Agreement No: 1009T

TEMPORARY AMENITIES SEPTIC SERVICES – GREAT KEPPEL ISLAND

CONDITIONS OF CONTRACT for the

SUPPLY OF SERVICES (MAINTENANCE)
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Appendix A

Appendix B
Supply Agreement – Services

Parties

Council  Livingstone Shire Council  ABN 95 399 253 048
4 Lagoon Place, Yeppoon, Queensland 4703

Supplier  [Insert name] ABN [Insert]
of [Insert address]

Background

A  The Supplier represents that it has expertise in the performance of septic pump out of the temporary amenities on Great Keppel Island.

B  On the basis of the Supplier’s expertise and capacity, Council has agreed to engage the Supplier to perform the septic pump out of the temporary amenities on Great Keppel Island if and when requested by Council.

C  Council and the Supplier have entered into the Agreement to govern the terms of the supply of the Services.

Operative provisions

1  Definitions and interpretation

1.1  Definitions

In the Agreement, except where the context otherwise requires:

Term                      Definition
Additional Period          is the period or periods specified in the Schedule.
Agreement                  means the agreement between the parties, comprising this Services Agreement, the Schedules (and any other documents annexed to this Services Agreement or referred to and incorporated by reference) and any Order issued under this document.
Business Day               Means a day that is not a Saturday, Sunday or public holiday in Rockhampton, Queensland.
Carbon Law                 means the Clean Energy Act 2011 (Cth) and any associated Legislative Requirement which imposes:
(a)  a tax or levy on the emission of greenhouse gases;
(b)  any requirement or condition of a licence, permit, governmental consent or approval with respect to the production on emission of, or to reduce, limit,
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<td>Term</td>
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<tr>
<td>Claim</td>
<td>includes any claim, action, judgment, arbitration, proceeding, suit, cause of action, defence, set-off or demand (including any claim for time, delay, disruption, acceleration or associated costs and damages): (a) under, directly or indirectly arising out of or in connection with: (i) the undertaking or performance of the Services; or (ii) either party’s conduct prior to the date the Agreement is signed by the parties or in the negotiations leading to the parties’ entry into the Agreement; or (b) otherwise at law or in equity including: (i) by statute; (ii) in tort for negligence or otherwise, including negligent misrepresentation; or (iii) for restitution including restitution based on unjust enrichment.</td>
</tr>
<tr>
<td>Commencement Date</td>
<td>means the date specified in the Schedule, or if no date is described, the date the Agreement is signed.</td>
</tr>
<tr>
<td>Confidential Information</td>
<td>means any information: (a) relating to the business and affairs of Council; (b) relating to the customers, clients, employees, sub-contractors or other persons doing business with Council; (c) which is by its nature confidential; (d) which is designated as confidential by Council; or (e) which the Supplier knows or ought to know, is confidential, and includes all trade secrets, knowhow, financial information and other commercially valuable information of Council.</td>
</tr>
<tr>
<td>Conflict of Interest</td>
<td>means, in relation to the Supplier or its Personnel, any circumstances which: (a) constitute a conflict; (b) constitute a known and material risk of a conflict; or (c) may reasonably be perceived by others to constitute a conflict, between the interests of Council and those of the Supplier or its Personnel (or between the duties of the Supplier or its Personnel to Council and their duties to another entity) in relation to the performance of the</td>
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<td>Term</td>
<td>Definition</td>
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<tr>
<td>Supplier’s obligations under the Agreement.</td>
<td>Council’s Representative means the person nominated by Council in accordance with clause 8.</td>
</tr>
<tr>
<td>EOT</td>
<td>means a postponement of the Expiry Date.</td>
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<td>Expiry Date</td>
<td>means, if the Schedule sets out:</td>
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<td>(a) a date, that date; or</td>
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<td>(b) a period of time, then the last day of that period.</td>
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<td>General Conditions</td>
<td>means this document and the Schedule.</td>
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<td>Government Agency</td>
<td>means:</td>
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<td></td>
<td>(a) a government or government department or other body;</td>
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<td></td>
<td>(b) a government, semi-governmental or judicial person;</td>
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<td></td>
<td>(c) a person (whether autonomous or not) who is charged with the administration of a law.</td>
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<td>GST</td>
<td>has the meaning set out in the GST Act.</td>
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<tr>
<td>GST Act</td>
<td>means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and includes other GST related legislation.</td>
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<td>Insolvency Event</td>
<td>means any of the following events occurring in relation to the Supplier:</td>
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<td></td>
<td>(a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act 2001 (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;</td>
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<td></td>
<td>(b) the party is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act 2001 (Cth), or is presumed to be insolvent under the Corporations Act 2001 (Cth);</td>
</tr>
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<td></td>
<td>(c) an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party, otherwise than for the purpose of an amalgamation or reconstruction;</td>
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<td>(d) the party ceases to carry on business;</td>
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<td></td>
<td>(e) the party or the party’s property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act; or</td>
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<td></td>
<td>(f) anything analogous to the events described in paragraphs (a) to (e) occur.</td>
</tr>
<tr>
<td>Intellectual Property Rights</td>
<td>means any and all beneficial and legal ownership, intellectual property and industrial protection rights throughout the world, both present and future, including rights of or in connection with any confidential information, copyright (including future copyright and</td>
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<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks, designs, semiconductors, circuit layouts and performance protection (whether or not now existing and whether or not registered or registrable) and includes any right to apply for registration of such rights or renewals.</td>
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<tr>
<td>Legislative Requirements</td>
<td>includes:</td>
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<tr>
<td>(a) Acts, regulations, by-laws and ordinances;</td>
<td>(b) orders, awards, Codes and proclamations of any Government Agency having jurisdiction in the country, state or territory in which the matters the subject of the Agreement or any part of it are being carried out and the requirements of any other relevant Government Agency;</td>
</tr>
<tr>
<td>(c) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the performance of the Services; and</td>
<td>(d) fees and charges payable in connection with the foregoing.</td>
</tr>
<tr>
<td>Licences</td>
<td>means all licences, qualifications, registrations and other statutory requirements necessary for supply of the Services under the Agreement.</td>
</tr>
<tr>
<td>Loss</td>
<td>means all loss, damages, costs, liability or expense.</td>
</tr>
<tr>
<td>NGER Legislation</td>
<td>means the National Greenhouse Energy Reporting Act 2007 (Cth) and its regulations and any other legislation which may be introduced regarding greenhouse gas emissions, energy consumption and energy reporting obligations.</td>
</tr>
<tr>
<td>Personal Information</td>
<td>means information or an opinion (including information or an opinion forming part of a database), whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.</td>
</tr>
<tr>
<td>Personnel</td>
<td>means:</td>
</tr>
<tr>
<td>(a) in relation to Council, Council’s employees, agents and contractors (other than the Supplier); and</td>
<td>(b) in relation to the Supplier, the Supplier’s employees, agents, subcontractors and subcontractor’s employees.</td>
</tr>
<tr>
<td>Price</td>
<td>means the sum calculated in accordance with clause 12 and the Schedule of Prices and Rates payable by Council to the Supplier for the performance of the Services.</td>
</tr>
<tr>
<td>Privacy Act</td>
<td>means the Privacy Act 2009 (Qld) and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued there under, as amended from time to time.</td>
</tr>
<tr>
<td>Privacy law</td>
<td>means:</td>
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<td>Term</td>
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</tr>
<tr>
<td>(a) Term</td>
<td>the Information Privacy Act 2009 (Qld);</td>
</tr>
<tr>
<td>(b) Term</td>
<td>the Information Privacy Principles (Qld); and</td>
</tr>
<tr>
<td>(c) Term</td>
<td>all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.</td>
</tr>
<tr>
<td>Schedule of Prices and Rates</td>
<td>means the document set out in Appendix B.</td>
</tr>
<tr>
<td>Serious Breach</td>
<td>means a serious, material or substantial breach of any obligation in the Agreement and without limitation, includes any breach of the Agreement that Council considers is not capable of being rectified.</td>
</tr>
<tr>
<td>Services</td>
<td>means the Services to be provided by the Supplier as specified in the Technical Specifications.</td>
</tr>
<tr>
<td>Site</td>
<td>means the location specified in the Schedule as to where the Services are to be performed.</td>
</tr>
<tr>
<td>Supplier</td>
<td>means the person named in the Agreement as the supplier or provider of the Services, together with its employees, agents and representatives.</td>
</tr>
<tr>
<td>Supplier’s Representative</td>
<td>means the person nominated by the Supplier in accordance with clause 8.</td>
</tr>
<tr>
<td>Technical Materials</td>
<td>includes plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material and any intellectual property rights attaching to or contained within those technical materials, provided by Council to the Supplier pursuant to the Agreement.</td>
</tr>
<tr>
<td>Technical Specifications</td>
<td>means the Technical Specifications and Technical Schedules set out in Appendix A.</td>
</tr>
<tr>
<td>Tender</td>
<td>means the tender submitted by or on behalf of the Supplier and accepted by Council.</td>
</tr>
<tr>
<td>Term</td>
<td>means unless terminated earlier, the period that commences on the Commencement Date and expires on the Expiry Date.</td>
</tr>
<tr>
<td>WH&amp;S Act</td>
<td>means:</td>
</tr>
<tr>
<td>(a) Term</td>
<td>the Work Health and Safety Act 2011 (Qld);</td>
</tr>
<tr>
<td>(b) Term</td>
<td>any of its regulations; and</td>
</tr>
<tr>
<td>(c) Term</td>
<td>any advisory standards, ministerial notices, codes of practice or prohibition notices made under or preserved pursuant to, the Work Health and Safety Act 2011 (Qld),</td>
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### 1.2 Interpretation

In this Agreement:

(a) a singular word includes the plural and vice versa;

(b) a word which suggests one gender includes the other gender;
(c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this Agreement and references to this Agreement include any schedules or annexures;

(d) a reference to a party to this Agreement or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;

(e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(f) a reference to a document or agreement (including a reference to this Agreement) is to that document or agreement as amended, supplemented, varied or replaced;

(g) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

(h) if any day on or by which a person must do something under this Agreement is not a Business Day, then the person must do it on or by the next Business Day;

(i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;

(j) a reference to ‘month’ means calendar month;

(k) this Agreement is not to be construed against the interests of a party merely because that party proposed this Agreement or some provision in it;

(l) the meaning of any general language is not restricted by any accompanying example, and the words ‘includes’, ‘such as’ or ‘for example’ (or similar phrases) do not limit what else might be included; and

(m) headings are not to be used in the interpretation of this Agreement.

2 Term

2.1 Term of agreement

The Agreement commences on the Commencement Date and, subject to it being:

(a) terminated under clause 23; or

(b) extended under clause 2.2,

it remains in force only during the Term.

2.2 Extension of term

Council may extend the Term for the Additional Period(s) specified in the Schedule, by giving written notice to the Supplier no later than one month before the Expiry Date.

Council may, at its sole discretion, extend the Contract Term for a period up to four (4) months beyond the expiry date of the Contract Extension Period in the event that it has not completed the procurement process for any replacement arrangement.
2.3 Terms and conditions continue

If Council extends the Term, then the terms and conditions of this Agreement will continue to apply during the Additional Period.

3 Evidence of Agreement

3.1 Documents that comprise the agreement

(a) The Agreement between Council and the Supplier is comprised of the following documents:

(i) these Conditions;
(ii) Technical Specifications;
(iii) the Schedules attached to this document; and
(iv) any other documents annexed to this Agreement or referred to and incorporated by reference.

(b) Where there arises any inconsistency or ambiguity between provisions in the different documents which constitute the Agreement, the order of precedence to resolve the inconsistency or ambiguity shall be from (i) to (iv) in clause 3.1(a).

3.2 Entire agreement

The Agreement forms the entire agreement between the Supplier and Council in connection with the performance of the Services. To the extent permitted by Legislative Requirements, any statement, representation or promise made in any document or discussion has no effect except to the extent expressly stated in the Agreement.

4 Supply of services

4.1 Performance of Services

(a) The Supplier shall provide the Services for Council in accordance with, and as specified in, the Agreement and any Drawings, Specifications and other documents issued by the Council to the Supplier under the Agreement. Unless otherwise provided for by the Agreement, the Supplier shall be responsible for all things, including items not expressly mentioned in the Agreement, necessary for the satisfactory completion and performance of the Services. The documents which constitute the Agreement shall be taken as mutually explanatory and anything contained in one but not in another shall be equally binding as if contained in all.

(b) The Supplier shall comply and ensure its operators, subcontractors and employees comply with all reasonable requirements of the Site in respect of access, times of access, use of tools, security measures, maintenance and continuity of operation of existing services (including electricity supply and other essential services) and daily working periods. The Supplier shall be deemed to have made itself familiar with such requirements and its Offer shall be deemed to have included allowance for compliance with them.

(c) Where monthly Services are specified, these shall be effected on a regular basis with intervals between Services of not less than three weeks.
(d) Where annual Services are specified, these shall be effected during the first three months of the cycle of Services in the Agreement and where specified, these annual Services shall be undertaken in conjunction with the Condition Assessment Report.

(e) Any other Services required shall be undertaken at the intervals specified in the Specification.

4.2 Breakdown Services

(a) Council may direct the Supplier to perform Breakdown Services.

(b) If a “Schedule of Rates – Labour, Warranties and Materials” is included in the Agreement, Council’s Representative may apply such rates for any Breakdown Services performed by the Supplier.

(c) Council at its entire discretion may but is not obliged to use the Supplier for any Breakdown Services.

5 Variation

5.1 Council’s right to vary

(a) Council may at any time by notice in writing, vary the Services. Any such variation may be to:

(i) increase or decrease the extent of Services;

(ii) omit the Services or part of the Services and have those same Services carried out by another or by Council; or

(iii) change the type of Services,

(Variation).

(b) The Supplier must not vary the Services except as directed in writing by Council.

(c) If Council directs a variation omitting any part or all of the Services Council will not be in breach of this Agreement if it thereafter performs this work itself or employs or engages another person to carry out and execute the omitted Services. The services that have been omitted shall be valued under clause 5.4 and the Supplier shall have no other Claim of any nature against Council.

5.2 Supplier to mitigate

On receipt of a Variation under clause 5.1, the Supplier must, as applicable, take all steps necessary to minimise any Loss suffered by the Supplier as a result of the Variation.

5.3 Request or notification of Variation by Supplier

(a) If the Supplier:

(i) requests Council approve a Variation for any reason, the Supplier must make the request as soon as possible, and in any case no later than 10 Business Days before the Supplier proposes that the Variation be implemented, stating that it is a notice under clause 5.3(a)(i) and provide full details of the proposed Variation in writing; or
(ii) is of the opinion that a direction given by Council’s Representative is a Variation even though it is not expressly identified as a Variation by Council’s Representative, then the Supplier must notify Council of its opinion, in writing within three Business Days of receiving the direction and the notice must state that it is a notice under clause 5.3(a)(ii).

(b) Within 10 Business Days of receiving a notice under clause 5.3(a) or 5.3(a)(ii), Council’s Representative must confirm in writing whether or not it approves or rejects the Variation or that the direction is a Variation to the Agreement. If Council’s Representative confirms that the direction is a Variation to the Agreement, it shall be valued in accordance with clause 5.4 (as applicable).

(c) If the Supplier fails to give the notices required by this clause 5.3 strictly in accordance with clause 5.3, the Supplier will not be entitled to make any Claim under clause 5.1 with respect to any proposed Variation or direction.

(d) Council will not be obliged to approve a Variation for the convenience of the Supplier.

5.4 Valuation of variation

Except to the extent expressly agreed to the contrary in writing, any adjustment to the Price as a result of a Variation will be determined as follows:

(a) to the extent that the Agreement sets out rates or prices that are applicable to the Variation, those rates or prices will be used;
(b) if clause 5.4(a) does not apply, then by Council, acting reasonably; and
(c) if a reduction in the extent of Services occurs after the Supplier has incurred costs directly relating to the cancelled Services, then Council must reimburse the Supplier a reasonable amount for the costs directly incurred.

6 Supplier’s warranties

6.1 Warranties as to services

The Supplier warrants that the Services will:

(a) match the description (including any performance criteria) in the Agreement;
(b) be performed with skill, care and diligence;
(c) be performed by appropriately qualified and trained personnel;
(d) comply with all relevant Legislative Requirements, standards of Standards Australia Ltd or such other standard as Council may nominate; and
(e) be fit and suitable for any purpose expressed in this Agreement or which Council has made known to the Supplier, or in the absence of such expressed purpose, be fit for the purposes for which services of the same kind as the Services are commonly procured.

6.2 Warranties as to investigations

The Supplier warrants that, before entering the Agreement, it informed itself and its Personnel, where applicable, as to:

(a) the terms and conditions of the Agreement;
(b) the effect of all current and pending Legislative Requirements that regulate the performance of the Supplier’s obligations under the Agreement; and

(c) if the Site location is made known to the Supplier before entering into the Agreement, the nature of the Site and the means of access to and from the Site, including as affected by the weather conditions that are known to occur at the Site.

6.3 **Warranties as to supplier’s understanding**

The Supplier warrants that it has:

(a) a clear understanding of its obligations under the Agreement;

(b) not relied upon, and will not rely upon, any written or verbal statement or representation made to it by Council, but instead has relied upon, and will continue to rely upon, its own investigations and the Agreement;

(c) not placed any reliance on the accuracy or adequacy of any information or data provided to it by the Council, except only that much that is set out in the Schedule; and

(d) satisfied itself as to the correctness and sufficiency of its tender to undertake all of the obligations under the Agreement and that the Price, subject to any adjustments permitted under clause 12.8, covers all of its costs and overheads for the Supplier to perform all of its obligations arising from the Agreement.

7 **Supplier’s obligations**

The Supplier must:

(a) complete the performance of the Services in accordance with the Agreement;

(b) comply with all Legislative Requirements relating to the performance of its obligations under the Agreement;

(c) obtain at its expense, any necessary Licences;

(d) take all necessary measures to prevent any damage, harm or nuisance to persons, property or the environment arising from or in connection with the performance of the Services;

(e) comply with all lawful directions of Council;

(f) comply with all lawful directions of any other person with authority for workplace health and safety at the Site;

(g) inform itself as to and comply with all lawful procedures and policies published from time to time by Council relating to any matter connected with the performance of the Supplier’s obligations under the Agreement, including health, safety, the environment, Council’s Code of Conduct and security of the Site;

(h) unless the Agreement expressly states to the contrary, at its own expense supply all labour, plant, goods, tools appliances and other things that it requires to fulfil its obligations under the Agreement;

(i) keep Council fully informed in respect to all aspects of the Services; and

(j) comply with any reporting or meeting requirements directed by Council.
8 Representatives

8.1 Appointment of Representative

(a) Unless otherwise notified by Council to the Supplier, Council’s Representative has the authority to act on behalf of Council in discharging Council’s functions under this Agreement. This includes acting as the assessor, valuer or certifier in respect of any matter under this Agreement which requires an assessment, valuation or certification by Council.

(b) The Supplier must comply with any directions of Council’s Representative.

(c) Any notice that the Supplier is required to give to Council under this Agreement may be given to Council’s Representative.

8.2 Supplier’s Representative

(a) The Supplier must appoint a Supplier’s Representative who:

(i) has the power to:

(A) receive directions from Council in respect of this Agreement on behalf of the Supplier; and

(B) bind the Supplier in respect of all matters which arise or may arise in relation to this Agreement and the performance of the Services; and

(ii) is in a position to immediately attend at the Site upon reasonable request by Council.

(b) Matters within the Supplier’s Representative’s knowledge will be deemed to be within the knowledge of the Supplier.

8.3 Representatives’ delegates

Either party’s Representative may by prior notice in writing appoint a delegate to exercise any function for which they are responsible under the Agreement provided that only one delegate may exercise any function at the same time. Each party must ensure that the notice appointing such delegate specifies in detail the functions which the delegate is to discharge.

8.4 Changes and objections

Each party must notify the other in writing of any change in the identity of their Representative. If Council makes a reasonable objection to the appointment or nomination of the Supplier’s Representative, the Supplier must terminate the relevant appointment and nominate another Supplier’s Representative.

8.5 Site Meetings

(a) The Supplier must ensure that it and any consultants, suppliers or employees requested by Council to attend are represented at any project or site meetings (Site Meetings) to openly discuss all matters relevant to the Services and their progress, which may be convened by Council by reasonable notice to the Supplier.

(b) Minutes of each Site Meeting are to be made by the Supplier and issued to Council’s Representative as soon as possible thereafter. If Council’s Representative does not agree
with the accuracy of the minutes, it shall notify the Supplier of the inaccuracy and the Supplier must amend them accordingly.

(c) Despite the recording of the minutes of any Site Meeting, no resolution or communication at any Site Meeting (nor minutes recording any resolution or communication) shall waive, release, vary or affect in any way the parties obligations under this Agreement nor shall it constitute a direction under this Agreement and the Supplier shall have no entitlement to Claim in connection with such minutes.

9 Subcontracting

9.1 Council’s consent required
The Supplier must not subcontract or assign any right or obligation under the Agreement without Council’s prior written consent.

9.2 Supplier remains responsible
If the Supplier subcontracts any of the Services, the Supplier:

(a) remains fully responsible for the Services and its obligations under the Agreement; and
(b) will be liable to Council for acts or omissions of its subcontractors as if they were acts or omissions of the Supplier.

10 Adjustment to Services

10.1 Notice of delay or prevention
If in the reasonable opinion of the Supplier, the performance of the Services or any part thereof is, or is likely to be, delayed, the Supplier must, in accordance with the times specified in the Agreement and in any case within two Business Days of the first occurrence of the circumstance giving rise to the delay commencing, notify Council in writing setting out the details of the cause of the delay, the activities affected and the steps taken by the Supplier to minimise the delay.

10.2 Adjustment
If:

(a) the performance of the Services will be delayed by an act or omission of Council or its Personnel;
(b) the delay or was not contributed to by an act or omission of the Supplier or its Personnel;
(c) the Supplier has taken all reasonable steps to minimise the consequences of the delay;
(d) the Supplier has notified Council of the delay strictly in accordance with clause 10.1; and
(e) within 10 Business Days of the first occurrence of the circumstance giving rise to the delay commencing, the Supplier provides Council with a further notice demonstrating to Council’s reasonable satisfaction that the requirements of clauses 10.2(a), 10.2(b) and 10.2(c) have been met,

then Council must grant the Supplier a reasonable adjustment to the volume or timing of the Services as determined by Council in its sole discretion.
10.3 Delay costs

The Supplier will not be entitled to Claim for any costs for any delay it suffers unless the delay is directly and solely caused by a breach of the Agreement by Council and the Supplier can provide documentary evidence of such costs to Council’s reasonable satisfaction.

10.4 Unilateral adjustment

Without limiting any other right of Council, even if the Supplier has not requested an adjustment under this clause 10, Council may unilaterally (at any time in its sole discretion and solely for Council’s benefit) grant an adjustment to the Services.

11 Suspension

11.1 Right to suspend

Council may, by notice in writing at any time to the Supplier:

(a) suspend the performance of Services; and

(b) direct the Supplier to recommence the performance of Services.

11.2 Supplier to comply

When the Supplier receives a notice of suspension, the Supplier must suspend the performance of the Services until such time as it is directed to resume performance of the Services. When directed, the Supplier must resume performance of the Services as soon as reasonably possible.

11.3 Supplier’s rights

Unless the suspension is required due to the breach of contract or negligent act or omission of Council or its Personnel, the Supplier will have no Claim against Council in connection with any notice of suspension given by Council.

12 Payment and price

12.1 Price is inclusive

The Price is inclusive of all costs and expenses of the Supplier in performing its obligations under the Agreement, including:

(a) the cost of any items used in or supplied with the Services; and

(b) all Taxes except GST; and

(c) all costs of complying with Carbon Law.

12.2 Rise and fall

Subject to clause 12.8, the Price is fixed and firm and is not subject to adjustment for escalation in the cost of the Services, materials, labour or any other inputs into the performance of the Services in accordance with the Agreement.
12.3 **Schedule of Prices and Rates**

(a) The Price shall be ascertained by multiplying the measured quantity of each item of work actually carried out under the Agreement by the rate accepted by Council for that item as contained within the Schedule of Prices and Rates.

(b) The Schedule of Prices and Rates forms part of the Agreement only to the extent necessary for the purposes of valuing payment claims and Variations.

(c) Quantities in the Schedule of Prices and Rates are estimated and indicative quantities only and are not guaranteed by Council.

(d) The Supplier shall not be required to obtain a direction to execute additional quantities of the Services provided that the additional quantities are caused solely by the difference between the estimated and actual quantities required to execute the Services described in the Agreement.

12.4 **Payment claims**

At the times specified in the Schedule, the Supplier must submit payment claims to Council which must:

(a) be in the form required by Council;

(b) contain the details which, in the reasonable opinion of Council, are sufficient to describe and identify the Services for which payment is sought; and

(c) be accompanied by a Tax Invoice.

12.5 **Payment**

Within 20 Business Days of receipt of a payment claim that complies with clause 12.4, Council will pay the amount of the payment claim, except where:

(a) Council exercises its right under clause 12.6; or

(b) Council disputes the payment claim, in which case:
   
   (i) Council will pay the undisputed part of the relevant payment claim (if any); and
   
   (ii) if the resolution of the dispute determines that Council is to pay an amount to the Supplier, Council will pay that amount within 20 Business Days of resolution of that dispute.

12.6 **Set off**

Council may reduce any payment due to the Supplier under this Agreement by any amount for which the Supplier is, or may become, liable to Council under this Agreement. This clause does not limit Council’s right to recover those amounts in other ways or limit any other rights of Council.

12.7 **Payment on account**

Any payment made by Council will neither be evidence of the value of the Services performed, nor an admission that the Services have been performed satisfactorily, but will be deemed to be a provisional payment on account and subject to a final verification by Council.
12.8 Adjustments to price

If the Schedule indicates that the Price is to be adjusted during the Term, then on the date or dates stated in the Schedule (which must not be more frequent than six monthly), the Price from and including the applicable date set out in the Schedule will be adjusted by the amount or according to the formula set out in the Schedule.

13 Goods and Services Tax

13.1 Definitions

In this clause 13, ‘Input Tax Credit’, ‘Joint Venture Operator’, ‘Recipient’, ‘Representative Member’, ‘Supplier’, ‘Tax Invoice’ and ‘Taxable Supply’ have the meanings given to them in the GST Act and ‘Supplier’ means the entity making the Supply.

13.2 GST exclusive

Except under this clause, the consideration for a Supply made under or in connection with this Agreement does not include GST.

13.3 Taxable supplies

If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:

(a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this Agreement for that Supply; and

(b) the Supplier must give the Recipient a Tax Invoice for the Supply.

13.4 Reimbursement and indemnity

If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST components of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credits (if any).

14 Insurance

14.1 Policies to be maintained

The Supplier must take out and maintain during the Term, and where applicable, ensure that its Personnel also take out and maintain:

(a) if stated in the Schedule, professional indemnity insurance to the value set out in the Schedule;

(b) insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer’s liability, from any accident or injury to any person employed by the Supplier in connection with the performance of the Services. This insurance must comply with the Legislative Requirements of the relevant jurisdiction in which the performance of the Services is carried out;
(c) if stated in the Schedule, comprehensive motor vehicle, including third party liability, insurance, in respect of all motor vehicles used by the Supplier or its Personnel, in connection with the performance of any obligations under the Agreement, including for third party property damage and for personal injury in accordance with relevant Legislative Requirements; and

(d) public liability insurance to the value set out in the Schedule.

14.2 Evidence of insurance

Within three Business Days of the Commencement Date and in any case before commencing to supply any Services and otherwise at the Council’s request, the Supplier must produce evidence that the Supplier is maintaining the insurances required by clause 14.1 (including providing certificates of currency of the insurance).

14.3 Failure to provide evidence

If the Supplier fails to produce evidence in accordance with clause 14.2, the Supplier may not submit any claim for payment under this Agreement or otherwise in connection with the performance of the Services until it does so.

15 Indemnity

15.1 Supplier’s liability

The Supplier is liable for, indemnifies and must keep indemnified Council and its Personnel against any Claim, liability, expense, cost, loss or damage of any nature whatsoever, which Council or its Personnel may suffer or incur, arising from or in connection with:

(a) any personal injury, illness, death to any person or loss or damage to any property;

(b) any infringement of any Intellectual Property Right, including any patent, registered design, trade mark or name, copyright or other protected right;

(c) any breach of the Agreement by the Supplier or its Personnel;

(d) any default or negligent act or omission of the Supplier or its Personnel.

15.2 Council to contribute

The Supplier’s indemnities under this clause 15 will be reduced to the extent that any negligent act or omission of Council or its Personnel contributed to the event giving rise to the obligation to indemnify.

15.3 Indemnities continuing

Each indemnity in this Agreement is a continuing obligation separate and independent from the Supplier’s other obligations and survives termination or expiration of this Agreement.

15.4 Right of recourse

If any Claim or action is made against Council, Council may retain any money due to the Supplier in respect of Services supplied for the purpose of settling or defending the claim or action. If the money retained is not sufficient for the purpose of settling or defending the Claim or action, the balance outstanding in respect of the claim or action may be recovered from the Supplier as a debt due and payable to Council.
16 Confidentiality

16.1 Obligations of confidence

The Supplier agrees to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any Confidential Information of Council provided to or obtained by the Supplier prior to or after entry into this Agreement.

16.2 Exclusions

The obligations of confidence in clause 16.1 do not apply to Confidential Information:

(a) that is required to be disclosed by applicable law, or under compulsion of law by a court or Government Agency, as long as the Supplier:

   (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and

   (ii) before disclosing any information, gives a reasonable amount of notice to Council and takes all available steps (whether required by Council or not) to maintain such Confidential Information in confidence;

(b) that is in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence; or

(c) that is already known by, or rightfully received, or independently developed, by the Supplier free of any obligation of confidence.

16.3 Restriction on disclosure

(a) The Supplier may use and disclose Confidential Information of Council only with the prior written consent of Council.

(b) If the Supplier discloses Confidential Information under clause 16.3(a), the Supplier must ensure that such information is kept confidential by the person to whom it is disclosed.

17 Intellectual property

17.1 Rights in council’s technical materials


17.2 Council grants licence to supplier

Council grants the Supplier a non-exclusive, royalty free, non-transferable licence to reproduce and use its Technical Materials, including a right to sub-licence as necessary for the purpose of completing the Agreement. The Supplier must not reproduce, use or otherwise deal with Council’s Technical Materials, or allow any other person to do the same, for any other purpose. Council has the right to revoke this licence at any time by notice in writing to the Supplier.

17.3 Supplier licences council

The Supplier grants to Council an irrevocable, royalty free licence, including the right to sub-licence, to use any of the Supplier’s and where applicable its Personnel’s Intellectual Property Rights connected with the Services and any documentation provided to Council in connection with the Services for the purposes of the Agreement.
17.4 Supplier’s warranty

The Supplier warrants that the licence granted under clause 17.2 will not infringe the Intellectual Property Rights of any third party.

17.5 Obligations continue

The obligations in this clause continue after the Agreement is terminated.

18 Defective Services

18.1 Options

If Council is not satisfied that the Services comply in all respects with the requirements of this Agreement, Council may, at its option:

(a) require the Supplier to, within a reasonable time, take such steps as are necessary to ensure that the Services comply with this Agreement and the Supplier agrees that no money will be payable to the Supplier by Council for any work done to rectify the non-compliance;

(b) notify the Supplier that Council rejects the Services which do not comply with this Agreement and the Supplier agrees to refund to Council any payments made by Council in respect of the Services which do not comply with this Agreement; or

(c) subject to clause 18.1(a) rectify, either itself or by others, rectify the Services which do not comply with this Agreement and the Supplier agrees to reimburse Council for any costs, losses, expenses or damages Council incurs in rectifying any Services which do not comply with this Agreement, which costs, losses, expenses or damages are deemed a debt due by the Supplier to Council.

18.2 Other rights not affected

Council’s rights under this clause do not in any way change or affect the Supplier’s obligations under this Agreement or affect Council’s rights to claim for any damage or Loss Council may suffer because of the Supplier’s failure to fulfil its obligations under this Agreement or to exercise other rights under this Agreement, including under clause 23.

19 Claims

If the Supplier does not:

(a) give to Council a written notice of any Claim it has or alleges against Council within 20 Business Days of events or circumstances giving rise to the Claim first occurring; or

(b) give to Council notice of any Claim required to be communicated by another provision of this Agreement within the time specified by that provision,

Council shall not be liable in connection with the Claim or to any Claim arising from or related to those events or circumstances and the Supplier shall be absolutely barred from proceeding with such Claim or any Claim arising from or related to those events or circumstances.
20  Records

20.1  Supplier to maintain records

The Supplier must maintain, and where applicable ensure that all of its Personnel maintain, accurate records relating to the performance of all of its and its Personnel’s obligations in connection with the Agreement, including records of:

(a) its tender to perform the obligations under this Agreement;
(b) quality management, testing and inspection records;
(c) compliance with all applicable Legislative Requirements, including NGER Legislation and any documentation received from Government Agencies;
(d) induction and other records relating to workplace health and safety and protection of the environment;
(e) insurance and any claims concerning such insurance;
(f) invoices and timeframes relating to the performance of the Services; and
(g) any other records reasonably requested by the Council.

20.2  Council’s access

Except where the Supplier has the benefit of legal professional privilege in relation to any record, the Council may at any time during business hours but subject to reasonable prior notice, inspect and copy any record referred to in clause 20.1 (including, without limitation, any records stored on any electronic medium).

20.3  Obligations continue

The obligations in this clause 20 will survive termination or expiry of the Agreement and will apply for a period of seven years from the Expiry Date or, from the date of termination of the Agreement, whichever first occurs.

21  Environmental reporting

21.1  Supplier to assist council

The Supplier acknowledges that Council is, or may become, subject to NGER Legislation. The Supplier shall provide any records required and all reasonable assistance to Council to enable it to comply with its obligations under NGER Legislation, including, but not limited to:

(a) keeping and maintaining for a period of seven (7) years, accurate records of:
   (i) the amount of greenhouse gases directly emitted; and
   (ii) the amount of energy (including, diesel, electricity or other fuels) used, in performing any of its obligations under this Agreement; and
(b) allowing Council access to those records and provide a copy of those records to Council upon request.
21.2 **Price includes costs of compliance**

The Price is deemed to include the Supplier’s costs of complying with its obligations under this clause 21.

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22 **Conflict of interest**

22.1 **Supplier’s warranty**

The Supplier warrants that, except as notified to Council at the date of signing the Agreement, no Conflict of Interest exists or is likely to arise in the performance of its obligations under the Agreement, by it or its Personnel.

22.2 **Supplier’s best endeavours**

The Supplier must use its best endeavours (including making all appropriate enquiries) to:

(a) ensure that a situation does not arise that may result in such a Conflict of Interest; and

(b) ensure that none of its Personnel engages in any activity or obtains any interests that may reasonably be considered to conflict with, or restrict the Supplier in, performing its obligations under the Agreement fairly and independently.

22.3 **Prohibited conduct**

The Supplier must not engage in any activity, transaction or arrangement that would be likely to result in a Conflict of Interest arising or continuing (including any activity, transaction or arrangement which Council may reasonably view as a Conflict of Interest), unless the Supplier has complied with clause 23.4 and Council has given its written approval for the Supplier to engage in that activity.

22.4 **Supplier to notify of conflicts**

Where a Conflict of Interest arises in the performance of the Supplier’s obligations under the Agreement, the Supplier must notify Council promptly of the situation, provide any information reasonably requested by Council and follow all reasonable directions by Council about the method for handling the Conflict of Interest.

22.5 **Breach of agreement**

Without limiting Council’s rights, a failure to comply with this clause 22 is a breach of the Agreement and Council may terminate the Agreement in accordance with clause 23.

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23 **Termination**

23.1 **Council may terminate**

Council may terminate the Agreement by notice in writing to the Supplier:

(a) if the Supplier does not carry out its obligations under the Agreement and fails to rectify the breach within seven days after being requested in writing to do so by Council; or

(b) immediately if the Supplier suffers an Insolvency Event.
23.2 Serious Breach

If Council reasonably considers that the Supplier has committed a Serious Breach, Council may in its absolute discretion either:

(a) terminate the Agreement immediately by notice in writing to the Supplier; or

(b) give the Supplier notice in writing requiring that the Supplier show cause in writing why the Principal should not terminate the Agreement immediately, and the Principal may terminate the Agreement immediately by notice in writing to the Supplier if:

(i) the Supplier does not show cause in writing within the time specified by the Principal in the notice to show cause (or if no time is specified, within a reasonable time); or

(ii) the Principal in its absolute discretion considers that the Supplier has not shown reasonable cause why the Principal should not terminate the Agreement immediately.

23.3 Consequences of termination

(a) Any expiration or termination of the Agreement does not affect:

(i) any of Council’s rights which may have accrued before the date of expiration or termination;

(ii) the rights and obligations of the parties under the Agreement which survive termination.

23.4 Return of documents

On the expiry or earlier termination of this Agreement, the Supplier agrees to immediately (and at no cost to Council) return all Technical Materials and all Confidential Information to Council.

24 Dispute resolution

24.1 Notice of Dispute

(a) If a dispute or difference between the Supplier and Council arises out of or in connection with the Agreement or the subject matter thereof (Dispute) then either party shall deliver a notice in accordance with clause 27.9 to the other party in writing adequately identifying and providing details of the Dispute and endorse it ‘Notice of Dispute’ (Notice of Dispute).

(b) Notwithstanding the existence of a Dispute, the Supplier shall continue to perform its obligations under the Agreement, subject to clause 23.

24.2 Notice to other Party

A party served with a Notice of Dispute may give a written response to the notice to the other party within 28 days of its receipt of the Notice of Dispute.

24.3 General Manager Meeting

(a) If a party is dissatisfied with the response of the other party under clause 24.2 or if the other party fails to give a written response to the Notice of Dispute within the time required under clause 24.2, the parties, by their respective general managers who will
have sufficient authority to resolve the Dispute, must meet within 14 days of the date of receipt of the response or within 14 days of the date upon which the response should have been given.

(b) At the meeting of the general managers referred to in clause 24.3(a), the parties will use their best endeavours to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means. At any such meeting, each party shall be represented by a person having authority to agree to a resolution of the Dispute.

(c) For the purposes of this clause 24.3:

(i) a ‘general manager’ of a party will be an appropriate senior manager nominated by that party; and

(ii) the meeting will take place in Rockhampton.

24.4 Chief Executive Officer Mediation

(a) If the general managers fail to resolve the Dispute or to agree on methods to resolve the Dispute by other means under clause 24.3, the parties must within 14 days of when the general manager’s meeting under clause 24.3 occurred or should have occurred:

(i) submit the Dispute to mediation (‘Mediation’) in accordance with, and subject to, the latest version of The Institute of Arbitrators’ & Mediators’ Australia Mediation and Conciliation Rules (whether or not that version was in force at the time of execution of this Agreement); and

(ii) have their respective Chief Executive Officer (‘CEO’) attend at and participate in the Mediation.

(b) If the identity of the mediator is not agreed by the parties within 14 days of when the Dispute was or ought to have been referred to Mediation under clause 24.4(a), the mediator shall be appointed by the President of The Institute of Arbitrators & Mediators Australia, Queensland Chapter.

(c) For the purposes of the Mediation, each party must within seven days from the date of submission of the Dispute to Mediation under clause 24.4(a), prepare and exchange with the other party, a brief statement setting out its own position on the Dispute and its reasons for adopting that position (‘Statement’).

(d) Within 10 days after the date the Statements are due to be exchanged under clause 24.4(c), the CEO of each party (or their authorised delegate) must attend at and participate in the Mediation and use their best endeavours to resolve the Dispute, each having full authority to do so.

(e) The Mediation shall be held on a ‘without prejudice’ basis. Except to the extent that may be necessary to demonstrate that a Mediation was, under the Agreement, required to proceed and that it did or did not proceed and the reasons for such circumstances having arisen, no dealings in respect to the subject matter of the Mediation (including the Statements) may be later disclosed or relied on by a party in any subsequent steps in respect to resolution of the Dispute in accordance with this clause 24.

(f) Unless the parties otherwise agree, the Mediation shall be held in Yeppoon.
24.5 **Non-Binding Expert Determination Process**

If the Dispute is not resolved under clause 24.4 within 30 days of the agreement or nomination of a Mediator, either party may give a notice ("Expert Determination Notice") to the other party, requiring the Dispute to be referred to an independent expert ("Expert") for determination.

24.6 **Who is an Expert?**

(a) For the purposes of this clause 24, an Expert is a person who is selected and agreed to as the Expert by the parties within five days after the Expert Determination Notice is given or, failing agreement on the identity of an Expert during that time, selected within the next 10 days by:

(i) for a Dispute only of a technical engineering nature, the President for the time being of Engineers Australia (Queensland Chapter); or

(ii) for a Dispute about any other matters, including the interpretation of the Agreement, the President for the time being of the Queensland Law Society Inc.

(b) An Expert must:

(i) have suitable and reasonable qualifications as well as commercial and practical experience in the area of the Dispute;

(ii) be independent of each party; and

(iii) have no interest or duty that conflicts or may conflict with the Expert’s function as an Expert.

24.7 **Referring Dispute to the Expert**

(a) Within seven days after an Expert is agreed or nominated, the parties must prepare and exchange with each other and with copies given at the same time to the Expert, written submissions ("Submissions") setting out the details of the Dispute to be determined by the Expert.

(b) Each Party must use its best endeavours to provide the Expert with any other information reasonably required by the Expert and will cooperate with the Expert and the other party in respect to the Expert determination process.

(c) Unless the parties otherwise agree, any meetings with the Expert in respect to the Expert determination process will be held in Yeppoon.

24.8 **Rules applying to Expert**

(a) The Expert must:

(i) act as an expert and not as an arbitrator and the provisions of the *Commercial Arbitration Act (Qld)* do not apply;

(ii) take into consideration and comply with the requirements of the Agreement;

(iii) proceed in any manner he or she thinks appropriate, without being bound to observe the rules of evidence, but subject to the requirements of procedural fairness;
(iv) take into consideration all documents, information and other material which the parties give the Expert including documents, information and material relating to the Dispute, including the Submissions;

(v) not be expected or required to obtain or refer to any other documents, information or material, but may do so if he or she thinks it is appropriate;

(vi) use his or her own expertise in forming conclusions; and

(vii) give a written decision on the Dispute ('Decision') within 30 days from the date of agreement on or the nomination of the Expert under clause 24.6 (or any extended period that the parties agree).

(b) The Expert may, if requested by either party, amend his or her Decision to correct:

(i) clerical mistakes;

(ii) an error from an accidental slip or omission;

(iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or

(iv) a defect in form.

(c) The parties agree to release and indemnify the Expert from and against any claim, liability or loss (except in the case of fraud or wilful default on the part of the Expert) that may be made against the Expert by any person relating to the Expert's determination of the Dispute, including the Decision.

24.9 Resolution of Dispute based on Expert's decision

(a) The Expert’s Decision is neither final nor binding on the parties.

(b) After the Expert has given his or her Decision:

(i) the parties may agree to give effect to the Decision (in which case this must be done within 14 days of the Decision being published); or

(ii) either party may proceed to litigation in respect to the Dispute in accordance with clauses 24.10 and 24.11.

24.10 Termination of Expert process

After the Expert has given his or her Decision or:

(a) if no Expert Determination Notice is given by a party under clause 24.5 within 30 days of when such an Expert Determination Notice could have been given; or

(b) if the Dispute has been referred to an Expert under this clause and the Expert has not made a decision within the 30 day period described in clause 24.8(a)(vii),

a party that has otherwise complied with the provisions of this clause 24 may by notice in writing delivered to the other party, terminate the Dispute resolution process provided for in clause 24 and proceed pursuant to clause 24.11.
24.11 Litigation
(a) Without limiting clauses 24.9 or 24.10, after termination of the Dispute resolution process under clause 24.10, either party may then commence legal proceedings concerning the Dispute in an appropriate court of law ('Litigation').

(b) A copy of the Expert’s Decision and of any Submissions or other documentation created in respect to the Expert Determination Notice are disclosable documents in any Litigation in respect to the Dispute, but in respect to the Mediation, clause 24.4(e) continues to apply.

24.12 Costs
Except for the costs of any Litigation concerning the Dispute, each party must pay:

(a) its own expenses in respect to the Dispute resolution processes under this clause 24 incurred prior to the termination of the Dispute resolution process under clause 24.10; and

(b) an equal proportion of any Mediator’s and Expert’s costs and of any necessary other third party costs reasonably incurred in respect to any Mediation or Expert determination processes under the Agreement.

24.13 Continued performance required
Without limiting the Agreement, including clause 24.1, the Supplier must continue to perform its obligations under the Agreement, despite the existence of a Dispute and despite any steps taken under this clause 24.

24.14 Information to be used for no other purpose
The parties agree that except to the extent that the Agreement, including this clause 24, otherwise provides, neither of them may use information provided or exchanged under this clause 24 for any purpose other than to resolve the Dispute between them.

24.15 No arbitration
This clause 24 is not an arbitration agreement within the meaning of the Commercial Arbitration Act (Qld).

24.16 Conditions Precedent
(a) Without limiting clauses 24.10 and 24.11, except in respect of urgent interlocutory relief, for instance in the nature of an urgent application for an injunction or for urgent declaratory relief, if a Dispute arises, the parties must comply with all of the requirements of this clause 24 before commencing any Litigation in respect of that Dispute.

(b) Compliance by a party with the procedures in clause 24 is a condition precedent to that party being entitled to commence Litigation in respect of any Dispute.

25 Privacy

25.1 Compliance with privacy laws
The Supplier must process all Personal Information in connection with this Agreement in accordance with the Privacy Laws (regardless of whether or not the Supplier is otherwise obliged
25.2 Compliance with directions of council

The Supplier must comply with all reasonable requests or directions of Council in connection with the obligations of Council under the Privacy Laws or in connection with policies developed by Council from time to time for the purpose of complying with the Privacy Laws.

25.3 Permitted disclosures

(a) The Supplier must not disclose Personal Information collected for the purposes of this Agreement without the prior authority of Council unless the disclosure is required:

(i) for the purposes of performing its obligations under this Agreement; or

(ii) by Legislative Requirements.

(b) The Supplier must immediately notify Council where it becomes aware that a disclosure of Personal Information may be required by law.

25.4 Transfer of information outside of Australia

The Supplier must not transfer outside Australia Personal Information collected for the purposes of this Agreement, or allow parties outside Australia to have access to such Personal Information, without the prior approval of Council.

25.5 Protection of personal information

The Supplier must take all necessary steps to ensure that Personal Information collected for the purposes of this Agreement is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only personnel authorised by Council have access to the Personal Information.

25.6 Supplier to notify of breaches

The Supplier must notify Council immediately if it becomes aware of a breach of any of clauses 25.1 to 25.5 by the Supplier or any Personnel or employee of any Personnel.

26 Personal Property and Securities Act 2009 (CTH)


The parties acknowledge that this Agreement may constitute a Security Interest in favour of Council.

If Council determines that this Agreement (or a transaction in connection with it) is or contains a Security Interest, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Council asks and considers necessary for the purposes of:

(a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;

(b) enabling Council to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
(c) enabling Council to exercise rights in connection with the Security Interest.

Council is not required to give any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).

The Supplier must notify Council as soon as the Supplier becomes aware of any of the following:

(d) if any Personal Property which does not form part of Council’s Personal Property becomes an Accession to Council’s Personal Property and is subject to a Security Interest in favour of a third party, that has attached at the time it becomes an Accession;

(e) if any of Council’s Personal Property is located or situated outside Australia or, upon request by Council, of the present location or situation of any of Council’s Personal Property; or

(f) if the Supplier parts with possession of Council’s Personal Property.

The Supplier must not:

(g) create any Security Interest or lien over any Personal Property that Council has an interest in (other than Security Interests granted in favour of Council);

(h) sell, lease or dispose of its Personal Property that Council has a Security Interest in;

(i) give possession of the Supplier’s Personal Property that Council has a Security Interest in or Council’s Personal Property to another person except where Council expressly authorises it to do so;

(j) permit any of Council’s Personal Property to become an Accession to or Commingled with any asset that is not part of the Works or the Site; or

(k) change its name without first giving Council 15 Business Days notice of the new name or relocate its Principal place of business outside Australia or change its place of registration or incorporation.

Everything the Supplier is required to do under this Clause 26 is at the Supplier’s expense.

Neither Council nor the Supplier will disclose information of the kind mentioned in section 275(1) of the PPSA and the Supplier will not authorise, and will ensure that no other party authorises, the disclosure of such information. This Clause 26 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) (b), (d) and (e) of the PPSA.

27 General

27.1 Amendments

This Agreement may only be amended by written agreement between all parties.

27.2 Assignment

(a) The Supplier may only assign this Agreement or a right under this Agreement with the written consent of Council.

(b) Council may at any time assign or novate its rights and obligations under this Agreement without the Supplier’s consent.
27.3 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts together make one instrument.

27.4 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

27.5 Entire agreement

This Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.

27.6 Further assurances

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

27.7 Governing law and jurisdiction

(a) Queensland law governs this Agreement except that the Sale of Goods (Vienna Convention) Act 1986 (Qld) will have no application to any matter in connection with either the Agreement or the Delivery of the Equipment.

(b) Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

27.8 Severability

A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause of this Agreement continue in force.

27.9 Notice

(a) A notice, consent or communication under this Agreement is only effective if it is:

   (i) in writing, signed by or on behalf of the person giving it;

   (ii) addressed to the person to whom it is to be given; and

   (iii) given as follows:

       (A) delivered by hand to that person’s address;

       (B) sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person’s address; or

       (C) sent by fax to that person’s fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.

       (D) sent by email to that person’s specified email address.
(b) A notice, consent or communication delivered under clause 27.9(a) is given and received:

(i) if it is hand delivered or sent by fax:

(A) by 5.00pm (local time in the place of receipt) on a Business Day – on that day; or

(B) after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day – on the next Business Day; and

(ii) if it is sent by post:

(A) within Australia – three Business Days after posting; or

(B) to or from a place outside Australia – seven Business Days after posting.

(iii) If it is sent by email:

(A) in accordance with the Electronic Transactions Act 1999 (Cth) when it enters that person's electronic or email system (whether or not they have seen it or read it) provided that the communication was sent to the email address specified by that person.

(c) A person's address, fax number and email address are those set out in the Schedule or as the person notifies the sender.

27.10 Relationship of parties

(a) The Supplier is Council’s contractor and not Council’s employee or agent.

(b) No party:

(i) is in any way the agent or partner of another party for any purpose whatsoever nor has any right to hold itself out as such; and

(ii) may make any promise, warranty or representation nor execute any contract or otherwise deal in the name of or on behalf of another party.
## Schedule

<table>
<thead>
<tr>
<th>Clause 2.1, Commencement Date:</th>
<th>1 July 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 1.1, Expiry Date:</td>
<td>30 June 2021</td>
</tr>
<tr>
<td>Clause 2.2 Additional Period:</td>
<td>Two (2) optional periods of up to twelve (12) months each at the sole discretion of Council.</td>
</tr>
<tr>
<td>Clause 1.1 Services:</td>
<td>Septic pump out of temporary amenities on Great Keppel Island.</td>
</tr>
<tr>
<td>Clause 1.1, Site:</td>
<td>[insert address of Site relevant to performance of Services or write 'not applicable']</td>
</tr>
<tr>
<td>Clause 1.1, Price:</td>
<td>See Appendix B</td>
</tr>
<tr>
<td>Clause 12.8, adjustments to Price:</td>
<td>Is the Price subject to adjustment: No.</td>
</tr>
<tr>
<td>Clause 12.4, times for submitting payment claims:</td>
<td>Invoices to be submitted monthly in arrears.</td>
</tr>
<tr>
<td>Clause 6.3(c), information that the Supplier may rely on:</td>
<td>Tender 1009T – Temporary Amenities Septic Services – Great Keppel Island – 18th May 2019.</td>
</tr>
</tbody>
</table>
| Clause 14.1, insurance:       | Is professional indemnity insurance required: no  
|                               | Is motor vehicle insurance required: Yes  
|                               | Value of public liability insurance is to be not less than: $20,000,000.00 |
| Clause 27.9(c), Details for notices: | Council  
| | Contact Person: [insert]  
| | Postal address: [insert]  
| | Street address: [insert]  
| | Facsimile: [insert]  
| | Supplier  
| | Contact Person: [insert]  
| | Postal address: [insert]  
| | Street address: [insert]  
| | Facsimile: [insert]  |
Execution

EXECUTED as an agreement.

Executed by
Livingstone Shire Council ABN 95 399 253 048 by its authorised officer:

Witness
Full name of Witness

Authorised Officer
Full name of Authorised Officer

Executed by
[#insert company name (in title case)]
ACN [#insert ACN] by:

Director
Full name of Director

Director/Secretary
Full name of Director/Secretary
Appendix A

Specifications

[Attach any specifications here or instead clearly identify the name, date and version of each document that forms the specifications]
Appendix B

Schedule of Prices and Rates

[Insert Suppliers Schedule of Prices and Rates]