of Interest**) The Supplier warrants and represents that as at the date of the Contract, the Supplier is not aware of any Conflict of Interest. The Supplier must not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which does, or is likely to, result in a Conflict of Interest during the Contract and must immediately notify the Principal in the event that a Conflict of Interest that has not previously been disclosed arises or is likely to arise.

6. PRINCIPAL'S REPRESENTATIVE

6.1 (**The Principal's Representative**) The Principal's Representative is appointed as the Principal's agent to exercise any of the Principal's rights or functions under the Contract. The Principal's Representative is not an independent certifier or valuer.

6.2 (**Rights and powers of the Principal's Representative**) The Principal's Representative may exercise any rights and powers granted to the Principal under this Contract. The Principal's Representative may give a direction in respect of any matter relating to this Contract, including the protection of people, property and the environment and the Supplier's performance of its obligations under the Contract.

6.3 (**Authorised delegates**) The Principal's Representative may, by giving written notice to the Supplier setting out the rights and powers which may be exercised, authorise another person to exercise all or some of the rights and powers under clause 6.2. Subject to clause 6.5, no other person is permitted to exercise any right or function of the Principal. The Supplier must notify the Principal immediately if it receives a purported direction in connection with the Contract from any other person. The Principal shall not be liable upon any Claim relating to a direction given to the Supplier by any other person.

6.4 (**Compliance**) The Supplier must, and must ensure that its Personnel, comply with all directions given by the Principal's Representative, within the time specified in the direction, or where no time is stated, as soon as is reasonably practicable.

6.5 (**Change**) The Principal may notify the Supplier of a change in the Principal's Representative at any time.

7. SUPPLIER'S REPRESENTATIVE

7.1 (**Supplier's Representative**) The Supplier's Representative is appointed by the Supplier to manage the Supplier's performance of the Contract. Matters which are in the knowledge of the Supplier's Representative are deemed to be within the knowledge of the Supplier.

7.2 (**Change**) The Supplier may seek the approval of the Principal to change the Supplier's Representative. The Supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal may refuse to approve a replacement person if the Principal reasonably believes that the person is inappropriate to take the role of Supplier's Representative or is of lesser skill, experience and competency to the person being replaced.

If the Principal reasonably objects to the nominated representative, the Supplier shall promptly nominate another representative.

8. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

8.1 (**Obligations, Warranties and Representations**) The Supplier:

(a) (**ability**) must ensure, and warrants and represents that the Supplier and, to the extent applicable to them, its Personnel:

(i) have the experience, skills, expertise, resources and judgement;

(ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

which are required for the Supplier to comply with its obligations under the Contract and will maintain such competencies, licences, accreditations, qualifications, permits, clearances or other authorisations at all times until the Supplier's obligations under the Contract are at an end;

(b) (**standard**) must, and to the extent applicable to them must ensure that its Personnel, provide the Services and carry out the Supplier's other obligations in connection with the Contract in accordance with Good Industry Practice and so that the Services are suitable and adequate for the purpose or purposes stated in the Contract;

(c) (**Supplier Documents**) must ensure that where the Supplier provides Supplier Documents under the Contract:

(i) those Supplier Documents:

(A) comply with the requirements of the Contract and applicable law;

(B) are of a standard and quality reasonably expected of a skilled and competent supplier using Good Industry Practice; and

(C) are suitable and adequate for the purpose for which they are provided;

(d) (**intellectual property**) must ensure that, except to the extent that Supplier Documents are manufactured or prepared strictly in accordance with technical plans or drawings provided to the Supplier by the Principal:

(i) the Supplier Documents; and

(ii) the Principal's use of the Supplier Documents for a purpose stated in or to be reasonably inferred from the Contract,

will not infringe Intellectual Property Rights;

(e) (**investigations**) warrants and represents that the Supplier has carefully reviewed the Contract (including the Scope and all other information contained or referenced in the SEO) prior to acceptance of it to satisfy itself that the Scope and other information is appropriate and adequate to enable the Supplier to comply with its obligations under the Contract;

(f) (**legal capacity**) must ensure, and warrants and represents that the Supplier has the full power, authority and capacity to enter into the Contract and that the Supplier's obligations under the Contract are valid and binding on it, and enforceable against it;

(g) (**Price**) warrants and represents that the rates and prices in the Contract include compliance with all of the Supplier's other obligations under the Contract except, and then only to the extent, that the Contract provides otherwise.

8.2 (**Improper Conduct)** The Supplier warrants and represents that neither the Supplier nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Supplier must not engage in any Improper Conduct in connection with the Contract.

8.3 (**Notice of breach**) The Supplier must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached a warranty given, representation made or obligation provided for, in clause 8.1 or 8.2.

8.4 (**Obligations, warranties and representations not affected**) The obligations, warranties and representations in clause 8.1 remain unaffected notwithstanding:

(a) that the Scope was prepared by the Principal or the Principal's Personnel;

(b) any inspection, test, receipt, review, permission, approval or comment on, of or in relation to the Services by the Principal or the Principal's Personnel;

(c) any Variation or other direction by the Principal or the Principal's Personnel; or

(d) the adoption or incorporation into the Supplier Documents by the Supplier of any industry standard or any information or documentation provided by others (including information or documentation provided by or on behalf of the Principal),

except that clauses 8.4(c) and 8.4(d) do not apply to the extent that the Supplier has, prior to acting or omitting to act in reliance on the direction or the affected Supplier Documents, given the Principal written notice expressly stating that the Variation, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

9. SUPPLIER'S PERSONNEL

9.1 (**General**) The Supplier must ensure that its Personnel involved in the performance of the Supplier's obligations under the Contract:

(a) act professionally and courteously in all dealings with the Principal, the Principal's Personnel and the general public in connection with the Contract;

(b) do not engage in any Improper Conduct;

(c) do not directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Supplier's obligations under the Contract are to be carried out, or to the public generally;

(d) are familiar with and properly trained for their allocated role;

(e) perform their allocated role competently, safely and in accordance with Good Industry Practice and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations; and

(f) are not affected by alcohol or drugs whilst performing any part of the Supplier's obligations under the Contract (other than prescription medication which does not affect the ability of the person to perform the relevant obligations under the Contract).

9.2 (**Key Personnel**) The Supplier must ensure that only Key Personnel perform the roles identified in the SEO and that the nominated Key Personnel perform those roles until Completion or such other time as may be stated in the SEO. The Supplier may seek the approval of the Principal to change the identity or role of any Key Personnel or to engage additional persons as Key Personnel. The Supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal cannot unreasonably refuse to approve a replacement or additional key person that is of equal or greater skill, experience and competency to the person nominated in the Contract as the key person for that role.

9.3 (**Local Government Worker**) The Supplier must ensure that when acting as a Local Government Worker, the Supplier's Personnel:

(a) have all appropriate qualifications, skills and training to exercise a power or perform a responsibility under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009* (Qld);

(b) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Personnel are authorised as Local Government Workers by the Principal; and

(c) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).

9.4 (**Police checks**) If the Principal directs the Supplier to obtain a National Police Certificate in respect of any of the Supplier's Personnel then the Supplier must not permit those Personnel to perform any of the Supplier's obligations under the Contract or to have access to any Confidential Information of the Principal or the Site unless and until 5 Business Days after the Supplier has given the Principal a written copy of a the National Police Certificate for those Personnel. If the National Police Certificate contains any entries, the Principal may, in its absolute discretion, notify the Supplier that the person is not permitted to perform any of the Supplier's obligations under the Contract or may otherwise place conditions upon that person's role in performing such obligations. The Supplier must use its best endeavours to provide any additional information which the Principal may reasonably request in relation to a National Police Certificate.

9.5 (**Industrial relations**) The Supplier remains solely responsible for the management of industrial relations relating to its Personnel. The Supplier must promptly inform, and keep informed, the Principal in relation to any potential or actual industrial relations issues which could affect the ability of the Supplier to comply with its obligations under the Contract.

9.6 (**Modern Slavery**) The Supplier:

(a) must not engage in Modern Slavery and warrants and represents that it has not engaged in any Modern Slavery;

(b) must take, and warrants and represents that it has taken, all reasonable steps to identify and eliminate Modern Slavery in the business and operations of its subcontractors, suppliers and consultants;

(c) immediately notify the Principal in writing if it becomes aware of any Modern Slavery in the Supplier's business or operations or the business or operations of its subcontractors, suppliers or consultants.

9.7 (**Labour Hire**) The Supplier must not provide any or utilise any labour hire services in connection with the Contract, unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld)

9.8 (**Removal**) The Principal may at any time direct the Supplier to remove any of the Supplier's Personnel from the performance of the whole or part of the Supplier's obligations under the Contract if the Principal reasonably believes that the Supplier is in breach of any clauses 8.1(a), 8.2, 9.1, 9.3, 9.6 or 9.7 or if a National Police Certificate contains any entries in respect of that person, or that the person is otherwise responsible for a breach of the Contract by the Supplier.

10. SUBCONTRACTING, ASSIGNMENT AND NOVATION

10.1 (**By the Supplier**) The Supplier must not subcontract, assign or novate the whole or any part of its rights and/or obligations under the Contract unless it has first obtained the written consent of the Principal (which may be given, withheld or given subject to conditions at the absolute discretion of the Principal). Subcontracting of the Supplier's obligations shall not relieve the Supplier from any liability or obligation under the Contract. As between the Principal and the

Supplier, the Supplier shall be responsible, and liable to the Principal, for the acts and omissions of the Supplier's Personnel in connection with the Contract as if they were the acts or omissions of the Supplier.

10.2 (**By the Principal**) The Principal may contract, assign or novate the whole or any part of its rights and/or obligations under the Contract in its absolute discretion and without obtaining the consent of the Supplier.

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

10.4 (**Subcontracts**) The Supplier must ensure that any subcontracts into which it enters place the same obligations, responsibilities and liabilities on the subcontractor that this Contract places on the Supplier to the extent that they are relevant to the services provided by the subcontractor.

11. SITE

11.1 (**Access for Supplier**) The Principal will give the Supplier sufficient, but non-exclusive, access to the Site to carry out the Supplier's obligations under the Contract. The Principal may refuse to give such access until the Supplier has given the Principal:

(a) evidence of insurance required by clause **Error! Reference source not found.**;

(b) copies of all competencies, licences, accreditations, qualifications, permits, clearances or other authorisations which are required for the Supplier to comply with its obligations under the Contract;

(c) any other documents or information which the Contract requires to be given to the Principal before access to the Site shall be given, including those identified in the SEO or elsewhere in the Contract; and

(d) evidence that the Supplier has done all other things which the Contract requires to be done before access to the Site shall be given, including those identified in the SEO or elsewhere in the Contract.

11.2 (**Access for Principal**) The Principal and its Personnel shall be entitled to access the Site and any other place where any obligation of the Supplier under the Contract is or is to be carried out on the giving of reasonable written notice, including to conduct tests, inspections or audit of the Supplier's compliance with the Contract or to carry out other services or work at the Site. The Supplier must cooperate, communicate and co-ordinate with the Principal and the Principal's Personnel in relation to the access by the Principal and the Principal's Personnel. The Principal must use reasonable endeavours to ensure none of the Principal's Personnel impedes the Supplier in the performance of the Services.

11.3 (**Site specific requirements**) The Supplier must comply with the reasonable requirements of the Principal in relation to the Supplier's access to or conduct on the Site.

12. MEETINGS

12.1 The Supplier must, at the times required by the Contract and when otherwise reasonably required by the Principal, meet and discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract.

13. TIMING

13.1 (**Timing**) Subject to clause 13.2 the Supplier must commence performing its obligations under the Contract by the Time for Commencement and must perform those obligations:

(a) with due expedition and without delay;

(b) in accordance with any requirements of the Contract and any reasonable directions of the Principal as to the order and timing of the performance of those obligations (including any program or schedule included in the SEO or agreed between the Parties); and

(c) where obligations are carried out at a Site, within any working hours stated in the SEO or where no working hours are stated in the SEO, the working hours reasonably directed by the Principal;

(d) so that the Supplier reaches Completion by the applicable Time for Completion.

13.2 (**Delay or interruption**) The Supplier must promptly notify the Principal's Representative if it suspects, or becomes aware, that the performance of the whole or any part of the Supplier's obligations under the Contract will be interrupted or delayed and must provide any further information reasonably requested by the Principal's Representative in relation to the delay or interruption.

13.3 (**Extension of time**) If the Supplier:

(a) is delayed in reaching Completion by the Time for Completion because of a Qualifying Cause of Delay; and

(b) the Supplier gives the Principal a written claim for an extension of the Time for Completion within 10 Business Days of the delay first occurring,

then the Principal shall grant a reasonable extension of the Time for Completion. The Principal may grant an extension of the Time for Completion for delay caused by any other cause of delay. The Supplier must provide the Principal with all information reasonably directed by the Principal's Representative in connection with the delay.

13.4 (**Monetary compensation**) If the Supplier:

(a) is entitled to an extension of the Time for Completion because of a delay caused by the Principal or the Principal's Personnel; and

(b) submits a written claim for delay costs within 10 Business Days of the cessation of the delay,

then the Principal shall be liable for the direct costs which the Supplier has reasonably, necessarily and not prematurely incurred by reason of that delay and which it cannot reasonably mitigate. The Supplier shall not otherwise be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Supplier's obligations under the Contract however caused.

14. VARIATIONS

14.1 (**Direction for Variation**) The Principal may at any time prior to the Time for Completion and for any reason, direct a Variation by giving written notice to the Supplier. The Principal cannot direct a Variation which is outside the general scope of the Contract. The Supplier cannot carry out a Variation without a written direction to do so from the Principal.

14.2 (**Variation proposal**) The Principal may direct the Supplier to provide an estimate or quotation for a Variation and/or a statement as to the impact of a Variation on the Supplier's obligations under the Contract (including the cost and timing of the Services). The Principal may direct the Supplier to support the estimate, quotation or statement with documentary evidence and may direct the time within which the estimate, quotation or statement is to be provided. The Supplier must comply with such a direction at its expense.

14.3 (**Adjustment of Price**) Subject to clause 14.4, the effect of a Variation on the Supplier's entitlement to payment shall be determined using the following order of priority:

(a) agreement between the Parties;

(b) applicable fees, rates or prices (if any) stated in the Contract; or

(c) by the Principal (acting reasonably).

14.4 (**No entitlement**) The Principal shall not be liable upon any Claim in connection with a direction for a Variation, unless:

(a) the Principal's Representative has, expressly stated in writing that the direction is a direction for a Variation; or

(b) within 10 Business Days of being given the direction, and where possible before the Supplier complies (in whole or part) with the direction the Supplier has notified the Principal in writing that it considers that the direction constitutes a Variation.

14.5 (**Variations requested by the Supplier**) The Principal may approve a request for a Variation by the Supplier. Unless the Principal agrees otherwise in writing, a Variation approved under this clause 14.5 shall have no effect on the Supplier's entitlement to payment, timing of the Supplier's obligations or any other obligation of the Supplier under the Contract.

14.6 (**Omissions**) Where the Principal directs a Variation omitting or reducing any part of the Services, then the Principal may subsequently provide the omitted or reduced Services itself or engage others to do so on its behalf. The Supplier shall not be entitled to any monetary compensation in connection with an omission or reduction and such omission or reduction shall not invalidate or constitute repudiation of the Contract.

15. INVOICES AND PAYMENT

15.1 (**Timing of invoices**) Subject to clause 15.11, the Supplier may submit invoices to the Principal for Services provided in accordance with the Contract at the times stated in the SEO or where no such time is stated in the SEO, on the 21st day of each month for Services provided up to the 21st of that month. Unless otherwise directed, all invoices should be submitted promptly and final invoices should be submitted no later than 5 Business Days after Completion.

15.2 (**Requirements of invoices**) Each invoice must comply with the GST Law and all other requirements:

(a) stated in the Contract; or

(b) which the Principal reasonably directs prior to the time for submission of the invoice.

15.3 (**Further supporting documentation**) The Principal may, acting reasonably, direct the Supplier to provide documentary evidence supporting the Supplier's entitlement to payment of the whole or part of the amount claimed. Until such evidence is provided the Principal may assess the claim on the basis that the supporting documentation does not exist.

15.4 (**Entitlement to payment**) The Supplier shall only be entitled to payment for Services which are provided in accordance with the requirements of the Contract (including the warranties given and representations made in the Contract).

15.5 (**Amount due)** The Principal may deduct from any amount claimed by the Supplier under or in connection with the Contract (including for a breach of the Contract):

(a) any amount which the Contract entitles the Principal to deduct;

(b) any other amount due and owing by the Supplier to the Principal.

The balance remaining after such deductions shall be due by the Principal to the Supplier or by the Supplier to the Principal as the case may be and shall be certified as such by the Principal within 15 Business Days after the invoice is received.

15.6 (**Due date for payment**) Subject to the Contract, the Principal shall pay the amount due to the Supplier (if any) including any applicable GST before the end of the Payment Period. If an amount is due from the Supplier to the Principal, the Supplier must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from the Principal.

15.7 (**Disputed Invoice**) If the Principal disputes an invoice issued by the Supplier:

(a) the Principal will pay the undisputed portion of the relevant invoice (if any) less any deductions provided for under clause 15.5 and dispute the balance; and

(b) if the resolution of the dispute determines that the Principal must pay an amount to the Supplier, the Principal will pay that amount upon resolution of that dispute.

15.8 (**No admission**) Payments made by the Principal to the Supplier are made on account only and do not constitute an admission that the Supplier is entitled to the payment made or that the Services and/or the Supplier Documents the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.

15.9 (**Sole entitlement**) Except to the extent expressly provided otherwise in the Contract payment of the Price shall be the Supplier's only entitlement to monetary compensation for the provision of the Services and compliance with the Supplier's other obligations under the Contract.

15.10 (**Liability for GST**) If GST is imposed on any supply made pursuant to the Contract, the amount payable for the supply is to be increased by the amount of that GST. Each Party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Contract.

15.11 (**Recipient created tax invoices**) Where the Principal is the recipient of a taxable supply under this Contract the Principal may issue recipient created tax invoices or recipient created adjustment notes in respect of these supplies in accordance with the GST Law and direct the Supplier not to issue tax invoices or adjustment notes in respect of the same supplies.

16. LAW AND POLICIES

16.1 (**Compliance**) The Supplier must, and must ensure that its Personnel involved in the performance of the Services, comply with:

(a) all law, standards and codes of practice applicable to the Supplier, the Supplier's business or the Supplier's obligations under the Contract; and

(b) any applicable policies, guidelines, procedures and codes of the Principal which are identified in the Contract or which are publicly available or otherwise made known to the Supplier from time to time.

16.2 (**Change in law**) If a law:

(a) necessitates a change to the Services or a change in a fee or charge or payment of a new fee or charge;

(b) comes into effect after the date of the SEO and could not reasonably then have been anticipated by a competent contractor; and

(c) causes the Supplier to incur more or less cost than otherwise would have been incurred,

then the Supplier may notify the Principal in writing of the law and the effect of it on the Supplier. After the notice is given, the Parties shall attempt to agree on a change to either or both of the Supplier's obligations under the Contract or the Price. If the Parties have not reached agreement within 45 Business Days after the notice is given, then either Party may give a notice of dispute pursuant to clause 29. Unless otherwise directed by the Principal, but notwithstanding the giving of a notice of dispute, the Supplier must continue to comply with its obligations under the Contract, including by making any payments or doing any things required to comply with the law.

17. WORK HEALTH AND SAFETY

17.1 (**Relationship of obligations**) The obligations in this clause 17 are in addition to, and not in substitution for, any other obligation of the Supplier:

(a) under the WHS Act and WHS Regulation; or

(b) elsewhere in this Contract or at law relating to WHS.

Nothing in this clause 17 is intended to reduce or limit such other obligations and none of those other obligations shall be taken to reduce or limit the Supplier's obligations under this clause 17.

17.2 (**Primary obligations of Supplier and Personnel**) The Supplier must itself, and must ensure that its Personnel engaged in performing the Supplier's obligations under the Contract:

(a) comply with all law (including the WHS Act and the WHS Regulation) and codes of practice relating to WHS that are in any way applicable to this Contract;

(b) discharge the duties and comply with all relevant duties, obligations, standards and requirements under the WHS Act and WHS Regulation which are or may become applicable in connection with the Contract including any direction relating to WHS issued by the Regulator or any other Authority;

(c) at all times identify and take all reasonably practicable steps to ensure health and safety of all persons who may be affected by the performance of the Supplier's obligations under the Contract*;*

(d) consult with and co-operate with the Principal in relation to matters of WHS that the Principal (acting reasonably) considers the Supplier cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal to ensure any issues are resolved to that standard;

(e) except where the Supplier is the principal contractor for a Site under the WHS Regulation, (in which case this clause 17.2(e) does not apply), comply with:

(i) the reasonable requirements of any third party appointed by the Principal as principal contractor for the Site; or

(ii) if no third party has been so appointed for the Site, the WHS policies and procedures and other WHS requirements of the Principal which are in any way applicable to this Contract for that Site.

17.3 (**Incident notification**) The Supplier must:

(a) report any Notifiable Incidents to the Regulator within the specified time frame as per the WHS Act and WHS Regulation;

(b) if any of the Supplier's Personnel are involved in an accident or other health and safety incident or otherwise suffer an injury in connection with the performance of the Supplier's obligations under the Contract:

(i) immediately notify the Principal of the accident, incident or injury; and

(ii) within 3 Business Days of the accident, incident or injury (or such longer period as the Principal may agree) provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future; and

(c) cooperate and assist (and procure its Personnel to cooperate and assist) the Principal with any investigation by the Principal into any accident, injury or other health and safety incident in connection with the Contract.

17.4 (**Supplier's WHS systems**) The Supplier:

(a) warrants and represents that it has adequate WHS systems in place having regard to the nature of its obligations under the Contract and any hazards specific to any Workplace at which an obligation under the Contract is to be carried out;

(b) must inform the Principal of all its WHS policies, procedures or measures implemented for the performance of its obligations under this Contract;

(c) must prepare and adopt WHS documentation which:

(i) addresses all the specific WHS hazards and issues relevant to the Supplier's obligations under the Contract which can be reasonably anticipated or ascertained at that time;

(ii) documents the system and control methods to be implemented for the performance of its obligations under the Contract,

and must update such documentation as required from time to time to ensure that it complies with clause 17.4(c);

(d) must, where directed to do so by the Principal:

(i) prior to commencing the Supplier's other obligations under the Contract, submit the Supplier's WHS documentation (including the documentation required elsewhere under the Contract) to the Principal for review; and

(ii) within the time directed by the Principal submit to the Principal for review any other WHS documentation that the Principal directs it to prepare,

and if the Principal notifies the Supplier that all or part of the WHS documentation is not suitable, at its cost amend and resubmit the relevant WHS documentation;

(e) must, if the Principal at any time during the performance of the Supplier's obligations under the Contract requests the Supplier to review any of the WHS documentation, promptly and within the time required by the Principal, review any or all of the WHS documentation in accordance with the Principal's request and either:

(i) submit revised documentation to the Principal; or

(ii) provide written confirmation that the WHS documentation is appropriate to manage the risks associated with the Supplier's obligations under the Contract;

(f) is not entitled to make any Claim (whether for additional costs or expense or an extension to the Time for Completion) in connection with its obligations under this clause.

17.5 (**Site specific induction**) Unless otherwise directed by the Principal, the Supplier must ensure that each of its Personnel working at the Site receives a site-specific induction and that each

person visiting the Supplier or its Personnel at that Site receives a site-specific induction or is accompanied by someone who has received such an induction.

18. PROTECTION OF PROPERTY AND THE ENVIRONMENT

18.1 (**General**) The Supplier must and must ensure that to the extent applicable to them, its Personnel:

(a) perform the Supplier's obligations under the Contract safely and in a manner that will prevent pollution, contamination or damage to property or the environment; and

(b) take all measures necessary to protect property and the environment in the performance of its obligations under the Contract.

18.2 (**Rectification of damage**) The Supplier must promptly rectify:

(a) any damage to any property which is caused by the Supplier or the Supplier's Personnel in connection with the performance of its obligations under the Contract;

(b) any damage to any property, which occurs whilst the Supplier is responsible for its care (whether or not due to any act or omission of the Supplier).

The Supplier shall be entitled to claim the cost which it reasonably and necessarily incurs in making good any such damage to the extent that the negligent act or omission or Wilful Misconduct of the Principal or the Principal's Personnel caused or contributed to the damage and/or the Principal failed to act reasonably to mitigate the damage.

19. INDEMNITY

19.1 (**Indemnity**) To the extent permitted by law, the Supplier shall indemnify and keep indemnified the Principal and the Principal's officers, employees and related bodies corporate against:

(a) any of the following:

(i) loss of or damage to property of the Principal (including Supplier Documents);

(ii) Claims by any person against the Principal in respect of personal injury or death, or loss of or damage to property of any party; and

(iii) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal,

to the extent caused or contributed to by the negligence or Wilful Misconduct of the Supplier or its Personnel in connection with the Contract and/or the breach of Contract by the Supplier; and

(b) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal resulting from:

(i) a Data Breach or breach of clause 23.5; or

(ii) an infringement or alleged infringement of Intellectual Property Rights in connection with the Services by the Supplier or its Personnel,

but the indemnity will be reduced to the extent that the act or omission of the Principal or the Principal's Personnel caused or contributed to the cost, expense, fine, penalty, loss, damage, injury or death and/or the Principal failed to act reasonably to mitigate the cost, expense, fine, penalty, loss or damage.

19.2 (**Acceptance of benefit**) The Principal has informed its officers, employees and related bodies corporate and communicates acceptance on their behalf, of the Supplier's undertaking to indemnify under clause 19.1.

20. LIMITATION OF LIABILITY

20.1 (**Limit of liability**) To the extent permitted by law:

(a) the aggregate liability of each Party to the other in respect of any Claim in connection with the Contract will not exceed that Party's Liability Limit;

(b) neither Party shall be liable to the other for any loss of profits, loss of opportunity, loss of agreement or loss of business in connection with the Contract unless, and then only to the extent, that the Contract expressly provides for that liability.

20.2 (**Exceptions**) Clause 20.1 does not apply to:

(a) liability of the Principal to pay the Price;

(b) liability of either Party in connection with personal injury, or death or damage to property;

(c) liability of a Party arising as a result of:

(i) an infringement of confidentiality or Intellectual Property Rights;

(ii) a deliberate breach or abandonment of the Contract;

(iii) Wilful Misconduct;

(iv) a breach of any law; or

(v) fraud or other criminal conduct,

by that Party; or

(d) liability of the Supplier which the Supplier:

(i) is entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) unless and then only to the extent that the Supplier uses all reasonable endeavours to, but does not actually, recover that liability; or

(ii) would have been entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) but for any act or omission of the Supplier or the existence of this clause 20,

and amounts referred to in subclauses (a), (b), (c) and (d) shall not be included in calculating whether the relevant Party's Liability Limit in clause 20.1(a) has been reached.

21. INSURANCE

21.1 (**Insurances to be effected and maintained**) The Supplier must effect the insurances stated in the SEO and any other insurance which the Supplier considers is necessary to protect its interests or which is required by law. Where the SEO does not provide for the insurances to be effected then the Supplier must effect the following insurance policies on terms and with an insurer reasonably acceptable to the Principal:

(a) public and product liability insurance in the amount of at least $20,000,000 in respect of any one occurrence and for an unlimited number of claims;

(b) professional indemnity insurance in the amount of at least $5,000,000 in respect of any one occurrence and for an unlimited number of claims;

(c) third party and comprehensive motor vehicle insurance for each vehicle used by the Supplier in performing its obligations under the Contract;

(d) plant and equipment insurance for each item of plant for the full replacement value of the plant; and

(e) workers' compensation insurance in respect of the Supplier's Personnel as required by law.

21.2 **(Period of insurance**) The insurance policies required under clause 21.2 must be maintained at all times from the date on which the Supplier commence the performance of its obligations under the Contract:

(a) until 5pm on the later of:

(i) the date on which Completion is achieved; and

(ii) the date on which the Supplier's obligations under the Contract are complete; and

(b) in respect of professional indemnity insurance only, for a period of 7 years after the date in clause 21.2(a).

21.3 (**Subcontractors**) The Supplier must ensure that any subcontractor, supplier or consultant of the Supplier has equivalent insurances to the extent that they are applicable to the part of the Supplier's obligations under the Contract to be carried out, by the subcontractor, supplier or consultant.

21.4 (**Evidence of insurance**) If requested by the Principal, the Supplier must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by the Principal of the Supplier's compliance with this clause 21. The Principal may suspend the Contract or any SEO issued pursuant to it until such evidence is provided.

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

21.6 (**Notification**) The Supplier must:

(a) if any insurance policy required under the Contract is cancelled or the Principal's interest in respect of any of those policies is adversely affected, immediately notify the Principal's Representative of this;

(b) if any event occurs which may give rise to a claim involving the Principal under any policy of insurance to be effected by the Supplier under this clause 21:

(i) notify the Principal within 10 Business Days of that event; and

(ii) ensure the Principal is kept fully informed of any subsequent actions and developments concerning the relevant claim.

22. INSPECTIONS AND TESTS

22.1 (**Right to inspect and test**) The Principal may inspect and test, or engage a third party to inspect and test, any or all Services and Supplier Documents provided to ensure that the Services and the Supplier Documents comply with the Contract, including all warranties given and representations made by the Supplier in the Contract. Inspections or tests carried out by

or on behalf of the Principal shall not relieve the Supplier of any obligation or liability under the Contract nor limit or waive any right of the Principal.

22.2 (**Cost**) If an inspection or test undertaken by or on behalf of the Principal reveals a failure by the Supplier to comply with the Contract, then the costs reasonably incurred by the Principal in undertaking the inspection or test shall be a debt due and payable by the Supplier to the Principal.

23. HANDLING OF INFORMATION

23.1 (**Obligation of confidence**) A Party must not use the other Party's Confidential Information for any purpose other than complying with its obligations or exercising its rights in connection with the Contract ("Permitted Purpose"). A Party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.

23.2 (**Breach of Confidence**) If a Party becomes aware of a suspected or actual breach of clause 23.1, that Party must immediately notify the other Party and take reasonable steps required to prevent, stop or mitigate the extent of the breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.

23.3 (**Return of Confidential Information**) Subject to this clause 23, the Disclosee of Confidential Information must return or destroy (at the Discloser's discretion) all Confidential Information and material containing Confidential Information when it is no longer required by the Disclosee for the Permitted Purpose or when otherwise directed by the Discloser. The Disclosee may, subject to its continuing obligation to comply with this clause 23, keep such copies as are required to comply with any law or to comply with its reasonable corporate governance requirements for so long as is necessary to satisfy those requirements.

23.4 (**Personnel**) The Parties must make every reasonable effort to ensure that only its Personnel that have a need to know any Confidential Information for the Permitted Purpose are permitted to access and use the other Party's Confidential Information and its Personnel are aware of and comply with the obligations of confidentiality in this clause 23.

23.5 (**Collection of information by the Supplier**) If the Supplier collects, Holds or has access to Personal Information in order to carry out its obligations under the Contract, the Supplier must:

(a) comply with Parts 1 and 2 of Chapter 2 and section 41 of Chapter 3 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this Contract as if the Supplier was the Principal;

(b) except to the extent required or permitted by law, not disclose Personal Information to any entity outside of Australia without the Principal's prior written consent;

(c) notify the Principal immediately on becoming aware of an actual or suspected Data Breach or breach of this clause 23.5 and immediately take and continue to take all reasonable steps to contain, stop and mitigate the extent of the Data Breach or breach and to mitigate the harm caused by the Data Breach or breach;

(d) promptly notify the Principal in writing of any enforcement of the Supplier's obligations under the *Information Privacy Act 2009* (Qld) in connection with the Contract and of any Privacy Complaints in connection with the Supplier's discharge of its obligations under the Contract;

(e) provide all reasonable assistance to the Principal to enable the Principal to comply with its obligations at law in connection with Privacy Complaints, Data Breaches, or applications for access to, or amendment of a document containing an individual's Personal Information;

(f) otherwise comply with any reasonable requirements of the Principal in relation to privacy and the security of Personal Information; and

(g) ensure that any subcontract with a subcontractor that will collect, Hold or have access to Personal Information places the same obligations on the subcontractor as this clause 23.5 places on the Supplier.

23.6 (**Collection of information by the Principal**) The Principal collects Personal Information and other information in connection with the Contract so that it can properly administer the Contract and otherwise carry out its functions as a local government authority. The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information will be accessible by Personnel of the Principal engaged to assist the Principal in connection with the Contract or otherwise carrying out the functions of the Principal. Information may also be disclosed as otherwise permitted under the Contract or at law, including under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld).

23.7 (**Right to Information**) The Supplier acknowledges that:

(a) information provided by the Supplier in connection with the Contract is potentially subject to disclosure to third parties, including information marked or otherwise identified by the Supplier as confidential; and

(b) the Principal will assess any application for disclosure in accordance with the terms of the *Right to Information Act (2009* (Qld).

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

24. INTELLECTUAL PROPERTY

24.1 (**Background IP**) Background IP of a Party shall remain the exclusive property of that Party. The Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Principal's Background IP strictly for the purpose of complying with the Supplier's obligations under the Contract and for no other purpose. The Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Supplier's Background IP for any purpose for which the Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract. Each Party warrants and represents to the other that the use of the Party's Background IP will not infringe any Intellectual Property Rights of a third party.

24.2 (**Project IP - Alternative 1**) If the SEO provides that Project IP vests in the Principal, or if the SEO does not deal with the matter, then:

(a) Project IP vests on creation in and is the exclusive property of the Principal;

(b) to the extent (if any) that clause 24.2(a) does not vest Project IP in the Principal, the Supplier assigns all right, title and interest in the Project IP to the Principal; and

(c) the Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Supplier to comply with the Supplier's obligations under the Contract and for no other purpose.

24.3 (**Project IP - Alternative 2**) If the SEO provides that Project IP vests in the Supplier, Project IP vests in the Supplier on creation and the Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Project IP for any purpose for which the Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract.

24.4 (**Moral Rights consent**) If the SEO provides that a Moral Rights consent is required then:

(a) the Principal may do anything which would, but for this clause, constitute an infringement of the Moral Rights of the Supplier or any of its Personnel in the Background IP or the Project IP; and

(b) the Supplier must procure, and on request by the Principal provide to the Principal a copy of, a written consent to this effect from each of its Personnel that is the author of any Supplier Documents.

24.5 (**Warranty and representation by Supplier**) The Supplier warrants and represents that:

(a) it has the necessary rights to exercise any Intellectual Property Rights that it uses to perform its obligations under the Contract, or to assign or license the Supplier's Background IP and Project IP in accordance with this clause 24;

(b) it has not infringed and will not infringe any Intellectual Property Rights of a third party in connection with the performance of its obligations under the Contract; and

(c) except to the extent that the infringement is caused by the Supplier's incorporation of the Principal's Background IP, the Project IP and the Principal's use of the Project IP for a purpose stated in or to be reasonably inferred from the Contract will not infringe the Intellectual Property Rights of a third party.

25. NON-CONFORMANCE

25.1 (**Non-conformance)** Where any of part of the Services provided by the Supplier does not conform strictly to the requirements of the Contract or the Supplier fails to comply with any other obligation of the Supplier under the Contract, the Principal may, in addition to or as an alternative to exercising its rights under clause 28, exercise the rights provided in clause 25.2.

25.2 (**Principal's rights**) Where permitted by clause 25.1, the Principal may:

(a) direct the Supplier to provide a detailed proposal as to how the Supplier proposes to rectify the non-conformance and the time within which such a proposal is to be provided;

(b) whether or not the Principal has given a direction under clause 25.2(a), direct the Supplier to:

(i) rectify the non-conformance or failure, including by:

(A) performing or reperforming any non-conforming Services; and/or

(B) replacing non-conforming Supplier Documents,

at the Supplier's expense and within the timeframes reasonably directed by the Principal.

25.3 (**Step-in rights**) Where the Supplier fails to comply with a direction under clause 25.2(a) or 25.2(b), the Principal may:

(a) after giving at least 5 Business Days written notice to the Supplier (except in the case of emergency, in which case no notice is required), take any of the steps contemplated by clause 25.2 or 25.3 itself or engage a third party to do so; or

(b) accept the non-conformance or failure and adjust the Price as if the Principal had directed a Variation for the non-conformance or failure.

25.4 (**Costs**) The cost reasonably incurred by the Principal in connection with any action taken pursuant to clause 25.2 or 25.3 shall be a debt due and owing by the Supplier to the Principal.

25.5 (**Timing**) The rights given to the Principal under clauses 25.2 or 25.3 may be exercised at any time up to 12 months after Completion.

25.6 (**Application of clause**) For clarity, this clause 25 shall apply to all Services and Supplier Documents provided or to be provided, under the Contract, including Services and Supplier Documents provided in compliance with a direction under clause 25.2(b).

26. SUSPENSION

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

26.2 (**Costs of suspension**) If the suspension is directed due to any act or omission of the Supplier or its Personnel (including a breach of the Contract by the Supplier) then the Supplier shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which the Supplier demonstrates it has reasonably, necessarily and not prematurely incurred by reason of the suspension and which the Supplier demonstrates it cannot reasonably mitigate.

27. FORCE MAJEURE

27.1 (**Notification of Force Majeure**) If either Party is rendered unable wholly or in part by Force Majeure to carry out any of its obligations under the Contract (other than an obligation to make a payment of monies), that Party ('the Affected Party'), shall give to the other Party prompt written notice of such Force Majeure detailing the particulars of the Force Majeure and to the extent that it is ascertainable at the time of giving the notice, the extent to which it will be unable to perform or be delayed in performing its obligations.

27.2 (**Suspension**) On the giving of a notice under clause 27.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.

27.3 (**Mitigation**) The Affected Party shall use all reasonable diligence to mitigate the effect of the Force Majeure on its obligations as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.

27.4 (**Industrial relations**) Clause 27.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on terms contrary to its wishes. The manner in which all such difficulties shall be handled shall be entirely within the discretion of the Affected Party.

27.5 (**Principal's rights**) Where the Supplier gives a notice under clause 27.1, the Principal may at its election:

(a) itself perform, or engage others to perform the obligations which the Supplier is unable to perform and may continue to perform such obligations until the later of the time that the Principal is reasonably satisfied that the Supplier is able to resume performance of those obligations and the time at which any interim arrangements put in place by the Principal are able to be reasonably brought to an end;

(b) take such other action as the Principal, acting reasonably, considers appropriate.

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

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

28. TERMINATION, DEFAULT AND INSOLVENCY

28.1 (**Termination for convenience**) The Principal may at any time and for any reason in its absolute discretion terminate the Contract by giving 25 Business Days written notice to the Supplier.

28.2 (**Notice to show cause**) If a Party ("the defaulting Party") commits a Substantial Breach of the Contract, then the other Party may give the defaulting Party a notice to show cause. The notice to show cause must state:

(a) that it is a notice to show cause under clause 28.2;

(b) the alleged Substantial Breach;

(c) that the defaulting Party is required to show cause in writing why the other Party should not exercise a right referred to in clause 28.3 or clause 28.4 (as the case may be);

(d) the date and time by which the defaulting Party must show cause (which must be a reasonable period taking into account the nature of the breach); and

(e) where applicable, the place at which cause must be shown.

28.3 (**Principal's rights**) If:

(a) the Supplier is subject to an Insolvency Event;

(b) the Supplier commits a Substantial Breach which is incapable of remedy; or

(c) by the time specified in the notice to show cause given by the Principal to the Supplier under clause 28.2, the Supplier fails to show reasonable cause why the Principal should not exercise a right under this clause 28.3

the Principal may by giving written notice to the Supplier:

(i) to the extent permitted by law, immediately terminate this Contract; or

(ii) permanently or temporarily take the whole or any part of the obligations of the Supplier remaining to be completed pursuant to the Contract (including the obligation to remedy the default) out of the hands of the Supplier and may itself perform those obligations or engage a third party to do so on the Principal's behalf, in which case:

(A) the Supplier shall not be entitled to any further payment in respect of the obligations taken out of the Supplier's hands;

(B) the Supplier must continue to perform any obligations under the Contract that were not taken out of the Supplier's hands;

(C) the Principal or the third party so engaged may enter the Site and any relevant premises of the Supplier and use all of the Supplier's plant, equipment and materials as may be necessary to perform the obligation;

(D) the Principal may, on the giving of reasonable notice, require the Supplier to resume the performance of the obligations of the Supplier under the Contract which were taken out of the hands of the Supplier if the Supplier ceases to be subject to an Insolvency Event or the Principal is otherwise of the view that the Supplier is capable of continuing to perform its obligations under the Contract in accordance with the Contract; and

(E) if the costs incurred by the Principal in performing the obligations or engaging a third party to do so are greater than the costs which would have been incurred had the Supplier performed the obligation then the difference shall be a debt due and owing by the Supplier to the Principal and may be deducted from payments otherwise owing to the Supplier. Until such costs are incurred, the Principal may deduct the estimated costs from payments to the Supplier.

28.4 (**Supplier's rights**) If:

(a) the Principal commits a Substantial Breach which is incapable of remedy; or

(b) by the time specified in a notice to show cause given by the Supplier to the Principal under clause 28.2, the Principal fails to show reasonable cause why the Supplier should not exercise a right under this clause 28.4,

the Supplier may at its election:

(i) suspend the whole or part of the Supplier's obligations under the Contract (but only after ensuring that the Site is left in a secure and safe condition); or

(ii) if the breach is not capable of remedy, terminate the Contract by giving written notice to the Principal.

If the Supplier suspends the whole or part of the Supplier's obligations under this clause 28.4, the Supplier shall lift the suspension if the Principal remedies the breach but if, within 45 Business Days after the suspension, the breach is not remedied and the Principal fails to make other arrangements to the reasonable satisfaction of the Supplier, then the Supplier may terminate the Contract by giving written notice to the Principal.

28.5 (**Consequences of termination**) If the Contract is terminated by either Party for any reason, then:

(a) unless otherwise directed by the Principal, the Supplier must secure the Site in a safe and proper manner and remove all of its Personnel, plant and equipment from the Site within 5 Business Days of the date of termination;

(b) the Principal may carry out any obligation of the Supplier which has not been carried out and completed as at the date of termination itself or engage others to do so on the Principal's behalf; and

(c) the Principal shall, subject to the Contract, pay the Supplier:

(i) the amount which the Supplier is entitled to be paid under the Contract for Services provided by the Supplier in accordance with the Contract up to and including the date of termination; and

(ii) if the termination is solely due to the act or omission of the Principal, without any fault on behalf of the Supplier, the amount of any other direct costs which the Supplier demonstrates it cannot reasonably mitigate and which the Supplier has reasonably, necessarily and not prematurely incurred:

(A) prior to the termination in the expectation of completing its obligations under the Contract; or

(B) as a direct consequence of the termination,

except that the total amount payable to the Supplier under the Contract shall not under any circumstances exceed the amount to which the Supplier would have become entitled to be paid had the Contract not been terminated and the Supplier had completed those obligations itself.

28.6 (**Effect on other rights**) To the extent permitted by law, the Supplier shall not be entitled to any monetary compensation in respect of:

(a) the termination of the Contract by either Party; or

(b) the Principal taking obligations out of the hands of the Supplier,

other than as expressly provided in this clause 28. Nothing in this clause 28 shall prejudice the Principal's right to claim and recover damages for breach of contract by the Supplier.

29. DISPUTE RESOLUTION

29.1 (**Mandatory process**) Unless otherwise stated in this Contract, any dispute between the Parties must be resolved in accordance with this clause 29.

29.2 (**Notice of dispute**) If a Party considers that a dispute has arisen between the Parties in connection with this Contract, then the Party must give written notice to the other, setting out the particulars of the dispute and stating that the notice is given under this clause 29. Unless the Parties otherwise agree in writing, the notice shall be delivered by hand or registered post.

29.3 (**Initial conference**) If a Party gives written notice to the other of a dispute under the Contract, representatives of the Parties shall promptly confer to attempt to resolve the dispute.

29.4 (**Mediation**) If the dispute is not resolved within 10 Business Days after the giving of the notice (or such longer period as may be agreed by the Parties) a Party may by written notice to the other Party refer the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute. The mediation must be conducted by a mediator to be appointed by agreement of the Parties or in default of agreement to be appointed by the President of the Queensland Law Society or his nominee at the request of a Party.

29.5 (**Legal proceedings**) If the dispute is not resolved within 20 Business Days after the appointment of the mediator any Party may take legal proceedings to resolve the dispute.

29.6 (**Urgent relief**) This clause 29 does not prevent any Party from taking any steps under any law out of which the Parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

29.7 (**Obligation to continue**) Notwithstanding the existence of a dispute, the Parties shall, subject to clauses 26, 27, and 28 continue to perform the Contract.

30. CLAIMS

30.1 (**Claims pursuant to the Contract**) The Principal shall not be liable upon any Claim by the Supplier for an extension of time, an adjustment to the Price (including due to a Variation) or other monetary compensation pursuant to the Contract unless the Supplier has complied with the requirements in the Contract for notifying the Principal of and making such a claim.

31. INTERPRETATION

31.1 (**Headings**) Headings are for reference purposes only and must not be used in interpretation;

31.2 (**No limitation**) The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that the Principal 'may' do something the Principal is not obliged to do that thing and is not prevented from doing any other thing;

31.3 (**Grammatical forms**) Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.

31.4 (**Law**) A reference to 'law' includes all:

(a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and

(b) certificates, licences, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,

which are applicable to the Supplier or the Contract or which are otherwise in force at any place where an obligation under the Contract is carried out, as introduced, amended or replaced from time to time.

31.5 (**Other references**) A reference to:

(a) a person includes any other legal entity and a reference to a legal entity includes a person;

(b) a clause is to a clause in the Contract unless expressly stated otherwise;

(c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;

(d) a monetary amount is a reference to an Australian currency amount.

31.6 (**Time**) References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Contract expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day. A reference to a day, week or month means a calendar day, week or month.

31.7 (**Indemnities**) Each indemnity provided in the Contract is a continuing indemnity which survives the expiration or termination of the Contract. The Principal need not incur any expense or make any payment in order to rely on an indemnity.

31.8 (**Contra proferentem**) The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.

31.9 (**Severance**) If a provision of the Contract is void or unenforceable it must be severed from the Contract and the provisions that are not void or unenforceable are unaffected by the severance.

32. GENERAL PROVISIONS

32.1 (**Costs**) Each Party must pay its own costs and expenses incurred in negotiating, executing, stamping, registering and performance of the Contract.

32.2 (**Joint and several obligations**) To the extent permitted by law, if either Party consists of two or more persons the Contract binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally, and any obligation incurred in favour of that Party may be enforceable by each person comprising that Party severally;

32.3 (**Governing law**) The Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.

32.4 (**Binding on successor**) The Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.

32.5 (**Further assurance**) The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under the Contract.

32.6 (**Service of notices**) A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the SEO or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:

(a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or

(b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.

32.7 (**Waiver**) No waiver by a Party of a provision of the Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.

32.8 (**Amendments**) This Contract may only be amended by written agreement executed by or on behalf of each Party.

32.9 (**Consent**) Any consent of the Principal under the Contract may be given, withheld or given subject to conditions at the absolute discretion of the Principal.

32.10 (**Consideration**) In consideration for the Supplier entering into this Contract, the Principal agrees to pay the Supplier the sum of $10 on demand. In consideration for the Principal entering into this Contract, the Supplier agrees to pay the Principal the sum of $10 on demand.

32.11 (**Discrepancy or inconsistency**) Where there is a discrepancy or inconsistency between any obligation of the Supplier under the Contract, the Supplier must notify the Principal in writing of the discrepancy or inconsistency, If the discrepancy or issue cannot be resolved using the order of precedence under clause 2.3 then unless otherwise directed by the Principal, the Supplier must comply with the highest or most onerous requirement.

32.12 (**Cumulative rights and obligations**) The rights and remedies of a Party provided in the Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of the Contract will not relieve the Supplier of any other obligation under the Contract, at law or in equity. The exercise by the Principal of a right provided in the Contract shall not invalidate or constitute a repudiation of the Contract.

32.13 (**Electronic execution**) The Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by email. For clarity, the Parties consent to the Contract being executed electronically using DocuSign or an equivalent electronic method to identify the Parties.

32.14 (**Current versions**) Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Supplier must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or prices in the Contract shall be deemed to have allowed for compliance with that version.

32.15 (**Clauses to survive termination**) In addition to any other clauses which may be found to survive termination, clauses 19, 20, 21.2(b), 23, 24 and 30 survive the expiration or earlier termination of the Contract.