MACKAY SEWERAGE STRATEGY

Quote 2020-017
Conditions of Quotation

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<th>Mackay Sewerage Strategy</th>
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<td>10:00 am, Tuesday 15 October, 2019</td>
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<td>RFQ Number:</td>
<td>Quote 2020-017</td>
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1 Agreement to be bound by conditions of quotation

In consideration of Mackay Regional Council:

(a) inviting the Respondent to quotation for the Services subject of these Conditions of Quotation; and

(b) agreeing to evaluate each Quotation submitted by the Respondent in accordance with these Conditions of Quotation,

the Respondent agrees to be bound by these Conditions of Quotation for each Quotation submitted by the Respondent.

2 Definitions

These Conditions of Quotation use definitions, some of which are found elsewhere in the Quotation Documents. Respondents should note the following defined terms:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Addenda or Addendum</td>
<td>means any document issued by Council pursuant to clause 7 of these Conditions of Quotation.</td>
</tr>
<tr>
<td>Alternative Quotation</td>
<td>has the meaning given to it in clause 14 of these Conditions of Quotation.</td>
</tr>
<tr>
<td>Conditions of Contract</td>
<td>means the contract pursuant to which any successful Respondent will be engaged by Council to carry out the Services, an indicative copy of which is set out in quotation Schedule 1.</td>
</tr>
<tr>
<td>Conforming Quotation</td>
<td>means a Quotation that:</td>
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<tr>
<td></td>
<td>(a) conforms with these Conditions of Quotation and with all applicable Legislative Requirements; and</td>
</tr>
<tr>
<td></td>
<td>(b) meets all safety and engineering standards to the satisfaction of Council; and</td>
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<tr>
<td></td>
<td>(c) ‘Contract’ means any contract formed between Council and the successful Respondent pursuant to clause 6 of these Conditions of Quotation and without limitation includes the Conditions of Contract.</td>
</tr>
<tr>
<td>Council</td>
<td>means Mackay Regional Council and includes where relevant any of its officers, agents or employees.</td>
</tr>
<tr>
<td>Date of Acceptance of Quotation</td>
<td>is the date so stated by Council in any Letter of Acceptance issued by Council pursuant to clause 17 of these Conditions of Quotation.</td>
</tr>
<tr>
<td>Date of the Invitation to</td>
<td>means the date on which Council invited Respondents to submit</td>
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<tr>
<td>Term</td>
<td>Definition</td>
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<td>-----------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
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<tr>
<td>Quotation</td>
<td>a Quotation in accordance with the Quotation Documents.</td>
</tr>
<tr>
<td>Day</td>
<td>means calendar day.</td>
</tr>
<tr>
<td>Drawings</td>
<td>means any diagrams, charts, maps, designs and other similar documents issued by Council as part of the Quotation Documents.</td>
</tr>
<tr>
<td>Legislative Requirements</td>
<td>includes: (a) acts, regulations, by-laws, ordinances, orders, awards and proclamations of the Commonwealth, the State or Territory or of the local government in which the Services or any part thereof is being carried out; (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services; and (a) fees and charges payable in connection with the foregoing.</td>
</tr>
<tr>
<td>Letter of Acceptance</td>
<td>means a letter provided by Council to the successful Respondent pursuant to clause 17 of these Conditions of Quotation.</td>
</tr>
<tr>
<td>Letter of Quotation</td>
<td>means the letter (in the form set out in Quotation Schedule 1) to be sent by a Respondent to Council enclosing that Respondent’s Quotation.</td>
</tr>
<tr>
<td>Mandatory</td>
<td>means enforcing strict compliance; not directory.</td>
</tr>
<tr>
<td>Moral Rights</td>
<td>means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, or particularly as conferred by the Copyright Act 1969 (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the Date of the Invitation to Quotation.</td>
</tr>
<tr>
<td>Non-Conforming Quotation</td>
<td>means a Quotation that does not strictly comply with the Quotation Criteria and includes an Alternative Quotation.</td>
</tr>
<tr>
<td>Personnel</td>
<td>has the meaning given to it in clause 32.4.</td>
</tr>
<tr>
<td>Privacy Act</td>
<td>means the Privacy Act 1988.</td>
</tr>
<tr>
<td>Program</td>
<td>means the Respondent’s program for the performance of the Services which must be submitted with a Respondent’s Quotation.</td>
</tr>
<tr>
<td>Schedule of Prices and/or Rates</td>
<td>means, if a Schedule of Prices and/or Rates is included in these Conditions of Quotation, that Schedule to be completed by the Respondent for a lump sum contract and/or a schedule of rates contract as the case may be.</td>
</tr>
<tr>
<td>Site</td>
<td>means the site at which the Services are to be performed.</td>
</tr>
<tr>
<td>Statement of Departures</td>
<td>means any Schedule created by the Respondent pursuant to clause 15 of these Conditions of Quotation, in the form set out in Schedule 2, listing all departures in the Quotation from the Quotation Documents.</td>
</tr>
<tr>
<td>Technical Specification</td>
<td>means any Technical Specification created by or on behalf of Council and included in the Quotation Documents, setting out the requirements for the Services.</td>
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</table>
### Interpretation

In these Conditions of Quotation:

(a) the singular includes the plural and vice versa and a gender includes other genders;

(b) a reference to a party is to be construed as a reference to a party to these Conditions of Quotation and includes its successors and permitted assigns;

(c) a reference to an item in a clause, schedule, annexure or appendix is a reference to an item in a clause of or schedule, annexure or appendix to these Conditions of Quotation and references to these Conditions of Quotation include its schedules and any annexures;

(d) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;

(e) a reference to a document or agreement including these Conditions of Quotation includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;

(f) in the interpretation of these Conditions of Quotation, headings are to be disregarded;

(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; and
(h) the words ‘including’ and ‘includes’ and any variants of those words, will be read as if followed by the words ‘without limitation’.

4 Background

Council seeks tenders to develop a robust, sustainable capital investment program for the Mackay Region up to 2046 which will enable the Long-Term Financial Forecast to be updated while taking into account operational impacts and costs, network resiliency and impacts to the treatment plants and licence conditions.

5 Timetable

The following timetable is indicative only and may be amended at any time in the absolute discretion of Council:

<table>
<thead>
<tr>
<th>Action</th>
<th>Time/Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quotation Release (Date the Quotation was advertised)</td>
<td>Friday 20 September 2019</td>
</tr>
<tr>
<td>Quotation Closing Date</td>
<td>10:00am Tuesday, 15 October 2019</td>
</tr>
<tr>
<td>Contract Award</td>
<td>October 2019</td>
</tr>
</tbody>
</table>

6 Quotation documents

6.1 Quotation documents

The Quotation Documents forming part of this Quotation are:

(a) the Conditions of Quotation and its Quotation Schedules;

(b) the Conditions of Contract;

(c) the Scope of Work;

(d) any Addenda issued pursuant to clause 7.

6.2 Respondent has no right to claim

The Respondent has no right or entitlement for time or financial compensation whatsoever (including, without limitation, to a claim for economic loss or loss of opportunity) arising from or with respect to or by reason of any error, omission, or misrepresentation (express or inferred) in the Quotation Documents.
7 Modification of the quotation documents (addenda)

7.1 Council may modify

Council may at any time prior to the Date of Acceptance of Quotation modify any provision or part of the Quotation Documents by issuing a written Addendum by mail, facsimile or email to all Respondents. Addenda issued will be numbered consecutively, commencing with the number 1.

7.2 Respondent to acknowledge receipt

The Respondent must acknowledge receipt of any written addenda within 7 Days of receipt, and must set out in their Letter of Quotation all addenda received.

8 Quotation enquiries

Any enquiries by Respondents including any request for access to the Site are to be directed to:

Emma Alford, Contracts Officer contracts@mackay.qld.gov.au

9 Lodgement of quotations

9.1 Electronic submission

Quotes shall be submitted electronically via vendor panel website, the respondent:

a) Must ensure that the quote is submitted in the format specified;

b) Must ensure that they have allowed sufficient time to upload documentation;

c) May submit multiple attachments to the Council to this website;

d) Must keep the file size of each document below 10MB (10,000KB);

e) Must ensure prior to submitting the quote that it is free from viruses and has been checked with an up to date virus checking program;

f) When the quote document/s is processed a system generated receipt confirmation shall be emailed to the respondent.

A Respondent may submit more than one quote in response to this invitation.

9.2 Opening of quotes

There will not be a public opening of Quotes.

9.3 Facsimile and email submissions

A Quote submitted by facsimile or email is a Non-Conforming Quote.

9.4 No representation

Any letter or other form of written or oral acknowledgment by Council of receipt of the Quote and the Quote Deposit (where applicable) does not imply that the Quote has been admitted or
accepted as a Conforming Quote or a Non-Conforming Quote and nor does it constitute any representation by Council as to any other matter.

10 Quotation validity period

Any Quotation lodged remains valid and binding upon the Respondent for a period of 90 Days from the Quotation Closing Date or such later date as may be mutually agreed between the Respondent and Council and shall not otherwise be withdrawn by the Respondent.

11 Late proposals

Proposals lodged with or received by Council after 10.00am on the Quotation Closing Date are deemed to be late and will be opened and registered separately. Council may, but is not bound to, consider or accept a late Quotation.

12 Quotation requirements

12.1 Documents to be submitted with quotations

In their Quotations, Respondents must provide all information required by the Quotation Documents, including:

(a) a completed Letter of Quotation (Quotation schedule 1);
(b) details of how the Quotation meets the requirements of the Quotation Documents;
(c) a Statement of Departures (Quotation schedule 2);
(d) a Statement of Additions and Variations (Quotation schedule 3) (if any);
(e) a completed Compliance Checklist including relevant attachments (Quotation Schedule 4);
(f) a completed Schedule of Prices and/or Rates (Quotation schedule 5);
(g) Policies and Plans and Program;
(h) any other information as set out and required in the Conditions of Quotation and the Quotation Schedules; and
(i) any other information required by the Quotation Documents.

12.2 Conforming quotations

For a Conforming Quotation, a Respondent must as part of its quotation:

(a) complete and sign a Letter of Quotation, in the form set out in quotation schedule 2;
(b) complete and sign a Statement of Departures in the form set out in quotation schedule 2; and
(c) without limitation, comply with the requirements of clauses 12 and 13 of these Conditions of Quotation.
12.3 Alternative quotations

For an Alternative Quotation, Respondents must, amongst other things, complete:

(a) a Letter of Quotation in the form set out in Quotation schedule 1, except that:
   (i) the letter must be clearly marked 'Alternative Quotation';
   (ii) the terms of the letter ought to be revised accordingly; and

(b) the Statement of Additions and Variations in the form set out in Quotation schedule 3.

12.4 Quotation price

The Quotation Price shall be submitted in the Letter of Quotation, including for any Alternative Quotation.

12.5 Respondent’s warranty

In submitting a Quotation, the Respondent warrants that it complies with Legislative Requirements such as are applicable.

13 Quotation criteria

13.1 Conforming quotation

(a) To be considered to be a Conforming Quotation, a Quotation must comply with the following criteria. No exceptions to these criteria are permitted in the Statement of Departures included with any Conforming Quotation:
   (i) Quotations must comply with these Conditions of Quotation;
   (ii) Quotations must address the Quotation Evaluation Criteria in clause 25 of the Conditions of Quotation;
   (iii) Quotations must be based on the entire scope of Services under the Contract as may be specified in the Quotation Schedules, including the Technical Specification;
   (iv) Quotations must be in accordance with any design and process specified in the Technical Specification;
   (v) Quotations must be based on compliance with all performance requirements contained in the Contract; and
   (vi) Quotations must be complete Quotations, containing all documentation described in clause 12 of the Conditions of Quotation.

(b) A Quotation that does not comply with clause 13.1(a) is a Non-Conforming Quotation.

13.2 Variations to quotation criteria

Any variation to the criteria in clause 13.1(a) proposed by the Respondent must be submitted as an Alternative Quotation in accordance with clause 14.
13.3 Council not obliged

Council may, but is not bound to, consider or accept a Non-Conforming Quotation i.e. a quotation that does not comply with the Quotation Criteria.

14 Alternative quotations

14.1 Submission of alternative quotations

Where a Respondent seeks to vary the Quotation Criteria of Council, the Respondent may, subject to this clause, in addition to any Conforming Quotation submitted, also submit an Alternative Quotation clearly marked as 'Alternative Quotation'. The Alternative Quotation must clearly describe the extent to which the Quotation Criteria are proposed to be varied by, amongst other things, completing the Statement of Additions and Variations found in Quotation schedule 3.

14.2 Alternative quotations are non conforming

An Alternative Quotation is not a Conforming Quotation.

14.3 Council not obliged

Council may, but is not bound to, consider or accept an Alternative Quotation.

15 Statement of departures

15.1 Statement of departures to be provided

Each Respondent, whether it provides a Conforming Quotation, a Non-Conforming Quotation or an Alternative Quotation, must provide a Statement of Departures with the Quotation. The purpose of this Statement is to highlight those clauses in the Contract and/or conditions in the Quotation Documents that the Respondent does not accept or will not be able to fully comply with.

15.2 Format

The Statement of Departures must be in the format and completed in accordance with the instructions specified in Quotation schedule 2.

15.3 Quotations deemed compliant

If the Statement of Departures is not completed or if it does not indicate clauses or conditions of the Contract or Quotation Documents that the Respondent does not accept or will not be able to fully comply with, the Respondent will be deemed to have fully complied with and accepted all those clauses and conditions. Such full compliance means:

(a) in the case of a clause which is of an informative nature only – that the clause has been read and understood;

(b) in the case of a clause which imposes a contractual condition – that the condition is agreed to in a strict and literal sense; and
(c) in the case of a clause which specifies a characteristic or performance standard to be met by the Respondent – that the Respondent’s offer is to provide or exceed the specified characteristic or standard.

16    Statement of additions and variations

16.1    Respondent to specify

In addition to or in lieu of an Alternative Quotation, if there are any:

(a) proposed optional additions to the requirements in the Quotation documents; and/or

(b) proposed optional variations to the requirements in the Quotation documents

which the Respondent is willing to incorporate as part of its Quotation and which will have significant commercial value to Council and which are proposed by the Respondent then the Respondent must specify these in a Statement of Additions and Variations in accordance with Quotation schedule 3.

16.2    Council’s discretion

Incorporation of any additions or variations specified in the Statement of Additions and Variations of the Respondent is at the discretion of Council.

17    Acceptance and consideration of quotations

17.1    Council not obliged

Council is under no obligation to accept the lowest or any Quotation.

17.2    Council may annul quotation process

Without limiting any other term of the Conditions of Quotation (which includes but is not limited to clause 27, 28 and 31 hereof), Council may accept or reject any Quotation, annul the Quotation process and reject all Quotations, at any time prior to the Date of Acceptance of Quotation, without incurring any liability for cost, expense, loss or damage to the affected Respondent or Respondents or any obligation to inform the affected Respondent or Respondents of the grounds for Council’s action or inaction.

17.3    Council’s other discretions

Council may at any time in its absolute discretion during the Quotation Period:

(a) request clarification or additional information from any Respondent;

(b) provide additional information to any or all Respondents;

(c) invite a Respondent to change its Quotation to take account of a change in any regard concerning the Quotation Documents, which includes, but is not limited to, the Technical Specification;

(d) discontinue negotiations with any Respondent;

(e) decide not to proceed with a quotation process; and
(f) enter into discussions with one or more Respondents including as to their Quotation Price.

17.4 Acceptance of a quotation

A Quotation is deemed to be accepted by Council only when Council provides to a Respondent a Letter of Acceptance.

17.5 Actions following acceptance

Following acceptance of a Quotation, Council may, but is not required to, notify the name of the successful Respondent(s) to all unsuccessful Respondents and may at its discretion disclose the accepted Quotation Price(s).

18 Signing of quotation

If the Respondent is a corporation, the Quotation shall be signed by the affixing of the signature of a senior executive of the corporation having authority to sign the Quotation on its behalf or by affixing the seal of the corporation in accordance with its constitution and the Corporations Act 2001 (Cth).

19 Evidence of respondent’s licensing

19.1 Evidence of licensing

It is a requirement of the Queensland Building and Construction Commission Act 1991 that a Contractor must be licensed to carry out certain works and Services. If any of the Services requires a licence under that Act then the Respondent must submit with its Quotation evidence of such licence.

19.2 Obligation to indemnify

The Respondent’s submission of a Quotation in response to the Conditions of Quotation means that the Respondent irrevocably warrants that it complies in all respects (including concerning licences) in accordance with the Queensland Building and Construction Commission Act 1991 and the Respondent agrees to indemnify Council for any breach of this warranty.

20 Nature of contract

20.1 General

(a) The nature of the Contract is as stated in the Quote Documents, being:

(i) lump sum (including a lump sum schedule of rates);

(ii) remeasurable schedule of rates; or

(iii) if expressly stated to be so, a combination of (i) and (ii).

(b) For the purposes of the Conditions of Quotation, including this clause 21 and the Pricing Schedule, ‘lump sum’ means the Works will be performed by the Respondent under the Contract for a fixed price, which may only be adjusted as provided for in the Contract.
(c) If the Contract contains a schedule of rates, the Contractor may be paid either a lump sum or on a remeasurable schedule of rates. Unless expressly stated to the contrary in the Quote Documents, the Contract and any reference to it as containing a schedule of rates means that the Works will be performed for a lump sum and will not be remeasurable.

(d) Any quantities that have been provided in any Pricing Schedule by or on behalf of Council and which schedule is in, is adopted from or is part of any document forming part of the Quote Documents and the Contract (whether prepared by or on behalf of Council or the Respondent) are provisional, estimated and indicative quantities only, are not guaranteed by Council and may be increased or decreased in accordance with the Contract.

(e) If there is any discrepancy between the Quote Price and the quantities of prices, rates or other information (or their respective summation) described in the Pricing Schedule:

(i) if the Contract is a lump sum contract, then the Quote Price has priority over the individual items of information in the Pricing Schedule; and

(ii) if the Contract is a remeasurable schedule of rates contract, then the rates shown in the Pricing Schedule have priority over the Quote Price.

20.2 Lump sum contract
For lump sum contracts:

(a) the Respondent shall state the lump sum Quote Price in the Letter of Quote to perform the Works;

(b) The Respondent shall also complete the Pricing Schedule which must be fully priced and summed to agree with the lump sum Quote Price in the Letter of Quote;

(c) Any items not listed in the Pricing Schedule but necessary for the completion of the Works in accordance with the Contract shall be deemed to be included in the Pricing Schedule and in the Quote Price; and

(d) If any correction is necessary in the Pricing Schedule to agree with the lump sum Quote Price, if directed by Council the Respondent must immediately make such alterations in and to the Pricing Schedule as Council may consider necessary for such purpose.

20.3 Lump Sum Schedule of rates contract
For schedule of rates contracts:

(a) as described in clause 20.1(c) above, unless expressly stated to the contrary in the Quote Documents, the Quote Price is lump sum;

(b) the Respondent must complete the Pricing Schedule by adding its tendered rates to the quantities or nature of the Works described;

(c) if not satisfied with the completeness of the Pricing Schedule, the Respondent shall insert any further items which the Respondent requires to price separately. Any other items not listed in the Pricing Schedule but necessary for the completion of the Works in accordance with the Contract shall be deemed to be included in the Pricing Schedule;
(d) the Respondent shall state in the Pricing Schedule the Quote Price by summing the itemised amounts in the Pricing Schedule, and this sum shall be inserted in the Letter of Quote. This sum shall be the lump sum Quote Price; and

(e) if any error is made in the calculations or summation of the itemised amounts in the Pricing Schedule, the Respondent shall be bound by the Quote Price stated in the Letter of Quote and the rates and amounts in the Pricing Schedule may be altered by Council to conform with the Quote Price.

20.4 Remeasurable Schedule of Rates Contract

Further to clause 20.1, if it is expressly stated in the Quote Documents that the Contract is a remeasurable schedule of rates contract, then:

(a) the Works performed under the Contract may be measured to recalculate the amount payable to the Contractor under the Contract;

(b) the Respondent will complete the Pricing Schedule by adding its rates and totalling those rates, not as a lump sum, but for the purposes of enabling Council to compare Tenders;

(c) where Council has accepted rates, the amount payable under the Contract will be the sum of the product ascertained by multiplying the measured quantity of each item of work actually carried out under the Contract by the rate accepted by Council for the item;

(d) where the actual quantity of part of the Works required to perform the Contract is:

(i) less than the quantity shown in the Pricing Schedule, where Council accepted a rate for that part of the Works, the rate shall apply to the lesser quantities; and

(ii) greater than the quantity shown in the Pricing Schedule, the amount payable under the Contract will only be adjusted in the terms of any variation properly issued under and in accordance with the Contract; and

(e) if there is any error in the rates or prices in the Pricing Schedule which is different to the Quote Price, the rates and prices described in the Pricing Schedule apply.

21 Quotation Briefing / Site Meeting

(a) Attendance at this meeting to discuss the Request for Quote is not Mandatory.

(b) Respondents are invited to attend a quote briefing at 10:00am Tuesday, 1st October 2019.

(c) The location of the meeting is at the Mackay Regional Council’s Paget Depot in Training Room B.

(d) The site inspection will provide Respondents with the opportunity to clarify any uncertainties with the Contact person prior to Closing Time.

(e) Please confirm with Emma Alford at contracts@mackay.qld.gov.au your attendance at this meeting no later than C.O.B. Monday, 30 September 2019.
22  Warranties

22.1  Respondent’s investigations

In submitting a Quotation, the Respondent warrants that it has carried out all relevant investigations (including of the Site and whether or not the Respondent has availed itself of any opportunity to inspect the Site or otherwise and whether the opportunity to so inspect the Site has been given to the Respondent or not) and has examined and acquainted itself with and satisfied itself concerning:

(a)  the contents of the Quotation Documents and their completeness;

(b)  all information which is relevant to the risks, contingencies and other circumstances which could affect the Quotation;

(c)  the accuracy, completeness and sufficiency of the Quotation; and

(d)  the appropriateness and sufficiency of the Quotation Price offered by the Respondent in its Quotation to perform the Services.

22.2  Respondent’s ability

In submitting the Quotation, the Respondent further warrants:

(a)  the accuracy of all information provided by the Respondent in the Quotation;

(b)  that it has all necessary experience, skill and resources to perform and carry out its obligations in accordance with the Quotation Documents;

(c)  that it is willing to accept the contractual terms and conditions of Council as contained or described in the Quotation Documents; and

(d)  that the Respondent is able to commence the Services the subject of this Quotation as required by Council.

23  Investigations by respondents

23.1  Respondent to investigate

Respondents must make their own investigations as to the nature of the Site and its surrounds and satisfy themselves as to the accuracy and completeness of any matters stated in the Quotation Documents and of any assumptions upon which Respondents base their Quotations prior to submitting their Quotation.

23.2  Access to site

(a)  Access to the Site for the purposes of conducting investigations may be arranged by contacting the person specified in clause 8.

(b)  Before entering the Site, the Respondent must inform itself of, and take, all necessary precautions to avoid harm to themselves or damage to their property during the visit.
(c) The Respondent assumes complete responsibility for their safety and that of their invitees, notwithstanding any omissions, errors or inadequacies in the conditions or information provided by Council regarding the Site visit.

23.3 Respondent remains responsible

Failure to investigate or to fully and properly investigate the conditions associated with the Site and the Services shall not relieve the Respondent from responsibility for properly estimating the difficulty or cost of successfully performing the Services. This clause and other relevant clauses of these Conditions of Quotation (which without limitation include clauses 21 and 28) apply whether access to the Site has been given to Respondents or whether it has not.

24 Information required after opening of quotations

24.1 Respondent to provide additional information if requested

The Respondent must provide, after the opening of Quotations, any additional information which may be requested by Council for evaluation of the Quotation(s).

24.2 Respondent interviews

Without limiting clause 17, Council may also interview a Respondent in relation to the Quotation. The Respondent shall be represented at such interviews by a responsible member or members of its staff who are conversant with all technical, financial and contractual details of the Quotation, who are authorised to make, at the interview, any decision on behalf of the Respondent and who are able to indicate the relative values of any items under discussion.

24.3 Changes to quotations

Council may after the Quotation Closing Date invite all or any Respondents to change their Quotation to take into account changes to the Quotation Documents as may be advised by Council.

25 Quotation evaluation

25.1 Local government act

Evaluation of Quotations will be generally in accordance with the requirements of the Local Government Act 2009 (Qld) and other applicable Legislative Requirements. Section 104 of the Local Government Act 2009 requires Council to have regard to the following principles:

(a) open and effective competition;
(b) value for money;
(c) development of local business and industry;
(d) environmental protection; and
(e) ethical behaviour and fair dealing.
25.2 Local Preference

In consideration of supporting local business and industry, Council will apply an additional weighting to conforming tendered prices submitted by local suppliers.

The maximum percentage applied to local businesses is 10 percent. Lower percentages are applicable based upon the value of the contract, with higher value contracts attracting lower percentages.

25.3 Other

In addition to the principles in clause 25.1 above, factors which will be taken into consideration by Council in assessing Quotations and Respondents include:

<table>
<thead>
<tr>
<th>A) Demonstrated Understanding/Methodology</th>
<th>Weighting</th>
</tr>
</thead>
</table>
| Respondents should detail the process they intend to use to achieve compliance with the requirements of the Services, including:  
(a) Methodology based on the proposed scope of services, including any alternative services that are recommended.  
(b) The process for the delivery of the Services; and  
Respondent’s proposed methodology is to be in an attachment labelled “Demonstrated Understanding and Methodology”. | <30%> |

<table>
<thead>
<tr>
<th>B) Key Personnel, Skills and Experience</th>
<th>Weighting</th>
</tr>
</thead>
</table>
| Respondents should provide as a minimum an attachment labelled “Key Personnel”. It will be expected that the personnel and roles of the actual project team is consistent with the personnel and roles identified in the Consultancy Proposal. Respondents are to:  
(a) Clearly identify the personnel and roles for the proposed project team;  
(b) Provided details of the work individual team members would be responsible for, their previous experience including examples relevant to this project; and  
(c) Provide CV’s for all key personnel, including qualifications. | <20%> |
C) **Ability to deliver in program – project schedule and availability of resources**

Respondents should demonstrate their ability to supply and sustain the necessary:

(a) Timeline / Project Schedule to be provided;
(b) Include project management arrangements, proposed meetings, critical dates and key milestones;
(c) Availability of Resources;
(d) Provide details of similar work;
(e) Detail the scope of the Respondent’s involvement including details of outcomes;
(f) Provide details of issues that arose during the project and how these were managed;
(g) Demonstrate sound judgement and discretion; and
(h) Demonstrate competency and proven track record of achieving outcomes.

As a minimum, Respondents should provide a current commitment schedule and plant/equipment schedule in an attachment and label it "**Ability to Deliver**" per index.

<table>
<thead>
<tr>
<th>Weighting</th>
<th>&lt;20%</th>
</tr>
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</table>

D) **Price**

A submission quotation schedule is included for pricing, including clearly stated assumptions regarding the estimation of the upper limit for Phases 2 and 3

<table>
<thead>
<tr>
<th>Weighting</th>
<th>&lt;30%</th>
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</table>

25.4 **Council may change criteria**

Without limitation to Council’s rights under any other provision of these Conditions of Quotation, Council may change any criteria set out or referred to in this clause 25 without any obligation to notify Respondents of such change.

26 **Contract**

26.1 **Council to send contract for signing**

Following the sending of any Letter of Acceptance pursuant to clause 17, the Contract will be sent to the successful Respondent for signing.

26.2 **Respondent must sign contract**

Within seven Days of being requested in writing by Council to do so, the successful Respondent must sign the Contract and return it to Council.
26.3 Order of Precedence of Contract

Where there is any ambiguity, discrepancy or inconsistency between the documents comprising the Contract the following order of Precedence shall apply, with documents higher in the list having higher priority:

a) Formal Instrument of Agreement
b) Letter of Acceptance
c) Tender Information Requests
d) Special Conditions of Contract
e) General Conditions of Contract
f) Contractor Submission
g) Addenda
h) Specifications
i) Drawings

Note that the special conditions and general conditions of contract will be amended to incorporate any Statement of Departures accepted as part of the tender evaluation process.

27 Representations by Council

27.1 Council makes no representations

Council does not make any representations, express, implied or inferred, or provide any undertakings to Respondents other than to invite them to submit a Quotation.

27.2 Council not obliged to contract

Council is not obliged to negotiate or sign a Contract with any Respondent.

27.3 Council may terminate quotation process

Council may, by notice in writing to the Respondents, terminate this quotation process at any time at no cost or loss (contingent or otherwise) to Council and the Respondent shall have no right or entitlement for any compensation whatsoever arising from such termination.

27.4 Council not liable for respondent’s costs

Without limiting the terms of clause 27.3, Council is not responsible for, or is not liable to pay for any costs, expenses, losses or damages which may be incurred by any Respondent in the preparation or submission of its Quotation.
28  Reliance by respondent

28.1 Quotation information for convenience only

Any information supplied to a Respondent in the Quotation Documents or otherwise or in subsequent oral or written communication by or on behalf of Council is provided to the Respondent for convenience only and may not be complete, up to date or accurate.

28.2 Respondent not to rely

The Respondent will not rely upon any matter disclosed or representation, warranty or statement (oral or otherwise) made to the Respondent by Council, whether in the Quotation Documents or otherwise, and will make and rely solely upon its own independent investigation, judgment and assessment of any such matter or representation.

28.3 Respondent to examine information

The Respondent must carefully review the Quotation Documents and all documentation and all other material provided and must make any enquiries which the Respondent considers necessary or desirable to verify the information and materials contained in the Quotation Documents or in any subsequent oral or written communication or material. The Respondent has no right or entitlement for time or financial compensation of any kind arising from, or with respect to, or by reason of any error, omission, or misrepresentation (including for any incompleteness or inaccuracy) in the Quotation Documents.

28.4 Council not liable

The Respondent releases Council against any liability or cost, expense, loss or damage arising from any claim, suit, demand, proceeding or action which, but for this document, the Respondent may have had against Council in respect of any matter disclosed or representation or warranty (oral or otherwise) made to the Respondent by Council.

29  No collusion

The Respondent warrants that:

(a) neither the Respondent not any of its servants or agents nor any other party on its behalf had any knowledge of the Quotation Price of any other Respondent prior to submitting its Quotation nor has the Respondent disclosed to any rival Respondent the Quotation Price;

(b) neither the Respondent nor any of its servants or agents nor any other party on its behalf have entered into any contract, arrangement or understanding having the result that on having its Quotation accepted and/or being awarded the Contract, the Respondent will pay to any unsuccessful Respondent any moneys or other reward in respect of or in relation to the Quotation or any Contract; and

(c) the Quotation is a genuine competitive quotation.
30 Conflicts of interest

30.1 Respondent to identify conflicts

Respondents must clearly identify in their Quotation if they have any actual or perceived conflict in responding to this Quotation, and if so, the manner in which they intend to deal with that conflict.

30.2 Respondent to notify if conflict arises

If, at any time, an actual or potential conflict of interest arises for any Respondent, that Respondent must immediately notify Council in writing of that conflict of interest.

30.3 Council’s rights

If a Respondent notifies Council of an actual or potential conflict of interest or Council becomes aware of the existence of an actual or potential conflict of interest, Council may, in its absolute discretion:

(a) enter into discussions to seek to resolve such conflict of interest;

(b) cease further consideration of and disregard the Quotation lodged by that Respondent; and/or

(c) take any other action, as it considers appropriate.

30.4 Respondent must not canvas support

Any Respondent who directly or indirectly canvasses support from an elected member, employee or agent of Council will be disqualified and any Quotation submitted will not be considered.

31 Costs of quotation

Council is not liable for any costs, expenses, losses or damages, however arising which a Respondent incurs or becomes liable for in relation to or in connection with the preparation of a Quotation, any representations by or on behalf of Council, the submission of a Quotation, subsequent clarifications to a Quotation, submissions after lodgement of a Quotation (whether or not that submission is required by Council), or any other part of the Quotation process and the Respondent releases Council from any such claim whatsoever and howsoever brought. Each Respondent participates in this Quotation at its own risk.

32 Use of information

32.1 Quotations are council property

All Quotations submitted by a Respondent become the property of Council and will not be returned to the Respondents.

32.2 Quotation documents are council property

The Quotation Documents and all documents, information, Drawings, specifications, technical information and other material and information provided to a Respondent (whether before or after the issue of these Conditions of Quotation):
(a) remain the property of Council;

(b) must only be used for the purpose of preparing a Quotation and for no other purpose;

(c) must not be disclosed to any person other than to a person who is assisting the Respondent in preparing its Quotation; and

(d) must be returned by an unsuccessful Respondent to Council within 7 Days of being requested to do so by Council.

32.3 Intellectual property in quotation documents

All intellectual property rights which exist in information contained in these Conditions of Quotation or any related material will remain the property of Council but the Respondent is permitted to use that information and material for the purpose only of compiling its Quotation.

32.4 Respondent licences council

Each Respondent licences Council and its officers, employees, agents, advisers and representatives (‘Personnel’) to copy, adapt, amend, disclose or do anything else necessary (in Council’s sole discretion) to all material (including that which contains intellectual property rights of the Respondent or other persons) contained in its Quotation for the purpose of Council’s evaluation of that Quotation, negotiating any Contract with the successful Respondent (if this Quotation process proceeds to that stage) and this Quotation process generally.

32.5 Council may make copies

Council and its Personnel may make such copies of a Quotation as it requires for those purposes.

33 Privacy act compliance

In relation to any ‘personal information’ (as defined in the Privacy Act) provided by a Respondent in connection with its Quotation, the Respondent warrants to Council:

(a) the Respondent has obtained the consent of each individual about which any ‘sensitive information’ (as defined in the Privacy Act) is provided;

(b) the Respondent has ensured or will ensure, within the time required by the Privacy Act, that each individual about whom any ‘personal information’ is provided has received a written statement setting out all of the matters required by the National Privacy Principles:

   (i) in relation to the disclosure of the ‘personal information’ to Council, any related body corporate of Council and any of their advisers, agents or employees requiring the information for the purposes set out below; and

   (ii) disclosing that the entities referred to above shall use the ‘personal information’ for the purpose of reviewing and assessing the Respondent’s Quotation; and

(c) the Respondent will comply with the provisions of the Privacy Act in relation to any ‘personal information’ provided to the Respondent by Council, any related body corporate of Council any of their advisers, agents or employees.
34  Governing law and jurisdiction

34.1  Governing law

The Conditions of Quotation and the Quotation Documents are governed by the laws in force in Queensland.

34.2  Governing jurisdiction

Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and the courts of appeal from them.
Consultancy agreement

Quote 2020-017 Mackay Sewerage Strategy

Mackay Regional Council ABN  56 240 712 069

And

[Consultant - insert full name] ABN -- --- --- ---
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Consultancy agreement

Parties

MRC Mackay Regional Council ABN 56 240 712 069
of Gordon Street, Mackay, Queensland

Consultant [Consultant name] ABN [Insert]
of [Insert]

Background

A. MRC intends to carry out works including the Mackay Sewerage Strategy Brief (Project).

B. The Consultant carries on the business of providing design, engineering, construction management and project delivery services to a range of industries, including to local governments.

C. MRC has agreed to engage the Consultant as an independent contractor to provide the Services set out in this document and the Consultant agrees to accept such appointment on the following terms and conditions.

D. The Guarantor has agreed to guarantee the obligations of the Consultant on the following terms and conditions.

Agreed terms

1 Definitions and Interpretation

1.1 Definitions

In this document:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Day</td>
<td>means a day that is not: (a) a Saturday or Sunday or a public holiday in Mackay; or (b) 27, 28, 29, 30 or 31 December in any year.</td>
</tr>
<tr>
<td>Claim</td>
<td>means any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.</td>
</tr>
<tr>
<td>Commencement Date</td>
<td>means the date specified in Schedule 1, or if no date is described, the date this document is signed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Completion Date</td>
<td>means:</td>
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<tr>
<td></td>
<td>(a) the date or dates specified in Schedule 1 for completion of the Services, or for the completion of a stage or stages of the Services; or</td>
</tr>
<tr>
<td></td>
<td>(b) if no dates are specified, the date that is derived by adding the fixed time period stated in Schedule 1 as being the Term to the Commencement Date.</td>
</tr>
<tr>
<td>Confidential Information</td>
<td>means all information and records belonging to MRC in whatever form, and includes:</td>
</tr>
<tr>
<td></td>
<td>(a) information which MRC indicates or has indicated is confidential or which might reasonably be considered confidential by MRC;</td>
</tr>
<tr>
<td></td>
<td>(b) information which by its very nature might reasonably be understood to be confidential relating to or concerning MRC’s Activities;</td>
</tr>
<tr>
<td></td>
<td>(c) information which is commercially valuable to MRC, including any notes, advices, papers or other communications in connection with MRC’s Activities provided to or by or prepared for or by MRC’s other service providers and advisers, including by other consultants and contractors and by MRC’s lawyers and which are given to, copied, or otherwise in the possession of the Consultant;</td>
</tr>
<tr>
<td></td>
<td>(d) information which relates to MRC’s financial affairs and its dealings with government and government departments and authorities;</td>
</tr>
<tr>
<td></td>
<td>(e) information which relates to any of MRC’s contracts with a third party, including contractors, other consultants and service providers and suppliers or to any arrangements or transactions between MRC and any other local government or state or federal government or authority, department or elected representative;</td>
</tr>
<tr>
<td></td>
<td>(f) information which relates to trade secrets, intellectual property or Intellectual Property Rights;</td>
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<td></td>
<td>(g) information which is found in MRC’s manuals or Policies and Plans;</td>
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<tr>
<td></td>
<td>(h) information which relates to MRC’s Activities which are current, proposed, developed or being developed by or on behalf of MRC, or for which MRC is negotiating the provision of, including quotations, strategies, reports, concepts, plans, designs, drawings and programs;</td>
</tr>
<tr>
<td></td>
<td>(i) all notes and other records prepared by MRC or anybody else, based on or incorporating information referred to in sub-clauses (a) to (h) above; and</td>
</tr>
<tr>
<td></td>
<td>(j) all copies of the information, notes and other records referred to in sub-clauses (a) to (h) above;</td>
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<td>except for information that:</td>
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<td>(k) is or, after the Commencement Date, becomes available in the public domain (other than as a result of a breach of this document); or</td>
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<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>Conflict of Interest</td>
<td>means a commercial or professional conflict of interest, either real, perceived, anticipated or identified as a risk or as a possibility of arising, identified by either party in respect to the ongoing performance of the Services (either pursuant to obligations and rights arising under this document or any other arrangement or agreement, with the Consultant or with others, either past, current or in the future).</td>
</tr>
<tr>
<td>Consequential Loss</td>
<td>means indirect, economic, special or consequential loss or damage, loss of revenue, time, goodwill, data, anticipated savings, opportunity, loss of production and loss of profit whether arising in contract, tort or otherwise.</td>
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<tr>
<td>Deliverable</td>
<td>means any report, plan, design, drawing, specification, program, model or document required to be produced by the Consultant as part of the Services, including but not limited to as may be described in the description of the Services found in Schedule 2 or in the Program in Schedule 4.</td>
</tr>
<tr>
<td>Fee</td>
<td>is the fee payable by MRC to the Consultant for the Services as stated in Schedules 1 and calculated in accordance with Schedule 5.</td>
</tr>
<tr>
<td>Fit for Purpose</td>
<td>means the assurance to be given to MRC by the Consultant that the Services shall be fit for the purposes for which they are intended and that the Services will be capable of meeting or exceeding MRC’s requirements, as those intentions and requirements, the Services and the Project’s requirements are described in this document.</td>
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<tr>
<td>Good Faith</td>
<td>means:</td>
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<td></td>
<td>(a) being fair, reasonable and honest; and</td>
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<td></td>
<td>(b) doing all things reasonably expected of it by the other party and by this document,</td>
</tr>
<tr>
<td>Good Industry Practice</td>
<td>means the standards (including any relevant Australian Standard), practices, methods and procedures generally followed or approved by relevant industries and consultants in Australia with respect to the Services and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced consultant engaged in similar work or services.</td>
</tr>
<tr>
<td>Insolvency Event</td>
<td>means any of the following events occurring in relation to a party:</td>
</tr>
<tr>
<td></td>
<td>(a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the <em>Corporations Act 2001</em>), trustee or controlling trustee or similar official is appointed over any</td>
</tr>
</tbody>
</table>
Term | Definition
--- | ---
| of the property or undertaking of the party; | (b) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act 1996 or a debt agreement under part IX Bankruptcy Act 1996; |
| 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, or is presumed to be insolvent under the Corporations Act 2001; | (c)
| the party ceases to carry on business; or | (d)
| an 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 reconstruction. | (e)

**Intellectual Property Rights**

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

**Key Personnel**

means the Personnel of the Consultant listed in Schedule 1 and any other employee, agent, sub-contractor or officer of the Consultant who is approved by MRC in accordance with clause 6.2 of this document.

**Legislative Requirements**

includes:

(a) Acts, ordinances, regulations, local laws, by-laws, orders, awards and proclamations of MRC, of local governments in Queensland, of the Commonwealth or of the State or Territory applicable to the Services;

(b) certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with or recognised generally as authorities in respect of the carrying out of the Services, including the requirements of any local government or other authority, the requirements of any development consent issued in relation to any project to which the Services relate.

(c) Australian Standards, the Building Code of Australia and any other relevant standards; and

(d) the Codes of Practice of the State or Territory applicable to the Services and other appropriate codes for the construction industry.

**Material Terms**

means clauses 1A, 2, 3, 5, 6.4, 6.5, 9, 15.3, 16, 17, 21, 22, 23.1, 26 and 28 of this document.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone Date</td>
<td>means any date identified in this document (including in its Schedules) for the performance or completion of the Services or a part of the Services, including in respect to a Deliverable.</td>
</tr>
<tr>
<td>MRC’s Activities</td>
<td>means the functions and responsibilities that MRC carries out pursuant to the <em>Local Government Act (Qld) 2009</em> including its arrangements or transactions with any other local government or a state or federal government or authority, department or elected representative and includes any contracts, arrangements or transactions between MRC and any third party, including contractors, other consultants and service providers and suppliers.</td>
</tr>
<tr>
<td>Personnel</td>
<td>means any officer, employee, agent or sub-contractor of a party and in respect to the Consultant, includes the Key Personnel.</td>
</tr>
<tr>
<td>Policies and Plans</td>
<td>means MRC’s published or to be published policies and plans which may be amended from time to time, or any policies and plans required to be prepared by the Consultant pursuant to the Contract, including but not limited to those concerning:</td>
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<td></td>
<td>(a) its operations;</td>
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<td></td>
<td>(b) environment;</td>
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<td></td>
<td>(c) health and safety;</td>
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<td>(d) employment and industrial relations;</td>
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<td>(e) quality assurance;</td>
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<td>(f) cultural heritage;</td>
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<td></td>
<td>(g) community; and</td>
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<td></td>
<td>(g) code of conduct.</td>
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<tr>
<td>Pre-Start Meeting</td>
<td>means the meeting referred to in clause 1A.</td>
</tr>
<tr>
<td>Program</td>
<td>means the Consultant’s Program for its performance of the Services, including in respect to Deliverables and Milestone Dates as set out in Schedule 4.</td>
</tr>
<tr>
<td>Project</td>
<td>has the meaning given in Background paragraph A of this document.</td>
</tr>
<tr>
<td>Quality Assurance System</td>
<td>means the Consultant’s system which establishes the qualities and performance of the Services including, all quality manuals, plans, management structures and responsibility statements, techniques for identification and management of non-conforming or disputed Services and audit and other critical issues relating to quality assurance, and which must comply with and be third party accredited to 1509001.</td>
</tr>
<tr>
<td>Representatives</td>
<td>has the meaning given in clause 15.6 and Schedule 1.</td>
</tr>
<tr>
<td>Schedule</td>
<td>means one of the schedules numbered 1 to 5 attached to this document.</td>
</tr>
<tr>
<td>Security Interest</td>
<td>means any encumbrance or other arrangement or agreement that secures the payment of money or the performance of an obligation, or any other interest or arrangement of any kind.</td>
</tr>
<tr>
<td>Services</td>
<td>means the services to be performed by the Consultant for MRC as set out in Schedule 2 as may be varied in accordance with this document.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<td>---------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Tax Invoice</td>
<td>has the meaning given to that term in the GST Act.</td>
</tr>
<tr>
<td>Term</td>
<td>means, subject to:</td>
</tr>
<tr>
<td></td>
<td>(a) any agreement in writing between the parties that the Term will be extended;</td>
</tr>
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<td></td>
<td>(b) any extension of time to the Completion Date made in accordance with this document; or</td>
</tr>
<tr>
<td></td>
<td>(c) earlier termination of this document in accordance with clause 24,</td>
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<td></td>
<td>the period that commences on the Commencement Date and expires on the Completion Date.</td>
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</tbody>
</table>

Other terms may be defined in the text of this document.

### 1.2 Interpretation

In this document:

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

(b) a word which suggests one gender includes the other gender;

(c) headings are, in the interpretation of this document, to be disregarded;

(d) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;

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

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

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

(h) a reference to this document includes the agreement recorded by this document;

(i) 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;

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

(k) 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.

(l) in the construction and interpretation of this document, no rule of construction or interpretation applies to MRC’s disadvantage or to the Consultant’s advantage on the
basis that MRC prepared or caused this document to be prepared on its behalf or because MRC relies on a provision of this document as a reason (if required) for any action or inaction on its part or to protect itself;

(m) wherever the words 'include', 'included' or 'including' are used in this document, those words will be interpreted in all cases as if they were proceeded by the further words 'but not limited to' or the appropriate grammatical derivative; and

(n) if the Consultant is a consortium or made up of more than one person, a reference to the Consultant is a reference to both persons and:

(i) an obligation of those persons is joint and several; and

(ii) any reference to the Consultant is to each of those persons separately so that any promise, representation or warranty is given by each of them separately.

1A Pre-Start Meeting

(a) The Consultant shall prior to commencing the Services, attend a Pre-start Meeting to be held in Mackay at a time and date nominated by MRC and at that meeting shall satisfy MRC of the:

(i) payment of all insurances required by, and evidence of insurance policies strictly in accordance with this document;

(ii) payment of any fees required pursuant to any Legislative Requirements; and

(iii) fulfilment of the consultation obligations under the Work Health and Safety Act 2011 and Work Health and Safety Regulations 2011 ("WHS Act"), being that where the Consultant is for the purposes of the WHS Act a:

(A) ‘designer’ of a ‘structure’ that is, or is part of, ‘construction work’ – that the Consultant has engaged in necessary consultation with MRC and other relevant parties about how the construction work in connection with the design can be undertaken in a way that prevents or minimises all risks to health and safety;

(B) ‘project manager’ for ‘construction work’ – that the Consultant has engaged in necessary consultation with MRC and other relevant parties about how the construction work can be planned and managed in a way that prevents or minimises all risks to health and safety; and

(C) ‘principal contractor’ for ‘construction work’ – that the Consultant has engaged in necessary consultation with MRC and other relevant parties about how the construction work can be undertaken in a way that prevents or minimises all risks to health and safety.

(b) At this meeting the Consultant shall also present to MRC for MRC’s approval:

(i) Confidentiality Undertakings in the form set out in Schedule 3;

(ii) a Program and confirmation of the Completion Date;

(iii) a list of its Key Personnel and an acknowledgement of the terms of clauses 5.1(f) and 6.2 in so far as those Key Personnel are concerned; and
(iv) evidence to MRC’s satisfaction of the Consultant’s compliance with the Policies and Plans and of its Quality Assurance System.

(c) The meeting may also address the following matters:

(i) lines of communication and authority levels;

(ii) frequency and venue of monthly and other meetings, including pursuant to clause 10.1;

(iii) the requirements and particulars required in progress reports to be provided by the Consultant pursuant to clause 10.2;

(iv) invoicing procedures; and

(v) any site induction/accreditation of the Consultant’s Personnel.

(d) Until each of the issues in clause 1A(a) and (b) has been satisfactorily addressed and resolved to MRC’s satisfaction, the Consultant shall have no right to invoice under clause 11 or to otherwise seek payment of its Fee and has no other Claim.

2 The Services

2.1 Consultant to undertake Services for the Term

The Consultant agrees to undertake and complete the Services during the Term, in accordance with this document.

2.2 Option

(a) MRC may provide a written notice to the Consultant requesting to extend the Term for up to 12 months at a time, on the same terms as this document. If the Consultant agrees to extend the Term as per the written notice from MRC, then the Term is extended accordingly. If MRC wish to extend the Term, it will give the Consultant at least three months written notice prior to the Completion Date. If the Consultant does NOT agree to extend the Term as per the written notice from MRC, then the Term shall not be extended and the Completion Date shall not change.

(b) The Term may be extended more than once.

2.3 Representation

The Consultant agrees and represents to MRC that:

(a) it has carefully reviewed the description of the Services in Schedule 2 prior to entering into this document;

(b) subject to clause 12, the Fee includes all costs and expenses which may be incurred by the Consultant as a result of the matters referred to, identified in, or to be reasonably inferred from, or contemplated by this document;

(c) it has made its own investigation and assessment of the work and risks involved in providing the Services and it has reviewed and satisfied itself about the information that MRC has made available to it about the Services and this document; and
(d) the scope of the Services includes all incidental and related work which may arise from matters referred to, identified in, or to be reasonably inferred from or contemplated by the description of the Services in Schedule 2.

2.4 Variation of Services

(a) MRC may request the Consultant to vary or add to the Services. If the Consultant agrees to the variation, then the Services will be deemed amended accordingly. If the Consultant does not agree to the variation, then MRC will not be in breach of this document if it thereafter either performs those Services itself or employs or engages another person to carry out and perform those Services.

(b) The Consultant shall not vary the Services except as directed in writing by MRC, approved in writing by MRC or agreed in writing. For the purposes of this clause, a direction by MRC shall refer only to a direction in writing given by MRC which states that it is a direction given under this clause 2.4 and otherwise no entitlement to Claim arises.

2.5 Valuation of Variation

(a) The valuation of any variation may be agreed to by the parties in writing including how much the Consultant is entitled to charge MRC for any additional services or, alternatively, the basis on which the Consultant will calculate the amounts that it may charge MRC.

(b) Unless MRC and the Consultant agree upon the price for a variation, a variation shall be valued under this clause.

(c) MRC may direct the Consultant to provide a detailed quotation for the Services the subject of a variation supported by measurements or other evidence of cost. The detailed quotation must provide a breakdown of the rates claimed and any other information which MRC may require. The rates must be competitive market rates for the Services to be performed.

(d) Where this document provides that a valuation shall be made under this clause, MRC shall pay or allow the Consultant or the Consultant shall pay or allow MRC as the case may require, an amount determined by MRC as follows:

(i) if this document prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;

(ii) to the extent that clause 2.5(d)(i) does not apply, reasonable rates or prices shall be used; and

(iii) in determining the deduction to be made for Services which are omitted, the deduction shall include a reasonable amount for profit and overheads.

2.6 Notice of Variations

(a) Without limiting clause 2.4(b), if the Consultant is of the opinion that a direction given by MRC is a variation even though it was not expressly identified as a variation by MRC then, within five Business Days of receiving the direction the Consultant shall notify MRC of its opinion in writing and endorse that letter or notice ‘Notice of Variation’.

(b) Within seven days of receiving such a notice, MRC shall confirm in writing whether or not the direction is a variation to the Services.
(c) If MRC confirms that the direction is a variation, it shall be valued in accordance with clause 2.5.

(d) If the Consultant does not agree with the response from MRC or if MRC does not respond within the time period prescribed, the Consultant shall within 10 Business Days of receiving the direction give a further notice called ‘Claim for Variation’. It will then be decided if it is a Variation as per clause 27.

(e) If the Consultant fails to give either or both of the notices required by this clause strictly in accordance with this clause, the Consultant shall not be entitled to make any Claim with respect to any direction of MRC.

2.7 No Variation

Despite any other provision of this document and without limiting clauses 2.4(b) or 2.6, the Consultant shall not be entitled to any Claim, if a variation results from:

(a) a defect in the Services;
(b) any Services not being in accordance with this document;
(c) the Consultant otherwise being in breach of this document; or
(d) any negligent or wilful act or omission of the Consultant or its sub-consultants or subcontractors and suppliers and their respective employees, contractors or agents.

3 Obligations of the Consultant

(a) The Consultant will complete the Services:

(i) with due care and skill, to the best of its knowledge and experience and in Good Faith;
(ii) in a thorough and professional manner in accordance with relevant professional principles and standards and to Good Industry Practice;
(iii) in accordance with:
   (A) all Legislative Requirements including all applicable safety, health and environmental laws and regulations;
   (B) all Policies and Plans, guidelines, rules and procedures relating to the MRC’s Activities knowledge of which is deemed to be held by the Consultant, including such Policies and Plans, guidelines, rules and procedures which may be provided to the Consultant by MRC; and
   (C) all reasonable directions and orders given by MRC; and
(iv) with due expedition and without delay and at all times in accordance with the Program; and
(v) by the Completion Date.

(b) If at any time the Consultant considers that any information or material given or provided to it by MRC in respect to the Services and the Project is inadequate, deficient, incorrect
or incomplete or that it contains any errors, discrepancies or ambiguities, the Consultant must give written notice to MRC within five Business Days of its discovery of such things including full particulars of its concerns. MRC may consider the notice and give a direction to the Consultant. Unless the Consultant complies with this clause, it has no Claim.

(c) the Consultant must ensure that the Services (including all Deliverables) are Fit for Purpose and suitable in all respects and acknowledges that MRC relies upon the skill and judgment of the Consultant in undertaking the Services.

4 WH& S Requirements

(a) As a condition of this contract, Mackay Regional Council requires that any Consultant (or Consultant’s sub-contractor) engaged to perform a service will at all times identify and exercise all necessary precautions for WH&S of all persons who may be affected by the services.

(b) The Consultant will inform Mackay Regional Council of all its WH&S policies, procedures, or measures implemented for individual workplaces or in the event of not having effective policies and procedures, will adopt Mackay Regional Council relevant WH&S policies and procedures.

(c) The Consultant will comply with any reasonable direction given by Mackay Regional Council relating to WH&S.

(d) The Consultant has an obligation under the Work Health and Safety Act 2011 and Work Health and Safety Regulations 2011 to provide a safe place and a safe system of work so as not to place at risk the Consultant’s own employees and well as other workers and the general public at the workplace. The Consultant must comply with all relevant enactments, associated WH&S Regulation, Standards, Codes of Practices and Mackay Regional Council WH&S policies and procedures which are in any way applicable to this contract, or the performance of the services under this contract.

(e) The Consultant has an obligation to take all practicable steps to ensure the WH&S of its employees, sub-contractors and their employees and other people (not employees) who may be affected by the Consultant’s work practices.

The WH&S Management System of the Consultant must be the minimum requirement to demonstrate compliance with all duties of an employer specified under legislation. The Consultant must submit a copy of their company WH&S Management System documentation that must include as a minimum requirement:

- WH&S policy & objectives;
- Organisational structure & responsibilities;
- Relevant risk assessments & controls (sample);
- Relevant safe working procedures (index);
- WH&S training & induction processes and records (Certificates of competencies (ticket as an electrician) and licences (truck drivers));
- WH&S inspections & auditing procedures;
- WH&S consultative processes;
- Incident reporting & investigation procedures; and
- Performance monitoring mechanisms.

(f) The Consultant will:

- Undertake a site hazard identification to systematically identify and assess hazards;
- Establish and maintain a register (or form) of on-site hazards in which the Consultant will record each identified hazard, the date it was identified and the measures taken to control the hazard; and
- The Consultant will make the register (or form) available to Mackay Regional Council for inspection.

(g) The Consultant must prepare and submit risk assessments and relevant control strategies prior to commencement of work under the contract. The completed risk assessment and control strategies will be reviewed and approved by Mackay Regional Council prior to the commencement of work under the contract. Relevant generic risk assessments and controls will be acceptable.

(h) The Consultant must ensure that all workplace staff are competent in the work being undertaken. The Consultant will provide the employees and sub-contractor with information about hazardous work processes or material and supervision.

(i) All employees are to have a general induction and the Consultant is to produce records of their construction industry induction ticket.

(j) Each person visiting a construction workplace are to receive a site-specific induction.

(k) The Consultant is required to report any serious bodily injuries or dangerous events to the relevant authority within the specified time frame. In addition, the Consultant must promptly notify Mackay Regional Council of any accident, injury, property or environmental damage, which occurs during the carrying out of the contract work.

(l) All lost time incidents are to be immediately notified to Mackay Regional Council. The Consultant must within 3 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 prevention in the future.

(m) If during the performance of work under the contract Mackay Regional Council informs the Consultant that it is of the opinion that the Consultant is:

   i. Not conducting the work in compliance with the WH&S Legislation or relevant policies and procedures; or

   ii. Conducting the work in such a way as to endanger the Health & Safety of the Consultant’s employees, MRC employees or the general public.

   iii. MRC may direct the Consultant to promptly remedy the breach of WH&S or may direct the Consultant to suspend work until such time as the Consultant satisfies MRC that the work will be resumed in a safe manner (QA procedures and forms for non-compliance would apply).
iv. If the Consultant fails to rectify any breaches of Health & Safety for which work has been suspended, or if the Consultants performance has involved recurring breaches of WH&S, Mackay Regional Council will notify Workplace Health and Safety Queensland and requests that an inspector visit the workplace or may terminate the work forthwith, depending on the severity of the issue.

5 Quality of Services

5.1 Consultant Warranty

The Consultant warrants that the Services will:

(a) be completed in accordance with this document including clause 3;
(b) match the description of the Services as set out in this document;
(c) be performed by appropriately qualified and trained Personnel;
(d) be performed to Good Industry Practice;
(e) be undertaken for the purpose or purposes:
   (i) described in this document;
   (ii) informed to the Consultant by MRC; and
   (iii) for which these types of Services are commonly provided,

and the Consultant further warrants that:

(f) without limiting this document including clause 1A, Key Personnel will be involved at all times in the performance of the Services and will not be removed or replaced by the Consultant except as provided for in clause 6.2; and

(g) the Services (including all Deliverables) and other things required to be prepared and procured by the Consultant as part of the Services will be Fit for Purpose.

5.2 Compliance with demonstrated Services

Without limiting clause 5.1, if the Consultant:

(a) provides or provided MRC with a demonstration of the Services before MRC entered into this document, the Services must correspond in nature and quality with the Services demonstrated; or

(b) showed MRC a result achieved by the Services or similar services before MRC entered into this document, the Services must correspond in quality with the services that achieved that result.

5.3 Supply of items

Any items which the Consultant uses or supplies in connection with the Services must:

(a) be of merchantable quality and be in accordance with clauses 3 and 5;
(b) comply with any applicable Australian Standards and any other standards described in this document; and

(c) be Fit for Purpose.

5.4 Indemnity for breach of promise

The Consultant shall indemnify MRC for any breach of a promise made in clause 5 or elsewhere in this document. It is not necessary for MRC to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.

6 Completion of Services

6.1 Direction

The Consultant must comply with any reasonable direction given to it by MRC in respect to the Services.

6.2 Key Personnel

The Consultant must:

(a) not replace or remove any Key Personnel unless directed in writing by MRC or with MRC’s prior written approval;

(b) promptly replace any Key Personnel that leave the Consultant’s employ with a person of comparable skill, experience and qualification, and obtain MRC’s prior written approval to such replacement Key Personnel;

(c) ensure that each of the Key Personnel is available at the times set out in this document or as otherwise required in writing by MRC; and

(d) ensure that the Key Personnel properly perform their roles and responsibilities in accordance with this document or as otherwise agreed to in writing by MRC.

6.3 Consultant not relieved of liability

Approval to assign, subcontract, sublicense or transfer in accordance with clause 9 will not relieve the Consultant from any liability or obligation under this document. The Consultant will be liable to MRC for the acts and omissions of its subcontractors, employees, agents and assignees as if such acts or omissions were acts or omissions of the Consultant.

6.4 Consultant to maintain licences

The Consultant must maintain solely at the Consultant’s own expense any licences, accreditations, certificates or registrations the Consultant or its Personnel are required to possess by any relevant Legislative Requirements in order to perform the Services.

6.5 No inducements

The Consultant will not accept any payment or other benefit from any person as an inducement or reward for any act or forbearance in connection with the Services. The Consultant must immediately disclose to MRC any of its interests which may compete or conflict with the interests of MRC or the Consultant’s obligations under this document.
6.6 Ensure compliance of Personnel

The Consultant will ensure its Personnel comply with the requirements of clause 6 and any other relevant obligations under this document.

6.7 Provision of replacement Personnel

If any particular Personnel prove to be unsatisfactory to MRC for any reasonable reason, MRC may direct their removal in writing and the Consultant will immediately remove the Personnel concerned from performance or any other role in respect to the Services and will provide a replacement for such Personnel, as approved in accordance with clause 6.2, as soon as practicable and unless otherwise agreed in writing, at no extra cost to MRC.

7 Quality Assurance

7.1 Quality Assurance System

The Consultant must:

(a) implement and carry out the Services under the Quality Assurance System and the requirements of this document; and

(b) allow the MRC Representative access to the Consultant’s Quality Assurance System at all reasonable times for purposes of quality monitoring and auditing.

7.2 Purpose of Quality Assurance

The Consultant’s Quality Assurance System is only an aid to achieving compliance with this document and documenting that compliance and does not relieve the Consultant of its obligations under this document.

8 Inspection and information

8.1 MRC to be kept fully informed

The Consultant must keep MRC fully informed in respect to all aspects of the Services.

8.2 Records

The Consultant must keep proper accounts, records (including information stored by or accessible by computer or other electronic means or technology) and timesheets in accordance with Good Industry Practice, including best business and accounting principles, as well as full details of any costs and expenditures properly incurred by the Consultant in the performance of the Services.

8.3 Provision of information

The Consultant will provide to MRC, as requested from time to time by MRC, copies of all plans, designs, drawings, specifications, reports, data and other information relating to the Services to a standard which at all times meets the satisfaction of MRC and accords with Good Industry Practice.
8.4 Inspection and Review

At all reasonable times, MRC (by itself or by its agents) will have the right to inspect and review performance of the Services and the records and information created by the Consultant in the performance of the Services, including those referred to in this document, (including those records and information referred to at clauses 7, 8.2 and 8.3) at:

(a) the site or premises at which the Services are being performed;
(b) the Consultant’s premises; and
(c) at the premises of any of the Consultant’s sub-consultants or subcontractors,

and on request by MRC, MRC may itself (or may require the Consultant to) take or arrange for copies of any such records and information to be taken for its use.

9 Assignment and subcontracting

MRC may assign or transfer any of its rights, interests or obligations under this document by written notice to the Consultant. The Consultant must not assign, subcontract, sublicense or transfer any of its rights or obligations under this document (including any part of the Services) without the prior written approval of MRC.

10 Meetings and reporting

10.1 Meeting

MRC and the Consultant shall meet monthly (and at other times as reasonably required by MRC) in Mackay to discuss:

(a) the progress of the Services and the Project; and
(b) any other matters which MRC may wish to raise at a meeting concerning the Services, the Project and this document.

The meeting shall be attended by the Representative of each party, plus one other person from or on behalf of each party and the meeting shall be chaired by one of the MRC attendees.

10.2 Progress Reports

The Consultant must, on the last Business Day of each month and at other times reasonably requested by MRC, provide MRC with detailed written progress reports as to the provision of the Services in such detail as allows MRC to ascertain whether the Services are being performed in accordance with this document including a report against Program, including Deliverables and Milestone Dates and in the form agreed at the Pre-Start Meeting or as may be directed by MRC. Updated Progress reports (as required) must be provided not less than two Business Days prior to the date of the monthly meeting (or any other meeting requested) pursuant to clause 10.1, and at other intervals reasonably requested by MRC.
11 Payment of Fee and invoicing

11.1 Fee Payable
The Consultant will undertake the Services for the Fee.

11.2 Method of payment and calculation of Fee
MRC agrees to pay the Consultant the Fee in accordance with the method of payment and calculation set out in Schedules 1 and 5.

11.3 Invoicing requirements
The Consultant will invoice MRC for the relevant part of the Fee incurred by it at that time on the last Business Day of each month or at the intervals set out in Schedule 1. All invoices issued pursuant to this document must be Tax Invoices and must state the Consultant’s Australian Business Number and set out a detailed description of the Services undertaken, the calculation of the invoice (and if the Fee is based on hourly rates, details of the hours spent by the Personnel in performing the Services and in respect to any claim for reimbursement of expenses, the claim must be in accordance with clause 12) and of any other matters as directed by MRC or as may be agreed at the Pre-Start Meeting.

11.4 Payment of Invoice
(a) Within 35 days of MRC receiving a Tax Invoice which complies with clause 11.3, then provided it has verified to its satisfaction the Tax Invoice details and the correctness of the Fee described in that Tax Invoice, MRC will pay the Consultant the Fee specified in the Tax Invoice, but if MRC has requested further particulars or records or information from the Consultant in respect to the Tax Invoice (including under clause 8) then the time for payment will be extended by the number of days elapsing between the date of MRC’s request for more detail or access under clause 8 and the date that such further detail or access is given.

(b) Despite clause 11.4(a), if MRC disputes some or all of the Tax Invoice, then MRC will advise the Consultant of this and the reasons why. MRC will pay the Consultant that part of the Tax Invoice with which it agrees (if any). If MRC and Consultant are unable to agree on the items in dispute, then it will be resolved in accordance with clause 27.

(c) Payment will be made having regard to the proper calculation of the Fee for the Services performed to the date of the Tax Invoice less amounts:

   (i) already paid; and

   (ii) which MRC is entitled to deduct or set off.

(d) Payment by MRC under this document shall not constitute acceptance or approval of any Services or other matter, nor shall it prejudice any rights of MRC.

11.5 Fee cap
Without limiting clauses 2.4 to 2.7, if the Fee exceeds or is likely to exceed $[Insert] (excluding GST), the Consultant must obtain MRC’s prior written approval for any increase in the Fee over $[Insert] (excluding GST). MRC will not be liable to pay the Consultant more than $[Insert] (excluding GST) unless prior written approval is obtained.
11.6 Correction of payments

MRC may at any time correct any error which has been discovered in any previous payments made. Without limiting the above or any other part of the document, at the time of each Tax Invoice and of any payments made under the document and at any other time MRC (in consultation with the Consultant if requested by MRC) may undertake a reconciliation of payments made to a relevant date and may make any adjustments to those payments and MRC may give further notice of approval, non-approval or of adjustment to any prior or subsequent payments made.

11.7 Set off

Without limiting MRC’s rights under any other part of this document, and despite any payment by MRC under this document, MRC may deduct from any moneys due to the Consultant any sum which may be or may become payable by the Consultant to MRC whether or not MRC’s right to payment arises pursuant to an indemnity or by way of damages, debt, restitution or otherwise and whether or not the factual basis giving rise to MRC’s right to payment arises out of this document, any other contract between it and the Consultant, or is independent of any such contracts. Nothing in this clause shall affect the right of MRC to recover from the Consultant the whole of such moneys or any balance that remains owing.

11.8 Final Claim

(a) Within 10 Business Days of the completion of the Services or of the Completion Date (whichever is the later), the Consultant shall lodge with MRC a final claim and endorse it ‘Final Claim’.

(b) The Consultant shall include in that claim all moneys which the Consultant considers to be due from MRC under or arising out of this document or any alleged breach of it. Any Claim by the Consultant must be in writing and must specify:

(i) the legal basis for the Claim, whether based on a term of the document or otherwise, and if based on a term of the document, clearly identifying the specific term;

(ii) the facts relied upon in support of the Claim in sufficient detail to permit proper verification and assessment by MRC; and

(iii) details of the quantification of the Claim, in all cases showing the basis of the calculations.

(c) After the expiration of the period for lodging a Final Claim, any Claim which the Consultant could have made against MRC and which has not been made and any upward adjustment to the quantum of the Final Claim made shall be barred.

12 Reimbursement of expenses

Provided that any claim for expenses is submitted in accordance with clause 11 and subject to that clause, MRC will reimburse the Consultant for reasonable expenses incurred by the Consultant in completing the Services, provided that:

(a) the expenses are incurred:

(i) at the request of MRC; and
(ii) with the prior written approval of MRC;

(b) the cost claimed is the out of pocket cost to the Consultant, exclusive of any profit, overhead or other margin or mark up; and

(c) the Consultant provides to MRC Tax Invoices and other supporting documentation substantiating that the expenses have been necessarily and properly incurred.

13 GST

13.1 Definitions

In this clause:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>GST</td>
<td>has the meaning given to that term in the GST Act.</td>
</tr>
<tr>
<td>Input Tax Credit</td>
<td>has the meaning given to that term in the GST Act.</td>
</tr>
<tr>
<td>Joint Venture Operator</td>
<td>has the meaning given to that term in the GST Act.</td>
</tr>
<tr>
<td>Recipient</td>
<td>has the meaning given to that term in the GST Act.</td>
</tr>
<tr>
<td>Representative Member</td>
<td>has the meaning given to that term in the GST Act.</td>
</tr>
<tr>
<td>Supplier</td>
<td>means the entity making the Supply.</td>
</tr>
<tr>
<td>Supply</td>
<td>has the meaning given to that term in the GST Act.</td>
</tr>
<tr>
<td>Taxable Supply</td>
<td>has the meaning given to that term in the GST Act.</td>
</tr>
</tbody>
</table>

13.2 GST exclusive

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

13.3 Taxable Supply

If a Supply made under or in connection with this document 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 document for that Supply); and

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

13.4 Reimbursement or indemnity

If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component 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 Credit (if any).
14 Labour, Plant and Equipment

14.1 Consultant to Supply

The Consultant will supply at its own expense all labour, plant, equipment, tools, appliances or other property and items the Consultant requires to fulfil its obligations under this document, unless otherwise provided in Schedule 1.

14.2 Use of Plant and Equipment

Any plant, equipment, tools, appliances or other property and items (the “Property”) that MRC provides to the Consultant to enable it to complete its obligations under this document remain MRC’s property and must only be used for the purposes of fulfilling the Consultant’s obligations under this document. The Consultant will exercise reasonable care and skill in using the Property and will only use the Property for its usual purpose.

14.3 Obligations of Consultant

The Consultant must keep MRC’s property in good order and condition, subject to fair wear and tear.

15 Relationship

15.1 Principal and independent contractor

The parties’ relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.

15.2 No contractual relationship

No contractual relationship will arise between any Personnel and MRC as a result of the Consultant’s and MRC’s relationship.

15.3 No right or authority

The Consultant does not have the right or authority to act on behalf of or bind MRC unless the Consultant has been expressly authorised by MRC in writing to do so.

15.4 No entitlements

Apart from the Fee, neither the Consultant nor the Personnel is entitled to any fees, payments, commissions, bonuses, wages, holiday pay, long service leave, sick pay, termination pay or any similar entitlement from MRC. The Consultant is solely responsible for providing the Personnel with these entitlements.

15.5 No responsibility

The Consultant is responsible for making appropriate tax deductions and payments and superannuation contributions in respect of any payments or benefits provided to the Consultant by MRC or to the Personnel by the Consultant.
15.6 Representatives

The persons named in Schedule 1 will act as Representatives for MRC and the Consultant respectively and will have authority to act on behalf of that party for all purposes in connection with this document. Subject to clause 6.2, a party’s Representative may be changed by notice in writing given to the other party.

16 Confidentiality

16.1 Information to be kept confidential

The Consultant agrees and undertakes that it will keep confidential and will not use for its own purposes and will not without the prior written consent of MRC disclose to any third party, any Confidential Information which may become known to the Consultant as a result of it undertaking the Services.

16.2 Permissible disclosure

The Consultant will not at any time, before, during or after completion of the Services, use or disclose any Confidential Information, for any purpose other than:

(a) as strictly necessary to complete the Services;
(b) with MRC’s prior written permission; or
(c) where required to disclose by law.

16.3 Consultant to keep information confidential

If Confidential Information is disclosed in accordance with clause 16.2, the Consultant will:

(a) ensure that the person to whom the information is disclosed is made aware of its confidential nature and the obligations restricting its use and disclosure; and
(b) immediately notify MRC in writing of such disclosure.

16.4 Disclosure to Consultant’s Personnel

Confidential Information may only be disclosed by the Consultant to those Personnel who:

(a) have a need to know, and only to the extent that each needs to know, in order for the Consultant to complete the Services; and
(b) who have agreed in writing to maintain the confidentiality of such Confidential Information prior to any disclosure to them of that Confidential Information taking place.

16.5 Confidentiality undertaking

In accordance with clause 1A(b), the Consultant will, prior to commencement of the Services and as a condition precedent to any entitlement of the Consultant to payment under or pursuant to this document, provide MRC with the original of a confidentiality undertaking in the form found in Schedule 3 signed by the Key Personnel or such other Personnel as may be nominated by MRC.
16.6 **Consequence of wrongful disclosure**

The Consultant accepts responsibility for any use or disclosure of Confidential Information contrary to clause 16 and will indemnify MRC for any damage, loss, cost or expense suffered by MRC in connection with any such use or disclosure.

17 **Intellectual Property**

17.1 **Assignment of Intellectual Property**

The Consultant assigns to MRC all Intellectual Property Rights which may arise in respect of, or as a result of, the performance of the Services and MRC grants to the Consultant a non-transferable, royalty free licence to use those Intellectual Property Rights in the performance of the Services.

17.2 **Disclosure of Intellectual Property Rights**

The Consultant must disclose to MRC any Intellectual Property Right promptly after it is brought into existence.

17.3 **Execution of documents**

The Consultant must execute all documents and do all other things reasonably necessary to:

(a) enable MRC or its nominee to obtain letters patent, design registration or other official protection for MRC’s interest in each of its Intellectual Property Rights; and

(b) assign and transfer to MRC or its nominee the full ownership of each of its Intellectual Property Rights.

17.4 **Survival of obligations**

The obligations of the Consultant relating to Intellectual Property Rights created or arising pursuant to this document, continue after termination of this document.

17.5 **Moral Rights**

The Consultant consents to MRC infringing any Moral Rights that the Consultant may have or become entitled to in any Work created in the course of completing the Services. For the purpose of this consent, ‘Work’ has the meaning given to that term in the *Copyright Amendment (Moral Rights) Act 2000* (Cth) and ‘Moral Rights’ refers to any right arising under the provisions of that legislation.

17.6 **Indemnity**

The Consultant agrees and undertakes to preserve MRC’s Intellectual Property Rights. The Consultant will indemnify MRC for any damage, loss, cost or expense suffered by MRC arising from or in connection with any claims against MRC in respect of the ownership of or rights to use any intellectual property the Consultant uses, develops or creates and for any breach by the Consultant of clause 17.
18 Non-compliant services

18.1 Rectification of non-compliant Services

If MRC is not satisfied that the Services comply with the requirements of this document, MRC may, at its option:

(a) require the Consultant, within a reasonable time, to take such steps as are necessary to ensure that the Services comply with this document and the Consultant agrees that no Fee or extra Fee, costs, damages or other Claim will be payable to the Consultant by MRC for any work done to rectify the non-compliance;

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

(c) rectify, either itself or by others, the Services which do not comply with this document and the Consultant agrees to reimburse MRC for any costs, losses, expenses or damages MRC incurs in rectifying any Services which do not comply with this document, which costs, losses, expenses or damages are deemed a debt due by the Consultant to MRC,

and without limiting any of MRC’s other rights, any damages, losses, costs or expenses incurred by MRC pursuant to this clause may be set off in accordance with clause 11.7.

18.2 Consultant’s obligations not effected

MRC’s rights under clause 18.1 do not in any way change or affect the Consultant’s obligations under this document or affect MRC’s rights to claim for any cost, expense, loss or damage that MRC may suffer or incur because of the Consultant’s failure to fulfil its obligations under this document or to exercise other rights under this document, including under clause 24.1.

19 Delay

19.1 Completion of Services

The Consultant must:

(a) complete the Services:

(i) in accordance with this document including the Program;

(ii) with due expedition and without delay; and

(iii) by the Completion Date; and

(b) take all possible steps to avoid or if it cannot be avoided, to minimise, any delay.

19.2 Notice of Delay

The Consultant must give written notice to MRC advising:

(a) all relevant details of any matters causing a delay;

(b) the duration of the delay;
(c) the impact of the delay on the time frames (if any) for completion of the Services, the Completion Date and any other requirements including for Deliverables and Milestone Dates as may be set out in this document, including in the Program;

(d) the Consultant's recommendation as to how to minimise the impact of the delay on its ability to complete the Services in accordance with this document; and

(e) any other information reasonably requested by MRC,

within five Business Days after becoming aware or within five Business Days from the first time that it ought to have become aware, whichever is the earlier, of anything which is likely to cause, or has caused, delay to the Consultant in providing the Services or which will or may affect the time frames for completion of the Services.

19.3 No liability

MRC will not be liable for any Claim arising from a delay which has not been made strictly in accordance with clause 19.2.

19.4 Review of Claim

On receipt of a notice from the Consultant in accordance with clause 19.2, MRC will review its content and if a request has been made by the Consultant in accordance with clause 19.2, may grant a reasonable extension of time to the Consultant and adjust the Completion Date (and any necessary adjustments to the dates for Deliverables and Milestone Dates) accordingly, provided:

(a) the delay:

   (i) has been directly caused by an act, omission or default of MRC;

   (ii) is critical in that its occurrence will affect the Consultant's ability to provide the Services by the Completion Date;

   (iii) is not concurrent with a delay for which the Consultant is responsible; and

   (iv) has not been caused or contributed to, directly or indirectly, by the Consultant; and

(b) the Consultant has complied with clauses 19.1 and 19.2.

19.5 No additional payment

The Consultant will not be entitled to any additional payment or to any Claim as a result of any granting of an extension of time to the Completion Date or to the dates for Deliverables or Milestone Dates or for any other Claim, including for delay or disruption.

19.6 Extension of time

MRC may at any time, in its absolute discretion, grant the Consultant an extension of time to the Completion Date or to the dates for Deliverables or Milestone Dates. This clause is for MRC's benefit and MRC will not be required to exercise its discretion under clause 19.6 for the benefit of the Consultant.
19.7  **Disputed determination**

If the Consultant disputes MRC’s determination under clause 19.4, it may refer the matter to be resolved under clause 27 within 10 Business Days after MRC notifies the Consultant of its decision under clause 19.4. Otherwise, MRC will have no further liability with respect to any Claim.

### 20 Liquidated damages

20.1  **Liquidated damages for delay**

The Consultant must pay liquidated damages to MRC in accordance with the amount for liquidated damages described in Schedule 1 for a delay in:

(a) completing the Services by the Completion Date;

(b) providing the Deliverables by the dates for Deliverables as set out in Schedule 2 and the Program; and

(c) achieving the Milestone Dates.

20.2  **Genuine pre-estimate**

Each party acknowledges that the liquidated damages amount, if any, that is specified in Schedule 1 is a genuine and realistic pre-estimate of the loss and damage that MRC will suffer as a result of a delay.

20.3  **Time liquidated damages are payable for**

Subject to clause 20.4, liquidated damages are payable by the Consultant from:

(a) the Completion Date until the date of completion of the Services in accordance with this document;

(b) the date in which the Deliverable was to be provided until the date the Deliverable is provided; and

(c) the Milestone Date until the date that the relevant milestone is achieved, as the case may be.

20.4  **No liquidated damages for period of extension**

Where MRC has granted an extension of time pursuant to clause 19, no liquidated damages are payable for the period of that extension.

20.5  **Without prejudice to other rights**

The exercise by MRC of its rights pursuant to clause 20 is without prejudice to any other right of action or remedy which has accrued or may accrue to MRC.
21 Restraint of trade

21.1 Agreed restraint

In consideration of MRC entering into this document with the Consultant, and in order to protect MRC’s goodwill and Confidential Information, the Consultant agrees that it will not, in any capacity, directly or indirectly:

(a) for the Term and for a period of 12 months after the termination or expiration of this document, induce any Personnel, including employees, of MRC to resign for the purpose of engagement in any capacity, directly or indirectly, with the Consultant or another person; or

(b) induce any of MRC’s other contractors, consultants, service providers or suppliers to terminate or restrict their relationship with MRC.

21.2 Validity not affected

The validity of each separate restraint is not affected by the invalidity, if any, of any other restraint.

21.3 Release from restraint

The Consultant may seek MRC’s consent in writing to be released from any restraint. This is at the sole discretion of MRC.

22 Insurance

22.1 Insurance required

(a) The Consultant must take out and keep current at its own expense insurance policies as follows:

(i) professional indemnity insurance during the Term and for a period of seven years after the completion of the Services or the Completion Date, whichever is the later. The policy must contain the following provisions:

(A) a minimum indemnity limit as described in Schedule 1; and

(B) one automatic reinstatement provision;

(ii) workers’ compensation insurance until the Completion Date and then for a further period of six months, covering liability for loss, damage, claim and all direct or associated costs and expenses arising at common law or under workers’ compensation insurance in respect of persons employed by the Consultant;

(iii) public liability insurance until the Completion Date and then for a further period of six months, an amount not less than that stated in Schedule 1 in respect of any single occurrence; and

(iv) motor vehicle insurance until the Completion Date and then for a further period of six months, covering all liabilities in respect of injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of motor vehicles,
and such insurances must also be in compliance with such further requirements for insurances as described in Schedule 1;

22.2 Consultant to provide documents

Without limiting clauses 1A or 8:

(a) the Consultant must supply MRC with copies of all schedules or certificates of currency and insurance and policy documents and wording for the insurance policies referred to in clause 22.1 at any time and within five Business Days of a request by MRC; and

(b) MRC may inspect the schedules of currency, certificates of currency and the Consultant’s insurance policy documents and wording, at any time on reasonable notice to the Consultant.

22.3 Cancellation or lapse of Policy

The Consultant must promptly notify MRC of any cancellation or lapse of any policy of insurance required by clause 22.1. If any policy of insurance is cancelled or lapses, MRC may take out equivalent insurance in lieu of the cancelled or lapsed policy and the cost to MRC of so doing will be a debt due and payable by the Consultant to MRC and can be set off against any payments otherwise due to the Consultant under this document.

22.4 Notification of Claims

The Consultant will within five Business Days of any claim arising, notify MRC and keep MRC informed of any claims arising from or relevant to the Services which fall for consideration under any policy of insurance required by clause 22.1.

22.5 Effect of Insurance

Nothing in this clause 22 limits the obligations, liabilities and responsibilities of the Consultant under this document.

23 Indemnity

23.1 Consultant’s indemnities

(a) Without limiting any other part of this document, the Consultant indemnifies and must keep indemnified MRC from and against all Claims of any nature whatsoever which MRC may suffer or incur in connection with loss of life, personal injury, illness or damage to property or nuisance to any third party (including any servant or agent or employee of MRC or the Consultant) arising directly or indirectly from, caused or contributed to or in connection with any act or omission of the Consultant or by any of the Consultant’s servants, agents or employees or for any breach of this document.

(b) The Consultant’s liability to indemnify MRC shall be reduced to the extent that an act or omission of MRC contributed to the loss or damage.

23.2 Payment on demand

The Consultant agrees to pay amounts due under this indemnity and under any other indemnity in this document on written demand from MRC.
23.3 Failure to comply

If the Consultant fails to comply with its obligations under clause 23, MRC may make good the damage and if the cost of so doing would, if the Consultant had performed it, have been borne by the Consultant under clause 23, then the cost to MRC of performing such Services or carrying out such repairs or of the carrying out of other things, will be a debt due and owing from the Consultant to MRC.

23.4 Survival of indemnity

Clause 23 survives termination or expiration of this document.

23A Consequential Loss and limits to liability

(a) Despite anything else contained in this document:

(i) the Consultant’s liability to MRC under this document in contract or in tort (including negligence) arising from acts or omissions by the Consultant, shall not exceed $2,000,000.00; and

(ii) the Consultant is not liable for any Consequential Loss.

(b) The limitation of liability in clause 23A(a) does not apply to limit the Consultant’s liability to MRC in relation to:

(i) any liability to the extent to which the Consultant receives payment or is entitled to be indemnified pursuant to an insurance policy in respect of that liability;

(ii) any liability for which, but for a failure by the Consultant to comply with its obligations under this document, the Consultant would have received payment or been entitled to have been indemnified under an insurance policy effected in accordance with this document;

(iii) any liability which arises from any fraud, wilful misconduct, wilful negligence or criminal conduct by the Consultant or any of its sub-consultants, subcontractors, suppliers, employees, servants or agents;

(iv) the indemnities given in clause 23.1(a) and elsewhere in this document; and

(v) any breach of its obligations in respect to Confidential Information under clause 16 or Intellectual Property Rights under clause 17.

(c) MRC will not be liable to the Consultant or any other person for any Consequential Loss.

24 Termination

24.1 Termination for default

Despite and without limiting any other provisions of this document, MRC may terminate this document immediately and by written notice if:

(a) the Consultant is subject to an Insolvency Event;
(b) the Consultant breaches any Legislative Requirements that, in the reasonable opinion of MRC, may detrimentally affect or place MRC’s Activities, funding for the Services the subject of the Project or MRC’s reputation at risk;

(c) the Consultant breaches a Material Term of this document, or fails to remedy a breach of any other term of this document within five Business Days of being directed in writing by MRC to do so; or

(d) in the opinion of MRC, the conduct of the Consultant or any Personnel, sub-consultant or subcontractor or other agent of the Consultant, damages or is likely to hinder or affect MRC’s:

(i) ability to efficiently, effectively or properly carry out MRC’s Activities; or

(ii) relationship with any authority, department, organisation or elected representative managing or administering or implementing any Legislative Requirements.

24.2 Termination by Consultant

If MRC:

(a) becomes insolvent or enters into a scheme of arrangement with its creditors; or

(b) fails to pay the Consultant in accordance with this document;

the Consultant may:

(c) in the case of the default specified in clause 24.2(a), terminate this document by 10 Business Days written notice; and

(d) in the case of the default specified in clause 24.2(b), terminate this document by written notice if MRC fails to remedy the default within 20 Business Days from the date of delivery of a written notice by the Consultant to MRC specifying the default.

24.3 Return of Confidential Information

Promptly upon the termination of this document, or upon request at any time by MRC, the Consultant will provide MRC with:

(a) any Confidential Information (including copies);

(b) any item in respect of which Intellectual Property Rights are held by MRC;

(c) any property, including records or information belonging to MRC or relating to the Services or the Project;

in the Consultant’s possession, power or control, in the form requested by and to the satisfaction of MRC.

24.4 Payment on termination

MRC will pay to the Consultant the amount of any outstanding Tax Invoices issued in accordance with this document for the Services or part of the Services performed up to the date of termination of this document.
24.5 No representation

Immediately upon and after termination of this document, the Consultant must not represent itself as being an agent or contractor of MRC.

24.6 Effect of termination

(a) Upon termination of this document:

(i) the Consultant is not released from liability in respect of any breach of, or non-performance of, any obligation under this document; and

(ii) the Consultant agrees that MRC may immediately appoint such other persons in its sole discretion to complete the Services and this clause does not affect MRC’s common law rights.

(b) Termination of this document by either party is without prejudice to any accrued rights or remedies of each party.

25 Privacy and Personal Information

25.1 Personal Information

If the Consultant collects or has access to Personal information as a result of this Agreement the Consultant must:

(a) If the Principal is an “agency” within the meaning of the Information Privacy Act 2009, comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Agreement as if the Consultant was the Principal;

(b) Not use Personal Information other than for the purposes of performing the services requested under this Agreement, unless required or authorised by law.

(c) Not disclose Personal Information without the consent of the Principal or Customer, unless required or authorised by law;

(d) Not transfer Personal Information outside of Australia without the consent of the Principal;

(e) Ensure access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties;

(f) Ensure that its sub-contractors who have access to Personal Information comply with obligations the same as those imposed on this Agreement under this clause;

(g) Fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual’s Personal Information and to privacy complaints; and

(h) Comply with such other privacy and security measures as the Principal advises the Consultant from time to time.
25.2 Executed Deed of Privacy

On request by the Principal the Consultant will obtain from its employees, officers and sub-contractors engaged for the provision of the services under this Agreement, an executed deed of privacy in a form acceptable to the Principal.

25.3 Breach

(a) The Consultant must immediately notify the Principal on becoming aware of any breach of clause 25.1.

26 Representations and warranties

In addition to the representations and warranties and other promises made in this document, including in clauses 3 and 5, the Consultant further represents and warrants to MRC that:

(a) it and the Personnel engaged in completing the Services, possess the necessary skills, qualifications, training and experience to perform the Consultant’s obligations pursuant to this document and complete the Services in a diligent and professional manner;

(b) it will not infringe the Intellectual Property Rights of any third party or otherwise breach any law or obligation to any third party in the performance of its obligations pursuant to this document or in completing the Services; and

(c) at the date of this document no Conflict of Interest exists or is likely to arise in the performance of its obligations pursuant to this document. If during the Term of this document a Conflict of Interest or risk of conflict of interest arises, the Consultant must notify MRC in writing of that conflict or risk,

and acknowledges that MRC has relied on those representations and warranties and other representations and warranties and promises made in this document, in entering into this document. The representations and warranties given in this clause and elsewhere in this document are regarded as repeated during the Term with respect to the facts and circumstances then subsisting.

27 Dispute resolution

27.1 Mediation

Any dispute or difference whatsoever arising out of or in connection with this document must be:

(a) notified in writing by one party to the other; and

(b) submitted to mediation for resolution in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

27.2 Termination of mediation

If:

(a) within 60 days of the written notice referred to in clause 27.1(a), the dispute or difference has not been resolved in mediation; or
(b) at any time either MRC or the Consultant reasonably considers that the other party is not acting reasonably in respect to the mediation process,

then the mediation may be terminated by written notice given by one party to the other.

27.3 Rights unaffected

Any dispute or difference not resolved in accordance with clause 27.1 may be the subject of litigation.

27.4 Continued performance

Despite the existence of a dispute or difference or mediation or litigation in respect to the dispute or difference, MRC and the Consultant agree to continue to perform their obligations under this document.

28 Conflict of Interest

28.1 Acknowledgement

MRC and the Consultant acknowledge and agree that for reasons including:

(a) the Confidential Information in the Consultant’s knowledge and possession; and

(b) the Consultant’s potential involvement in or knowledge of the Project,

a Conflict of Interest may arise.

28.2 If a Conflict of Interest arises

Without limiting clause 28.1 or any other part of this document, in the event that a Conflict of Interest arises, or there is in the minds of either party a real, perceived, anticipated or identified risk of a Conflict of Interest arising, then:

(a) the Consultant must advise MRC in writing within 24 hours of such a Conflict of Interest or risk of Conflict of Interest arising or MRC must advise the Consultant as the case may be; and

(b) if a discussion in Good Faith between MRC and the Consultant cannot satisfactorily resolve the Conflict of Interest, then without limiting the document, the Consultant will act as directed by writing by MRC and MRC may terminate this document effective immediately by notice in writing given by MRC to the Consultant in that respect.

29 Novation of Consultant

There is no intention held by the parties that the Consultant may be novated (or assigned or transferred) to perform a role as a professional services provider to any other person for or in connection with the Project. Without limiting this document, the Consultant agrees not to consult or provide professional services or advice to any other person in connection with the Project without first obtaining the prior written consent of MRC, which consent (if given) may be on terms satisfactory in all respects to MRC.
30 Notices

30.1 Method of giving notice

A notice, consent or communication under this document is only effective if it is:

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

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

(c) given as follows:

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

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

(iii) 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.

30.2 When is notice given

A notice, consent or communication delivered under clause 30.1 is given and received:

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

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

(ii) 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

(b) if it is sent by post, three Business Days after posting.

30.3 Address for notices

A party’s address and fax number are those set out in Schedule 1, or as one party may notify the other of a change of such address or fax number in writing.

31 General

31.1 Amendments

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

31.2 Counterparts

This document may be executed in any number of counterparts. All counterparts together make one instrument.
31.3 No merger

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

31.4 Entire agreement

(a) This document supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.

(b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in this document.

31.5 Further assurances

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

31.6 No waiver

(a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.

(b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

(c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

31.7 Governing law and jurisdiction

(a) Queensland law governs this document.

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

31.8 Severability

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

32 Use by Other Local Governments

A Local Government other than the Principal (an “Other Local Government”) may access the Contract subject to mutual agreement in writing of the Principal, the Contractor and the Other Local Government. Responsibility for establishing and managing any contract between the Contractor and the Other Local Government rests with the Other Local Government.
Schedule 1

Details

<table>
<thead>
<tr>
<th><strong>Commencement Date:</strong></th>
<th>1 November 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Representatives of the parties:</strong></td>
<td>MRC: Sarah Lethbridge</td>
</tr>
<tr>
<td></td>
<td>Consultant:</td>
</tr>
<tr>
<td><strong>Address for Notices:</strong></td>
<td>TBA</td>
</tr>
<tr>
<td><strong>Term:</strong></td>
<td>From the Commencement Date until the Completion Date.</td>
</tr>
<tr>
<td><strong>Milestones Dates:</strong></td>
<td>TBA</td>
</tr>
<tr>
<td><strong>Completion Date:</strong></td>
<td>28 February 2020</td>
</tr>
<tr>
<td><strong>Key Personnel:</strong></td>
<td>TBA</td>
</tr>
<tr>
<td><strong>Fee:</strong></td>
<td>The Fee is Lump Sum with estimated upper limit and is calculated in the manner as may be further described in Schedule 5.</td>
</tr>
<tr>
<td><strong>Intervals for Invoices</strong></td>
<td>Monthly</td>
</tr>
<tr>
<td><strong>Notice of Termination (23.1):</strong></td>
<td>10 Business Days.</td>
</tr>
<tr>
<td><strong>Insurance:</strong></td>
<td>Public liability insurance with a limit of liability of not less than $20 million.</td>
</tr>
<tr>
<td></td>
<td>Professional indemnity insurance with a limit of liability of not less than $2 million.</td>
</tr>
<tr>
<td></td>
<td>Insurance in compliance with applicable workers’ compensation legislation in respect of the Personnel. MRC is not responsible for and is not obliged to maintain such a policy in respect of the Consultant or its Personnel.</td>
</tr>
</tbody>
</table>
BRIEF FOR

DEVELOPMENT OF A STRATEGY FOR THE MACKAY SEWERAGE SYSTEM

DOCUMENT CONTROL

<table>
<thead>
<tr>
<th>Rev</th>
<th>Date</th>
<th>Prepared by</th>
<th>Reviewed by</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>28/8/2019</td>
<td>Sunnie Hollenbeck</td>
<td>Sarah Lethbridge</td>
</tr>
<tr>
<td>0</td>
<td>18/09/2019</td>
<td>Sarah Lethbridge</td>
<td>Sarah Lethbridge</td>
</tr>
</tbody>
</table>
1. PROJECT OVERVIEW

Mackay Regional Council (Council) developed a sewerage strategy for Mackay Region (excluding areas of Sarina, Marian/Mirani or rural areas) in 2011 to determine trunk infrastructure required to meet future services requirements within the priority infrastructure area (PIA) and currently informs the Long-Term Financial Forecast (LTFF). This strategy identified two primary options for servicing the significant growth anticipated at the time. Preferred options included extension of Council’s one or two major water recycling facilities, addition of major pump stations and pipeline infrastructure. Since 2011, there has been a change in the expected growth pattern of the Region that has delayed the timing of trunk infrastructure.

As Mackay Water Services grows in maturity in asset management and understanding whole of life costs of providing the levels of service deemed required to the Mackay Region, an updated sewerage strategy is required to determine the best options for servicing the region.

The primary objective of the new strategy is to develop a robust, sustainable capital investment program for the Mackay Region up to 2046 which will enable the LTFF to be updated while taking into account operational impacts and costs, network resiliency and impacts to the treatment plants and licence conditions. The strategy is to assess both capital and operational costs considering innovation and non-capital solutions in developing the investment program strategy. It shall also highlight opportunities for improvements that are expected to yield performance and operational benefits.

1.1 Mackay Sewerage System Overview

The Mackay sewerage system is currently served by two major wastewater treatment plants – Bucasia (Mackay North) Water Recycling Facility (MNWRF) to the north and Bakers Creek (Mackay South) Water Recycling Facility (MSWRF) to the south. A third wastewater treatment plant at Mount Bassett was abandoned in 2010 with flows diverted to the extended MSWRF via Sydney St SPS. Current WRF capacities are provided below as is a simplified Mackay sewerage system schematic.

<table>
<thead>
<tr>
<th>Treatment Plant</th>
<th>Megalitres per Day</th>
<th>Equivalent Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>MNWRF (Bucasia)</td>
<td>4.9</td>
<td>24,500</td>
</tr>
<tr>
<td>MSWRF (Bakers Creek)</td>
<td>23.8</td>
<td>119,000</td>
</tr>
</tbody>
</table>

Table 1. Capacities at Wastewater treatment plants serving Mackay
Figure 1. Current Mackay Sewerage System simplified schematic (North)

Figure 2. Current Mackay Sewerage System simplified schematic (South)
1.2 Current Mackay Sewerage Strategy - 2011

When the current Mackay sewerage strategy was developed in 2011, annual population growth was significantly higher than it is today. Using equivalent population figures, which also allows for industrial, commercial and public land uses, 2011 projections estimated that the 2036 Mackay sewered population would grow from 102,600 to 170,000.

Based on the data available in 2011, Council developed a strategy to meet the projected growth at the time, which necessitated significant sewage treatment and infrastructure spend. Preferred schemes had a total estimate capital spend of $250m from 2011 to 2031 (2011 price-base date). The preferred options were as follows:

Option 1/AC:
- Extension of both MNWRF and MSWRF.
- Provide additional sewerage infrastructure
  - Rising mains 31,473m (12 schemes 300-750mm dia)
  - Gravity Mains 4,142m (2 schemes 375-900mm dia)
  - Pumping Stations – 9 upgrades, 2 new

Option 2/BD:
- Extension of only MSWRF.
- Provide additional sewerage infrastructure
  - Rising mains 34,718m (13 schemes 300-800mm dia)
  - Gravity Mains 5,130m (4 schemes 375-900mm dia)
  - Pumping Stations – 7 upgrades, 2 new

Analysis on these preferred options did not identify a clearly better strategy. Although 2/BD was marginally better on NPV analysis, it was also recognised that 1/AC would provide broader system resilience and greater treatment capacity by 2024.

Option 1/AC was adopted in 2011 and further developed.

1.3 Strategy Implementation

To date the following elements of this strategy have been implemented:
- Dump Rd SPS and rising main upgrade (2011)
- Prawn Farm SPS and rising main upgrade (2012)

Furthermore, the following related activities have been completed in relation to the Mackay Sewerage Strategy. These provide benefits to the current sewerage system or enable implementation of the longer-term Mackay Sewerage Strategy.

Paget and Ooroloea Master Plan:
- Pump station assessment and potential upgrade at Schmidtkes Rd (2014)
- Pelorus Court SPS flow diversion to Schmidtkes Rd SPS (2014)

Northern Beaches Water and Wastewater Master Plan
- Gravity Mains – 484m (2013) McCreadys
1.4 **Other drivers for the Mackay Sewerage Strategy**

In addition to the growth demands on the network other drivers for an updated strategy include, but are not limited to:

- Operational costs/energy management
- Resiliency in the network, for example:
  - The Southern Rising Main (from Sydney St SPS to MS WRF) has been identified as a critical asset which currently has no redundancy. Opportunities to provide redundancy in this regard could be included in a sewerage strategy.
- Operational management to minimise network degradation, for example with regards to septicity
- Changes in legislative requirements for EA and discharges, and how it will impact upgrades to MNWRF and MSWRF.

1.5 **Concurrent Planning Projects**

Council is currently undertaking/ about to undertake the following planning projects that interface with the Mackay Sewerage Strategy:

- Southern Rising Main (SRM) contingency plan – considering failure risk of the SRM and operational/ capital mitigation measures;
- MNWRF Upgrade Options – considering high level upgrade options for MNWRF based on site constraints and likely discharge requirements;
- Renewals planning for sewerage assets.

Outcomes from the above projects will be made available as inputs to the Mackay Sewerage Strategy, dependent on timing of project deliverables.

2. **PROJECT DRIVERS**

2.1 **Mackay Regional Council Operational Plan 2018/19**

Sec 7.5 Water and sewerage networks - Maintain and improve Council’s water and sewerage networks by optimising the useful life of assets and by adopting more efficient service delivery mechanisms in consultation with the community.

Sec 7.5.1 Use planning optimisation to devise capital program, developed within governance framework, in line with Council budget schedule.

Sec 7.5.2 Develop a capital program to maintain required services over the next 10 years at optimal investment, with business cases developed for projects identified for the first year.

Sec 7.8 Asset Management - Ensure that asset management aligns to the Council’s strategic direction and that effective asset management practices are in place to optimise the use of Council's assets required to deliver services to the community.

Sec 7.8.4 Review assets to determine current compliance with Statements of Intent and Levels of Service.

2.2 **Water Services Business Plan (2019-2024)**

6.1 Maximise asset life by improved asset management and maintenance practices
  - 6.1.1 The Region’s assets meet the requirements of our customers
6.1.7 Understanding of asset renewals strategy for water and sewerage mains
6.1.8 Understanding of asset renewals strategy for water and wastewater treatment plants

7.1 Meet all regulatory obligations
7.1.1. Nil regulatory enforcement notices

3. RISK DRIVERS

<table>
<thead>
<tr>
<th>Project Drivers (negative)</th>
<th>Likelihood</th>
<th>Consequence</th>
<th>Risk</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>WPH&amp;S</td>
<td>Likely</td>
<td>Major</td>
<td><strong>High (20)</strong></td>
<td>In the short-term, operational teams would be faced with more incidents leading to the elevated risk of accidents.</td>
</tr>
<tr>
<td>Public Health</td>
<td>Rare</td>
<td>Major</td>
<td><strong>Medium (13)</strong></td>
<td>Would need public to be sufficiently exposed to any spilled sewage as a result of having an ineffective sewerage strategy in place.</td>
</tr>
<tr>
<td>Environment</td>
<td>Unlikely</td>
<td>Catastrophic</td>
<td><strong>High (21)</strong></td>
<td>Council will be unable to effectively manage the longer-term challenges to the Mackay sewerage system. Business as usual would be effective for some time before being overloaded / overstretched.</td>
</tr>
<tr>
<td>Stakeholder Service Levels</td>
<td>Unlikely</td>
<td>Catastrophic</td>
<td><strong>High (21)</strong></td>
<td>Increased risk of a catastrophic service failure if strategy is not set-up to deal with sewer system challenges. Business as usual would be effective for some time before being overloaded / overstretched.</td>
</tr>
<tr>
<td>Reputation</td>
<td>Unlikely</td>
<td>Catastrophic</td>
<td><strong>High (21)</strong></td>
<td>Major failure of wastewater services would result in considerable local and state government dissatisfaction. Business as usual would be effective for some time before being overloaded / overstretched.</td>
</tr>
<tr>
<td>Economic</td>
<td>Unlikely</td>
<td>Catastrophic</td>
<td><strong>High (21)</strong></td>
<td>With no strategy, Council would face increased risk of regulatory standard breaches and resultant action would likely bring financial penalties. Business as usual would be effective for some time before being overloaded.</td>
</tr>
</tbody>
</table>

| Project Drivers (positive) |   |           |           |                                                                                                                                              |


### Project Drivers (negative)

<table>
<thead>
<tr>
<th>Opportunities</th>
<th>Likelihood</th>
<th>Consequence</th>
<th>Risk</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Likely</td>
<td>Major</td>
<td>High (20)</td>
<td>Significant opportunity to optimally plan for greatest benefit / least cost approach to manage the future Mackay sewerage system.</td>
</tr>
</tbody>
</table>

### 4. SCOPE OF WORKS

#### 4.1 Scope of Works

**Phase 1 – Understand Strategy Inputs**

**4.1.1 Project kick off meeting**

An initiation meeting is to be held with Council stakeholders at project commencement. This is intended to bring all stakeholders up to speed with the current strategy and its implementation status, and gather early ideas on the future strategy.

Consultant to prepare minutes of meeting.

**4.1.2 Current Strategy Review**

The consultant will develop familiarity with the existing Mackay Sewerage Strategy and other applicable reports provided. A review of the strategy identifying positives, concerns and update requirements should also be completed.

Consultant to prepare a summary memo to include current assumptions.

**4.1.3 Stakeholders workshop and needs analysis**

The consultant will undertake a stakeholder workshop and needs analysis to ensure alignment with Mackay Water Services objectives and to fully understand strategy direction and project goals. Project inclusions and exclusions should be re-iterated in this process.

Consultant to prepare agenda, facilitate and document / share workshop outputs (including minutes).

**4.1.4 Data Collection and gap analysis**

Review applicable previous reports and source all relevant asset, flow and performance data from Council in order to develop an understanding of current capacity and performance issues. Key data sources include, but are not limited to, flow data, SPS performance, MiSewer performance data, and asset characteristics.

**Phase 2 – Strategy Development**

**4.1.5 Strategy Assessment and development of options**

Based on the outcome of Phase 1, the consultant shall develop a list of strategic options to be shortlisted with Council key stakeholders.
The options are to be produced with supporting high level costs, options analysis and identification of any key risks, issues and opportunities/ benefits. This will be circulated to project stakeholders before task 4.1.6.

**4.1.6 Multi Criteria Assessment and Workshop**
Develop a multi criteria assessment (MCA) in conjunction with Council to explore non-capital and innovative solutions.

Conduct a review workshop to work through to a final preferred option with the agreed on multi criteria assessment.

Consultant to prepare agenda, facilitate and document / share workshop outputs (including minutes).

**Phase 3 – Final Strategy Development**

**4.1.7 Final Strategy**
The consultant shall prepare a final strategy in MSWord report with a pre-approved format and table of contents, that clearly defines strategy inputs, strategy assumptions and associated sensitives. The report will provide required detail to enable the long-term financial forecast (LTFF) to be updated, and include a plan of associated trunk infrastructure as well as triggers for capital upgrades. The report is to include:

- Project assumptions risk and opportunities register such that they are clearly defined
- A robust prioritised program of works (capital, operational and recommended for further studies) to enable the LTFF to be updated. Highlight opportunities for improvements that are expected to yield performance and operational benefits
- Assessment of the sewerage network in terms of contingency and resiliency and recommend measures to assess the loss of assets noted as particular high risk
- Clearly defined and assessed sensitivities and drivers behind all decisions / options.

**4.1.8 Update Mackay North hydraulic model**
The MN hydraulic model will be updated to reflect the final sewerage strategy.

**4.2 Out of Scope**
The following works are not included in the scope of this project:

- Growth / Population Projections - the growth model has been updated in the current Mackay South hydraulic model. The Mackay North catchment will be updated by Council and will be available at commencement of this project
- Impacts on MS/MNWRF – any impacts on the MS/MNWRF arising from the sewerage strategy will we assessed by Council, and associated cost/ program implications provided as input to the strategy development
- Renewals planning.

**4.3 Reporting and Communication**
The consultant shall send an update via email on the progress of the technical report fortnightly.

Subject headings for all project correspondence (including emails) are to follow the following format:
Council Project No. - Project Name - Subject
For example: 12345 – Mackay Sewerage Strategy – Progress Update

All project specific correspondence is to be collated and provided in electronic format as part of the project deliverables.

5. INFORMATION AVAILABLE

Council is able to supply:

- Current Mackay Sewerage Strategy (2011)
- Ooralea, Paget and Bakers Creek Sewerage Planning Report (2014)
- Northern Beaches Water and Wastewater Master Plan (2014)
- MNWRF network model
- MSWRF network model
- Septicity Report
- Sewer Network Hydraulic Model
- Inputs from concurrent planning projects when available.

The consultant should identify additional data/information required to undertake their investigations in their submission.

6. WORKPLACE HEALTH AND SAFETY

If, in the opinion of the consultant, a particular safety consideration is required for any aspect of the Project, then the Project Manager shall clearly identify the issue(s) within the assessments.

7. DELIVERABLES

The consultant is to supply Council Water Services with the following deliverables:

- Fortnightly emails to update progress of the project
- A project initiation meeting at Council as per 4.1.1, with minutes of the meeting
- A summary memo style report as per 4.1.2
- A workshop at Council as per 4.1.3, with minutes of the workshop
- A list of strategic options for shortlisting with Council, as per 4.1.5
- A multi criteria assessment workshop, as per 4.1.6, with minutes of the workshop
- Draft Table of Contents for final Strategy report
- A draft Mackay Sewerage Strategy as per 4.1.7, including LTFF capital profile and plans identifying trunk infrastructure with triggers identified
- A final Mackay Sewerage Strategy as per 4.1.7, incorporating feedback from Council
- An updated Mackay North hydraulic model as per 4.1.8

The consultant is to deliver all requested workshops in Mackay and provide meeting minutes for all workshops and meetings. Council to arrange stakeholder attendance and facilities (rooms, catering).
All documents, reports, tables, charts, drawings, specifications, schedules, maps and all other such deliverables produced under this consultancy shall become and remain the intellectual property of Council.

Where Excel tables and charts have been prepared, these must be supplied in excel format. Where a Schedule/Program has been prepared, these must be supplied in MS Project format.

8. PROJECT SCHEDULE

The consultant shall prepare a project timeline as part of their submission, with the expectation that the initiation meeting as per 4.1.1 at Council be undertaken by 31 October 2019. It is envisaged that the project should be completed by the end of February 2020.

9. SUBMISSION REQUIREMENTS

Consultants are to submit the following for consideration:

- Proposed methodology, demonstrating understanding of the project and identifying data/information requirements;
- Project schedule indicating key tasks and activities (including Council inputs);
- CV’s of key personnel who will undertake the project;
- Availability of key personnel to undertake the project in the required timeframe;
- Completed submission quotation schedule.

9.1 Terms of Engagement

Offer of service shall be developed on a lump sum basis for Phase 1 and estimated upper limit for Phases 2 and 3, for all the work as specified. This design works shall be performed in accordance with the Specific Form of Agreement for Consultancy Services developed by Council (refer Appendix A).

Bidders are to clearly state their assumptions used in the pricing of the estimated upper limit for Phases 2 and 3.

Bidders are to ensure that the limited payment Items identified in the quotation schedule provide fully for the Scope of the works as provided for in this Brief document read in its entirety and anything not explicitly listed but nonetheless required to complete the design works.

This document read in its entirety is to be taken to represent and define the overall scope of works.

Organisations bidding for the Consultancy Appointment are advised that:

a) In the event that scope variation occurs, the provisions under the Consultancy Agreement dealing with inter alia variations to the scope of work shall be adhered to. The value of such works will be agreed based on the hourly rates submitted in the RFQ response.

b) The items/tasks nominated by Council are not necessarily exhaustive and as competent and experienced designers, bidders are requested to add additional items or clarifications as deemed necessary to ensure that the full scope of the required work to deliver the completed contract is defined and all resource requirements are identified, costed and included in the submitted price.
c) By the very nature of a fixed price /lump sum offer, risk is expected to be priced and included into the price submitted.
d) Organisations bidding for the Consultancy Appointment are required to submit a sufficiently detailed project plan.
e) The submitted project plan must demonstrate and promote a clear understanding of the projects staging and interdependencies.
f) Bidders are requested to propose provisional items about which bidders are of the opinion that insufficient certainty exists but which may well materialise and where associated costs may be significant.
g) Council expects that all such activities and effort that may reasonably be anticipated by a Service Provider competent and experienced in delivering similar work are identified and provided for in the offer and if believed appropriate, that provisional costs are developed.
h) Council reserves the right to accept or reject Provisional Cost Items, and if rejected the bidder will be requested to include for this effort including provision for Risk in the Price submitted.
i) Bidders are to provide a MS Excel schedule identifying key personnel that will work on this project plus a breakdown of estimated hours per person per Task/Activity/Item.
j) The rates submitted are to be utilised in the valuation of any potential Variation. This valuation and Council approval is required prior to the work being carried out.
Appendix A

Contractor Induction
Appendix B
Contractor Spot Checks
Appendix C
Drug and Alcohol Policy
Appendix D

Fitness for Work Policy
Schedule 3
Confidentiality undertaking

Confidentiality undertaking

Dated:

By

Recipient [Insert Key Personnel name]

C/o of [Consultant name] ABN [Insert] of [Insert address]

BACKGROUND

A. Under an agreement Quote 2020-017 Mackay Sewerage Strategy (Agreement) made between Mackay Regional Council (MRC) and [Consultant name] (Consultant) the Consultant agreed to cause the Recipient to enter into this Undertaking.

B. In consideration of MRC entering into the Agreement with the Consultant, the Recipient agrees to the terms of this Confidentiality Undertaking for the benefit of MRC and its successors and assigns.

NOW THIS DEED WITNESSES

1 The expressions used in this Undertaking have the same meaning as those used in the Agreement referred to in the Background.

2 The Recipient covenants and agrees to take all action necessary to maintain the confidential nature of the Confidential Information.

3 The Recipient covenants and agrees not to:

(a) disclose any of the Confidential Information to any person without MRC’s prior written consent;

(b) use or reproduce any of the Confidential Information for any purpose other than for the performance of Services to MRC under the Agreement;

(c) use any of the Confidential Information:

(i) in a manner which might prejudice the businesses of MRC or otherwise cause loss or damage to MRC; or

(ii) for the purpose of providing a competitive advantage to the Consultant or a third party.

4 The Recipient acknowledges that damages are not a sufficient remedy for any breach of this Undertaking and that MRC is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Recipient in addition to any other remedies available to MRC at law, in equity or pursuant to statute concerning the Consultant under the Agreement.
5 The Recipient covenants and agrees to deliver to MRC all documents and other materials (including copy documents) in any medium in the Recipient’s possession, power or control which contain or refer to any of the Confidential Information (whether or not those documents and other materials were created by the parties) on the earlier of:

(a) demand by MRC; and

(b) the time the documents and other materials are no longer required for the performance of Services to MRC under the Agreement.

Signed by the Recipient as a deed

[Signature of Recipient]

[Signature of witness]

[Name of witness (print)]
Schedule 4

Program

As per awarded program
Schedule 5

Fee (calculation)

As per awarded fee offer.
Execution

EXECUTED as an agreement in Queensland

Signed by Mackay Regional Council ABN 56 240 712 069 by its duly authorised officer on ___ / ___ / ___ in the presence of:

.................................................................
Signature of Authorised Officer

.................................................................
Signature of witness

.................................................................
Full Name of Authorised Officer

.................................................................
Name of witness (print)

.................................................................
Office Held

Signed by [Consultant name] ABN [Insert] by its duly authorised officer on ___ / ___ / ___ in the presence of:

.................................................................
Signature of Authorised Officer

.................................................................
Signature of witness

.................................................................
Full Name of Authorised Officer

.................................................................
Name of witness (print)

.................................................................
Office Held