



SOUTH BURNETT

REGIONAL COUNCIL

S4.4 Supply of Services Contract

[#Company name]

Management and Operation of the _____
SBRC-20/21-21

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The Agreement

Parties

SBRC **South Burnett Regional Council ABN 89 972 463 351**

of PO Box 336, Kingaroy, Queensland 4610

SBRC Supplier means the person named as Supplier in Schedule 1.

Background

- A SBRC is establishing a Services Contract for the supply of a range of services to it.
- B The Supplier has represented to SBRC that it has the expertise, capacity and willingness to provide the services (and associated goods) to SBRC if and when required, and agrees to supply the services (and associated goods) to SBRC if and when required, in accordance with the terms and conditions of this agreement (i.e. the '**Agreement**').

AGREED TERMS

1 Definitions and Interpretation

1.1 Definitions

In this Agreement:

Term	Definition
Acceptance	has the meaning given to that term in clause 17.1(g).
Additional Period	means the period set out in Schedule 1.
Affiliated Supplier	has the meaning given to that term in clause 24.2.
Agreement	means the agreement referred to in Background B and comprising the documents referred to in clause 3 together with any other documents which are incorporated by reference.
Business Day	means a day that is not: (a) a public holiday in Kingaroy, Queensland; or (b) Saturday, Sunday or 27, 28, 29, 30 or 31 December.
Change of Control	means, in relation to the Supplier: (a) if the Supplier is a corporation: (i) a change in the shareholding of the Supplier such that a change in control (as defined in the <i>Corporations Act 2001</i> (Cth)) of the Supplier occurs (whether occurring at the one time or

Term	Definition
	<p>through a series of transfers or issues of securities); or</p> <p>(ii) any other event (including a change or alteration occurs in the corporate structure of the Supplier or the group of companies of which the Supplier is a member) occurs which results in a person other than the shareholders of the Supplier at the date of this Agreement:</p> <p>(A) controlling the composition of the board of directors of the Supplier;</p> <p>(B) controlling the voting power of the board of directors or any class of shareholders, or both, of the Supplier; or</p> <p>(C) holding more than one half of the issued share capital (either beneficially or otherwise) of the Supplier,</p> <p>(D) other than where shares or other equity interests in an entity are listed on any recognised Australian or overseas stock exchange and a Change in Control occurs due to any change in the legal or beneficial ownership of any such listed shares or interests;</p> <p>(b) if the Supplier is a unit trust:</p> <p>(i) a change affecting the trustee of that unit trust as described in paragraph (a) above (if the trustee is a corporation) or a change in the identity of the trustee itself; or</p> <p>(ii) a change in the beneficial ownership of at least 50% of the units comprising the trust; and</p> <p>(c) if the Supplier is a discretionary trust:</p> <p>(i) a change affecting the trustee of that trust as described in paragraph (a) above (if the trustee is a corporation) or a change in the identity of the trustee itself; or</p> <p>(ii) the addition of any new class of beneficiaries or the modification of any classes of beneficiaries under that discretionary trust.</p>
Claim	<p>includes any claim (whether known or unknown, actual or contingent, fixed or unascertained), demand, action, proceeding or suit, for:</p> <p>(a) the payment of money (including damages) or any liability;</p> <p>(b) an adjustment to the Price; or</p> <p>(c) delay, disruption, acceleration or other time-based claim,</p> <p>whether arising by way of indemnity, under contract, in equity, for restitution, under statute (to the maximum extent possible),</p>

Term	Definition
	in tort (including negligence) or otherwise, including arising out of or in connection with:
	(d) the Agreement, any Order, or the Services; or
	(e) the conduct of, or relationship between, the Supplier and SBRC, before or after this Agreement came into force.
Commencement Date	means the commencement date set out in Schedule 1.
Confidential Information	means the terms of this Agreement and any information of a party: <ul style="list-style-type: none"> (a) which the party indicates or has indicated is confidential; (b) which by its nature might reasonably be understood to be confidential or to have been disclosed to the other party in confidence; or (c) which is commercially valuable or would be of commercial value to a competitor of the party to whom it belongs, as well as: <ul style="list-style-type: none"> (d) all notes and other records prepared by SBRC or anybody else, based on or incorporating information referred to in sub-clauses (a) to (c) above; and (e) all copies of the information, notes and other records referred to in sub-clauses (a) to (d) above; but excludes information that: <ul style="list-style-type: none"> (f) was rightfully in the possession of the other party and not subject to an obligation of confidentiality on that party before the date of this Agreement; (g) is or, after the date of this Agreement, becomes available in the public domain (other than as a result of a breach of this Agreement); or (h) is required to be disclosed by Legislative Requirements.
Consequential Loss	has the meaning given to that term in clause 10(a).
Date for Delivery	has the meaning given to that term in clause 17.1(a).
Defective Services	has the meaning given to that term in clause 19.1.
EOT	has the meaning given to that term in clause 17.3.
Environmental Law	means any Legislative Requirements or local government by-law whenever in force (including the common law) concerning the environment including without limitation, laws relating to environmental protection, planning, development, pollution, green house gas emissions, contamination, conservation, heritage, natural resources, biodiversity, endangered species, the production, storage, handling, use or transportation of wastes or hazardous materials.
Expiry Date	means the expiry date set out in Schedule 1.
Force Majeure Event	means any event or circumstances, or combination of events and circumstances, which is beyond the reasonable control of the party affected (Affected Party) which causes or results in

Term	Definition
	<p>default or delay in the performance by the Affected Party of any of its obligations under this Agreement or an Order and which the Affected Party could not reasonably have been expected to have prevented, avoided or overcome exercising Good Industry Practice, and includes, provided the foregoing is satisfied:</p> <ul style="list-style-type: none"> (a) a physical natural disaster including fire, flood, lightning or earthquake; (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law; (c) epidemic or quarantine restriction; (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency; and (f) national or state-wide strikes, lockouts, industrial or labour disputes, work bans, blockades or picketing provided that the strikes, lockouts, industrial or labour disputes, work bans, blockades or picketing is not caused by, or directed solely at, the Affected Party, its Related Bodies Corporate or its subcontractors, <p>but does not include:</p> <ul style="list-style-type: none"> (a) any occurrence which results from the wrongful act or wrongful omission of the Affected Party; (b) mechanical or electrical breakdown or failure of plant or equipment; (c) any failure by the Affected Party to reach agreement with any third party necessary to enable the Affected Party to perform its obligations under this Agreement or an Order; or (d) a lack of, or an inability to use, money or available funds for any reason.
Good Industry Practice	means the practices, policies, methods and acts that, with the exercise of the degree of skill, diligence, prudence and foresight, would reasonably be expected from an experienced and competent supplier of goods of a similar nature to the Services (and the performance of services of a similar nature to the associated services), consistent with the need to comply with all Legislative Requirements.
GST Act	means <i>A New Tax System (Services and Services Tax) Act 1999</i> (Cth).
GST Act Supplier	means the entity making the Supply.
Heavy Vehicle	has the meaning given in the <i>Heavy Vehicle National Law Act 2012</i> (Qld).

Term	Definition
Heavy Vehicle Law	means any Legislative Requirements, principles of law or equity established by decisions of Australian courts or requirements of persons with obligations relating to <i>Heavy Vehicles</i> , including the <i>Heavy Vehicle National Law Act 2012</i> (Qld) and the <i>Heavy Vehicle National Law Regulation 2014</i> (Qld);
Heavy Vehicle Safety Requirements	means: <ul style="list-style-type: none"> (a) any Heavy Vehicle Law; and (b) the requirements of: <ul style="list-style-type: none"> (i) the SBRC's policies and procedures relating to work health and safety; (ii) industry standards, codes, practices and guidelines; and (iii) any other provisions of the Agreement, relating to the operation of Heavy Vehicles.
Insolvency Event	means any of the following events: <ul style="list-style-type: none"> (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the <i>Corporations Act 2001</i> (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the Supplier; (b) the Supplier or the Supplier's property or undertaking becomes subject to a personal insolvency arrangement under part X of the <i>Bankruptcy Act 1966</i> (Cth) or a debt agreement under part IX of the <i>Bankruptcy Act 1966</i> (Cth); (c) the Supplier is unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the <i>Corporations Act 2001</i> (Cth), or is presumed to be insolvent under the <i>Corporations Act 2001</i> (Cth); (d) the Supplier ceases to carry on business; (e) an application or order is made for the liquidation of the Supplier or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Supplier, otherwise than for the purpose of an amalgamation or reconstruction; (f) the Supplier makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that the Supplier is insolvent; (g) the Supplier makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that a director of the Supplier is seeking to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B Corporations Act; (h) the Supplier stops or suspends payment of all or a class of its debts, or threatens to stop or suspend payment of all or a class of its debts; or

Term	Definition
	(i) anything analogous to the events described in paragraphs (a) to (h) occur.
Intellectual Property Rights	means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, Moral Right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, know-how, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of those rights.
Legislative Requirements	includes: <ul style="list-style-type: none"> (a) acts, ordinances, regulations, by-laws, local laws, orders, awards and proclamations of the Commonwealth, the State and the local government applicable to the Services (and associated services) of the kind described in Error! Reference source not found.; (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 performances of the Services (and any associated services) of the kind described in, Error! Reference source not found.; (c) any relevant Australian standards; and (d) fees and charges in connection with the foregoing.
Order	means an order issued by SBRC to the Supplier, in the form of a phone, email or electronic order.
Notice of Dispute	has the meaning given to that term in clause 36.1.
Personnel	means any officer, employee, agent or subcontractor of a party but SBRC's Personnel does not include the Supplier or the Supplier's Personnel and the Supplier's Personnel does not include SBRC or SBRC's Personnel.
Place for Delivery	means the location for the delivery of the Services, as specified in an Order.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth).
PPSA Information	means any information or documents (including copies of such documents), which are in existence or may be entered into in the future, of the kind mentioned in section 275(1) PPSA.
Proposal	has the meaning given to that term in clause 4.3(a).
Quality System	has the meaning given to that term in clause 16.
Rates and Prices	means the rates and prices set out in Error! Reference source not found.
Related Bodies Corporate	has the meaning given to it in the <i>Corporations Act 2001</i> (Cth).
Review Period	has the meaning given to that term in clause 15.4(a).

Term	Definition
Price	means the price or prices payable by SBRC to the Supplier pursuant to any Order.
SBRC Insignia	means any sign (including any letter, word, name, signature, numeral, device, brand, heading, label, ticket, shape, colour, sound or aspect of packaging) used to distinguish goods and services dealt with or provided in the course of trade by SBRC or a company or other entity associated with SBRC.
SBRC Supplied Information	any information (whether documented or otherwise, including Confidential Information, but excluding the documents specified as comprising this Agreement) supplied or made available to the Supplier by or on behalf of the SBRC on, before or after the date of this Agreement.
SBRC Trade Mark	means a trade mark owned or used by the SBRC irrespective of whether or not that trade mark is registered.
SBRC's Representative	means for the purposes of this Agreement, the person named in Schedule 1 and for the purposes of an Order, the person named in that Order, or any replacement notified by SBRC to the Supplier from time to time under clause 8.1.
Secured Party	has the meaning given to that term in clause 32.1.
Security Interest	has the meaning given to that term by the PPSA.
Services	means the services (and any associated services) provided, or to be provided, pursuant to Orders issued to the Supplier from time to time by SBRC.
SOPA	means <i>Building Industry Fairness (Security of Payment) Act 2017</i> (Qld).
Special Conditions	means the special conditions set out in Schedule 3.
Subcontractors' Charges Legislation	means Part 4 of the SOPA.
Supplier's Representative	means, for the purposes of this Agreement, the person named in Schedule 1 and for the purposes of an Order, the person named in that Order, or any replacement notified by the Supplier to SBRC from time to time under clause 8.2.
Term	means, subject to earlier termination of this Agreement in accordance with clause 34, the period stated in Schedule 1 , and any extension of that period under clause 2.2.
Variation	has the meaning given to that term in clause 4.5(a).

1.2 Interpretation

In this Agreement unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other;
- (c) headings are for convenience only and are not to be used for interpretation;

- (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 Agreement and references to this Agreement include any of their respective schedules or annexures;
- (e) a reference to a party to this Agreement 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 Agreement is to that document or agreement as amended, supplemented, varied or replaced;
- (h) 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;
- (i) if any day on or by which a person must do something under this Agreement is not a Business Day, then the person must do it on or by the next Business Day;
- (j) 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;
- (k) the words 'include', 'included', 'including' or the equivalent are not words of limitation;
- (l) no provision of this Agreement are to be construed against the interests of SBRC because SBRC prepared or relies on that provision;
- (m) references to the Supplier includes its Personnel; and
- (n) a reference to 'month' means calendar month;

1.3 Supplier consisting of multiple parties

If the Supplier consists of more than one person:

- (a) an obligation of those persons is joint and several, and each of those persons agrees that it is responsible for the acts and omissions of the other as if they were its own;
- (b) a right of those persons (including to payment) benefits them jointly, and a payment by SBRC to one of those persons will be deemed to be payment to all of them; and
- (c) the Supplier may not exercise any right under this Agreement unless that right is exercised concurrently by all persons constituting the Supplier.

2 Term

2.1 Term of Agreement

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

- (a) terminated under clause 34; or
- (b) extended under clause 2.2,

remains in force during the Term.

2.2 Extension of Term

- (a) SBRC may extend the Term for the Additional Period by giving written notice to the Supplier no later than one month before the Expiry Date.
- (b) If SBRC extends the Term, then the terms and conditions of this Agreement will continue to apply during the Additional Period.

3 The Agreement

3.1 Documents comprising this Agreement

This Agreement is comprised only of the following documents (with the documents higher in the list having higher priority):

- (a) each Order;
- (b) Schedule 3 of this Agreement – Special Conditions;
- (c) these terms and conditions (excluding the schedules to this Agreement);
- (d) Schedule 1 of this Agreement – Agreement Particulars;
- (e) Schedule 2 of this Agreement – Rates and Prices;
- (f) Schedule 3 of this Agreement – Special Conditions;
- (g) Schedule 4 of this Agreement – Insurances;
- (h) the other schedules to this Agreement; and
- (i) any documents stated in the schedules to form part of the Agreement.

3.2 Resolving ambiguities

- (a) Any ambiguity between the documents comprising this Agreement will be resolved according to the order of precedence set out in clause 3.1.
- (b) If the order of precedence described in clause 3.2(a) cannot resolve the ambiguity, then SBRC will direct the interpretation to be followed and the Supplier must comply with that direction and will have no Claim against SBRC in connection with that direction.

4 Issuing Orders

4.1 Warranties

- (a) The Supplier warrants that it remains ready, willing and able to provide the Services described in Schedule 3 pursuant to Orders issued by SBRC from time to time during the Term, and to do so for a Price that must not be less favourable to SBRC than the Rates and Prices.
- (b) The Supplier acknowledges and agrees that SBRC may, during the Term:

- (i) issue no Orders to the Supplier at all;
- (ii) Order any one or more types of Services;
- (iii) Order the Services or in a single lot or instalments and in such quantities as may be required from time to time; or
- (iv) procure goods (and associated services) of the same kind as those set out in Schedule 3 from other persons,

and the Supplier will have no Claim against SBRC in connection with those acts or omissions.

4.2 No Exclusivity

This Agreement does not grant the Supplier an exclusive right to supply any or all of the Services to SBRC during the Term. SBRC makes no warranty or representation of any kind whatsoever (whether implied or express) as to the quantities of Services that it may Order during the Term.

4.3 Orders

- (a) At any time before the Expiry Date, SBRC may:
 - (i) issue an Order; or
 - (ii) notify the Supplier of a proposed Order and request the Supplier to submit to SBRC, within the time nominated by SBRC, a written proposal (**Proposal**) setting out:
 - (A) a proposed Price for the Services (which must not be less favourable to SBRC than the Rates and Prices); and
 - (B) any other details reasonably requested by SBRC,
 provided that the Services are largely consistent with those described in Schedule 3.
- (b) The Supplier is not entitled to any Claim in connection with SBRC's request.
- (c) The Supplier acknowledges and agrees that SBRC may place an Order or seek a proposal of the kind described in clause 4.3(a) from third parties in regard to the same proposed Order, and that SBRC may choose not to proceed with any proposal or to proceed with that third parties' proposal.
- (d) SBRC may accept the Proposal by issuing an Order to the Supplier that is consistent with the Proposal, or if the parties have agreed variations to the Proposal, consistent with the agreed variations.
- (e) No legal or equitable obligation shall arise between SBRC and the Supplier unless and until an Order has been issued in accordance with clauses 4.3(a)(i) or 4.3(d).

4.4 Orders and the Expiry Date

- (a) If SBRC has issued an Order before the Expiry Date and the parties have not fulfilled all of their obligations in relation to that Order by the Expiry Date, then:

- (i) that Order will continue, in accordance with the terms of the relevant Order and this Agreement, until each party has fulfilled its obligations in relation to that Order; and
 - (ii) where the whole of this Agreement has not been terminated, the Expiry Date is extended to match the outstanding Order, but solely for the purpose of allowing completion of that Order.
- (b) The extension of the Expiry Date under this clause 4.4 does not permit SBRC to issue, or the Supplier to accept, any new Order under this Agreement after the original Expiry Date.

4.5 Variation of Order

- (a) SBRC may at any time by the issue of an Order, vary a previous Order. Any such variation may be to:
- (i) increase or decrease the quantity of the Services Ordered (including cancelling an Order);
 - (ii) change the Date for Delivery or time for performance of any associated services;
 - (iii) omit Ordered Services and have those same Services supplied and delivered by a third party or by SBRC; or
 - (iv) change the type of Services that have been Ordered.
- (b) On receipt of a Variation Order under clause 4.5(a), the Supplier must, as applicable, take all steps necessary to minimise any loss, cost, damage and expense suffered by the Supplier as a result of the Variation.
- (c) Except to the extent expressly agreed to the contrary in writing, any adjustment to the Price as a result of a Variation will be determined as follows:
- (i) to the extent that the Agreement or Order sets out rates or prices that are applicable to the Variation, those rates or prices will be used;
 - (ii) if clause 4.5(c)(i) does not apply, then by SBRC, acting reasonably; and
 - (iii) if a reduction in the quantity of Services Ordered, or the cancellation of an Order, occurs after the Supplier has incurred costs directly relating to the cancelled Services, then SBRC must reimburse the Supplier a reasonable amount for the costs directly incurred (taking into account any steps taken by the Supplier to minimise any loss, cost, damage and expense suffered, in accordance with clause 4.5(b)).
- (d) Other than as set out in clause 4.5(c), the Supplier has no Claim against SBRC arising out of, or in connection with, any Variation.

4.6 Termination of Orders

Where a party terminates an Order in accordance with this Agreement, but the whole of this Agreement is not terminated, then:

- (a) this will not, of itself, affect any other Order which will continue in accordance with the terms of the relevant Order and this Agreement; and

- (b) this will not, of itself, affect either party's rights to terminate this Agreement in accordance with its terms.

4.7 Refresh of Rates and Prices

- (a) Subject to clause 4.7(b), the Rates and Prices are firm and are not subject to rise or fall or any other change for the period set out in Schedule 1.
- (b) The Supplier may, at the times set out in Schedule 1 submit proposed revised Rates and Prices for SBRC's consideration. SBRC may, at its absolute discretion, agree to or reject the proposed revised Rates and Prices. Any agreed revised Rates and Prices will be firm and will not subject to rise or fall for the further period set out in Schedule 1.

5 Supplier's general warranties

5.1 Supplier's warranties

- (a) Without limiting any other obligation under this Agreement, the Supplier warrants to SBRC that:
 - (i) it has carefully reviewed the types of Services described in **Error! Reference source not found.** before entering into this Agreement, and it has and will maintain the necessary experience, and an appropriately qualified and trained workforce, to provide such Services in response to an Order issued at any time during the Term;
 - (ii) the Rates and Prices are appropriate and sufficient for the performance of the types of Services described in **Error! Reference source not found.**;
 - (iii) it has made its own investigation and assessment of the work and risks involved in providing the Services of the kind described in **Error! Reference source not found.**, and it has reviewed and satisfied itself about any information that SBRC has made available to it concerning those Services, in this Agreement;
 - (iv) the Services will:
 - (A) comply with, or exceed, all applicable Australian Standards, or if none are applicable then applicable international standards, except to the extent that a different standard is prescribed under this Agreement or an Order;
 - (B) comply with all relevant Legislative Requirements;
 - (C) be new and of merchantable quality, free from defects in composition, materials and workmanship;
 - (D) be provided in accordance with Good Industry Practice;
 - (E) be fit for the purposes described in this Agreement and the Order, for the purposes (if any) informed to the Supplier by SBRC, and for the purposes for which goods or services similar to the Services are commonly supplied; and
 - (F) be supplied and delivered in accordance with all Legislative Requirements to ensure that any pollutants, toxins or hazardous chemicals do not expose SBRC, the Supplier and Personnel to unforeseen risk;

- (v) it does not have any conflict of interest that could be expected to affect the performance of its obligations under this Agreement;
 - (vi) it has not engaged in, and will not engage in, any collusive behaviour, anti-competitive conduct or other similar conduct in contravention of Legislative Requirements relating to this Agreement;
 - (vii) it will, at all times, comply with and take reasonable steps to ensure that its subcontractors comply with, all applicable obligations under the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth);
 - (viii) it has the necessary authority and power to enter into this Agreement, and to perform the obligations under them; and
 - (ix) the Price compensates the Supplier for all expenses it may suffer or incur in relation to this Agreement.
- (b) The Supplier repeats each of those warranties in clause 5.1(a) to SBRC each and every time it submits a Proposal and each and every time that an Order is issued.

5.2 SBRC's reliance

The Supplier acknowledges that SBRC, in entering into this Agreement, is relying on the warranties and representations made in clause 5.1.

5.3 Statutory Declaration

The Supplier agrees that:

- (a) at any time, SBRC's Representative may request the Supplier to provide a completed and signed statutory declaration (in a form and containing such detail as reasonably required by SBRC's Representative) from a current director of the Supplier confirming that the Supplier is solvent and not subject to any Insolvency Event; and
- (b) the Supplier must provide such completed and signed statutory declaration within 3 Business Days of such a request.

6 SBRC Supplied Information

6.1 SBRC Supplied Information provided for convenience only

The Supplier acknowledges and agrees that unless SBRC expressly agrees in writing:

- (a) any SBRC Supplied Information has been or will be provided only for the Supplier's convenience;
- (b) any SBRC Supplied Information has not been and will not be relied upon by the Supplier for any purpose (including entering into this Agreement or performing its obligations under any Order); and
- (c) it will, by its own independent investigations, verify the correctness and suitability of any aspect of any SBRC Supplied Information, before it relies on, or allows any of its Personnel to rely on, that SBRC Supplied Information in relation to the provision of any Services.

6.2 Supplier to independently verify and SBRC not liable

The Supplier acknowledges and agrees that:

- (a) SBRC does not:
 - (i) assume any responsibility or duty of care in respect of; or
 - (ii) warrant, guarantee or make any representation as to, any aspect of SBRC Supplied Information; and
- (b) it must have no Claim against SBRC in relation to any error, omission or inadequacy of SBRC Supplied Information or in relation to SBRC's failure to provide any SBRC Supplied Information.

7 SBRC's policies and plans

The Supplier must at all times during the Term, and in providing the Services pursuant to Orders issued to it from time to time by SBRC during the Term, comply with all of SBRC's policies, procedures and rules, as may be amended from time to time.

8 Representatives

8.1 SBRC's representative

- (a) SBRC must appoint a person to be SBRC's Representative for the purposes of this Agreement and each Order.
- (b) SBRC may at any time and from time to time by written notice to the Supplier replace SBRC's Representative.
- (c) The Supplier and SBRC agree that SBRC's Representative acts at all times as SBRC's servant or agent for the purposes of this Agreement, is subject to the directions of SBRC and will act solely in the interests of SBRC.
- (d) Only SBRC's Representative is authorised to give any direction to the Supplier for the purposes of this Agreement. The Supplier must comply with all lawful directions of SBRC's Representative.

8.2 Supplier's representative

- (a) The Supplier must appoint a person to be the Supplier's Representative for the purposes of this Agreement and each Order.
- (b) The Supplier's Representative must have the authority to bind the Supplier in respect of all matters relating to this Agreement.
- (c) Matters within the knowledge of the Supplier's Representative are deemed to be within the knowledge of the Supplier.
- (d) The Supplier may at any time and from time to time by written notice to SBRC replace the Supplier's Representative, provided that any replacement satisfies the applicable requirements of clause 8.2(b).

9 Indemnity

9.1 Supplier to indemnify SBRC

The Supplier must indemnify SBRC from and against any claim, demand, action, proceeding or suit, of any nature suffered or incurred by SBRC in connection with:

- (a) loss of, or damage to, real or personal property of any person (including the Supplier);
- (b) personal injury, illness or death to any person (including the Supplier's Personnel); or
- (c) breach of any obligation under clause 22,

arising out of any act or omission of the Supplier or its Personnel, except to the extent that any negligent act or omission of SBRC or its Personnel contributed to the event giving rise to the obligation to indemnify.

9.2 Property Law Act

Any third party whom the Supplier has promised to indemnify under the Agreement may accept the benefit of that indemnity for the purposes of s.55 *Property Law Act 1974* (Qld) by notice in writing to the registered office of the Supplier within 24 months from the termination of the Agreement.

9.3 Effect of indemnities

SBRC need not incur any cost before enforcing an indemnity under clause 9.

9.4 Survival

The obligations in this clause survive the expiry or termination of this Agreement or any Order.

10 Exclusion of consequential loss

- (a) Subject to clause 10(b), to the maximum extent permitted by law, no party shall be liable to the other for any indirect or special loss or damage, loss of profit, loss of production, loss of opportunity, loss of revenue, loss of business, loss of use, third party financing costs, loss of third party contracts, loss of goodwill or damage to reputation (**Consequential Loss**).
- (b) Clause 10(a) does not exclude a party's liability for Consequential Loss:
 - (i) in respect of any fraud or fraudulent concealment;
 - (ii) in respect of any intentional or reckless act or omission of the relevant party or its Personnel having had regard to, or with conscious or reckless indifference to, the foreseeable harmful consequences arising from that act or omission;
 - (iii) in respect of any criminal conduct or wilful misconduct of the relevant party or its Personnel;
 - (iv) in the case of the Supplier (and ignoring the application of this clause 10), for any liability which is recovered or recoverable under a policy of insurance

effected under this Agreement or which would have been recoverable had the Supplier:

- (A) effected insurance in accordance with this Agreement and complied with the terms and conditions of that insurance; and
- (B) promptly claimed, and diligently pursued such claim, under the relevant policy;
- (v) under the indemnities pursuant to clause 9;
- (vi) for any liquidated damages payable under clause 17.4; or
- (vii) which by law the party cannot contract out of.

11 Limit of liability

Notwithstanding anything in this Agreement to the contrary, and any Order, SBRC's liability to the Supplier for any claim (whether known or unknown, actual or contingent, fixed or unascertained), demand, action, proceeding or suit, of any nature suffered or incurred by SBRC, whether arising by way of indemnity, under contract, in equity, for restitution, under statute (to the maximum extent possible), in tort (including negligence) or otherwise, arising out of or in connection with an Order, this Agreement (insofar as it relates to, or affects, the relevant Order), and the Services the subject of the relevant Order, is limited to the Price of the relevant Order.

12 QBCC requirements

12.1 Provisions Subject to QBCC Act

- (a) The rights and obligations of the parties under the Agreement are subject to the provisions of the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**) to the extent they apply and have not been contracted out of.
- (b) Where there is any inconsistency between the Agreement and the QBCC Act, the QBCC Act will prevail to the extent necessary to avoid the inconsistency.
- (c) Terms used in this clause and defined in the QBCC Act, will have the meaning given to them by the QBCC Act.

12.2 The Supplier's Registration

To extent required in order for the Supplier to deliver the Services and perform any Services in accordance with the Agreement, the Supplier warrants it is currently registered under the QBCC Act to deliver the Services carry out the Services under the Agreement.

12.3 Directions in writing

- (a) Despite any other provision of the Agreement, the Supplier is not obliged to comply with any direction given by SBRC or SBRC's Representative pursuant to the Agreement until the direction is given in writing.
- (b) If the Supplier intends to not comply with a direction until the direction is given in writing, the Supplier must immediately notify the person giving the direction of that intention immediately the direction is first given.

12.4 Non-conforming building products

To extent the QBCC Act applies to the Services, the Supplier:

- (a) warrants that the Services do not constitute 'Non-Conforming Building Products' as defined under the QBCC Act (**Non-Conforming Building Products**);
- (b) must comply with all of its obligations under the QBCC Act in connection with Non-Conforming Building Products and ensure that its acts or omissions do not cause or contribute to Council contravening the QBCC Act in connection with Non-Conforming Building Products;
- (c) must immediately notify SBRC of:
 - (i) any breach or potential breach by the Supplier or any of the Supplier's Personnel in respect of 12.4(a) to 12.4(d); or
 - (ii) any notice or direction received by the Supplier or any of the Supplier's Personnel under or in connection with 12.4(a) to 12.4(d) from any the Queensland Building and Construction Commission or any other authority (including by providing a copy of the notice or direction to SBRC); and
- (d) must at all times keep SBRC indemnified against any action, claim, suit, demand or liability to pay compensation or damages and costs or expenses arising out of, or in respect of, any breach or alleged breach of this clause 12.4.

13 Subcontractors' Charges Legislation

If any person at any time lodges, or purports to lodge, under the Subcontractors' Charges Legislation, a charge over any moneys payable by SBRC to the Supplier:

- (a) the Supplier must indemnify, and keep indemnified, SBRC against any loss or expense (including legal fees on an indemnity basis and expert fees) that SBRC suffers or incurs arising from or in connection with the lodgement of the charge (including in responding to any notice of charge or paying any moneys into court) (**SBRC's Charges Liabilities**); and
- (b) the SBRC's Charges Liabilities shall be a debt due and immediately payable to SBRC by the Supplier,

whether or not the charge is validly lodged or any action taken by the person lodging the charge is successful.

14 Force Majeure

14.1 Event of Force Majeure

- (a) If a party is prevented in whole or in part from:
 - (i) in the case of the Supplier, providing the Services;
 - (ii) in the case of SBRC, carrying out its obligations under this Agreement,as a result of Force Majeure, it must promptly notify the other party accordingly.

- (b) The notice must:
 - (i) specify the obligations it cannot perform;
 - (ii) fully describe the event of Force Majeure;
 - (iii) estimate the time during which the Force Majeure will continue; and
 - (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- (c) Subject to the notice being provided under this sub-clause, and to the extent the Force Majeure continues, the obligations which cannot be performed under this Agreement because of the Force Majeure will be suspended.

14.2 Remedy of Force Majeure

The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure notified under clause 14.1 must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as the event of Force Majeure ceases.

14.3 No relief from liability

An event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of such event.

14.4 Termination

If an event of Force Majeure notified under clause 14.1 affects the Supplier's performance of its material obligations (subject to clause 14.3) for no less than the period of time stated in Schedule 1, then:

- (a) if the Force Majeure affects the provision of Services under an Order, the relevant Order may be immediately terminated by SBRC by written notice to the Supplier;
- (b) if the Force Majeure affects all or substantially all of the types of Services set out in this Agreement, this Agreement may be immediately terminated by SBRC by written notice to the Supplier, or otherwise SBRC may by written notice to the Supplier omit the relevant types of Services set out in 3 of this Agreement affected by the Force Majeure from **Schedule 3** of this Agreement,

and:

- (c) subject to clause 14.4(d), neither party shall have any other Claim arising out of or in connection with the termination or omission; and
- (d) any rights of a party arising from:
 - (i) prior breaches by the other party before the date of termination or omission shall not be affected; and
 - (ii) obligations to be performed by either party arising on, or which continue to take effect after, termination or omission.

15 Reporting and records

15.1 SBRC to be kept fully informed

The Supplier must keep SBRC fully informed in respect to all aspects of this Agreement and the performance of the Orders.

15.2 Reports

Without limiting the generality of clause 15.1, the Supplier must submit the reports in Schedule 1 by the times set out in Schedule 1.

15.3 Records and inspection

- (a) The Supplier must keep proper accounts and records (including information stored by or accessible by computer or other electronic means or technology) in accordance with Good Industry Practice.
- (b) At all reasonable times, SBRC (by itself or by its agents) will have the right to inspect and review the records and information created by the Supplier in relation to this Agreement and the performance of the Orders, and on request by SBRC, SBRC may itself (or may require the Supplier to) take or arrange for copies of any such records and information to be taken for its use.

15.4 Performance Reviews

- (a) At the time stated in Schedule 1 during the Term, SBRC may review the Supplier's performance (**Review Period**) in relation to the Orders placed or completed during that quarter.
- (b) These reviews shall be based on such criteria as SBRC in its absolute discretion considers appropriate, for example:
 - (i) customer satisfaction;
 - (ii) satisfactory administration of this Agreement and each Order issued;
 - (iii) the quality of the Services provided under any Order;
 - (iv) compliance with the terms and conditions of this Agreement and any Order; and
 - (v) compliance with Legislative Requirements.
- (c) If SBRC in its absolute discretion considers that the Supplier's performance in that Review Period is not satisfactory, it will notify the Supplier and the Supplier must:
 - (i) take whatever action is reasonably necessary to ensure that its performance for the remainder of the Term is satisfactory; and
 - (ii) if required by SBRC, the Supplier must at its own cost rectify the unsatisfactory performance with a reasonable time specified by SBRC.
- (d) If there is a repeat or successive failure by the Supplier to achieve satisfactory performance in any two Review Periods, SBRC may at its absolute discretion suspend this

Agreement or terminate this Agreement effective immediately by notice in writing given by SBRC to the Supplier in that respect.

16 Quality Assurance

16.1 General

- (a) The Supplier shall, at all times during the Term, establish and implement a quality system (**Quality System**) that:
 - (i) complies with Good Industry Practice; and
 - (ii) is suitable for the purpose of ensuring that the Services provided carried out comply with this Agreement and any Order.

16.2 Quality System inspection

- (a) The Supplier shall maintain records of all documents necessary to demonstrate and verify compliance with the Quality System.
- (b) These records shall be:
 - (i) provided to SBRC at the times set out in Schedule 1; and
 - (ii) otherwise available to SBRC or its nominee at any time upon request.

16.3 Compliance

The Quality System shall be used only as an aid to achieving compliance with this Agreement. The Quality System will not relieve the Supplier of any obligations or liabilities under this Agreement or notwithstanding the obligation of the Supplier to plan, develop and implement a Quality System.

17 Delivery and Title in and Risk to Services

17.1 Delivery

- (a) The Supplier will perform the Services by the date for delivery specified in the Order (**Date for Service**).
- (b) The Supplier must pack and label the Services in accordance with the Order, any directions of SBRC and otherwise in accordance with all applicable Legislative Requirements.
- (c) Unless otherwise agreed, the Supplier is responsible, at its cost, for transportation of the Services to the Place for Delivery and the unloading of the Services at the Place for Delivery.
- (d) Delivery of the Services will occur when the Supplier has safely unloaded the Services at the Place for Delivery and SBRC has acknowledged, in writing, its receipt of the Services.
- (e) Any terms or conditions included in a 'delivery docket' provided by the Supplier or its Personnel and signed by or on behalf of SBRC at delivery will have no application to this Agreement, the Order or SBRC.

- (f) Delivery shall not, of itself, constitute Acceptance of the Services by SBRC.
- (g) SBRC shall be deemed to have Accepted the Services on the earlier of:
 - (i) the date SBRC gives written notice to the Supplier that the Services have been Accepted; and
 - (ii) 10 Business Days after the date of delivery, provided that during that 10 Business Day period SBRC did not notify the Supplier that any of the Services were defective.

17.2 Title in and Risk to Services

- (a) Title in the Services passes from the Supplier to SBRC upon delivery of the Services to SBRC or payment in full for those Services (whichever is the earlier to occur), provided that payment shall include any credit by way of set off (whichever is the earlier to occur).
- (b) The Supplier bears the risk related to each Good until Acceptance of that Services or the date when title in that Good passes to SBRC (whichever is the earlier to occur).

17.3 Extension of time for delivery

- (a) If the delivery of the Services (or provision of any associated services) is, or is likely to be, delayed, the Supplier must within five Business Days of the first occurrence of the circumstance giving rise to the delay commencing, notify SBRC in writing setting out the details of the cause of the delay, the activities affected and the steps taken by the Supplier to minimise the delay.
- (b) If:
 - (i) the delivery of the Services (or provision of the associated services) will be delayed by an act or omission of SBRC or its Personnel;
 - (ii) the delay was not contributed to by an act or omission of the Supplier or its Personnel;
 - (iii) the Supplier has notified SBRC of the delay in accordance with clause 17.3(a); and
 - (iv) within 10 Business Days of the first occurrence of the circumstance giving rise to the delay commencing, the Supplier provides SBRC with a further notice demonstrating to SBRC's reasonable satisfaction that the requirements of clauses 17.3(b)(i) and 17.3(b)(ii) have been satisfied,

then SBRC may grant the Supplier a reasonable extension of time to the Date for Delivery or the time for performance of the associated services (**EOT**).

- (c) The Supplier will not be entitled to any delay costs for any delay it suffers unless the delay is directly and solely caused by a breach of this Agreement by SBRC and the Supplier can provide documentary evidence of such delay costs to SBRC's reasonable satisfaction.
- (d) SBRC may (at any time in its sole discretion and solely for SBRC's benefit) grant an EOT even if the Supplier has not requested an EOT.

- (e) A delay or failure by SBRC to grant an EOT, that the Supplier would otherwise have been entitled to, will not cause the Date for Delivery or the time for the performance of the associated services to be set at large but may entitle the Supplier to a claim for damages for the amount set out in Schedule 1.

17.4 Liquidated damages

If an Order states that liquidated damages apply to the provision of Services under that Order, then:

- (a) if the Supplier fails to deliver the Services by the Date for Delivery or perform the associated services by the time for performance, it will be indebted to SBRC for liquidated damages at the rate stated in the Order for every day after the Date for Delivery or time for performance (as the case may be) until the earlier of the date upon which the Services are delivered or the associated services are performed (as the case may be), and the date that this Agreement or relevant Order is terminated; and
- (b) SBRC and the Supplier agree that all sums payable by the Supplier to SBRC under this clause is proportionate to the greatest amount of loss and damage suffered by SBRC if the Supplier does not deliver the Services or perform the associated services by the Date for Delivery or time for performance (as the case may be).

18 Heavy Vehicle National Law

- (a) The Supplier must ensure that all work under the Agreement is carried out in accordance with Heavy Vehicle Laws and Heavy Vehicle Safety Requirements.
- (b) Without limiting clause 18(a), the Supplier must at all times:
 - (i) discharge its duties under Heavy Vehicle Law; and
 - (ii) ensure the Supplier's Personnel discharge their respective duties under Heavy Vehicle Law,
 in connection with the Services.
- (c) The Supplier must ensure that all Heavy Vehicles operated by the Supplier or Supplier's Personnel in connection with Services comply with Heavy Vehicle Laws and Heavy Vehicle Safety Requirements.
- (d) The Supplier must:
 - (i) ensure that in the delivery of the Services and any programming or methodology to deliver the Services:
 - (A) enables the Supplier to discharge its duties under Heavy Vehicle Law; and
 - (B) allows for the use and operation of Heavy Vehicles associated with Services to comply with Heavy Vehicle Safety Requirements, including but not limited to mass, dimensions, loading, speed and fatigue;
 - (ii) warrant that it has taken into account the Heavy Vehicle Safety Requirements before:

- (A) undertaking to deliver any Services; and
 - (B) committing to delivery of any Order by the Delivery Date and any other time based obligation.
- (e) SBRC may at any time conduct their own audit of the Suppliers records for its Heavy Vehicles and compliance with Heavy Vehicle Safety Requirements (including any safety management systems of the Supplier) and the Supplier must:
 - (i) cooperate fully with SBRC in connection with that audit (including by providing all necessary access, SBRC's policies and procedures relating to work health and safety or other information); and
 - (ii) immediately address, and ensure the Supplier's Personnel address, any issues identified by SBRC or the Superintendent from their audit and notified to the Supplier.
- (f) SBRC may issue a direction at any time if it considers that the Supplier has not complied or may potentially not comply with the requirements in this clause 18. The Supplier shall have no claim due to SBRC issuing, or failing to issue, any such direction.
- (g) The Supplier must immediately notify SBRC of:
 - (i) any breach or potential breach by the Supplier or any of the Supplier's Personnel of the Heavy Vehicle Safety Requirements; or
 - (ii) any notice or direction received by the Supplier or any of the Supplier's Personnel under or in connection with Heavy Vehicle Law (including by providing a copy of the notice or direction to SBRC).

19 Non Compliant Services

19.1 Non Compliant Services

Without limiting any other clause of this Agreement or any other remedy that SBRC may have, if at any time before or during the warranty period specified in an Order, the Services supplied (or associated services performed) pursuant to the Order:

- (a) are in any way non compliant;
- (b) do not comply with the requirements of this Agreement or the relevant Order (including the Specifications); or
- (c) breach any warranties given by the Supplier (including the warranties under clause 5.1),

(Non Compliant Services), SBRC will not be required to pay for those Non Compliant Services and the Supplier must (at its own cost and if required to do so by SBRC), promptly amend those Non Compliant Services from SBRC's premises (or any other location) and, at the election of SBRC, either:

- (d) rectify the Non Compliance Services with Services that meet the requirements of this Agreement (including the Specifications) and which are acceptable to SBRC, within a reasonable period as specified by SBRC. If the Supplier fails to rectify the Non Compliant Services within the period specified by SBRC, SBRC may, without further notice, rectify the Non Compliant Services itself or engage another to do so and SBRC's loss, cost,

damage and expense arising from the Supplier's failure shall be a debt due and payable to SBRC; or

- (e) refund to SBRC all money paid in respect of the Non Compliant Services.

20 Insurance

20.1 Requirement to maintain insurances

As a minimum, the Supplier must procure and maintain the insurances set out in Schedule 4 for the duration set out in Schedule 4.

20.2 Insurer requirements

The insurances required under clause 20.1 must be taken out and maintained with an insurer that is authorised under applicable Legislative Requirements to carry on an insurance business in Australia and complies with all applicable prudential and other requirements prescribed under applicable Legislative Requirements.

20.3 Evidence of insurance

- (a) The Supplier must provide to SBRC certificates of insurance for all insurances it is required to effect under clause 20.1:
 - (i) at the times set out in Schedule 1; and
 - (ii) otherwise on request by SBRC from time to time.
- (b) If at any time SBRC does not receive evidence that the Supplier has in place the insurances required by clause 20.1 with an insurer that complies with clause 20.2:
 - (i) SBRC may direct the Supplier to procure the prescribed insurance with an insurer that complies with clause 20.2, within the time directed by SBRC; and
 - (ii) if the Supplier fails to strictly comply with clause 20.3(b)(i), SBRC may suspend this Agreement or an Order.
- (c) The Supplier must:
 - (i) inform SBRC in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 20.1 and keep SBRC informed of subsequent developments concerning the claim;
 - (ii) ensure that its subcontractors similarly comply with this obligation; and
 - (iii) immediately advise SBRC of any cancellation or amendment of the terms of any policy.

20.4 Liabilities and obligations

The liabilities and obligations of the Supplier under either this Agreement or any Order are not affected by reason of it or its Personnel maintaining the insurances required by this clause 20.

20.5 Subcontractors

Before commencing to provide any Services, the Supplier must ensure that each of its subcontractors is covered by or takes out and maintains policies of insurance of the types and for the amounts set out in clause 20.2 (to the extent that they are applicable to the functions performed by that subcontractor).

21 Financial records

21.1 General

At:

- (a) the times set out in Schedule 1; and
- (b) otherwise on request by SBRC from time to time,

the Supplier must provide to SBRC its audited financial statements or a current original signed letter from a qualified accountant (addressed to SBRC) which details and explains the current and prospective financial viability of the Supplier. This requirement shall not apply to publicly listed companies.

21.2 Notification

The Supplier must notify SBRC immediately if the Supplier's (or any subcontractor's) financial viability is compromised to the extent that the compromise could reasonably be considered to be a risk to the performance of Services Ordered from time to time by SBRC.

21.3 Suspension

If SBRC in its absolute discretion considers that the Supplier's (or any subcontractor's) financial viability is in question, it may at its absolute discretion suspend this Agreement or any Order (or do all of this) effective immediately by notice in writing given by SBRC to the Supplier in that respect until such time as the Supplier has demonstrated to SBRC's satisfaction that it (or its subcontractors) is financially sound.

22 Intellectual Property

22.1 Warranty

The Supplier represents and warrants and it is a condition of this Agreement and any Order, that:

- (a) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision or carrying out of, or which is incorporated in, any Services; and
- (b) use of the Services by SBRC will not infringe the Intellectual Property Rights or other rights of any third party.

22.2 Indemnity

The Supplier indemnifies and will at all times keep SBRC indemnified against any action, claim, suit, demand or liability to pay compensation or damages and costs or expenses arising out of, or

in respect of, any breach or alleged breach of any third party's Intellectual Property Rights relating to the provision of the Services.

22.3 Licence

- (a) The Supplier grants (and must ensure is granted to) SBRC a non-exclusive, transferable, royalty-free, global, perpetual licence to use any Intellectual Property Rights in relation to any Services to the extent necessary to allow SBRC the full use and enjoyment of those Services in accordance with this Agreement and the relevant Order and the Supplier must upon request by SBRC, do all things reasonably required (including executing any documents) to give full effect to this clause.
- (b) The licence contemplated by clause 22.3(a) includes the right to sublicense to third parties.

22.4 No Assignment

Nothing in this clause affects any assignment of Intellectual Property Rights in any Services under this Agreement or any Order unless the parties expressly agree otherwise in writing.

23 Use of SBRC logos

23.1 SBRC logos

- (a) The Supplier must not, at any time, use in the course of trade or business any SBRC Trade Mark or SBRC Insignia without the prior written consent of the SBRC.
- (b) The operation of this clause 23 survives expiry or termination of this Agreement and any Order, including termination for breach by either party.

24 Confidentiality

24.1 Supplier to keep Confidential Information confidential

The Supplier must keep Confidential Information strictly confidential and may not sell, trade or otherwise disclose Confidential Information to any person in any manner whatsoever without SBRC's prior written consent except as permitted by this clause 24.

24.2 Permitted Disclosure

- (a) The Supplier may disclose Confidential Information without SBRC's prior written consent to the extent that the Confidential Information:
 - (i) is already known to the Supplier prior to the date of disclosure;
 - (ii) is already in the public domain or becomes available to the public (other than through the act or omission of the Supplier); or
 - (iii) is required to be disclosed under any applicable law, Legislative Requirement, decree, regulation or rule or the requirement of a stock market on which the Supplier's securities are quoted (provided that the Supplier will give written notice to SBRC prior to any such disclosure).

- (b) The Supplier may without SBRC's prior written consent disclose Confidential Information to:
 - (i) a Related Body Corporate of the Supplier;
 - (ii) an employee, adviser, consultant, officer or director of the Supplier; or
 - (iii) an employee, adviser, consultant, officer or director of a Related Body Corporate of the Supplier,(each an **Affiliated Supplier**) provided that:
 - (iv) it is reasonably necessary for the Affiliated Supplier to have access to Confidential Information for the provision of the Services;
 - (v) the Supplier ensures that the Affiliated Supplier is obliged to treat Confidential Information as strictly confidential; and
 - (vi) the Supplier undertakes to procure that the Affiliated Supplier will comply with the confidentiality obligations of this Agreement as if a party to it.

24.3 Use of Confidential Information

- (a) The Supplier and any Affiliated Supplier may use or permit the use of Confidential Information only for the provision of the Services to SBRC and will ensure that Confidential Information is not used at any time for the benefit of any other person or to the detriment of SBRC.
- (b) The Supplier acknowledges that SBRC may suffer damage by reason of a breach of the confidentiality obligations under this clause 24.

24.4 Return and Destruction of Confidential Information

- (a) Confidential Information will remain the property of SBRC and SBRC may demand the return of Confidential Information at any time upon giving written notice to the Supplier.
- (b) Within seven (7) days of receipt of such notice, the Supplier will return all of the original Confidential Information and must destroy all copies and reproductions (both written and electronic) in its possession and in the possession of each person to whom it was disclosed.
- (c) The Supplier will continue to be bound by the terms and conditions of this Agreement after receiving notice under clause 24.4(b) in accordance with clause 32.2.

24.5 Survival of Obligations

The Supplier's obligations under this clause 24 will survive the expiration or termination of this Agreement

24.6 Compliance with Information Privacy Act

- (a) The Supplier warrants that it has complied with all of its obligations under the *Information Privacy Act 2009* (Qld) in relation to information supplied to SBRC about the Supplier's Personnel.

- (b) Any Personal Information (as defined in the *Information Privacy Act 2009* (Qld)) exchanged between the Supplier and SBRC must be dealt with in accordance with that Act.
- (c) The Supplier must immediately notify SBRC upon becoming aware of any breach of clause 24.6.
- (d) The Supplier indemnifies SBRC against any that SBRC may incur as a consequence of a breach by the Supplier of clause 24.6.

24.7 Eligible data breach

If this Supplier becomes aware of an 'eligible data breach' (as defined in the Privacy Act) (**Eligible Data Breach**) involving information obtained from SBRC it:

- (a) must immediately notify SBRC of the Eligible Data Breach;
- (b) must not notify any other party of the information pertaining to the Eligible Data Breach unless advised by SBRC to do so;
- (c) must provide, at the Contractor's cost, with all reasonable assistance required by SBRC (including access to records, employees and agents of the Contract) for it to investigate the Eligible Data Breach and meet any notification requirements SBRC may have under the Privacy Act or other Legislative Requirement; and
- (d) indemnifies SBRC against all damages, expenses (including, without limitation, lawyers' fees and expenses) loss or liability of any nature suffered or incurred by SBRC arising out of the Eligible Data Breach.

25 Subcontracting and assignment

25.1 No subcontracting without consent

- (a) The Supplier must not subcontract any part of its obligations under this Agreement without the prior written approval of SBRC.
- (b) Any approval to subcontract given by SBRC in accordance with clause 25.1(a) does not discharge the Supplier from any liability under this Agreement and the Supplier remains bound by all of its obligations under this Agreement and vicariously and fully liable for all acts and omissions of its subcontractors as if they were acts or omissions of the Supplier.
- (c) The Supplier must ensure any subcontractors approved by SBRC observe all the provisions of this Agreement in relation to the relevant Services as if the subcontractor was a party to this Agreement.

25.2 Assignment by Supplier

The Supplier must assign, charge, encumber, mortgage or otherwise deal with any of its rights under this Agreement without the prior written consent of SBRC.

25.3 Assignment by SBRC

SBRC may assign, novate, encumber or otherwise deal with its rights and obligations under this Agreement in its absolute discretion and without the need for any consent from the Supplier. The Supplier must execute any document reasonably required by SBRC to affect its rights under this clause 25.3.

26 Conflict of Interest

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 Supplier must advise SBRC in writing within 24 hours of such a conflict of interest or risk of conflict of interest arising; and
- (b) if the Supplier cannot resolve the conflict of interest to the absolute satisfaction of SBRC, then without limiting this Agreement, the SBRC may in its absolute discretion suspend this Agreement or terminate this Agreement, or suspend any Order or terminate any Order (or any combination of these rights) effective immediately by notice in writing given by SBRC to the Supplier in that respect.

27 Change in Control

The Supplier must notify SBRC in writing of:

- (a) any proposed or impending Change of Control of the Supplier, and SBRC may, at its absolute discretion, suspend this Agreement or suspend any Order or terminate any Order (or any combination of these rights) until the Supplier provides evidence to the reasonable satisfaction of SBRC that the Supplier is able to continue to perform its obligations under this Agreement; and
- (b) any Change of Control of the Supplier deemed to be an assignment by the Supplier for the purposes of this Agreement.

28 Invoicing and Payment

28.1 Supplier to submit Payment Claims

- (a) The Supplier must submit to SBRC its claims for payment for the Supply carried out, and any other money owing under the Agreement (**Payment Claim**), which must:
 - (i) be in the form required by SBRC;
 - (ii) contain details which, in the reasonable opinion of SBRC, are sufficient to identify the work carried out and evaluate the amounts claimed;
 - (iii) request payment of the amount claimed for payment;
 - (iv) include any other information prescribed by SOPA; and
 - (v) be accompanied by a tax invoice.
- (b) A Payment Claim submitted earlier than the Payment Claim Date will be deemed to have been submitted on the Payment Claim Date, but if the Payment Claim Date is not a Business Day, then the Payment Claim will be deemed to have been submitted on the next Business Day.

28.2 Payment Schedule

Within ten Business Days of receipt of a valid Payment Claim, SBRC will issue to the Supplier a payment schedule stating:

- (a) the Payment Claim to which the payment schedule applies;
- (b) the amount of the Payment Claim which in the opinion of SBRC (subject to clauses 17 and 28.5), is payable by SBRC (including taking into account any bona fide claim of SBRC against the Supplier for any debt, loss, damages, costs or expenses that SBRC intends to set off); and
- (c) if the amount in the payment schedule is less than that in the Payment Claim, the reasons why,

(Payment Schedule).

28.3 Provisional assessment of liquidated damages

When issuing a Payment Schedule after the Date for Completion, SBRC may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing to the date of the Payment Schedule.

28.4 Payment

Subject to clause 28.5 payments will be paid by SBRC or the SUPPLIER (as applicable) within the time frame set out in the Particulars. Any payment by SBRC is on account only, and is not evidence of a Supply or other obligations having been carried out in accordance with the requirements of the Agreement.

28.5 Deductions by SBRC

SBRC may set off against and deduct from any monies due to this Supplier, any debt, damages, loss, costs or expense due to or bona fide claimed by SBRC from this Supplier arising from or in connection with the Agreement, the Supply or any other contract between the parties.

29 Costs and taxes

- (a) Each party bears its own costs in relation to the preparation and signing of this Agreement. The Supplier must pay all stamp duty (including penalties and interest) assessed or payable in connection with this Agreement.
- (b) Subject to clause 30, the Supplier must pay all taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed or levied in Australia or overseas in connection with the performance of this Agreement.

30 GST

- (a) Words and phrases used in this clause and not already defined in clause 1.1 have the meaning given to them in the GST Act.
- (b) Except under clause 30, the consideration for any Services provided does not include GST.

- (c) If a Supply made under or in connection with this Agreement or an Order is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
 - (i) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this Agreement or the relevant Order for that Supply; and
 - (ii) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- (d) For clarity, the GST payable under clause 30(c) is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.
- (e) If either party has the right under this Agreement or an Order to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement or the relevant Order, 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).
- (f) Where a Tax Invoice is given by the GST Act Supplier, the GST Act Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

31 Occupational, Health, Safety and Environmental Legislation

- (a) All Personnel engaged by the Supplier to provide Services shall in all respects be or be deemed to be under the control and direction of the Supplier and the Supplier shall be responsible for complying at all times with the provisions of all applicable occupational health, safety and welfare and environmental legislation and regulations. All plant and equipment utilised by the Supplier in providing the Services must meet the requirements of all relevant safety and environmental legislation, Australian Standards and applicable codes of practice.
- (b) It is a requirement of SBRC that all of the Supplier's Personnel working on SBRC owned or operated work sites report for work not impaired by drugs or alcohol. To this end all of the Supplier's Personnel shall report to work not impaired by drugs and with a blood alcohol reading of zero.
- (c) SBRC reserves the right to request that the Supplier provide information relating to the conducting of drug and alcohol testing of the Supplier's Personnel at SBRC owned or operated work sites.
- (d) SBRC has a policy of "zero tolerance" to the use of illegal drugs at SBRC owned or operated work sites and premises. The sale, possession, distribution or use of illegal drugs or unprescribed controlled drugs by the Supplier's Personnel is prohibited.
- (e) SBRC may, at its absolute discretion and from time to time, conduct drug and alcohol testing on any of the Supplier's Personnel. The Supplier agrees that it will ensure that its Personnel consent to any drug and alcohol testing conducted by SBRC.

32 Personal Property Securities Act

32.1 Security Interests

If a party (**Secured Party**) determines that this Agreement is or contains a Security Interest, the other party (**Grantor**) agrees to provide such information, and do such things as may be reasonably required by the Secured Party for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the Secured Party to effect any registration relating to the Security Interest; and
- (c) enabling the Secured Party to exercise rights in connection with the Security Interest.

32.2 PPSA Confidentiality

- (a) The parties acknowledge and agree that this clause 32.2 constitutes a confidentiality agreement within the meaning of section 275(6)(a) PPSA.
- (b) Each party agrees to keep the PPSA Information in strict confidence and not disclose that information, except in circumstances required by sections 275(7)(b) or (e) PPSA, provided that where sections 275(7)(b) or (e) require such disclosure, the party that is required to disclose the information gives all available notice to the other party to allow that party to legally challenge the required disclosure and takes all available steps (whether required by the other party or not) to maintain such PPSA Information in confidence.
- (c) Each party agrees not to authorise the disclosure of any PPSA Information to any third party pursuant to section 275(7)(c) PPSA or request information under section 275(7)(d) PPSA unless the other party to explicitly agrees.

33 Suspension

33.1 Suspension by SBRC

SBRC may, in its absolute discretion and by written notice to the Supplier, suspend this Agreement or an Order:

- (a) if in the reasonable opinion of SBRC, the Supplier has breached this Agreement or the relevant Order;
- (b) for any reason that SBRC considers necessary or appropriate; or
- (c) for any other cause as expressly set out in this Agreement.

33.2 Notice

The notice of suspension will:

- (a) set out the reasons for suspension;
- (b) the period of suspension; and

- (c) any terms and conditions for the removal of the suspension that SBRC, acting reasonably, decides.

33.3 Effect of suspension

During the period of suspension:

- (a) of this Agreement, SBRC will not request any Proposals from the Supplier or place any Orders with the Supplier; and
- (b) of an Order, the Supplier must suspend the provision of the Services.

33.4 Removal of suspension.

Notwithstanding clause 33.2, SBRC may, at its sole direction, remove the suspension of this Agreement or any Order.

33.5 No Claim

The Supplier shall have no Claim arising out of or in connection with a suspension under this clause unless the suspension is required due to the breach of the Agreement or the Order, or negligent act or omission, of SBRC or its Personnel.

34 Termination

34.1 Notice

SBRC may, at any time (including in conjunction with the exercise of any other rights it may have), terminate this Agreement or an Order for any reason (and without any obligation to provide any reason) in its absolute discretion by notice in writing to the Supplier of not less than the period stated in Schedule 1.

34.2 SBRC's right to terminate for default

SBRC may, in its sole and unfettered discretion, immediately terminate this Agreement or an Order by notice in writing to the Supplier:

- (a) if the Supplier:
 - (i) breaches any term of this Agreement or the relevant Order (as the case may be), in circumstances where SBRC has determined in its sole and unfettered discretion that:
 - (A) the breach was capable of being remedied; and
 - (B) the Supplier has failed to remedy that breach to SBRC's satisfaction within the time notified by SBRC in writing to do so;
 - (ii) breaches any term of this Agreement or the relevant Order, in circumstances where SBRC has determined in its sole and unfettered discretion that:
 - (A) the breach was not capable of being remedied; and

- (B) the Supplier has failed to satisfy SBRC, within the time notified by SBRC in writing to do so, that the Supplier has implemented all necessary measures to ensure that a breach of a similar nature will not occur again;
- (iii) breaches clauses 20 (Insurances), 25 (Subcontracting and Assignment), 26 (Conflict of Interest) and 27 (Change in Control);
- (iv) breaches any term of this Agreement or the relevant Order (as the case may be) in such a way as to pose an unacceptable risk of harm to any person or the natural environment, as determined by SBRC in its sole and unfettered discretion;
- (v) commits a fraudulent, dishonest or other illegal act or engages in misleading or deceptive conduct; or
- (vi) suffers an Insolvency Event; or
- (b) as expressly set out in this Agreement.

34.3 Effect of termination

On termination or expiration of this Agreement or the relevant Order, the Supplier must at its cost and to the extent directed by SBRC:

- (a) immediately cease to use the SBRC Insignia and the SBRC Trade Marks and refrain from holding itself out as being in any way associated with SBRC;
- (b) immediately return to SBRC all property belonging to SBRC including any Confidential Information; and
- (c) immediately remove from SBRC's premises all material, plant and equipment.

34.4 No Claim

- (a) Subject to clause 34.4(b), the Supplier shall have no Claim arising out of or in connection with a termination under this clause 34.
- (b) Subject to clause 34.4(c), if SBRC exercises its rights under clause 34.1, SBRC will pay the Supplier for the Services, up to the date of termination and otherwise the Supplier will have no other Claim as a consequence of the termination, including in respect of any loss of profit.
- (c) If SBRC exercises its rights under clause 34.1, and the Supplier at the time of termination:
 - (i) is subject to an Insolvency Event;
 - (ii) has not provided a statutory declaration in accordance with clause 5.3; or
 - (iii) has provided the statutory declaration which the Supplier is required to provide in accordance with clause 5.3 and such statements are determined by SBRC (acting reasonably) to be untrue, false or misleading (as applicable),

then SBRC will not be liable to make any payment under clause 34.4(b) to the Supplier for the Services.

34.5 Termination not valid

If SBRC terminates, or purports to terminate, this Agreement or an Order under this Agreement or otherwise at law (including by way of accepting, or purportedly accepting, repudiatory conduct), and it is subsequently held to be invalid, void or otherwise unenforceable then SBRC will be deemed to have terminated for convenience under clause 34.1 as at the same date and time as the original notice of termination (subject to time limits in clause 34.1).

The Manager's sole entitlement will be a payment (if applicable) under clause 34.4 and the Supplier waives any Claim it has, or would have had, but for this subclause 0, arising out of or in connection with any termination, or purported termination, by SBRC under clause 34.2 or otherwise at law being subsequently held to be invalid, void or otherwise unenforceable.

34.6 Clauses that survive termination

Rights and obligations of this Agreement that are capable of surviving the expiration or termination of this Agreement will survive that expiration or termination, irrespective of the reason for any termination, except if the context requires otherwise.

35 SOPA Requirements

35.1 Provisions subject to the SOPA

- (a) The rights and obligations of the parties under the Agreement are subject to the provisions of the SOPA to the extent that they apply and have not been contracted out of.
- (b) Where there is any inconsistency between the Agreement and the SOPA, the SOPA will prevail to the extent necessary to avoid the inconsistency.
- (c) Terms used in this clause and defined in the SOPA, will have the meaning given to them by the SOPA.

35.2 Service under the SOPA on SBRC's Representative

Notwithstanding any other provision of the Agreement and subject to section 102 of the SOPA, the Supplier agrees that in the event it is seeking to serve any claims, notices and other documents upon SBRC under the SOPA, the Supplier must only do so by serving such claim, notice or other document upon the SBRC's Representative in accordance with clause 40 and the SBRC's Representative is the Principal's agent for such purpose.

35.3 Notice of Communications to the SBRC's Representative

The Supplier must:

- (a) ensure that a copy of any written communication it delivers or arranges to deliver to SBRC of whatever nature in relation to the SOPA, (including a payment claim under the SOPA), is provided to the SBRC's Representative at the same time;
- (b) promptly (and within one Business Day) give the SBRC's Representative a copy of any written communication of whatever nature in relation to the SOPA (including a payment claim, adjudication application, adjudication determination or notice to suspend works under the SOPA), which the Supplier receives from a subcontractor; and

- (c) ensure that each subcontractor promptly (and within one Business Day) gives the SBRC's Representative a copy of any written communication of whatever nature in relation to the SOPA (including a payment claim, adjudication application, adjudication determination, or notice to suspend works under the SOPA), which the subcontractor receives from another party.

35.4 The Supplier's Remedies Limited

Nothing in the Agreement will be construed to:

- (a) make any act or omission of SBRC in contravention of the SOPA (including failure to pay an amount becoming due under the SOPA), a breach of the Agreement (unless SBRC would have been in breach of the Agreement had the SOPA had no application); or
- (b) give to the Supplier rights or remedies under the Agreement which extend or are in addition to rights or remedies given to the Supplier by the SOPA in respect of any act or omission of SBRC in contravention of the SOPA.

35.5 Suspension by the Supplier

If the Supplier, at any time suspends the whole or any part of the work under the Agreement pursuant to the SOPA then, despite any other provision of the Agreement:

- (a) the Date for Delivery will not be affected but the suspension will be a cause of delay for which the Supplier may claim an extension of time in accordance with the Agreement; and
- (b) except as expressly provided in clause 35.5(a), SBRC will not be liable for any costs, expenses, damages, loss or other liability whatsoever suffered or incurred by the Supplier as a result of the suspension.

35.6 Suspension by Supplier's Personnel

If any of the Supplier's Personnel at any time suspends the provision by it of work, services, materials or other things (which form part of the work under the Agreement) pursuant to the SOPA, despite any other provision of the Agreement:

- (a) The Supplier will not be relieved of any of its obligations under the Agreement and the suspension by any of the Supplier's Personnel will not entitle the Supplier to any claim (including without limitation, for an extension of time for the delivery of an Order or delay or disruption costs in accordance with the delivery of an Order); and
- (b) The Supplier must immediately provide to the SBRC's Representative full details of the circumstances giving rise to the Supplier's Personnel right or alleged right to suspend or take any other action.

35.7 Adjudication

Where an adjudication occurs under the SOPA and, if required by the SOPA to do so, SBRC has paid the adjudicated amount to the Supplier:

- (a) SBRC may provide a copy of the adjudicator's determination to SBRC's Representative; and

- (b) where an adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount will become a debt due and immediately payable by the Supplier to SBRC.

35.8 Construction of Agreement Provisions

To the extent any provision of the Agreement is (or may, if not for the operation of this clause, be) found to be void under the SOPA, the provision must be construed or severed from the Agreement in a manner which:

- (a) avoids the provision or any other provision of the Agreement being void; and
- (b) subject to clause 35.8(a), preserves to the maximum possible extent:
 - (i) the enforceability of the provision and the other provisions of the Agreement; and
 - (ii) the original effect and intent of the Agreement.

36 Dispute resolution

36.1 Obligation to Negotiate

- (a) The parties agree that they shall attempt to resolve every dispute (whether under this Agreement or under an Order) first through amicable negotiations. When a dispute arises, a party shall commence the negotiation process by providing written notice of a dispute to the other party (**Notice of Dispute**). The Notice of Dispute shall identify the parties to the dispute and contain a short statement describing the nature of the dispute and the relief requested.
- (b) The parties must promptly hold discussions between representatives of each party after the issue of a Notice of Dispute to attempt to resolve the dispute.
- (c) If the dispute has not been resolved within 15 days after the Notice of Dispute, the parties must attempt to resolve the dispute by holding discussions between members of the key management personnel of the parties.
- (d) If the dispute has not been resolved within 30 days after the Notice of Dispute, the parties must attempt to resolve the dispute by holding discussions between the managing directors of the parties.

36.2 Obligation to Mediate

- (a) If the dispute is not resolved by execution of a written memorandum of settlement within 45 days of receipt by the recipient of the Notice of Dispute, the dispute shall be submitted to mediation.
- (b) If the parties do not agree on a mediator within 60 days of receipt by the recipient of the Notice of Dispute, the mediator shall be selected by the President of the Law Society in Queensland within 75 days of receipt by the recipient of the Notice of Dispute.
- (c) The mediator shall be qualified by education, training, or experience to determine the dispute, controversy, or claim.

36.3 Interlocutory Relief

Notwithstanding anything in this clause 35 a party may at any time commence court proceedings in relation to a dispute or claim arising in connection with this Agreement or any Order where that party seeks urgent interlocutory relief.

37 Parties' relationship

37.1 Independent contractor

The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership. The Supplier does not have the right or authority to act on behalf of or bind SBRC unless the Supplier has been expressly authorised by SBRC in writing.

37.2 No relationship between SBRC and the Supplier's Personnel

- (a) No contractual relations will arise between any of the Supplier's Personnel and SBRC as a result of this Agreement or any Order.
- (b) Apart from the Price, neither the Supplier nor the Supplier's Personnel are entitled to any fees, payments, commissions, bonuses, wages, holiday pay, long service leave, sick pay, termination pay or any similar entitlement from SBRC. The Supplier is solely responsible for providing its Personnel with these entitlements.

38 Orders by other Government Agencies

38.1 Use by Government Agencies

The Supplier acknowledges and agrees that:

- (a) other Government Agencies may utilise this Agreement (including by requesting Proposals and issuing Orders); and
- (b) the Supplier must perform its obligations under this Agreement in respect of other Government Agencies utilising this Agreement,

as if those Government Agencies were SBRC.

39 General

39.1 Amendments

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

39.2 Counterparts

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

39.3 No merger

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

39.4 Entire agreement

- (a) This Agreement supersedes all previous agreements about their respective subject matter and any agreements collateral to those agreements. This Agreement embodies the entire agreement between the parties regarding their respective subject matter.
- (b) Except to the extent expressly provided to the contrary in this Agreement, each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this Agreement.

39.5 Further assurances

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

39.6 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this Agreement 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 Agreement 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.

39.7 Governing law and jurisdiction

- (a) Queensland law governs this Agreement.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

39.8 Severability

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

39.9 Competition and Consumer Act

Nothing in this Agreement excludes, restricts or modifies any terms, conditions or warranties or the Supplier's liability for them which are imposed or implied by any statute, including but not limited to the *Competition and Consumer Act 2010* (Cth), and which by statute cannot be excluded, restricted or modified. Any limitations and exclusions are made only to the extent that the Supplier may legally do so.

40 Notice

- (a) A notice, consent or communication under this Agreement is only effective if it is:
- (i) in writing, in English, signed by or on behalf of the person giving it;
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) given as follows:
 - (iv) delivered by hand to that person's address;
 - (v) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas;
 - (vi) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission was made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or
 - (vii) sent by email to that person's email address.
- (b) A notice, consent or communication given under clause 40(a) is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

If a notice is	It is given and received on
Delivered by hand or sent by fax or email	(a) that day, if delivered by 5.00pm on a Business Day; or (b) the next Business Day, in any other case.
Sent by post	(a) three Business Days after posting, if sent within Australia; or (b) seven Business Days after posting, if sent to or from a place outside Australia.

- (c) A person's address, email address, email size limit and fax number for notices issued under this Agreement are as set out in Schedule 1.

Schedule 1 Agreement Particulars

Supplier:	[#insert legal name and ACN or ABN]	
SBRC's Representative:	Name: Natalee Taylor Postal address: PO Box 336, Kingaroy QLD 4610 Telephone: 4189 9100 Email address: natalee.taylor@sbrc.qld.gov.au	
Supplier's Representative:	Name: Postal address: Telephone: Fax: Email address:	
Commencement Date:	22 September 2021	
Term:	1 year with option of 1 year with option of 1 year with option of 1 year with option of 1 year	
Period that Rates and Prices are fixed (Clause 4.7(a))	As per rates submitted	
Times for submission of revised Rates and Prices (Clause 4.7(b))	NA	
Period of time affecting Supplier's performance due to Force Majeure (Clause 14.4)	5 Business days	
Reports (Clause 15.2)	Report	Time for submission
	Attendance Records	Monthly
Time for submission of certificates of insurance (Clause 20.3(a)(i))	Prior to contract commencement	
Notice of termination (Clause 34.1)	30 Business Days	

Schedule 2 Rates and Prices

Choose relevant option.

Line No	Service Description	Tender Unit	Price Tendered (ex GST)	GST Component	Price Tendered (inc GST)
SBRC-20/21-21	Management and Operation of the Kingaroy, Wondai and Murgon Swimming Pools	per month			
SBRC-20/21-21-1	Management and Operation of the WJ Lang Memorial Swimming Pool	Per month			
SBRC-20/21-21-2	Management and Operation of the Wondai Swimming Pool	Per month			
SBRC-20/21-21-3	Management and Operation of the Murgon Jubilee Swimming Pool	Per month			

Line No	Service Description	Tender Unit	Price Tendered (ex GST)	GST Component	Price Tendered (inc GST)
SBRC-20/21-21	Management and Operation of the Kingaroy, Wondai and Murgon Swimming Pools	per calendar year			
SBRC-20/21-21-1	Management and Operation of the WJ Lang Memorial Swimming Pool	Per calendar year			
SBRC-20/21-21-2	Management and Operation of the Wondai Swimming Pool	Per calendar year			
SBRC-20/21-21-3	Management and Operation of the Murgon Jubilee Swimming Pool	Per calendar year			

Schedule 3 Special Conditions

SCHEDULE A – SPECIAL TERMS AND CONDITIONS

SERVICES TO BE PROVIDED under this Lease:

1. OPERATION AND MANAGEMENT OF THE _____

1.1 The Management Services are operating and managing the _____, with a commitment to the promotion, presentation and maintenance of this recreational destination.

1.2 These Contract Holders Services include:

- (a) performing and providing all services that are consistent with the good and proper operation and management of the Complex;
- (b) opening the Complex to the public during the specified Operating Hours;
- (c) complying with Council requirements, including taking guidance from an officer of the Council in relation to Pool operation and control;
- (d) maintaining a log book in which the Lessee will record;
 - (1) the appearance of the water;
 - (2) bathers' complaints of sore ears, eyes, skin or other health related matters;
 - (3) other relevant matters including weather conditions and filter conditions;
 - (4) any other matter including other data collection documentation as required and requested by a Council Officer;
- (e) on a daily basis and as required throughout the day during the swimming season ensure;
 - (1) prior to the use of the Pool;
 - i. the Pool surrounds are tidy; and
 - ii. any papers and rubbish within the Pool surrounds are collected and disposed of properly;
 - (2) prior to the use of the Pool in the morning, and at mid-morning, and at midday, and at mid-afternoon, and between four and five pm;
 - i. check pH levels;
 - ii. check the free chlorine levels;
 - iii. check operation of chemical pumps;

- (3) the level of Hypo Tank is checked;
 - (4) all check results are recorded;
 - (5) the floor, sink and testing equipment are in a clean and safe condition before leaving the control room; and
 - (6) the log book is updated
- (f) as required and when requested by an officer of the Council ensure:
- (1) filters are backwashed;
 - (2) the hair and lint screen is cleaned (at least twice weekly);
 - (3) the lawns are mown and trees trimmed and cuttings and leaves removed, and gardens are maintained;
 - (4) dressing rooms, toilets and showers are swept out, hosed and cleaned, that all toilets have toilet rolls, all mirrors are clean and that general standards of cleanliness are maintained throughout the Pool surrounds; (at least daily)
 - (5) the Pool surface is skimmed of leaves, grass and other materials and the Pool vacuumed;
 - (6) the Pool walls and entry point fixtures above the water line are cleaned to remove grease, dirt and other materials; (at least weekly)
 - (7) Pool blinds to be cleaned at least **weekly**, zips silicone sprayed and all zips operated to prevent creasing; (if applicable)
- (g) ensure any defects in the operation of the pump, filtrations, or any other equipment are remedied as far as practicable on being brought to the Contract Holders attention;
- (h) ensure Council is informed immediately of any equipment defect;
- (i) ensure no alterations, adjustments, or removal of any equipment, fittings, and/or appliances occurs without prior Council consent;
- (j) prior to the end of March each year, ensure a list of maintenance works, highlighting any major capital works, is prepared for Council consideration;
- (k) as and when requested by users of the Swimming Pool, ensure the independent access Pool lift and steps are installed (if provided at the Pool);
- (l) ensure the swimming Pool blankets are placed over the Pool at the end of the day and removed before opening time the following day;
- (m) during thunder/electrical storms or power blackouts ensure the Pool is closed;
- (n) ensure that the Pool/s are not emptied without permission of the authorised Council Officer;

- (o) ensure Council is notified of all staff/people working at pool and police check, blue card and all relevant certificates are supplied to Council prior to commencement of employment
- (p) ensure all electrical equipment is tested and tagged annually by a qualified electrician with payment for the non-Council owned items being the responsibility of the Contract Holder;
- (q) Pay 50% of complex electricity as invoiced monthly by Council
- (r) Pay 100% for Security monitoring to site
- (s) Pay 100% for Sanitary Bin servicing
- (t) Annual Carpet Clean (if applicable)
- (u) Pressure clean pool grates weekly
- (v) Pressure clean all bathroom floors weekly
- (w) Provide all equipment needed for the Hydrotherapy Pool including aqua wheel chairs (if applicable)
- (x) Provide all necessary exercise or program equipment
- (y) Replace lane ropes when replacement is required
- (z) Undertake minor maintenance including all light bulb replacement and minor plumbing works
- (aa) Undertake or arrange regular inspections of first aid kit stock to ensure expiry dates are not exceeded and replenish as necessary;
- (bb) as required and throughout the day ensure the Pool surrounds are patrolled so that the conduct of Pool users, both swimmers and non-swimmers, is controlled to ensure that good order is maintained by all persons at the Complex and/or in the Pool at all times;
- (cc) ensure Council is notified immediately of any accidents or incidents of a safety nature that have occurred within the grounds of the Complex and that the incident log is completed that day;
- (dd) take responsibility to provide, and provide all safety equipment and devices in accordance with Royal Life Saving Australia rules and related regulations;
- (ee) operate the Pool Kiosk in accordance with this Contract and;
 - (1) be responsible for the acquisition of, and payment for, all foods and other substances sold at the Kiosk;
 - (2) the Contract Holder may retain all proceeds of sales;
 - (3) the Contract Holder is not to part with possession or sublease or sublet the Pool Kiosk area at any time except with the prior written consent of the Council;

- (ff) in respect of group bookings including, but not restricted to, those made by school groups, community groups, sporting groups, rehabilitation organisations, fitness groups, swimming clubs, and swimming carnivals, ensure;
 - (1) the Pool behaviour rules have been highlighted; and
 - (2) an indemnity form has been completed and signed by an appropriate person; and
 - (3) the group's current insurance policy has been sighted and copied
- (gg) prior to the beginning of the first Pool Season under this Management Agreement ensure;
 - (1) a compliant Pool Operating Manual is prepared; and
 - (2) that such manual is kept up to date during the entire period of the Lease; and;
 - (3) that it is available for inspection at any time at the Complex.
- (gg) Supply Council at end of each calendar year the number participating in Swimming and the Levels

2. **POOL SEASON**

- 2.1 The Pool Season will be for a full calendar year excluding any close down period. The Complex may be closed for maintenance for up to 1 month each year at a date to be determined by Council in consultation with the Contract Holder.
- 2.2 The Pool Season will include the following two periods each year
 - (a) summer period: that time from the 1st of September or at the beginning of the period identified as the Queensland September School Holidays whichever date comes first, to the 30th April or at the end of the period identified as the Queensland April School Holidays whichever comes last: and
 - (b) winter period: that period of the year that does not include the summer period and/or the close down maintenance period.

3. **OPERATING HOURS**

- 3.1 The Manager must ensure the Complex is opened to the public at a minimum between the hours:
 - (a) Summer period:
 - (1) 6.00am to 6.00pm weekdays
 - (2) 10am to 5pm Weekends

(3) 11.00am to 5.00pm Public Holidays

(b) Christmas day and Good Friday: (and including ANZAC Day up to 12.00midday)

(1) Closed

3.2 These operating hours may be varied by the Contract Holder with the Council's prior written consent.

4. PAYMENTS UNDER THIS CONTRACT

- 4.1 The Council will pay the Contract Holder an annual amount of dollars () inclusive of GST per annum paid monthly by dividing this amount by 12 and paying the such calculated amount fortnightly in arrears.
- 4.2 Should the agreement period be less than 12 months, then a pro rata calculation will be applied to estimate the pro rata amount payable in 4.1;
- 4.3 All entrance fees and multi passes, group and school bookings income collected by the Contract Holder are retained by the Contract Holder;
- 4.4 All income taken from the Kiosk is retained by the Contract Holder;
- 4.5 All income from swimming lessons/coaching and Contract Holder initiated activities, agreed to with Council, is retained by the Contract Holder;
- 4.6 Any expenses and costs incurred by the Contract Holder through the operation of the Kiosk/Canteen, and conducting swimming coaching/lessons, will be the responsibility of the Contract Holder;
- 4.7 The Contract Holder shall provide a Tax Invoice if GST registered, or an Invoice if not GST registered to the Council to facilitate any payment made pursuant to 4.1, and 4.2 above.

5. ACCOMMODATION

Not Applicable.

6. FEES

Complex entry fees will be in accordance with Council's Schedule of Fees and Charges as determined by Council from time to time.

7. REPORTING

7.1 At least monthly during the Pool Season the Contract Holder will provide the Council, as a minimum, the information required as per spreadsheet sent by Council:

- the number of adults, seniors and children attending the Complex each day
- the number of persons utilising the Hydrotherapy Pool
- a statement of admission fees and other Pool revenue received by the Contract Holder, including from the Kiosk/Canteen and from swimming coaching/lessons and also including any income received as a consequence of swimming Pool carnivals or events of a similar nature;
- the number of seasonal or other multi visit passes taken out each month, year and, currently operating;
- a book of records of reservations for swimming Pool carnivals or events of a similar nature;
- a diary of incidents occurring within the Complex and including the swimming Pool;
- a report of incidents occurring within the Complex and including the Pool within one day of any such occurrence;
- a report of promotional material and activities undertaken.
- Monthly Managers report

8. COUNCIL WILL PROVIDE:

- 8.1 50% of Electricity for the Complex remainder shall be the responsibility of the Contract Holder.
- 8.2 Pool chemicals;
- 8.3 Tools and equipment necessary for the control of the filtration and chlorination plant, test kits, consumables and thermometer, (cyan uric acid) test kit and reagent;
- 8.4 Pool vacuum cleaner;
- 8.5 All water for the Pool/s;
- 8.6 Payment of Council Rates;
- 8.7 Independent access pool lift and steps (if required);
- 8.8 Swimming Pool blankets/covers and rollers;
- 8.9 Microbiology tests of the Pool water;
- 8.10 "Pool Behaviour", "Exit", and "Resuscitation" signs;

- 8.11 Fire extinguishers including maintenance;
- 8.12 Electrical repairs including maintenance;
- 8.13 Resuscitation equipment including maintenance;
- 8.14 Testing and tagging of Council supplied electrical equipment;
- 8.15 Maintenance of all Council owned Complex buildings, pathways, and plant on the premises, in reasonable order and condition, but excluding maintenance and good repair of any lawns, grounds and gardens, the cleaning of pathways and the replacement of light bulbs and minor maintenance items detailed and intended to be the Contract Holders responsibility.

Schedule 4 Insurances

General third party liability insurance	
Limit of cover	\$20,000,000
Additional requirements	NA
Duration	Duration of Contract
Workers' compensation and employer's liability insurance	
Limit of cover	As per WorkCover Queensland
Additional requirements	As per the Workers Compensation Laws Qld
Duration	Duration of Contract
Professional indemnity insurance	
Limit of cover	\$10,000,000
Additional requirements	NA
Duration	Duration of Contract
Product Liability	
Limit of cover	\$20,000,000
Additional requirements	NA
Duration	Duration of Contract

Execution

Executed as an Agreement

Signed for and on behalf of
South Burnett Regional Council (ABN 89 972 463 351)
by its duly authorised delegate in the presence of

Signature of Witness

Signature of delegate

Name of witness (print)

Name of delegate (print)

Position of delegate (print)

ON: [insert date]

Executed as an Agreement

Signed for and on behalf of
***SUPPLIER* (ABN *ENTER ABN*)**
by its duly authorised delegate in the presence of

Signature of Witness

Signature of delegate

Name of witness (print)

Name of delegate (print)

Position of delegate (print)

ON: [insert date]