



CONTRACT

(DESIGN AND CONSTRUCT:
STANDARD RISK)

WATER FOR PARKS
CROYDON IRRIGATION WATER SUPPLY

Contract No: RFT 04 2021-22

FORMAL INSTRUMENT OF AGREEMENT

Parties

Croydon Shire Council ABN 98 659 525 296 of 63 Samwell Street, Croydon 4871 in the State of Queensland

(*the Principal*)

(*the Contractor*)

Recitals:

- A. The *Contractor* has submitted an offer to carry out and complete the *WUC* and has given the *Principal* warranties and made representations to the *Principal*.
- B. In reliance on the warranties given and representations made by the *Contractor*, the *Principal* has accepted the *Contractor's* offer.
- C. The parties wish to enter into this *Contract* to record the terms of their agreement.

The Parties Agree:

1. THE CONTRACT

- 1.1 The *Contract* shall comprise the following documents:
 - (a) this *Formal Instrument of Agreement*;
 - (b) Annexure Part A to AS4902-2000 General conditions of contract for design and construct;
 - (c) Annexure Part E to AS4902-2000 General conditions of contract for design and construct;
 - (d) AS4902-2000 General conditions of contract for design and construct (which form a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);
 - (e) Annexure Part F1 – General Specification;
 - (f) Annexure Part F2 – The *Principal's* Briefing Drawings
 - (g) Annexure Part F3 – *Contractor's* Design Documents;
 - (h) Not used;
 - (i) Not used;
 - (j) Not used;
 - (k) Not used;
 - (l) Annexure Part H – Price Schedule;

- (m) Not used; and
 - (n) Annexure Part J – Contractor's Statutory Declaration.
- 1.2 The *Contract* constitutes the entire, final and concluded agreement between the parties. It supersedes all prior representations, agreements, statements and understandings between the *Contractor* and the *Principal* (whether oral or in writing).
- 1.3 Where any obligation described in the *Contract* has been carried out by the *Principal* or the *Contractor* 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.
- 1.4 Subject to subclause 8.1, if there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1 of this *Formal Instrument of Agreement* then the ambiguity, inconsistency, conflict or discrepancy shall be resolved by giving precedence to the document which places the highest or more onerous requirement on the *Contractor*. If that does not resolve the issue, then the documents will take precedence in the order set out in clause 1.1 of this *Formal Instrument of Agreement*, with the *Formal Instrument of Agreement* being the highest in the order.

2. INTERPRETATION

- 2.1 The contra proferentem rule and other rules of construction will not apply to the *Contract* 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.
- 2.2 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.
- 2.3 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.
- 2.4 The rights and remedies of a party to the *Contract* are in addition to the rights or remedies conferred on the party elsewhere in the *Contract*, at law or in equity.
- 2.5 If a provision of the *Contract* is void or unenforceable it must be severed from this *Contract* and the provisions that are not void or unenforceable are unaffected by the severance.
- 2.6 In the *Contract* the words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.
- 2.7 The *Contract* may be executed in any number of counterparts and communication of the fact of execution to the other party may be made by sending evidence of execution by email to the other party.
- 2.8 A reference in the *Contract* to a *legislative requirement* means a reference to that *legislative requirement* as amended or replaced from time to time.
- 2.9 In Annexure Part A, items or words which have been struck through are deleted from Annexure Part A and items or words which have been underlined have been added to Annexure Part A.

EXECUTED AS AN AGREEMENT

EXECUTION BY THE PRINCIPAL

SIGNED for and on behalf of Croydon Shire Council in accordance with the Council's local laws and in the presence of:

| | | |
|---------------------------------|---|---------------------------------|
| |) | |
| |) | Signature of authorised officer |
| |) | |
| Signature of witness |) | |
| |) | Name of authorised officer |
| |) | |
| Name of witness (block letters) |) | |
| |) | Role of authorised officer |
| |) | |
| Date | | |
| | | Date |

EXECUTION BY THE CONTRACTOR (WHERE CONTRACTOR IS A CORPORATION)

SIGNED for and on behalf of the *Contractor* in accordance with its Constitution and Section 127 of the *Corporations Act 2001* in the presence of:

| | | |
|---------------------------------|---|--------------------|
| |) | |
| |) | |
| Signature of witness |) | Director |
| |) | |
| Name of witness (block letters) |) | Director/Secretary |
| |) | |
| Date | | |
| | | Date |

ANNEXURE to the Australia Standard
General conditions of contract for design and
construct
AS4902-2000

PART A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

Item

| | | |
|----|---|--|
| 1 | <i>Principal</i> (clause 1) | Croydon Shire Council ABN 98 659 525 296 |
| 2 | <i>Principal's address</i> | 63 Samwell Street, Croydon QLD 4871 |
| 3 | <i>Contractor</i> (clause 1) | ABN |
| 4 | <i>Contractor's address</i> | |
| 5 | <i>Superintendent</i> (clause 1) | Wright Outcomes Pty Ltd ABN 15 094 164 342 |
| 6 | <i>Superintendent's address</i> | 10 Findlay Street, Cairns, QLD 4870 |
| 7* | a) <i>Date for practical completion</i> (clause 1) | |
| | OR | |
| | b) <i>Period of time for practical completion</i> (clause 1) | 210 days from the <i>date of acceptance of tender</i> . |
| 8 | Governing law (clause 1(h)) | Queensland |
| | a) Currency (clause 1(g)) | AUD |
| | b) Place for payments (clause 1(g)) | Payments will be made by electronic transfer into the bank account last notified in writing by the <i>Contractor</i> to the <i>Principal</i> . |

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- c) Not used
- 10 The *Principal's project requirements* are described in the following documents (clause 1) 1 Annexure Part F1 – General Specification
2 Annexure Part F2 – The Principal's Briefing Documents
- 11 Preliminary design (clause 1) (a) A *preliminary design* is:
 is included
 is not included
in the *Principal's project requirements*.
If nothing selected, a *preliminary design* is not included.
(b) Not applicable.
- 11A Contract sum (clause 1 and clause 2) The Contract is a:
 schedule of rates contract
 lump sum contract
- 12 Quantities in *schedule of rates*, limits of accuracy (subclause 2.65(b)) Not applicable
Not applicable
- 13 *Provisional sum*, percentage for profit and attendance (clause 3) No profit and attendance is payable.
- 14* *Contractor's security*
- a) Form (clause 5) Two (2) unconditional bank guarantees in equal amounts.
- b) Amount or maximum percentage of *contract sum* (clause 5) 5%
- c) If retention moneys, percentage of each *progress certificate* (clause 5 and subclause 37.2) Nil
- d) Time for provision (except for retention moneys) (clause 5) Within 20 *business days* after the *date of acceptance of tender*

Annexure Part A to AS4902 – 2000

| | | | |
|-----|--|--|--|
| | e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3) | Not applicable \$ | |
| | f) <i>Contractor's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4) | 50% of amount held | |
| 15* | <i>Principal's security</i> | | |
| | a) Form (clause 5) | Not applicable | |
| | b) Amount or maximum percentage of <i>contract sum</i> (clause 5) | Not applicable | |
| | c) Time for provision (clause 5) | Not applicable | |
| | d) <i>Principal's security</i> upon <i>certificate of practical completion</i> is reduced by (subclause 5.4) | Not applicable | |
| 16 | <i>Principal-supplied documents</i> (subclause 8.2) | Document Copy of Contract | No. of copies 1 |
| 17 | Documents, numbers of copies, and the times or stages at which they are to be supplied by the <i>Contractor</i> (subclause 8.3) | As stated in the General Specification | |
| 18 | Time for <i>Superintendent's direction</i> about documents (subclause 8.3) | If nothing stated, 10 <i>business days</i> | |
| 19 | Subcontracting (subclause 9.2) | <i>Work by consultants</i> <hr/> Any part of <i>WUC</i> | <i>Work by others</i> <hr/> The whole or any part of <i>WUC</i> |

Annexure Part A to AS4902 – 2000

| | | | |
|-----|---|---|---|
| 20 | Novation (subclause 9.4) | <i>Subcontractor or selected subcontractor as the case may be</i> | Particular part of the <i>preliminary design or selected subcontract work</i> , as the case may be |
| | | Not applicable | Not applicable |
| 21 | <i>Intellectual property rights granted to the Principal, the Alternative applying</i> (subclause 10.2) | Alternative 1 | |
| 22 | <i>Legislative requirements</i> | | |
| | a) Those excepted (subclause 11.1) | | |
| | b) Identified <i>WUC</i> (subclause 11.2(a)(iii)) | Not applicable | |
| 22A | <u>Portable long service</u> (subclause 11A.1) | The: | <input type="checkbox"/> <u>Principal</u> <input checked="" type="checkbox"/> <u>Contractor</u> <u>is to make payments and give notices under the Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld) 'Q Leave'</u> |
| 22B | <u>Work, health and safety</u> (Clause 12A) <u>Engagement as principal contractor</u> | <u>The Contractor:</u> | <input checked="" type="checkbox"/> <u>is engaged</u> <input type="checkbox"/> <u>is not engaged</u> <u>as principal contractor under the Work Health and Safety Regulation 2011 (Qld).</u> |
| 22C | <u>The Contractor's liability is limited to</u> (clause 1 and clause 15A) | <u>The Contractor's liability is not limited</u> | |
| 22D | <u>The Principal's liability is limited to</u> (clause 1 and clause 15A) | <u>The contract sum as adjusted pursuant to the Contract.</u> | |
| 23 | Insurance of <i>the Works</i> (clause 16A) | | |
| | a) Alternative applying | Alternative 1 | |
| | If Alternative 1 applies | | |

Annexure Part A to AS4902 – 2000

| | | | | |
|------------|-----|--|--|--|
| | b) | Provision for demolition and removal of debris | Nil | |
| | c) | Provision for <i>consultants' fees</i> and <i>Principal's consultants' fees</i> | 10% of the <i>contract sum</i> | |
| | d) | Value of materials or things to be supplied by the <i>Principal</i> | Nil | |
| | e) | Additional amount or percentage | Nil | |
| 24 | | Professional indemnity insurance (clause 16B and subclause 9.2(d)) | | |
| | (a) | Levels of cover of <i>Contractor's</i> professional indemnity insurance shall be not less than | Not required. | |
| | (b) | Period for which <i>Contractor's</i> professional indemnity insurance shall be maintained after issue of the <i>final certificate</i> | Not applicable | |
| | (c) | Categories of <i>consultants</i> and levels of cover of <i>consultants' professional indemnity insurance</i> | Category | Levels of cover |
| | | | Civil Engineer | \$2,000,000 |
| | (d) | Period for which each <i>consultant's</i> professional indemnity insurance shall be maintained after issue of the <i>final certificate</i> | 6 years | |
| 25 | | Public liability insurance (clause 17) | | |
| | a) | Alternative applying | Alternative 1 | |
| | | If Alternative 1 applies | | |
| | b) | Amount per occurrence shall be not less than | Twenty million dollars \$20,000,000 | |
| <u>25A</u> | | <u>Key Personnel</u> <u>(Clause 23A)</u> | <u>Name</u> | <u>Role</u> |
| | | | | Until the expiry of the last <i>defects liability period</i> |
| | | | | Until the expiry of the last |

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*defects liability
period*

| | | | |
|-----|---|---|---|
| 26 | a) Time for giving access (subclause 24.1) | Within 20 <i>business days</i> after the <i>date of acceptance of tender</i> | |
| | b) Time for giving possession (subclause 24.1) | Within 20 <i>business days</i> after the <i>date of acceptance of tender</i> | |
| 26A | <u>Working days and working hours</u> (clause 31) | <u>Working days</u> <u>Monday to Friday</u> <u>Saturday and Sunday</u> <u>but shall not include:</u> a) <u>Public holiday, special holiday or bank holiday at the site;</u> b) <u>22 December to 10 January in any year; or</u> c) <u>any other day which the Contract elsewhere provides is a day on which work cannot be carried out</u> | <u>Working hours</u> <u>6am to 6pm</u> <u>6am to 5pm</u> |
| 27 | The information, materials, documents or instructions and the times by, or periods within which they are to be given to the <i>Contractor</i> (clause 32) | <u>Documents or instructions</u> | <u>Times/Periods</u> |
| 28 | <i>Qualifying causes of delay, causes of delay for which EOTs will not be granted</i> (paragraph (b)(iii) of clause 1 and subclause 34.3) | | |
| 29* | Liquidated damages, rate (subclause 34.7) | \$100.00 per day | |
| 30* | Bonus for early <i>practical completion</i> (subclause 34.8) a) Rate b) Limit | Not applicable | |
| 31* | Other <i>compensable causes</i> (page 1, clause 1 and subclause 34.9 34A) | No other <i>compensable causes</i> | |

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|------|--|------------------------------|------------|
| 31A* | <u>Delay costs, limit per working day</u> (clause 34A) | <u>\$200 per working day</u> | |
| 32 | <i>Defects liability period</i> (clause 35) | 9 months | |
| 32A | <u>Variations, percentage for profit and overheads</u> (subclause 36.4) | <u>Profit</u> | <u>15%</u> |
| | | <u>Overheads</u> | <u>5%</u> |
| 33 | Progress Claims (subclause 37.1) | | |
| | a) Times for progress claims | Fortnightly | |
| | OR | | |
| | b) Stages of <i>WUC</i> for progress claims | | |
| 34 | Unfixed plant and materials for which payment claims may be made (subclause 37.3) | Nil | |
| 35 | Interest rate on overdue payments (subclause 37.5) | 3 % per annum | |
| 36 | a) Time for <i>Principal</i> to rectify inadequate access (subclause 39.7(a)(iii)) | 25 working days | |
| | b) Time for <i>Principal</i> to rectify inadequate possession (subclause 39.7(a)(iv)) | 25 working days | |
| 37 | Not used | | |

Part E

Annexure to the
Australian Standard General conditions of contract for design and construct

Deletions, amendments and additions

1. The following clauses have been deleted from AS4902-2000

See below

2. The following clauses have been amended and differ from the corresponding clauses in AS4902-2000

See below

3. The following clauses have been added to those of AS4902-2000

See below

1 INTERPRETATION AND CONSTRUCTION OF CONTRACT

Insert a new definition of '*as built drawings*':

'as built drawings means those drawings, amended or redrawn as necessary to show *the Works* as built and complete, in the form, and containing the details, required by the Annexure Part F1 – General Specification';

Delete the definition of '*bill of quantities*' and replace with:

'bill of quantities means a *price schedule*;'

Insert a new definition of '*building contract*':

'building contract has the same meaning as given to that term in section 67AAA of the *Queensland Building and Construction Commission Act 1991* (Qld);'

Insert a new definition of '*business day*':

'business day means:

- (a) when used in the definition of *payment period*, has the same meaning as given to that term in section 67W of the *Queensland Building and Construction Commission Act 1991* (Qld);
- (b) otherwise, has the same meaning as in the *security of payment legislation*;'

Insert a new definition of '*claim*':

'claim includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including pursuant to a provision of the *Contract* (including any claim for a *variation*, an *EOT* or other adjustment of the *contract sum*), at law

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(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, in connection with the *Contract, the Works or WUC*;

Insert a new definition of '*claimable amount*':

'claimable amount means:

- (a) the value of *work* carried out by the *Contractor* in the performance of the *Contract* which the *Contractor* is entitled to include in a progress claim; and
- (b) amounts otherwise due from the *Principal* to the *Contractor* pursuant to the *Contract*;

Insert a new definition of '*compensable direction*':

'compensable direction means a *direction* pursuant to subclause 8.1 that is necessitated solely because of an inconsistency, ambiguity, discrepancy or error in a part of the *Principal's project requirements* prepared by or on behalf of the *Principal* and which could not have been identified by a competent contractor at the time of the *Contractor's* tender if that contractor had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds;

Insert a new definition of '*conflict of interest*':

'conflict of interest means any actual, potential or perceived conflict between the interests of the *Contractor* and the *Contractor's* obligations under the *Contract*;

Delete the definition of '*Contract* and replace with:

'Contract has the meaning in clause 1.1 of the *Formal Instrument of Agreement*;

Delete the definition of '*Contractor's design obligations*' and insert:

'Contractor's design obligations means all tasks necessary to design, engineer and specify *the Works* whether before or after the *date of acceptance of tender* including preparing the *design documents*;

Delete the definition of '*contract sum*' and replace with:

'contract sum means

- (a) where *Item 11A* states that the *Contract* is a *lump sum contract*, the sum of the lump sums contained in the *price schedule*; or
- (b) where *Item 11A* states that the *Contract* is a *schedule of rates contract*.
 - (i) the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *price schedule*; plus

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- (ii) any lump sums contained in the *price schedule*,

including *provisional sums* but excluding additions or deductions which may be required to be made under the *Contract*;

Insert a new definition of '*Councillor*':

'Councillor' has the meaning given to that term in the *Local Government Act 2009* (Qld);'

Delete the definition of '*date of acceptance of tender*' and insert:

'date of acceptance of tender' means the date which appears on the written notice from the *Principal* to the *Contractor* advising that the *Contractor's* tender or quotation (as the case may be) is successful or, where no such notice is issued means the date on which the *Contract* is executed by the last party to do so;'

Delete paragraph (a) of the definition of '*date of practical completion*' and replace with:

- (a) the date stated in a *certificate of practical completion* as the date on which *practical completion* was reached (which may be a date earlier than the date on which the *certificate of practical completion* is issued); or'

Insert a new definition of '*deliverables*'

'deliverables' means those documents (whether in electronic or hard copy format) required under this *Contract* to be handed over to the *Principal* by the *Contractor* (and all information, advice, designs and recommendations in those documents) including:

- (a) the *design documents*,
- (b) any management plan (and documents produced under it);
- (c) operation and maintenance manuals for *the Works*;
- (d) *as built drawings*; and
- (e) anything else (other than *the Works*) which the *Contract* expressly requires the *Contractor* to provide to the *Principal* or the *Superintendent* which are otherwise obviously and indispensably necessary for the performance of *WUC* or the compliance with the *Contractor's* obligations under the *Contract* in accordance with *good industry practice*;

Delete the definition of '*design documents*' and insert:

'design documents' means the drawings, specifications and other information, samples, models, patterns and the like included in or required by the *Contract* and created or used for the construction of *the Works*;

Insert a new definition of '*equipment*':

'equipment' means any machinery, plant (but not *construction plant*), equipment, materials and things of all kinds to be incorporated into *the Works*;

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Insert a new definition of '*existing design documents*':

'existing design documents means the documents contained in Annexure Part F2 – Existing Design Documents;'

Insert a new definition of '*Formal Instrument of Agreement*':

'Formal Instrument of Agreement means the document of that name forming part of the *Contract*;

Insert a new definition of '*good industry practice*':

'good industry practice means those practices, methods, techniques and acts that, as at the *date of acceptance of tender* are equal or superior to those utilised by other competent contractors experienced in the design and construction of work similar to *the Works*;

Insert a new definition of '*improper conduct*':

'improper conduct means:

- (a) engaging in misleading or deceptive conduct;
- (b) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct;
- (c) failing to declare a *conflict of interest* in breach of subclause 2A.2;
- (d) canvassing, attempting to improperly influence, offering any inducement to, or accepting or inviting improper assistance from, the *Principal's Councillors* or other *personnel* (or former *personnel*);
- (e) using any information improperly obtained, or obtained in breach of any obligation of confidentiality;
- (f) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
- (g) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld);'

Insert a new definition of '*informal variation direction*':

'informal variation direction means a *direction* by the *Superintendent* for a *variation* which is either:

- (a) not in writing; or
- (b) in writing but which does not expressly state that it is a *direction* for a *variation* pursuant to clause 36;'

Insert a new definition of '*liability limit*':

'liability limit means:

- (a) in respect of the *Contractor*, the sum of:
 - (i) the amount specified in *Item 22C*; and

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- (ii) the amount of any excess payable under a policy of insurance required to be effected and maintained by the *Contractor* under the *Contract*; and
- (b) in respect of the *Principal*, the sum of:
 - (i) the amount specified in *Item 22D*; and
 - (ii) the amount of any excess payable under a policy of insurance required to be effected and maintained by the *Principal* under the *Contract*;

Insert a new definition of '*lump sum contract*':

'lump sum contract' means a contract to which subclause 2.5 applies;

Insert a new definition of '*payment period*':

'payment period' means:

- (a) ~~if the *Contract* is a *building contract*, 15 business days;~~
- (b) ~~otherwise, 25 business days;~~

after the progress claim or *final payment claim* (as the case may be) is given to the *Superintendent*;

Insert a new definition of '*payment schedule*':

'payment schedule' has the same meaning as in the *security of payment legislation*;

Insert a new definition of '*personal information*':

'personal information' has the same meaning as given to that term in the *Information Privacy Act 2009* (Qld);

Insert a new definition of '*personnel*':

'personnel' includes the officers, employees, agents, representatives, consultants and contractors (including, in respect of the *Contractor*, its *subcontractors* and subconsultants), of a party and any other person or entity for whom that party is vicariously liable and in respect of the *Principal* includes the *Councillors* of the *Principal* but does not include the *Contractor*;

Insert a new subparagraph at the end of the definition of '*practical completion*':

- "(d) *the Works* and all parts of *the Works* (including *equipment*) are fit for the purpose(s) stated in or to be reasonably inferred from the *Contract*;
- (e) the *Contractor* has provided to the *Superintendent*:
 - (i) all warranties required from manufacturers, suppliers, installers or other third parties required by the *Contract*;
 - (ii) complete *as built drawings*;
 - (iii) complete operation and maintenance manuals for *the Works*; and

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- (iv) all other documents and information required under the *Contract* (other than that which the *Contract* provides is to be provided after *practical completion*);
- (f) all *equipment* has been properly installed and configured, is functioning correctly, has met all specifications, requirements, functionality and capabilities required by the *design documents* and the *Contract* and is fit for its purpose; and
- (g) anything else which the *Contract* provides is to be done, provided or otherwise satisfied as a requirement of or prior to *practical completion* has been so done, provided or satisfied;

Delete the definition of '*prescribed notice*' and insert:

'prescribed notice means a written notice which contains:

- (a) details of the basis of the *claim*; and
- (b) a detailed itemised breakdown of the quantum of the *claim*, or, where the quantum cannot be itemised at the time that the *prescribed notice* is given because the costs are not yet known, an itemised breakdown of the estimated quantum of the *claim*;

Insert a new definition of '*price schedule*':

'price schedule means the documents incorporated into Annexure Part H;

Insert a new definition of '*Principal's policies*':

'Principal's policies means the *Principal's* plans, policies, procedures, codes, standards and guidelines to the extent that these are made available by the *Principal* (whether to the public at large or to the *Contractor*) from time to time;

Insert a new definition of '*provisional work*':

'provisional work means:

- (a) any *work* or item to which a *provisional sum* relates; and
- (b) any other *work* or item which is identified in the *Contract* as 'provisional', 'if ordered', 'as directed' 'optional' or similar or which the *Contract* otherwise provides is not to be carried out or supplied by the *Contractor* unless the *Contractor* is given a *direction* to do so;

Insert a new definition of '*QBCC Act*':

'QBCC Act means the *Queensland Building and Construction Commission Act 1991* (Qld);

Delete the definition of '*qualifying cause of delay*' and insert:

'qualifying cause of delay means to the extent that they delay activities on the critical path of the *program*:

- (a) any of the following, which are beyond the control of the *Contractor* occurring on or before the *date for practical completion*:

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- (i) industrial action not exclusively directed at the *Contractor*;
- (ii) inclement weather and the effects at the *site* of inclement weather;
- (b) any of the following which are beyond the control of the *Contractor* whether occurring before, on or after the *date for practical completion*:
 - (i) any act, default or omission of the *Superintendent*, the *Principal* or the *Principal's* consultants, agents or other contractors (not being employed by the *Contractor*);
 - (ii) *variations* (other than a *variation* for the convenience of the *Contractor*);
 - (iii) *latent conditions*;
 - (iv) a change in a *legislative requirement* which comes into effect after the 10th *business day* before the closing of tenders and which could not have been reasonably anticipated by a competent contractor;
 - (v) delays by municipal, public, or statutory authorities (including the *Principal* in its capacity as a local government authority);
 - (vi) claims referred to in subclause 15.1(d);
 - (vii) any breach of the *Contract* by the *Principal*,

but does not include any cause of delay identified in *Item 28*;

Insert a new definition of '*required deductions*':

'required deductions means:

- (a) amounts paid previously under the *Contract*;
- (b) retention moneys to be deducted pursuant to *Item 14*;
- (c) amounts which the *Superintendent* is required to certify pursuant to subclause 5.1A;
- (d) other amounts due from the *Contractor* to the *Principal* in connection with the *Contract*;
- (e) amounts due from the *Contractor* to the *Principal* otherwise than in connection with the *Contract*;
- (f) to the extent that such *work* has not yet been carried out by the *Contractor* and the cost of such *work* has not yet been incurred by the *Principal*, the estimated cost to the *Principal* of having any *work* of removal, demolition, redesign, reconstruction, replacement, correction or rectification the subject of a *direction* pursuant to subclause 29.3 or clause 35 carried out by a third party;
- (g) amounts in respect of *work* which is required by the *Contract* to be tested and for which any of the following conditions have not been met:
 - (i) all required *tests* have been completed;

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- (ii) the results of the *tests* do not reveal a failure of the *Contractor* to comply with the *Contract*;
- (h) the *Contractor* has made good *WUC* and provided the results of the *tests* to the *Superintendent* and to the *Principal* in accordance with subclause 30.6; and
- (i) other amounts which the *Contract* expressly provides are *required deductions* or which the *Contract* expressly entitles the *Principal* or the *Superintendent* to deduct from payments to the *Contractor*;

Insert a new definition of '*response period*':

'response period' for a progress claim or *final payment claim* (as the case may be) means 15 *business days* after the claim is given to the *Superintendent*;

Delete the definition of '*schedule of rates*' and insert:

'schedule of rates' means a *price schedule*;

Insert a new definition of '*schedule of rates contract*':

'schedule of rates contract' means a contract to which subclause 2.6 applies;

Delete paragraphs c) and d) of the definition of '*security*'.

Insert a new definition of '*security of payment legislation*':

'security of payment legislation' means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and any associated subordinate legislation;

Insert a new definition of '*specified loss*':

'specified loss' means:

- (a) any loss of, or loss of anticipated, profit, income, revenue, saving, production; business, good will, contract or opportunity (including access to markets); increase in financing or operating costs; liability for loss or damage suffered by third parties; legal costs (on a solicitor and client basis); fines levied; loss of reputation or embarrassment and the cost of abating or reducing such; damage to credit rating; any other financial or economic loss; and
- (b) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraph, howsoever arising;

Insert a new definition of '*variation rates*':

'variation rates' means the rates included in Annexure Part I;

Insert a new definition of '*wilful misconduct*':

'wilful misconduct' means an intentional act or omission by a party committed with reckless disregard for its foreseeable and potentially harmful consequences, in circumstances where that 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;

Insert a new definition of '*working day*':

'working day means a day identified as such in *Item 26A*;

2 NATURE OF CONTRACT

Delete the existing text of subclause 2.1 and replace with:

'2.1 The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and *directions* authorised by the *Contract* and shall otherwise comply with its obligations under the *Contract* at its expense.

Notwithstanding anything else in this clause, where the *price schedule* or the *Contract* elsewhere contains provisions for determining the *Contractor's* entitlement to payment for an item then the *Contractor's* entitlement to payment for that item shall be determined in accordance with such provisions.'

Delete the existing text of subclause 2.2 and replace with:

'The *Contractor* must, and warrants and represents that it shall:

- (a) ensure that the *Contractor* and the *Contractor's personnel* at all times:
 - (i) have the experience, skills, expertise, resources and judgement necessary to carry out and complete the *Contractor's* obligations under the *Contract* in accordance with the *Contract*;
 - (ii) hold all necessary competencies, licenses, accreditations and qualifications which are required to be held to carry out *WUC*, including an appropriate license under the *QBCC Act*;
 - (iii) in carrying out and completing the *Contractor's design obligations* and *WUC* and otherwise complying with all of the *Contractor's* obligations under the *Contract*.
 - (A) use *good industry practice*; and
 - (B) otherwise exercise the standard of skill, care and diligence expected of a competent contractor experienced in the design, construction and delivery for commercial use of works of a similar size and complexity to *the Works*;
- (b) execute and complete the *Contractor's design obligations* and produce the *design documents* to accord with:
 - (i) all requirements of the *Contract*;
 - (ii) all *legislative requirements*; and
 - (iii) *good industry practice*;
- (c) execute and complete the *WUC* in accordance with the *Contract* and the *design documents* so that *the Works*, when completed:
 - (i) comply with all the requirements of the *Contract* and all *legislative requirements*;

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- (ii) comply with all relevant Australian Standards to the extent that they are not inconsistent with the requirements of the *Contract* and *legislative requirements*; and
- (iii) are fit for the purpose(s) stated in or to be reasonably inferred from the *Contract*;
- (d) all *equipment* has been properly installed and configured, is functioning correctly, has met all specifications, requirements, functionality and capabilities required by the *design documents* and the *Contract* and is fit for its purpose; and
- (e) ensure that all *deliverables* and the construction methods, techniques, materials and workmanship employed in and about the construction of the *Works* are in each case suitable and adequate for their respective functions and purposes and consistent with *good industry practice*.

Delete subclauses 2.4 and 2.5 insert:

- 2.4 **(Price schedule)** Quantities in a *price schedule* are estimated quantities only. The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in a *price schedule*.

The *Principal* gives no warranty and makes no representation as to the completeness, accuracy or adequacy of a *price schedule*. If a *price schedule* omits an item which should have been included, the item shall be deemed to have been allowed for in other items.

- 2.5 **(Lump sum contract)** This subclause 2.5 only applies where *Item 11A* states that the *Contract* is a *lump sum contract*.

The *Principal* shall pay the *Contractor* the sum of the lump sums stated in the *price schedule*, adjusted by any additions or deductions made pursuant to the *Contract*. Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *price schedule* the *Contractor* shall carry out that greater or lesser quantity as if it were originally stated in the *Contract* and there shall be no adjustment to the *contract sum*.

The *price schedule* may be used by the *Superintendent* as a guide in the assessment of progress claims, *variations* and other adjustments to the *contract sum* permitted by the *Contract*, but for no other purpose.

- 2.6 **(Schedule of rates contract)** This subclause 2.6 only applies where *Item 11A* states that the *Contract* is a *schedule of rates contract*.

The *Principal* shall pay the *Contractor* the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate provided in the *price schedule* for the section or item adjusted by any additions or deductions made pursuant to the *Contract*. Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in a *price schedule* and:

- (a) the *price schedule* contains a lump sum for the item, the difference shall be a deemed *variation*;

- (b) the *price schedule* contains a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *price schedule* are stated in *Item 12*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.
- 2.7 **(Rise and fall)** The *contract sum* is not subject to adjustment for variations in the cost of labour and materials unless, and then only to the extent that, the *Contract* expressly elsewhere provides that such an adjustment is to be made and states the formula by which that adjustment is to be calculated.
- 2.8 **(Inclusions)** Except to the extent that the *Contract* expressly allows an adjustment, the *Contractor* warrants and represents that the *contract sum*, and all rates, sums and prices included in the *contract sum* allow for:
- (a) all of the risks, contingencies and other circumstances which could have an effect on the *Contractor's* ability to carry out and complete *the Works* for the *contract sum*, except to the extent that the *Contract* expressly allows an adjustment;
- (b) the provision of all materials, plant, labour and other services necessary for the proper completion of *the Works*, whether or not those items are expressly mentioned in the *Contract*;
- (c) payment of all royalties, levies, fees, charges, costs, expenses, taxes or duties in connection with *WUC*; and
- (d) compliance with all of the *Contractor's* obligations under the *Contract*, including compliance with *directions* of the *Superintendent*.'

2A CONDUCT OF CONTRACTOR AND PERSONNEL

Insert a new clause 2A as follows:

'2A CONDUCT OF CONTRACTOR AND PERSONNEL

- 2A.1 **(General)** The *Contractor* must, and must ensure that its *personnel*, at all times whilst engaged in *WUC* act professionally and treat all of the *Principal's* *personnel*, other contractors and the general public respectfully and comply with all of the *Principal's* *policies*.
- 2A.2 **(Conflict of interest)** The *Contractor* warrants and represents that as at the *date of acceptance of tender* the *Contractor* is not aware of any *conflict of interest*. The *Contractor* 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.
- 2A.3 **(Improper Conduct)** The *Contractor* warrants and represents that neither the *Contractor* nor any of its *personnel* engaged in any *improper conduct* in connection with the procurement process pursuant to which the parties entered into the *Contract*. The *Contractor* must not, and must ensure that its *personnel* do not, engage in any *improper conduct* in connection with the *Contract*.'

3 PROVISIONAL SUMS

Insert the following at the end of clause 3:

'The *Superintendent* shall not be obliged to give a *direction* that any *provisional work*, or any particular part or quantity of *provisional work*, be carried out or supplied by the *Contractor*. The *Principal* may carry out or supply the whole or any particular part or quantity of *provisional work* itself or engage a third party to do so on its behalf. The *Contractor* shall not be entitled to any monetary compensation (whether for costs incurred, lost profit, lost overheads or otherwise) in connection with any *provisional work* (or any particular part or quantity of *provisional work*) which it is not directed to carry out or supply. Unless the *Contract* elsewhere provides how particular *provisional work* is to be valued, it shall be valued in accordance with this clause 3 as if it were identified as a *provisional sum*.'

5 SECURITY

Insert the following at the end of subclause 5.1:

'Where, due to adjustments made pursuant to the *Contract*, the *contract sum* is increased by more than 10%, the *Superintendent* may direct the *Contractor* to provide additional *security*. Unless the parties agree otherwise, the additional *security* shall be:

- (a) in the form stated in *Item 14*;
- (b) in an amount no more than is necessary to ensure that the total *security* held by the *Principal* is equivalent to the percentage stated in *Item 14(b)* of the *contract sum* as adjusted at the time of the *direction*; and
- (c) provided within 10 *business days* of the *Superintendent's direction*.'

Insert a new subclause 5.1A as follows:

5.1A Failure to provide security

Without limiting the *Principal's* other rights, unless and until the *Contractor* provides *security* (other than retention moneys) in accordance with subclause 5.1:

- (a) the *Superintendent* shall certify, as a *required deduction*, an amount equal to the value of the *security* which has not been provided; and
- (b) the *Principal* shall be entitled to hold that amount as *security*.

The *Principal* shall release and return any amounts held under this under this subclause 5.1A within 10 *business days* after *Contractor* provides the *security* in accordance with subclause 5.1.'

Delete the existing text of subclause 5.3 and replace with:

'The *Contractor* may at any time request the *Principal's* consent to substitute retention moneys or cash *security* with another form of *security*. The *Principal* may, at its absolute discretion give or withhold consent or give consent subject to such conditions as the *Principal* sees fit. To the extent that another form of *security* is provided, the *Principal* shall not deduct, and shall promptly release and return, retention moneys and cash *security*.'

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Delete the existing text of subclause 5.4 and replace with:

‘To the extent permitted by law, upon the later of:

- (a) the issue of the *certificate of practical completion*; and
- (b) in respect of *security* under *Item 14* only, the rectification of all *defects* in respect of which the *Superintendent* has given the *Contractor* written notice either in, or prior to the issue of, the *certificate of practical completion*,

a party’s entitlement to *security* (other than in *Item 14(e)*) shall be reduced by the percentage or amount in *Item 14(f)* or *15(d)* as applicable, and the reduction shall be released and returned within 10 *business days* to the other party.

The *Principal’s* entitlement to *security* in *Item 14(e)* shall cease 10 *business days* after incorporation into *the Works* of the plant and materials for which that *security* was provided.

A party’s entitlement otherwise to *security* shall cease 10 *business days* after the last of the following to occur:

- i) the issue of the *final certificate*;
- ii) in respect of *security* under *Item 14* only, compliance by the *Contractor* with all *directions* given under subclause 29.3 or clause 35 (other than *directions* which have been the subject of a *notice of dispute*); and
- iii) the resolution (whether pursuant to clause 42 or otherwise) of any *dispute* the subject of a *notice of dispute* referred to in subclause 37.4(d).’

6 EVIDENCE OF CONTRACT

Delete the existing text of clause 6 and replace with:

‘Within the time reasonably required by the *Principal* (or where the *Principal* does not prescribe a time, 10 *business days*) after receiving a copy of a *Formal Instrument of Agreement* for execution (*‘execution copy’*), the *Contractor* shall either:

- (a) properly execute the number of copies provided and return them; or
- (b) provide the *Principal* with written notice of any aspect of the *execution copy* which the *Contractor* considers is in error or which does not reflect the agreement between the *Principal* and the *Contractor*.

If the *Contractor*:

- (i) does not give the *Superintendent* the written notice required by subclause 6(b) within the time required by that subclause; or
- (ii) the *Contractor* commences *work* after receiving the *execution copy* and before giving the *Principal* the written notice required by subclause 6(b),

then the *Contractor* shall be deemed to have accepted and agreed to, and shall be legally bound by, the terms of the contract as evidenced by the *execution copy*.

Otherwise, until a *Formal Instrument of Agreement* is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*.

Within 25 *business days* after receiving executed copies of the *Formal Instrument of Agreement* from the *Contractor*, the *Principal* shall execute both copies and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.'

7 SERVICE OF NOTICES

Insert an additional subclause 7(b)(iv) (together with any consequential amendments) at the end of subclause 7(b) as follows:

'(iv) the time at which an email comprising or attaching the notice or other document becomes capable of being retrieved and read by the addressee at the addressee's email address.

Notwithstanding anything else in this clause 7, where the *Contract* elsewhere prescribes the manner in which a particular notice is to be given, then such a notice shall only be deemed to have been given and received if given in the prescribed manner.'

8 CONTRACT DOCUMENTS

Delete the existing text of subclause 8.1 and replace with:

'Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in or between any document prepared for the purpose of carrying out *WUC* (including the documents incorporated into Annexure Parts F and G), that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Principal* shall not be liable upon any *claim* for compliance with a *direction*, under this subclause 8.1.'

Insert the following after the second paragraph of subclause 8.3:

'The *Contractor* warrants and represents that the *existing design documents* are suitable, appropriate and adequate to enable the *Contractor* to comply with its obligations under the *Contract*. The *Contractor* must ensure that the *design documents* accord precisely with the *existing design documents*, save and except for any *variations* directed by the *Superintendent* and any minor changes which become necessary to complete the *design documents* and which do not:

- (a) adversely affect the quality, standard, functionality, performance or other characteristics of *the Works*;
- (b) adversely impact on the costs of operation or maintenance of *the Works*;
- (c) adversely impact on the scope, duration or extent of manufacturers' warranties able to be provided;

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- (d) compromise any other warranty given or representation made in the *Contract* or in the *Contractor's* tender;
- (e) otherwise result in any non-compliance by the *Contractor* with an obligation under this *Contract*.

When submitting *design documents* for review by the *Superintendent*, the *Contractor* must identify any aspects of the *design documents* which differ from the *existing design documents* and must provide the *Superintendent* with all information reasonably requested in respect of such differences, including the reason for the changes and evidence that the changes comply with this subclause 8.3.

The *Contractor* must not commence any *work* in relation to *design documents* until they are approved by the *Superintendent*.

The *Superintendent* may refuse to approve the *design documents* if the *Superintendent* reasonably considers that the proposed *design documents* do not comply with this subclause 8.3.'

Delete the second last paragraph of subclause 8.3 and insert:

'A *direction* by the *Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUC* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Contract*.'

Delete subclause 8.5 and insert:

'The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential or which are, of their nature, confidential.

If required in writing by the *Principal*, the *Contractor* shall enter into a separate agreement not to disclose to anyone else any confidential matter even after issue of the *final certificate* or earlier termination of the *Contract*.

Notwithstanding anything else in this subclause 8.5 or elsewhere in the *Contract*, documents and information provided on behalf of a party to the other party in connection with the *Contract* may be used, copied, modified or disclosed as required or permitted by any *legislative requirement* or other law and otherwise:

- (a) by the *Principal*, as the *Principal* considers to be reasonably necessary to:
 - i) carry out its obligations and exercise its rights under the *Contract*;
 - ii) obtain legal, accounting or other professional advice in connection with the *Contract*; and/or
 - iii) otherwise properly carry out its functions as a local government authority;
- (b) by the *Contractor*, as is reasonably necessary to enable the *Contractor* to:
 - i) carry out its obligations and exercise its rights under the *Contract*;
 - ii) obtain legal, accounting or other professional advice in connection with the *Contract*; and

- iii) comply with the *Contractor's* corporate governance requirements.

If the *Contractor* is required by law to disclose confidential information of the *Principal*, the *Contractor* must notify the *Principal* of this prior to making such disclosure and must only disclose the minimum amount of information required to meet its obligation to disclose.

If the *Contractor* collects or has access to *personal information* in order to carry out its obligations under the *Contract*, the *Contractor* must comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this *Contract* as if the *Contractor* was the *Principal*. Where the *Principal* consents to the *Contractor* subcontracting the whole or part of the *Contractor's* obligations under this *Contract*, the *Contractor* must ensure that any subcontract with a subcontractor that will collect or have access to *personal information* contains a clause requiring the subcontractor to acknowledge and agree that it is a 'bound contracted service provider' as that term is defined in the *Information Privacy Act 2009* (Qld).

The *Principal* collects *personal information* and non-personal 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 employees of the *Principal* and third-party personnel 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).'

Insert the following at the end of subclause 8.6:

'The *Principal* may organise official media releases for publication in relation to the *Works*. The *Contractor* shall provide any assistance that may be reasonably requested by the *Principal* to facilitate the production of any such media releases.'

9 ASSIGNMENT AND SUBCONTRACTING

Insert the following at the end of subclause 9.2:

'For the purposes of this subclause 9.2, the *subcontractors* which the *Contractor* nominated in its tender (as amended by post-tender negotiation) are approved by the *Superintendent*. In considering whether to approve a request by the *Contractor* to use other *subcontractors*, the *Superintendent* may, in addition to any other matter which the *Superintendent* is entitled to consider, also take into account whether the proposed *subcontractor* is:

- (a) a local supplier (as defined in the *Principal's* procurement policy as published at the *date of acceptance of tender*); or
- (b) at least 50% owned by Aboriginal or Torres Strait Islander persons,

and if not, whether such a supplier is available to undertake the *work* which is proposed to be subcontracted.'

10 INTELLECTUAL PROPERTY RIGHTS

Delete the existing text of Alternative 1 and insert:

'The *Contractor* warrants that the *design documents* (including the *existing design documents*) and any other design, materials, documents and methods of working, each provided by the *Contractor*, or any of its subcontractors, shall not infringe any *intellectual property right*.'

11A SPECIFIC LEGISLATION AND OTHER REQUIREMENTS

Insert new clause 11A as follows:

'11A SPECIFIC LEGISLATION AND OTHER REQUIREMENTS

- 11A.1 (**Portable Long Service Leave**) The party identified in *Item 22A* shall pay any levy payable and give any relevant notices pursuant to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld) in relation to *WUC*.
- 11A.2 (**Goods and Services Tax**) If GST, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), is imposed on any supply made pursuant to this *Contract*, the amount payable for the supply is to be increased by the amount of that GST.
- 11A.3 (**Local government**) Nothing in the *Contract* shall be taken to fetter the power, rights or authority of the *Principal* as a local government authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) or any other *legislative requirement*.
- 11A.4 (**Compliance**) The *Contractor* must, and must ensure that to the extent relevant to them its *personnel*, in carrying out the *Contractor's* obligations under the *Contract*.
- (a) hold, maintain and are compliant with all requirements of, all necessary competencies, licences, accreditations, certifications, permits, clearances and other authorisations which are required:
 - (i) under contract;
 - (ii) pursuant to a *legislative requirement* or the *Principal's policies*; or
 - (iii) otherwise at law,for the *Contractor* to carry out its obligations under the *Contract*;
 - (b) act consistently with, and do all things reasonably necessary to enable the *Principal* to comply with, applicable *legislative requirements* and the *Principal's policies*;
 - (c) not do, or permit to be done, anything which would cause the *Principal* to be in breach of any *legislative requirements* or the *Principal's policies*;
 - (d) notify the *Principal* immediately if it becomes aware of any breach of this subclause 11A.4; and

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- (e) when directed to do so by the *Superintendent*, provide the *Superintendent* with such information and documentation evidence as the *Superintendent* reasonably requests to satisfy the *Superintendent* that the *Contractor* has complied with this subclause 11A.4.

11A.5 (**Indemnity**) The *Contractor* shall indemnify and keep indemnified the *Principal* against any *claim* which may be brought against the *Principal* and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the *Principal* in connection with:

- (a) the *Contractor's* failure to comply with this clause 11A or to satisfy a *legislative requirement* as required by subclause 11.1;
- (b) any breach by the *Contractor* of its obligations under any *legislative requirement*; and/or
- (c) any enforcement of obligations imposed on the *Contractor* under any *legislative requirement*,

but the indemnity will be reduced to the extent that the act or omission of the *Principal* or the *Superintendent* caused or contributed to the *claim* or loss.

11A.6 (**Interpretation**) In the event of any inconsistency, ambiguity, discrepancy or conflict in or between any obligation of the *Contractor* under subclauses 11A.1 to 11A.4, the *Contractor* must promptly notify the *Superintendent* who shall direct the *Contractor* as to the interpretation to be followed. In the absence of such a *direction*, the *Contractor* shall adopt the interpretation which places the higher or more onerous obligation on the *Contractor*.

12A WORK HEALTH AND SAFTY

Insert new clause 12A as follows:

'12A WORK HEALTH AND SAFETY

12A.1 (**Interpretation**) In this clause:

- (a) '*Act*' means the *Work Health and Safety Act 2011* (Qld);
- (b) '*WHS authority*' means any government authority having jurisdiction under the *WHS Laws*;
- (c) '*Regulation*' means the *Work Health and Safety Regulation 2011* (Qld);
- (d) '*inspector*', '*notifiable incident*', '*regulator*' '*structure*' and '*workplace*' have the same meanings as in the *Act*,
- (e) '*principal contractor*' has the same meaning as in the *Regulation*;
- (f) '*statutory notice*' means any:
 - (i) infringement notice, prohibition notice, improvement notice or non-disturbance notice; and

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- (ii) any electrical safety protection notice or unsafe equipment notice,

issued by an *authority* pursuant to the *WHS Laws*;

- (g) '*WHS*' means work, health and safety;
- (h) '*WHS Laws*' means the *Act*, the *Regulation* and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards.

12A.2 (**Appointment as principal contractor**) Where *Item 22B* states that the *Contractor* is appointed as *principal contractor*, then from the *date of acceptance of tender*:

- (a) the *Principal* engages the *Contractor* to be the *principal contractor* under the *Regulation* in relation to *WUC* and authorises the *Contractor* to:
 - (i) have management and control of the *site* and any other *workplace* at which *WUC* is carried out; and
 - (ii) discharge the duties of the *principal contractor*;
- (b) the *Contractor* accepts the engagement as *principal contractor* from the *Principal* and agrees to fulfil all requirements and give effect to that engagement prior to the commencing any *WUC*; and
- (c) the *Contractor* will comply with and discharge all obligations imposed on the *Contractor*, as *principal contractor*, by the *WHS Laws*.

If *Item 22B* states that the *Contractor* is not engaged as *principal contractor*, the *Contractor* must comply with all *directions* of the *Superintendent* relating to *WHS*.

12A.3 (**Contractor's primary obligations**) From the *date of acceptance of tender*, the *Contractor* must:

- (a) comply with and discharge all obligations imposed on the *Contractor* as a person who conducts a business or undertaking and otherwise, by the *WHS Laws*;
- (b) consult with the *Principal* and consult with the designers of the whole or any part of a structure to be constructed under the *Contract*, about how to ensure that risks to health and safety arising from the design are eliminated during construction of *WUC* or, if it is not reasonably practicable to eliminate the risks, minimise, so far as is reasonably practicable;
- (c) in performing its obligations under the *Contract*, take into account and take appropriate action having regard to any information given to the *Contractor* by the *Principal* or any other person, about hazards and risks at or in the vicinity of the *workplace* where *WUC* is being carried out, and
- (d) without limiting paragraph 12A.2(c) ensure its officers, workers and agents, subcontractors and its subcontractors' officers, workers and

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agents, discharge their respective duties under the *WHS Laws* in connection with *WUC*.

12A.4 (Contractor's WHS systems and documentation) The *Contractor*:

- (a) must ensure, and 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 the *Contract*;
- (c) must prepare and adopt a *WHS* plan and other documentation which:
 - (i) addresses all the specific *WHS* hazards and issues relevant to the *Contractor's* obligations under the *Contract* which can be reasonably anticipated or ascertained from time to time during the performance of the *Contractor's* obligations under the *Contract*;
 - (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 this subclause 12A.4(c) at all times during the performance of its obligations under the *Contract*;

- (d) must:
 - (i) unless otherwise directed by the *Principal*, prior to commencing *WUC*, submit the *Contractor's WHS* plan and other 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 *Contractor* 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 *Contractor's* obligations under the *Contract* requests the *Contractor* 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 *Contractor's* obligations under the *Contract*.

12A.5 (Notices and reports) The *Contractor* must:

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- (a) if a *notifiable incident* occurs at the *workplace* at which *WUC* is being undertaken:
 - (i) immediately notify the *regulator* and the *Superintendent* of the *notifiable incident*; and
 - (ii) take all reasonably practicable steps to secure the *site* where the *notifiable incident* occurred until an *inspector* arrives at the *site* or any earlier time that an *inspector* directs;
- (b) provide a copy of every *statutory notice* received from an *authority* in connection with *WUC* to the *Principal* and the *Superintendent* within 1 *business day* after the notice is received; and
- (c) within the time directed by the *Superintendent* make available to the *Superintendent* and the *Principal* all project *site* accident data which must include injuries and damage resulting from accidents or any incidents involving harm to a third party, particularly where legal action may be taken against them or the *Principal*.

12A.6 (**Site specific induction**) The *Contractor* must ensure that all *personnel* of the *Contractor* working at the *site* receive a site-specific induction and that each person visiting the *Contractor* or its *personnel* at that *site* receives a site-specific induction or is accompanied by someone who has received such an induction.

12A.7 (**Safety compliance**) If during the performance of *WUC* the *Superintendent* informs the *Contractor* that it is of the opinion the *Contractor* is:

- (a) not conducting *WUC* in compliance with the *Act*, *Regulation*, codes of practice or relevant policies and procedures; or
- (b) conducting *WUC* in such a way as to endanger the health and safety of the *Contractor's personnel*, the *Principal's personnel* or the general public,

the *Superintendent* may direct the *Contractor* to promptly remedy the breach or take any other action permitted by the *Contract*, including suspending the whole or part of *WUC* pursuant to clause 33 until such time as the *Contractor* satisfies the *Superintendent* that *WUC* can be resumed in a safe manner.'

15 DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC

Delete clause 15.2.

15A LIABILITY

Insert a new clause 15A as follows:

'15A LIABILITY

15A.1 (**Limit and exclusion of liability**) Subject to subclause 15A.2, to the extent permitted by law:

- (a) the total aggregate liability of each party to the other in connection with the *Contract* (including in respect of any *claims*) shall not exceed that party's *liability limit*; and

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- (b) neither party shall be liable to the other upon any *claim* for any *specified loss* unless and then only to the extent that the *Contract* expressly provides for that liability.

15A.2 (**Application of clauses**) Subclause 15A.1 does not apply to:

- (a) liability of the *Principal* to pay the *contract sum* as adjusted pursuant to the *Contract*;
- (b) liability of the *Contractor* for liquidated damages pursuant subclause 34.7;
- (c) liability of either party in connection with personal injury or death or damage to property;
- (d) liability of a party arising as a result of:
 - (i) a breach of any *legislative requirement*;
 - (ii) an infringement of confidentiality or *intellectual property rights*;
 - (iii) a deliberate breach or abandonment of the *Contract*;
 - (iv) *wilful misconduct*; or
 - (v) fraud or other criminal conduct,by that party;
- (e) liability of the *Contractor* which the *Contractor*.
 - (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 *Contractor* 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 *Contractor*,

and amounts referred to in paragraphs (a), (b), (c), (d) and (e) shall not be included in calculating whether the *liability limit* of a party has been reached.'

16A INSURANCE OF THE WORKS

In the third paragraph of Alternative 1, delete 'The insurance cover shall be for an amount not less than the aggregate of the:' and insert:

'The insurance cover shall be for an amount per occurrence of not less than the aggregate of the:'

In the second last paragraph of Alternative 1, delete 'be in the joint names of the parties' and insert 'be in the name of the *Contractor* and shall note the *Principal* as an interested party'.

17 PUBLIC LIABILITY INSURANCE

In Alternative 1, delete the existing text of subclause 17(a) and replace with:

- '(a) be in the name of the *Contractor* with the *Principal* noted as an interested party;'

19 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

Delete subclauses 19.3 and 19.6.

20 SUPERINTENDENT

Delete the first paragraph of clause 20 and insert:

'The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent*, when acting as certifier, valuer or assessor, fulfils all aspects of the role and functions honestly, independently, and in accordance with the *Contract*. The *Contractor* acknowledges and accepts that the *Superintendent* and individuals appointed as *Superintendent's Representatives* under clause 21 may be employees of the *Principal* or may have a general commercial relationship with the *Principal* beyond the performance of the appointed roles under this *Contract*.'

23A KEY PERSONNEL

Insert a new clause 23A as follows:

'23A KEY PERSONNEL

Unless the *Superintendent* approves a change in key *personnel* in writing, the *Contractor* must provide the key *personnel* (if any) identified in *Item 25A* to perform the roles during the period or periods stated in *Item 25A* or where no period is stated, until the end of the last *defects liability period*. The *Contractor* may seek the approval of the *Superintendent* to change the role of any key *personnel* or to engage additional persons as key *personnel*.

The *Contractor* must promptly arrange a replacement approved by the *Superintendent* to replace any key *personnel*. The *Contractor* must provide any information reasonably required by the *Superintendent* in connection with the replacement. The *Superintendent* cannot unreasonably refuse to approve a replacement person that is of equal or greater skill, experience and competency to the person being replaced.'

24 SITE

Delete the first sentence of the second paragraph of subclause 24.1 and insert:

'The *Principal* shall give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site* on the later of:

- (a) the expiry of the time in *Item 26(b)*; and
- (b) 10 *business days* after the *Contractor* has:
 - (i) complied with subclause 19.1;

- (ii) submitted *design documents* which comply with the requirements of the *Contract*, and
- (iii) given the *Superintendent* all other information and documentation and done all other things which the *Contract* elsewhere requires to be given or done before possession of the *site* is given.

Possession of the *site* may be non-exclusive.

25 LATENT CONDITIONS

Delete '28 days' from subclause 25.3 and insert '5 *business days*'.

29 QUALITY

Delete the first paragraph of subclause 29.3 and insert:

'If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):'

Delete the existing text of subclause 29.4 and insert:

'Instead of a *direction* pursuant to subclause 29.3 or clause 35, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*. Where the *Contract* elsewhere provides for an applicable reduced level of service for the subject *work*, then the *contract sum* shall be adjusted in accordance with such provisions. Otherwise, there shall be a deemed *variation*.'

31 WORKING HOURS

Delete the first sentence of clause 31 and replace with:

'The working hours and *workings days* for *work* on the *site* are stated in *Item 26A*.'

32 PROGRAMMING

In the fifth paragraph, delete 'It shall be deemed a *Contract* document'.

34 TIME AND PROGRESS

Delete '28 days' from paragraph (b) of subclause 34.3 and replace with '10 *business days*'.

Delete the first paragraph of subclause 34.4 and replace with:

'To the extent that delays caused by *qualifying causes of delay* overlap with delays caused by other causes of delay, the *Contractor* shall not be entitled to an *EOT*.'

Insert the following at the end of subclause 34.4:

'To avoid doubt, all *EOTs* shall be claimed and granted in *working days*.'

Delete the existing text of subclause 34.5 and replace with:

'Within 20 *business days* after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate*, in its absolute discretion and without any obligation to do so for the benefit of the *Contractor*, direct an *EOT*. The *Contractor* shall not be entitled to any monetary compensation (whether under clause 34A or otherwise) in connection with an *EOT* granted by the *Superintendent* pursuant to this paragraph.

Neither:

- (a) a delay caused by a *compensable cause*; nor
- (b) a failure by the *Superintendent* to grant a reasonable *EOT* or to do so within the time required under subclause 34.5,

will set the *date for practical completion* at large or render subclause 34.7 unenforceable. Nothing in subclause 34.5 shall affect the *Contractor's* right to damages for a breach of contract.'

Delete subclause 34.9.

34A DELAY COSTS

Insert a new clause 34A as follows:

'34A DELAY COSTS

For every *working day* the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay costs pursuant to subclause 41.1, the *Superintendent* shall, under subclause 41.3, certify as due and payable to the *Contractor*, such extra costs as are reasonably and necessarily incurred by the *Contractor* by reason of the delay up to a maximum per *working day* of the amount stated in *Item 31A*.

Nothing in this clause 34A shall oblige the *Principal* to pay extra costs for delay –

- (a) which have already been included in the value of a *variation* or any other payment under the *Contract*;
- (b) caused by inclement weather or its effects, even if that inclement weather or those effects would not have delayed the *Contractor* but for an earlier delay caused by a *compensable cause*;
- (c) to the extent that the *Contractor* has failed to take all reasonable steps to mitigate the delay or the extra costs incurred.'

36 VARIATIONS

At the end of subclause 36.1, insert:

'The *Principal* may itself perform or engage others to perform any *work* which is omitted pursuant to this subclause 36.1 without payment of monetary compensation to the *Contractor* for doing so. No *variation* shall invalidate or amount to a repudiation of the *Contract*.'

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Delete the last sentence of subclause 36.2.

Delete the existing text of subclause 36.4 and replace with:

'The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) rates or prices in a *price schedule* to the extent that it is reasonable to use them;
- (c) *variation rates* (or where no applicable *variation rates* are included in the *Contract*, other applicable rates or prices in the *Contract*);
- (d) reasonable rates or prices, which shall include the percentage stated in *Item 32A* for profit, and if the *Superintendent* considers it reasonable to do so, the percentage stated in *Item 32A* for overheads,

and any deductions shall include the full value of the deducted *work* (including profit and overheads) unless the *Superintendent* considers it reasonable to exclude an amount for overheads, in which case the amount so excluded shall not exceed the percentage stated in *Item 32A* for overheads.

That price shall be added to or deducted from the *contract sum*, as the case may be.

For clarity, percentages for profit and overheads shall be calculated independently of each other, not cumulatively.

Notwithstanding anything else in the *Contract*, the *Principal* shall not be liable upon any *claim* in connection with an *informal variation direction* unless the *Contractor* gives the *Superintendent* a written notice which:

- (a) identifies the *informal variation direction*; and
- (b) states that the *Contractor* considers the *informal variation direction* is a *direction* for a *variation*,

within 5 *business days* after the *informal variation direction* is first given to the *Contractor*.'

37 PAYMENT

Delete the second paragraph of subclause 37.1, and insert:

'With each progress claim, the *Contractor* must submit the statutory declaration included in Annexure Part J, and any other documentation which the *Contract* elsewhere requires to be submitted with a progress claim.'

Delete the existing text of subclause 37.2 and insert:

'The balance remaining after all *required deductions* are deducted from the *claimable amount* shall be due from the *Principal* to the *Contractor*, or the *Contractor* to the *Principal*, as the case may be. The *Superintendent* shall, before the end of the *response period*, issue to the *Principal* and to the *Contractor* a *progress certificate* evidencing the *Superintendent's* opinion of that balance and, if

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that balance is different to the amount claimed by the *Contractor*, the reasons for that difference.

If the *Contractor* does not make a progress claim in accordance with *Item 33*, the *Superintendent* may nevertheless issue the *progress certificate*.

Unless the *Principal* itself issues a *payment schedule* which complies with the requirements of the *security of payment legislation* within the timeframes permitted under that legislation, the *Superintendent's progress certificate* or *final certificate* (as the case may be) shall be deemed to be the *Principal's payment schedule*, and to the extent that it is necessary for the *Principal* to do so, the *Principal* authorises the *Superintendent* to receive progress claims and issue *payment schedules* on its behalf.

Subject to the following paragraph, if the *progress certificate* shows that an amount is due to the *Contractor*, then the *Principal* shall pay the amount of the *progress certificate* before the end of the *payment period*. If the *progress certificate* shows that an amount is due to the *Principal*, the *Contractor* shall pay the *Principal* the amount of the *progress certificate* within 15 *business days* after receiving the *progress certificate*.

The party entitled to receive payment must provide a tax invoice in the form required by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). If the payment is a progress payment to be made by the *Principal* to the *Contractor*, then the tax invoice shall be in the amount of the *Superintendent's progress certificate* and must be provided to the *Principal* within 5 *business days* of receipt of such *progress certificate*.

To the extent permitted by law, if the *Superintendent* fails to include a *required deduction* in a *progress certificate*, then the *Principal* may nevertheless deduct that *required deduction* from the amount shown in the certificate and pay the balance (if any) to the *Contractor*.

Neither a *progress certificate* nor a payment of monies shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be on account only.'

In the second paragraph of subclause 37.4, delete 'Within 42 days after the expiry of the last defects liability period' and insert 'Before the end of the *response period*'.

Delete the third paragraph of subclause 37.4 and replace with:

'If the *final certificate* shows that an amount is due to the *Contractor*, then the *Principal* shall pay the amount of the *final certificate* before the end of the *payment period*. Otherwise, the *Contractor* shall pay the *Principal* the amount of the *final certificate* within 15 *business days* after receiving the *final certificate*.'

Delete subclause 37.6.

39 **DEFAULT OR INSOLVENCY**

Delete the existing text of paragraph (e) of subclause 39.2 and insert:

- '(e) in respect of subclauses 37.1 and 38.1, failing to provide a statutory declaration or documentary evidence or providing a statutory declaration or documentary evidence which is false, misleading or deceptive in any material respect; and

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- (f) failing to comply with an obligation under, warranty given or representation made in clause 2A (including where a warranty given or representation made is found to be false).'

Before the comma at the end of subclause 39.5(b)(iii), insert:

'(including *design documents* for which the *Principal* has been granted a licence under Alternative 1 of subclause 10.2).'

Delete the last paragraph of subclause 39.10 and insert:

'The *Principal* may also, without payment of compensation, take possession of and use the *design documents* (including *design documents* for which the *Principal* has been granted a licence under Alternative 1 of subclause 10.2).'

39A TERMINATION FOR CONVENIENCE

Insert a new clause 39A as follows:

'39A TERMINATION FOR CONVENIENCE

39A.1 (**Right to terminate**) The *Principal* may at any time, and for any reason, in its absolute discretion, terminate this *Contract* by giving 5 *business days* written notice to the *Contractor*.

39A.2 (**Obligations and rights after termination**) If the *Principal* exercises its right under this clause 39A, then:

(a) the *Contractor* must comply with all reasonable *directions* of the *Principal* in connection with the termination;

(b) the *Principal* may complete the uncompleted part of *WUC* itself or have it completed by others; and

~~(c) the *Principal* may, without payment of compensation to the *Contractor*, take possession of and use any:~~

~~(i) *design documents* (including *design documents* for which the *Principal* has been granted a licence under Alternative 1 of subclause 10.2); and~~

~~(ii) other documents and goods which have become the property of the *Principal*;~~

~~and the *Principal* shall have a right of access to any premises at which those things are held in order to recover possession of those things.~~

39A.3 (**Payment on Termination**) The *Superintendent* shall issue a certificate evidencing, and the *Principal* shall, subject to the *Contract*, pay the *Contractor*:

(a) the amount due to the *Contractor* for all work carried out to the date the termination notice takes effect, after taking into account previous payments and any deductions;

(b) the costs of materials reasonably ordered by the *Contractor* for the *WUC* which the *Contractor* is legally liable to accept, but only if on

payment these unincorporated materials become the property of the Principal, free of any encumbrance;

- (c) the reasonable, direct costs incurred by the *Contractor* for the removal of the temporary works and other things from the *site*, but only to the extent that the *Contractor* complies with a strict duty to mitigate its costs;
- (d) the costs reasonably incurred by the *Contractor* prior to receiving notice of termination in the expectation of completing *WUC*, where those costs have not been recovered through another payment by the *Principal*, but only to the extent that the *Contractor* complies with a strict duty to mitigate its costs; plus.
- (e) an additional amount equal to 5% of the balance of the *contract sum* remaining after deducting all amounts paid or payable to the *Contractor* pursuant to the *Contract* (including under subclause 39A.3(a)-(d)),

except that the total amount payable to the *Contractor* under the *Contract* shall not exceed the amount which would have been payable had the *Contract* not been terminated and the *Contractor* completed *WUC* in accordance with the *Contract*. The *Principal* shall not be liable upon any other *claim* in connection with the termination.'

39B PRINCIPAL'S RIGHTS ON FAILURE OF CONTRACTOR TO CARRY OUT AN OBLIGATION

Insert new clause 39B as follows:

'39B PRINCIPAL'S RIGHTS ON FAILURE OF CONTRACTOR TO CARRY OUT AN OBLIGATION

Without limiting the *Principal's* other rights, where the *Contractor* fails to carry out any obligation under the *Contract* (including the obligation to comply with a *direction* of the *Superintendent*) within the time required by the *Contract* or reasonably directed by the *Superintendent* for performance of such an obligation, the *Principal* may, after giving five *business days'* notice (unless urgent action is required, in which case the *Principal* need not give notice) to the *Contractor*, carry out that obligation itself or have it carried out by others.

If the *Principal* incurs more cost in carrying out the obligation itself, or having it carried out by others than it would have incurred if the *Contractor* had carried out the obligation, then those additional costs shall be a debt due and payable by the *Contractor* to the *Principal* and shall be certified as such by the *Superintendent*. The *Principal* shall be entitled to have access to the *site* and any other place where an obligation under the *Contract* is to be carried out in order to exercise the rights provided by this clause 39B.'

41 NOTIFICATION OF CLAIMS

Delete the first paragraph of subclause 41.1 and replace with:

‘References in clause 41 to a ‘claim’ are to be taken as references to a ‘*claim*’ whether or not the term is italicised.’

In subclause 41.2, delete ‘a party’ and replace with ‘the *Principal*’ and delete ‘the other party’ and replace with ‘the *Contractor*’.

Insert the following at the end of subclause 41.2:

‘Notwithstanding any other provision of the *Contract*, the *Principal* shall not be liable upon any *claim* by the *Contractor*:

- (a) which is required to be communicated in accordance with another provision of the *Contract* unless the *claim* has been communicated strictly in accordance with that provision;
- (b) to which subclause 41.1 applies unless the *Contractor* has given the *Principal* a *prescribed notice* within 45 *business days* after first becoming aware of the circumstances giving rise to the *claim*.’

Insert the following at the end of subclause 41.3:

‘For clarity, within 42 days of receipt of a *prescribed notice*, the party receiving a *prescribed notice* may give the *Superintendent* and the other party submissions in respect of the *claim* and the *Superintendent* shall be entitled to consider those submissions in assessing the *claim*.’

42 DISPUTE RESOLUTION

Delete the last paragraph of subclause 42.1 and insert:

‘Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39, 39A, 40 and subclause 42.4, continue to perform the *Contract*.’

In subclause 42.2:

Delete ‘or to agree on methods of doing so’ from the first paragraph.

Delete ‘or methods’ from the first paragraph.

Delete ‘arbitration’ from the second paragraph and insert:

‘mediation which shall be conducted in accordance with the mediation rules published by the Resolution Institute current as at the *date of acceptance of tender*’.

Delete the existing text of subclause 42.3 and insert ‘Not used’.

In subclause 42.4 delete ‘herein’ and insert ‘in subclauses 42.1 and 42.2’.

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Insert a new subclause 42.5 as follows:

'42.5 Disputing a direction of the Superintendent

Notwithstanding anything else in this clause or elsewhere in the *Contract*, unless a notice of *dispute* disputing a *direction* of the *Superintendent* is given in accordance with subclause 42.1 within 25 *business days* after the *direction* is given:

- (a) the *Contractor* will be deemed to have irrevocably accepted the *direction* and shall be barred from disputing the *direction* under this *Contract* or otherwise; and
- (b) the *Principal* shall not be liable upon any *claim* that is inconsistent with the *direction*.'

Annexure Part F1 – General Specification

Annexure Part F2 – The Principal's Briefing Documents

1. DESIGN & CONSTRUCT SCOPE OF WORKS. V3
2. 2021-10 Water for Parks-C1 rev C – Overall
3. 2021-10 Water for Parks-C2 rev C – Pipeline
4. 2021-10 Water for Parks-C3 rev C – Photos
5. 2021-10 Water for Parks-C4 rev C – Photos
6. 2021-10 Water for Parks-C5 rev C – Photos
7. 2021-10 Water for Parks-C6 rev C - Photos

Annexure Part F3 – Contractor’s Design Documents

Design documents tendered by the Contractor comprise-



Annexure Part H – Price Schedule

The *contract sum* is the lump sum of \$

including GST

Annexure Part J – Contractor’s Statutory Declaration

**Oaths Act 1867
STATUTORY DECLARATION**

QUEENSLAND
TO WIT

I,

of

in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between Croydon Shire Council and
(Contractor),

for the **(Contract)**

1. I hold the position of . Having made all reasonable inquiries, I am in a position to know the facts contained herein and am duly authorised by the Contractor to make this declaration on its behalf.

2. All subcontractors, suppliers, and consultants ('subcontractors') of the Contractor have been paid all that:

- (a) is due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted in respect of their part of the work under the Contract; and
- (b) the subcontractors have claimed is due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted in respect of their part of the work under the Contract,

except as disclosed in paragraph 3.

3. The Contractor has not paid the following amounts which are due and payable to subcontractors or which subcontractors claim are due and payable to them:

| Name of subcontractor | Date of claim | Date work the subject of the claim carried out | Amount claimed | Amount paid | Reason for not paying amount claimed |
|-----------------------|---------------|--|----------------|-------------|--------------------------------------|
| | | | | | |
| | | | | | |

4. All the Contractor's employees who at any time have been engaged on work under the Contract by the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted (including, without limitation building industry superannuation and long service leave levies), except as disclosed in paragraph 5.

5. The Contractor has not paid the following amounts which are due and payable to workers:

| Name of worker | Amount unpaid | Basis of payment (e.g. wages) | Reason for not paying amount claimed |
|----------------|---------------|-------------------------------|--------------------------------------|
| | | | |
| | | | |

6. All subcontracts and employee agreements are in accordance with applicable law and any specific requirements in the Contract.

7. The Contractor is not aware of any current or potential legal action against it which it has not previously disclosed to the Principal.

- 8. The Contractor remains able to pay its debts as and when they become due and payable. None of the events described in subclause 39.11(a), (b), (c) or (d) of the AS4902–2000 General conditions of contract for design and construct (or any analogous event) has occurred in relation to the Contractor since the date on which the Contractor submitted its tender for the Contract to the Principal.
- 9. No non-conforming building products or building products the subject of a warning statement issued by the Minister have been incorporated into the works and all required information has been obtained and provided to the Principal or the Superintendent (where 'building product', 'Minister', 'non-conforming building product' and 'required information' each have the respective meanings given to those terms in the *Queensland Building and Construction Commission Act 1991* (Qld)).
- 10. All insurances which are required to be effected and maintained under the Contract remain in place.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

Taken and declared at)
 this day of)
 before me:)

 Solicitor Justice of the Peace
 Commissioner for declarations