



STANDARD TERMS AND CONDITIONS:

WORK ORDER

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1. DEFINITIONS

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

- (a) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
- (b) **Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality or any other person having jurisdiction over the project;
- (c) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (d) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of the Contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law (including without limitation any claim for an extension of time, Variation or other adjustment to the Price);
- (e) **Commencement Time** means the time stated in the Work Order by which the Contractor is required to commence performing its obligations under the Contract (or where no time is stated, promptly after the Contractor receives the Work Order) as extended (if at all) pursuant to the Contract;
- (f) **Completion** means the stage at which:
 - (i) each and every part of the Works has been carried out and completed in accordance with the Contract, Approvals and applicable law, except for minor omissions which do not reasonably affect the benefit to Council of the Works or prevent the Works from complying with an Approval or any applicable law;
 - (ii) all Approvals required to be provided by the Contractor under the Contract have been provided to Council;
 - (iii) a detailed photographic record demonstrating that the Works have been completed in accordance with the Contract, Approvals and applicable law has been provided to Council;
 - (iv) unless Council has stated in writing that it is not required, the Contractor has provided a declaration in the form contained in Schedule 1; and
 - (v) all other obligations of the Contractor which are stated in the Contract to be a requirement of Completion, or which are otherwise required to be undertaken prior to Completion have been completed;
- (g) **Completion Time** means the time (if any) stated in the Work Order or otherwise agreed between the Contractor and Council by which the Contractor is required to achieve Completion as extended (if at all) pursuant to the Contract or where there is no such time, means a reasonable time from the date of the Work Order;
- (h) **Confidential Information** means the Contract and all documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a Party in connection with the Contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public

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domain other than through a breach of clause 26 or are independently developed by the other Party;

- (i) **Contract** means the contract between Council and the Contractor comprising the documents described in clause 4.1;
- (j) **Contractor** means the person or entity identified to whom the Work Order is issued;
- (k) **Contractor Documents** means those records, reports, designs, specifications, certificates and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to Council by the Contractor (and all information advice, designs, calculations and recommendations in those documents);
- (l) **Council** means Torres Strait Island Regional Council;
- (m) **Council's Representative** means the person notified to the Contractor verbally or in writing from time to time;
- (n) **Council's Code of Conduct** means the code of conduct for suppliers published on Council's website or otherwise made available to the Contractor from time to time;
- (o) **Good Industry Practice** means those practices, methods, techniques and acts that, as at the date of this Contract are equal or superior to those utilised by other competent contractors experienced in the provision of work similar to the Works;
- (p) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (q) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (r) **Improper Conduct** means:
 - (i) engaging in misleading or deceptive conduct in relation to the Procurement Process or the Contract;
 - (ii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the Procurement Process;
 - (iii) attempting to improperly influence any Personnel of Council, or violate any applicable law regarding the offering of inducements in connection with the Procurement Process or the Contract;
 - (iv) accepting or inviting improper assistance of employees or former employees of Council in preparing its tender or any Claim against Council in connection with the Contract;
 - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract;
 - (vi) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence;
 - (vii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld); or
 - (viii) otherwise breaching Council's Code of Conduct;

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- (s) **Insolvency Event** in respect of a Party, means the Party:
 - (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
 - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
 - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (t) **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
- (u) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;
- (v) **Party or Parties** means one or both of Council and the Contractor as the context requires;
- (w) **Payment Period** means period ending 25 Business Days after receipt by Council of the claim.
- (x) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, suppliers, contractors and subcontractors of a Party and any other person or entity for whom that Party is vicariously liable but in respect of Council, does not include the Contractor;
- (y) **Preferred Supplier** means a contractor that has been selected as a preferred supplier under a Preferred Supplier Arrangement;
- (z) **Preferred Supplier Arrangement** means a preferred supplier arrangement established pursuant to section 233 of the *Local Government Regulation 2012* (Qld);
- (aa) **Pre-qualified Supplier** means a contractor that has been included on a Register of Pre-qualified Suppliers;
- (bb) **Price** means the amount payable for carrying out and completing the Work and satisfying all of the other obligations of the Contractor, as determined in accordance with the Contract;
- (cc) **Procurement Process** means the procurement process undertaken by Council pursuant to which the Parties have entered into the Contract;
- (dd) **Register of Pre-qualified Suppliers** means a register of pre-qualified suppliers established pursuant to section 232 of the *Local Government Regulation 2012* (Qld);
- (ee) **Regulator** has the meaning given in the WHS Act and WHS Regulation;
- (ff) **Site** means the site or sites made available by Council to the Contractor for the purpose of the Contractor carrying out its obligations under the Contract;
- (gg) **Standard Documents** means the Standard Price Schedule and the Standard Scope;
- (hh) **Standard Price Schedule** means the documents detailing the Contractor's rates and prices for the provision of the Works by the Contractor which were incorporated (whether physically or by reference) in to the written notice issued by Council to the Contractor notifying the Contractor that it had been appointed as a Pre-qualified

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Supplier or selected as a Preferred Supplier, as amended or replaced by agreement in writing between the Contractor and Council during the term of the Register of Pre-qualified Suppliers or Preferred Supplier Arrangement;

- (ii) **Standard Scope** means any documents detailing Council's requirements for the provision of the Works by the Contractor which were incorporated (whether physically or by reference) in to the written notice issued by Council to the Contractor notifying the Contractor that it had been appointed as a Pre-qualified Supplier or selected as a Preferred Supplier as amended or replaced by agreement in writing between the Contractor and Council during the term of the Register of Pre-qualified Suppliers or Preferred Supplier Arrangement;
- (jj) **Standard Terms and Conditions** means these standard terms and conditions;
- (kk) **Substantial Breach** includes:
 - (i) a failure to remedy a breach of a warranty given or representation made within 10 Business Days after being given a written notice to do so;
 - (ii) a failure to remedy any breach of an obligation under the Contract within 10 Business Days after being given a written notice to do so;
 - (iii) a breach that is incapable of remedy of an obligation under, or warranty given or representation made in, the Contract;
 - (iv) a breach of clause 18; or
 - (v) if the defaulting Party is the Contractor, the consistent or repeated breach of the Contract by the Contractor, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the defaulting Party;
- (ll) **Variation** means any material increase, decrease or change to the Works or the Contractor's obligations under the Contract;
- (mm) **WHS** means work, health and safety;
- (nn) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;
- (oo) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;
- (pp) **Wilful Misconduct** means an intentional act or omission by or on behalf of a Party committed with reckless disregard for its foreseeable and harmful consequences in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;
- (qq) **Work** means the work to be carried out by the Contractor as described in the Work Order and includes Variations, remedial work, construction plant and temporary works and any work not specifically mentioned in the Work Order but that is obviously and indispensably necessary for the carrying out and completion of the work that is mentioned;
- (rr) **Work Order** means, unless the Parties expressly agree otherwise:
 - (i) where a written request is issued, the written document(s) issued by Council to the Contractor which:

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- A. detail Council's requirements for the carrying out of Works by the Contractor; and
- B. either request the Contractor to provide, or accept the Contractor's offer to provide, those Works to Council,

including all documents attached to or incorporated by reference into those written documents and which may include a specification, product description, price list or other documents;

- (ii) where a verbal request is made, means the information provided verbally, and the information contained in any documents to which the Contractor's attention is directed;
- (iii) where a request, whether verbal or written, is made pursuant to a Register of Pre-qualified Suppliers or Preferred Supplier Arrangement, also include the Standard Documents;

(ss) **Workplace** has the meaning given in the WHS Act and the WHS Regulation; and

(tt) **Works** means the whole of the Work to be carried out and completed in accordance with the Contract, including Variations provided for by the Contract, which by the Contract is to be handed over to Council.

2. INTERPRETATION

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

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

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

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

- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of a local government authority, the State of Queensland, the Commonwealth or other Authority having jurisdiction and any related fees and charges; and
- (b) certificates, licenses, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,

which are applicable to the Contractor or the Contract or which are otherwise in force at any place where an obligation under the Contract is carried out and a reference to a statute includes all regulations and subordinate legislation and amendments

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

- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
- (b) a clause is to a clause in the Contract unless expressly stated otherwise;

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- (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile; and
 - (d) a monetary amount is a reference to an Australian currency amount.
- 2.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Contract expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day. A reference to a day, week or month means a calendar day, week or month.
- 2.7 **(Indemnities)** Each indemnity provided in the Contract is a continuing indemnity which survives the expiration or termination of the Contract. Council need not incur any expense or make any payment in order to rely on an indemnity.
- 2.8 **(Contra proferentem)** The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 2.9 **(Severance)** If a provision of the Contract is void or unenforceable it must be severed from the Contract and the provisions that are not void or unenforceable are unaffected by the severance.

3. GENERAL PROVISIONS

- 3.1 **(Joint and several obligations)** An obligation of two or more Parties binds them jointly and each of them severally. An obligation incurred in favour of two or more Parties is enforceable by them severally.
- 3.2 **(Governing law)** This Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 3.3 **(Binding on successor)** This Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.
- 3.4 **(Further assurance)** The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under the Contract.
- 3.5 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the Work Order or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:
- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
 - (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.
- 3.6 **(Waiver)** No waiver by a Party of a provision of the Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.
- 3.7 **(Consent)** Any consent of Council under the Contract may be given, withheld or given subject to conditions at the absolute discretion of Council.
- 3.8 **(Cumulative rights and obligations)** The rights and remedies of a Party provided in the

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Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of the Contract will not relieve the Contractor of any other obligation under the Contract, at law or in equity.

- 3.9 **(Counterparts)** This Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by fax or email.
- 3.10 **(Current versions)** Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Contractor must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or prices in the Contract shall be deemed to have allowed for compliance with that version.
- 3.11 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, clauses 20, 21.2, 23.4, 25.5, 25.7, 26 and 28 survive the expiration or earlier termination of the Contract.

4. CONTRACT

- 4.1 **(Documents comprising Contract)** The Contract comprises:
- (a) the Work Order; and
 - (b) these Standard Terms and Conditions (including Schedule 1 – Completion Declaration).
- 4.2 **(Final agreement)** The Contract constitutes the entire, final and concluded agreement between the Parties as to its subject matter.
- 4.3 **(Order of precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between the documents listed in clause 4.1, then the Work Order will take precedence.

5. PERFORMANCE AND PAYMENT

- 5.1 **(Performance)** The Contractor must, at the Contractor's expense, carry out and complete the Works and otherwise comply with its other obligations under the Contract in accordance with the Contract.
- 5.2 **(Payment)** Subject to the Contract, Council must pay the Contractor the Price for Work provided under the Contract in accordance with the Contract.

6. NO EXCLUSIVITY

- 6.1 The Contractor is not the exclusive supplier of the Work or of work of the same or a similar type to the Work.

7. NATURE OF RELATIONSHIP

- 7.1 The Contractor is an independent contractor of Council. The Contractor is solely responsible for payments required to be made to its Personnel for the performance of services in connection with the Contract and solely responsible for determining the manner in which it complies with its obligations under the Contract. The Contractor must provide such materials, equipment, knowledge and Personnel as the Contractor deems necessary to comply with its obligations and under the Contract.

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8. REPRESENTATIVES

- 8.1 **(Council's Representative)** Council's Representative is appointed as Council's agent to exercise any of Council's rights or functions under the Contract. Council's Representative is not an independent certifier or valuer. No other person is permitted to exercise any right or function of Council without the express written consent of Council or Council's Representative. The Contractor must notify Council immediately if it receives a purported direction in connection with the Contract from any person other than Council's Representative. Council shall not be liable upon any Claim relating to a direction given to the Contractor by any person other than Council's Representative.
- 8.2 **(Contractor's representative)** The Contractor must nominate an authorised representative for the purpose of managing the Contract and must notify Council in writing of the details of the nominated representative. Matters which are in the knowledge of the Contractor's representative are deemed to be within the knowledge of the Contractor. If Council reasonably objects to the nominated representative, the Contractor shall nominate another representative. The Contractor must notify Council in writing of a change in representative prior to effecting the change. If Council reasonably objects to the representative nominated by the Contractor, the Contractor shall nominate another representative.

9. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

- 9.1 **(Contractor Warranties)** The Contractor must ensure, and warrants and represents that:
- (a) **(Improper Conduct)** neither the Contractor nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Contractor must not, and must ensure that its Personnel do not, engage in any Improper Conduct in connection with the Contract;
 - (b) **(ability)** the Contractor and, to the extent applicable to them, its Personnel:
 - (i) have and will maintain the experience, skills, expertise, resources and judgement;
 - (ii) hold and will continue to hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,which are required for the Contractor to comply with its obligations under the Contract at all times until the Contractor has completed its obligations under the Contract;
 - (c) **(investigations)** the Contractor has carefully reviewed the Work Order (including the scope of Work and all other information contained or referenced in the Work Order) and is satisfied that the scope and other information is appropriate and adequate to enable the Contractor to comply with its obligations under the Contract;
 - (d) **(the Works)** the Contractor shall ensure that the Works:
 - (i) comply in all respects with the Work Order, Approvals, any applicable law and all directions of Council;
 - (ii) where applicable, comply with:
 - A. the Building Code of Australia and National Construction Code; and
 - B. manufacturers' specifications and installation instructions;
 - (iii) are carried out:

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- A. to the standard of skill, care and diligence expected of a skilled and competent Contractor engaged in the business of providing work similar to the Works or to such higher standard as the Contractor has represented in writing to Council in relation to the Contract; and
 - B. in accordance with Good Industry Practice;
- (e) **(legal capacity)** the Contractor has the full power, authority and capacity to enter into the Contract and that the Contractor's obligations under the Contract are valid and binding on it, and enforceable against it; and
- (f) **(Price)** the rates and prices in the Contract include compliance with all of the Contractor's other obligations under the Contract except, and then only to the extent, that the Contract provides otherwise.
- 9.2 **(Notice of breach)** The Contractor must notify Council immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Contractor has breached a warranty given or representation made in clause 9.1.
- 9.3 **(Warranties unaffected)** The warranties, representations and acknowledgements in clause 9.1 remain unaffected notwithstanding any Variation or other direction by Council or Council's Personnel except to the extent that the Contractor has given Council prior written notice expressly stating that the Variation or direction would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

10. CONDUCT OF CONTRACTOR AND PERSONNEL

- 10.1 **(General)** The Contractor must, and must ensure that to the extent applicable to them its Personnel involved in the performance of the Contractor's obligations under the Contract:
- (a) act professionally and courteously in all dealings with Council and Council's Personnel and the general public in connection with the Contract;
 - (b) comply with:
 - (i) Council's Code of Conduct;
 - (ii) any law, standards and codes of practice applicable to the Contractor, the Contractor's business or the Contractor's obligations under the Contract;
 - (iii) all directions of Council given pursuant to the Contract; and
 - (iv) any applicable policies, guidelines, procedures and codes of Council which are publicly available or otherwise made known to the Contractor from time to time; and
 - (c) do not either directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Works are to be carried out or to the public generally.
- 10.2 **(Local Government Worker)** The Contractor must ensure that when acting as a Local Government Worker, the Contractor's Personnel:
- (a) have all appropriate qualifications, skills and training to exercise a power or perform a responsibility under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009* (Qld);
 - (b) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Personnel are authorised as Local Government Workers by Council; and

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- (c) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).
- 10.3 **(Conflict)** Where there is any conflict between any standard or obligation described in clause 10.1 or 10.2, the Contractor and its Personnel must adopt the higher standard or more onerous obligation unless directed otherwise by Council.
- 10.4 **(Removal)** Council may at any time direct the Contractor to remove any of the Contractor's Personnel from the performance of the whole or part of the Contractor's obligations under the Contract if Council reasonably believes that the Contractor is in breach of clause 10.1 or clause 10.2 or a warranty and representation given in clause 9.1(a) or clause 9.1(b) in respect of that person, or that the person is otherwise responsible for a breach of the Contract by the Contractor.
- 10.5 **(Industrial relations)** The Contractor remains solely responsible for the management of industrial relations relating to its Personnel. The Contractor must promptly inform, and keep informed, Council in relation to any potential or actual industrial relations issues which could affect the ability of the Contractor to comply with its obligations under the Contract.

11. SITE

- 11.1 **(Access)** Council will endeavour to give the Contractor sufficient, but non-exclusive, access to the Site to carry out the Contractor's obligations under the Contract.
- 11.2 **(Pre-conditions to access)** Council may refuse to give such access until the Contractor has given the Council:
 - (a) evidence of insurance required by clause 21.3; and
 - (b) any other documents or information which the Work Order requires to be given to Council before access to the Site shall be given.
- 11.3 **(Cooperation with Council's Personnel)** The Contractor must use all reasonable endeavours to cooperate, communicate and co-ordinate with Council's Personnel at the Site. Council and its Personnel shall be entitled to access the Site and any other place where any obligation of the Contractor under the Contract is or is to be carried out on the giving of reasonable written notice.
- 11.4 **(Site specific requirements)** The Contractor must comply with the reasonable requirements of Council in relation to the Contractor's access to or conduct on the Site, including those identified in the Work Order.

12. SUBCONTRACTING, ASSIGNMENT AND NOVATION

- 12.1 **(By the Contractor)** The Contractor may subcontract, assign or novate the whole or any part of its obligations under the Contract but only with the prior written consent of Council (which may be given, withheld or given subject to conditions at the absolute discretion of Council). Subcontracting of the Contractor's obligations shall not relieve the Contractor from any liability or obligation under the Contract. As between Council and the Contractor, the Contractor shall be responsible and liable to Council for the acts or omissions of the Contractor's Personnel in connection with the Contract as if they were the acts or omissions of the Contractor.
- 12.2 **(By Council)** Council may assign or novate the whole or any part of its obligations under the Contract in its absolute discretion and without obtaining the consent of the Contractor.

13. MEETINGS

- 13.1 The Contractor must when reasonably required by Council, meet and discuss the performance of the Contractor and/or any other matter concerning Council in connection with the Contract.

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14. CONTRACTOR DOCUMENTS

- 14.1 **(Provision of copies)** The Contractor must create and provide Council with copies of the Contractor Documents at the times required by the Work Order, or where no time is stated, promptly whenever requested by Council.
- 14.2 **(Updated Contractor Documents)** Where directed by Council to do so, as a requirement of Completion (or where the Contract is earlier terminated, no later than 10 Business Days after the notice of termination under clause 25 is given), the Contractor must provide Council with a complete updated copy of the Contractor Documents accompanied by a declaration in the form contained in Schedule 1.

15. TIMING

- 15.1 **(Timing)** Except to the extent otherwise agreed by Council, subject to clause 15.2, the Contractor must commence performing its obligations under the Contract by the Commencement Time and must perform those obligations:
- (a) within any working hours described in the Work Order;
 - (b) with due expedition and without delay;
 - (c) in accordance with any requirements of the Contract and any reasonable directions of Council as to the order and timing of the performance of those obligations (including any program included in the Work Order or agreed between the Parties);
 - (d) so that the Works reach Completion by the applicable Completion Time.
- 15.2 **(Delay)** The Contractor must promptly notify Council if the Contractor is or will be delayed in carrying out the Work or otherwise performing its obligations under the Contract.
- 15.3 **(Claim for Extension of Date for Practical Completion)** Subject to clause 28, if the Contractor is delayed in reaching Completion by the Completion Time because of:
- (a) an act or omission of Council or its Personnel;
 - (b) a Variation;
 - (c) inclement weather occurring prior to the Completion Time; or
 - (d) any other event or circumstance which the Contract expressly states will entitle the Contractor to claim an extension of time under this clause 15.3,
- then Council shall extend the Completion Time by a reasonable period. Notwithstanding clause 28, Council may grant an extension of the Completion Time at any time at Council's absolute discretion and without any obligation to do so for the benefit of the Contractor.
- 15.4 **(Prevention and mitigation)** The Contractor shall take all reasonable steps to prevent the occurrence and to mitigate the effects of a delay.
- 15.5 **(No monetary compensation)** The Contractor shall not be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Contractor's obligations under the Contract however caused.

16. VARIATIONS

- 16.1 **(Direction for Variation)** Council may at any time and for any reason direct a Variation by giving written notice to the Contractor but cannot direct a Variation which is outside the general

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scope of the Contract. The Contractor must not carry out a Variation without a written direction to do so from Council.

- 16.2 **(Request for information)** The Contractor must promptly provide any information reasonably requested by Council in connection with a Variation, including, if requested, a detailed quotation for the Variation.
- 16.3 **(Adjustment of Price)** Subject to clause 28, the Price shall be adjusted for each Variation directed by Council in accordance with clause 16.1 or 16.2 by the amount agreed by the Parties or failing agreement by a reasonable amount determined by Council. The Contractor shall not otherwise be entitled to any payment in connection with a Variation.
- 16.4 **(Omissions)** Where Council directs a Variation omitting or reducing any part of the Work then Council may subsequently provide the omitted or reduced Work itself or engage others to do so on its behalf. The Contractor shall not be entitled to any monetary compensation in connection with an omission or reduction.

17. INVOICES

- 17.1 **(Timing of invoices)** Subject to clause 17.8, the Contractor may submit invoices to Council at contact.builders@tsirc.qld.gov.au for Works carried out in accordance with the Contract once after Completion.
- 17.2 **(Requirements of invoices)** Unless otherwise directed, invoices should be submitted promptly and, in any event, no later than 5 Business Days after Completion. The invoice must comply with the GST Law and unless otherwise directed by Council, include or be accompanied by:
- (a) the following information for each day on which Work was undertaken:
 - (i) the date on which the Work was undertaken;
 - (ii) lot number;
 - (iii) Work Order number;
 - (iv) for each separate task identified in the Work Order by a task number:
 - A. a description of the task (which aligns with the Work Order);
 - B. the task number: and
 - C. the number of hours taken to complete the task;
 - (b) where the invoice is the final invoice for the Work Order, all of the following (to the extent not already provided):
 - (i) a detailed photographic record demonstrating that the Works have been completed in accordance with the Contract;
 - (ii) a declaration in the form contained in Schedule 1; and
 - (iii) any Approvals; and
 - (c) any other documentation which Council reasonably directs prior to the time for submission of the invoice.
- 17.3 **(Amount due)** Council may deduct any amount due and owing by the Contractor to Council and any amount which Council reasonably claims is or will become due and owing by the Contractor to Council (whether under the Contract or otherwise) from any amount claimed by

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the Contractor under or in connection with the Contract (including for a breach of the Contract). The balance remaining after such a deduction shall be due by Council to the Contractor or by the Contractor to Council as the case may be.

- 17.4 **(Due date for payment)** Subject to the Contract, Council shall pay the amount due (if any) to the Contractor including any applicable GST before the end of the Payment Period. If an amount is due from the Contractor to Council, the Contractor must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from Council.
- 17.5 **(No admission)** Payments made by Council to the Contractor are made on account only and do not constitute an admission that the Contractor is entitled to the payment made or that the Works the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.
- 17.6 **(Sole entitlement)** Payment of the Price shall be the Contractor's only entitlement to monetary compensation for the provision of the Works and compliance with the Contractor's other obligations under the Contract.
- 17.7 **(Liability for GST)** If GST is imposed on any supply made pursuant to the Contract, the amount payable for the supply is to be increased by the amount of that GST.
- 17.8 **(Recipient created tax invoices)** Where Council is the recipient of a taxable supply under this Contract Council may issue recipient created tax invoices or recipient created adjustment notes in respect of these supplies in accordance with the GST Law and direct the Contractor not to issue tax invoices or adjustment notes in respect of the same supplies.

18. WORK HEALTH AND SAFETY

- 18.1 **(Relationship of obligations)** The obligations in this clause 18 are in addition to, and not in substitution for any other obligation of the Contractor:

- (a) under the WHS Act and WHS Regulation; or
- (b) elsewhere in this Contract or at law relating to WHS.

Nothing in this clause 18 is intended to reduce or limit such other obligations and none of those other obligations shall be taken to reduce or limit the Contractor's obligations under this clause 18.

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

- (a) comply with all law (including the WHS Act and the WHS Regulation) and codes of practice relating to WHS that are in any way applicable to this Contract;
- (b) discharge the duties and comply with all relevant duties, obligations, standards and requirements under the WHS Act and WHS Regulation which are or may become applicable in connection with the Contract including any direction relating to WHS issued by the Regulator or any other Authority;
- (c) at all times identify and take all reasonably practicable steps to ensure health and safety of all persons who may be affected by the performance of the Contractor's obligations under the Contract;
- (d) consult with and co-operate with Council in relation to matters of WHS that Council considers the Contractor cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with Council to ensure any issues are resolved to that standard;

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- (e) except where the Contractor is the principal contractor for a Site under the WHS Regulation, (in which case this subclause 18.2(e) does not apply), comply with:
 - (i) the reasonable requirements of any third party appointed by Council as principal contractor for the Site; or
 - (ii) if no third party has been so appointed for the Site, the WHS policies and procedures of Council which are in any way applicable to this Contract for that Site.

18.3 **(Incident notification)** The Contractor must:

- (a) promptly (and no more than 12 hours after the occurrence) notify Council of any accident, injury, property or environmental damage, which occurs during the carrying out of an obligation of the Contractor under the Contract;
- (b) report any Notifiable Incidents to the Regulator within the specified time frame as per the WHS Act and WHS Regulation; and
- (c) immediately notify Council of any lost time incident and within 3 Business Days of any such incident provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future.

18.4 **(Contractor's WHS systems and documentation)** The Contractor:

- (a) warrants and represents that it has adequate WHS systems in place having regard to the nature of its obligations under the Contract and any hazards specific to any Workplace at which an obligation under the Contract is to be carried out;
- (b) must inform Council of all its WHS policies, procedures or measures implemented for the performance of its obligations under this Contract;
- (c) must prepare and submit to Council for review the WHS documentation that Council directs it to prepare within the time directed by Council and must ensure that such documentation:
 - (i) addresses all the specific WHS hazards, issues relevant to the Contractor's obligations under the Contract which can be reasonably anticipated or ascertained at that time;
 - (ii) documents the system and control methods to be implemented for the performance of its obligations under the Contract,

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

- (d) must, if Council 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 Council, review any or all of the WHS documentation in accordance with Council's request and either:
 - (i) submit revised documentation to Council; or
 - (ii) provide written confirmation that the WHS documentation is appropriate to manage the risks associated with the Contractor's obligations under the Contract;
- (e) is not entitled to make any Claim (whether for additional costs or expense or extension to the Completion Time) in connection with its obligations under this clause.

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- 18.5 **(Site specific induction for construction sites)** If any Site is a construction site, then the Contractor must ensure that all Personnel of the Contractor working on that construction 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.

19. PROTECTION OF PROPERTY AND THE ENVIRONMENT

- 19.1 **(General)** The Contractor must:

- (a) perform its obligations under the Contract and ensure that its Personnel perform their part of those obligations safely and in a manner that will prevent pollution, contamination or damage to property; and
- (b) take all measures necessary to protect property in the performance of its obligations under the Contract.

- 19.2 **(Rectification of damage)** The Contractor must promptly rectify:

- (a) any damage to any property which is caused by the Contractor in connection with the performance of its obligations under the Contract; and
- (b) any damage to any property, which occurs whilst the Contractor is responsible for its care (whether or not due to any act or omission of the Contractor).

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

- 19.3 **(Urgent action)** If urgent action is necessary to protect persons, property or the environment in connection with the performance of the Contractor's obligations under the Contract, and the Contractor has not taken that action, Council may take such action itself or have it undertaken by others without prior notice to the Contractor. The cost incurred by Council in doing so shall be a debt due and owing by the Contractor to Council and may be deducted from any payments otherwise owing to the Contractor.

20. INDEMNITY

- 20.1 **(Indemnity)** To the extent permitted by law, the Contractor shall indemnify and keep indemnified Council and Council's Personnel against:

- (a) loss of or damage to property of Council; and
- (b) Claims by any person against Council in respect of personal injury or death, or loss of or damage to property of any party,

arising out of or in connection with the performance of the Contractor's obligations under the Contract, but the indemnity will be reduced to the extent that the negligent act or omission or Wilful Misconduct of Council or Council's Personnel caused or contributed to the cost, expense, fine, penalty, loss, damage, injury or death and/or Council failed to act reasonably to mitigate the cost, expense, fine, penalty, loss or damage.

- 20.2 **(Acceptance of benefit)** Council has informed its Personnel and communicates acceptance on behalf of its Personnel, of the Contractor's undertaking to indemnify under clause 20.1.

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21. INSURANCE

- 21.1 **(Insurances to be effected and maintained)** The Contractor must effect the following insurance policies on terms and with an insurer reasonably acceptable to Council:
- (a) public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims;
 - (b) third party and comprehensive motor vehicle insurance for each vehicle used by the Contractor in performing its obligations under the Contract;
 - (c) plant and equipment insurance for each item of plant for the full replacement value of the plant; and
 - (d) workers' compensation insurance in respect of the Contractor's Personnel as required by law.
- 21.2 **(Period of insurance)** The insurance policies required under clause 21.1 must be maintained at all times from the date on which the Contractor commences the performance of its obligations under the Contract until Completion.
- 21.3 **(Evidence of insurance)** If requested by Council, the Contractor must provide Council with a copy of the relevant certificate of currency and other evidence reasonably required by Council. Council may suspend the Contract or withhold payment from the Contractor until such evidence is provided.
- 21.4 **(Notification)** The Contractor must immediately notify Council's Representative if any insurance policy required under the Contract is cancelled or Council's interest in respect of any of those policies is adversely affected.

22. INSPECTIONS AND TESTS

- 22.1 **(Right to inspect and test)** Council's Representative shall be entitled to inspect and test all Works and Contractor Documents to ensure that the Works and Contractor Documents comply with the Contract, including all warranties given and representations made by the Contractor in the Contract. Inspections or tests carried out by Council or on behalf of Council shall not relieve the Contractor of any obligation or liability under the Contract nor limit or waive any right of Council.
- 22.2 **(Cost)** If an inspection or test undertaken by Council reveals a failure by the Contractor to comply with the Contract, then the costs reasonably incurred by Council in undertaking the inspection or test shall be a debt due and payable by the Contractor to Council.

23. NON-COMPLIANCE WITH THE CONTRACT

- 23.1 **(Non-complying Work or Contractor Documents)** Where the Contractor fails to comply with any obligation of the Contractor under the Contract, Council may direct the Contractor to rectify the non-compliance (including by performing or reperforming, removing, demolishing, repairing, replacing or reconstructing any non-complying Work or replacing non-complying Contractor Documents) at the Contractor's expense and within the timeframes reasonably directed by Council and make good any damage to any property or Work to the extent caused by the non-compliance or the rectification.
- 23.2 **(Step-in rights)** If the Contractor fails to comply with a direction under clause 23.1, then Council may after giving at least 5 Business Days written notice to the Contractor (except in the case of emergency, in which case no notice is required) carry out that other obligation itself or have it carried out by others and the cost incurred by Council in doing so shall be a debt due and owing by the Contractor to Council.

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23.3 **(Council's election)** Council may, at its absolute discretion and without any obligation to do so for the benefit of the Contractor, elect to rectify a non-compliance contemplated in clause 23.1 itself, or engage others to do so, at Council's own expense.

23.4 **(Timing)** A direction under clause 23.1 may be given at any time up to 3 months after Completion.

24. SUSPENSION

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

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

25. DEFAULT AND TERMINATION

25.1 **(Consequence of non-compliance or failure)** Council will take into account the Contractor's compliance with its obligations under this Contract in determining whether or not (and when) Council will enter into a future contract with the Contractor. Without limiting the preceding or any of Council's other rights under the Contract:

- (a) if the Contractor does not reach Completion by the Completion Time, Council may decide not to enter into any future contract with the Contractor until Completion is reached;
- (b) if the Contractor does not promptly comply with a direction under clause 23.1, Council may decide not to enter into any future contract with the Contractor until the non-conformance is rectified; and
- (c) Council may require the Contractor to satisfy Council that it has implemented appropriate improvements to its business prior to entering into any future contract with the Contractor.

25.2 **(Termination for convenience)** Council may at any time and for any reason in its absolute discretion terminate the Contract by giving 5 Business Days written notice to the Contractor.

25.3 **(Default by Contractor)** Where the Contractor has committed a Substantial Breach or is subject to an Insolvency Event, Council may by giving written notice to the Contractor immediately:

- (a) take out of the Contractor's hands the whole or part of the Contractor's obligations remaining to be completed pursuant to the Contract and suspend payment to the Contractor under the Contract until it becomes due and payable under clause 25.6; or
- (b) to the extent permitted by law, terminate the Contract.

Council may itself perform, or may engage others to perform, any obligations of the Contractor taken out of the hands of the Contractor or which remain unperformed at the time of termination.

25.4 **(Default by Council)** Where Council has committed a Substantial Breach, the Contractor may suspend the performance of its obligations under the Contract by giving written notice to this

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effect to Council. If the default has not been remedied within 20 Business Days after the notice of suspension is given to Council, the Contractor may terminate the Contract by giving written notice to this effect.

25.5 **(Payment on Termination)** If the Contract is terminated by either Party, Council shall, subject to the Contract and its other rights at law, pay the Contractor:

- (a) the amount which the Contractor is entitled to be paid under the Contract for Works carried out and obligations performed up to and including the date of termination; and
- (b) if the termination is solely due to the act or omission of Council, without any fault on behalf of the Contractor, the amount of any other direct costs which the Contractor demonstrates it has reasonably, necessarily and not prematurely incurred prior to the termination in the expectation of completing its obligations under the Contract, and which the Contractor demonstrates it cannot reasonably mitigate,

except that the total amount payable to the Contractor under the Contract shall not under any circumstances exceed the amount to which the Contractor would have become entitled to be paid had the Contract not been terminated.

25.6 **(Payment on take out)** On completion of the obligations of the Contractor which have been taken out of the hands of the Contractor, Council shall determine the cost incurred in completing those obligations and the amount which would have been paid to the Contractor had the Contractor completed those obligations (including any payment suspended under clause 25.3(a)) and the difference shall be a debt due and payable by the Contractor to Council or by Council to the Contractor as the case may be.

25.7 **(No other compensation)** Except to the extent expressly provided in this clause 25, the Contractor shall not be entitled to any monetary compensation in respect of the termination of the Contract by either Party or Council taking obligations out of the hands of the Contractor pursuant to this clause 25.

26. HANDLING OF INFORMATION

26.1 **(Obligation of confidence)** A Party must not use the other Party's Confidential Information for any purpose other than complying with its obligations or exercising its rights in connection with the Contract.

26.2 **(Information Privacy Act)** If the Contractor collects or has access to 'Personal Information' as that term is defined in the *Information Privacy Act 2009* (Qld) in order to carry out its obligations under the Contract, the Contractor must comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the Contract as if the Contractor was Council. Personal information collected by Council in connection with the Contract is collected for the purposes of enabling Council to properly discharge its functions as a local government authority and may be accessible by and disclosed to Personnel engaged to assist Council in doing so. Personal information will otherwise be dealt in accordance with Council's privacy policy. Council is authorised to collect personal information in accordance with the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) and related legislation.

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

27. DISPUTE RESOLUTION

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

27.2 **(Mediation)** If the dispute is not resolved within 10 Business Days after the giving of the notice (or such longer period as may be agreed by the Parties) a Party may by written notice to the

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other Party refer the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute. The mediation must be conducted by a mediator to be appointed by agreement of the Parties or in default of agreement to be appointed by the President of the Queensland Law Society or his nominee at the request of a Party.

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

27.4 **(Urgent relief)** This clause 27 does not prevent any Party from taking any steps under any law out of which the Parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

28. NOTIFICATION OF CLAIMS

28.1 Notwithstanding anything else in this Contract, Council shall not be liable upon any Claim by the Contractor:

(a) **(Extension of time)** for an extension of the Completion Time pursuant to clause 15.3 unless the Contractor gives Council:

(i) a written notice of the delay within 10 Business Days after the first occurrence of the delay; and

(ii) a written claim for an extension of the Completion Time within 10 Business Days after the delay ends;

(b) **(Variation)** in connection with a direction for a Variation pursuant to clause 16.1 unless Council has expressly stated in writing that the direction is a Variation pursuant to clause 16.1 or the Contractor gives Council both:

(i) a written notice that it considers the direction is a Variation within 5 Business Days of the direction being given and, where practicable, before complying with it; and

(ii) a written claim for an adjustment to the Price within 15 Business Days after the Work the subject of the Variation is completed;

(c) **(Other directions)** in connection with any other direction under the Contract unless the Contractor gives Council a written notice of the Contractor's intention to make the Claim, identifying the direction and the general basis of the Claim and (if possible) the estimated quantum of the Claim within 15 Business Days after the direction is given; or

(d) **(Other Claims)** in connection with any other matter arising out of the Contract (including a Claim for a breach of Contract not including a claim for payment of the Price) unless the Contractor gives Council a written notice of the Contractor's intention to make the Claim, identifying the general basis of the claim, and (if possible) the estimated quantum of the claim within 45 Business Days after the first occurrence of the events on which the Claim is based.

Schedule 1 Contractor's Declaration

I, [insert name of person signing] declare that, in relation to the contract no. [insert contract no.] between Torres Strait Island Regional Council and [insert Contractor's name] (**Contractor**),:

1. the Works and Contractor Documents provided by the Contractor in connection with the Contract comply with the requirements of the Contract;
2. all other obligations of the Contractor under the Contract have been performed in accordance with the Contract; and
3. each claim for payment which the Contractor has submitted in connection with the Contract (and the documentary evidence provided in support of it), is true and correct.

Signed on behalf of the Contractor:

Signature

Name

Date