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| CONTRACT  (MINOR WORKS) |



[INSERT CONTRACT NAME]

Contract No: [INSERT CONTRACT NUMBER]

FORMAL INSTRUMENT OF AGREEMENT

Parties

Carpentaria Shire Council ABN 59 242 797 822 of 29-33 Haig street, Normanton in the State of Queensland

('the *Principal*')

ACN       of      ,       in the State of

('the *Contractor*')

Recitals:

1. The *Contractor* has submitted an offer to carry out and complete the *WUC* and the *Principal* has accepted the *Contractor's* offer.
2. The parties wish to enter into this *Contract* to record the terms of their agreement.

The Parties Agree:

1. **THE CONTRACT**
   1. The *Contract* shall comprise the following documents:
      * 1. This formal instrument of agreement;
        2. Annexure Part A to AS4906 – 2002 General Conditions of Contract;
        3. Annexure Part B to AS4906 - 2002 General Conditions of Contract;
        4. AS4906 - 2002 General Conditions of Contract (which form a part of this *Contract* notwithstanding that a copy is not physically incorporated into this *Contract*);
        5. Annexure Part C – Scope of Works;
        6. Annexure Part D – Contract Sum;
        7. Annexure Part E – Other documents.
   2. The *Contract* constitutes the entire, final and concluded agreement between the parties. It supersedes all prior representations, agreements, statements and understandings between the *Contractor* and the *Principal* (whether oral or in writing)*.*
   3. If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1 of this formal instrument of agreement then the documents will take precedence in the order set out in clause 1.1 of this formal instrument of agreement, with the formal instrument of agreement being the highest in the order.
   4. *Items* or words in Annexure Part A which have been struck through are deleted from Annexure Part A, and *Items* or words which are underlined have been added to Annexure Part A.
2. **CONSIDERATION**
   1. In consideration of:
      * 1. the *Principal* agreeing to pay the *Contractor* in accordance with the provisions of the *Contract*, the *Contractor* will perform the *WUC* in accordance with the provisions of the *Contract* and will otherwise comply with its obligations under the *Contract* at its expense;
        2. the *Contractor* carrying out the *WUC* and complying with its obligations under the *Contract* at its expense, the *Principal* will pay the *Contractor* in accordance with the provisions of the *Contract* and will otherwise comply with its obligations under the *Contract*.
3. **STANDARDS AUSTRALIA**
   1. This document contains Standards Australia Ltd copyrighted material that is distributed by SAI Global Ltd on Standards Australia Ltd’s behalf. It may be reproduced and modified in accordance with the terms of SAI Global Ltd’s Licence 1907-c120 to Carpentaria Shire Council (**Licensee**). All amended, marked up and licensed copies of this document must be obtained from the Licensee. Standards Australia Ltd copyright material is not for resale, reproduction or distribution in whole or in part without written permission from SAI Global Ltd: tel +61 2 8206 6355 or [copyright@saiglobal.com](mailto:copyright@saiglobal.com).
   2. A copy of AS4906-2002 General Conditions of Contract and Annexures (as current at the *date of acceptance of tender*) forms part of this *Contract* notwithstanding that a copy is not physically included. A copy of the AS4906-2002 General Conditions of Contract can be obtained from SAI Global by contacting (02) 8206 6355 or [copyright@saiglobal.com](mailto:copyright@saiglobal.com) or by visiting the website [www.saiglobal.com](http://www.saiglobal.com).

EXECUTED AS AN AGREEMENT

**EXECUTION BY THE PRINCIPAL**

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of Carpentaria Shire Council in accordance with the Council's local laws and in the presence of:    Signature of witness    Name of witness (block letters)  Date: / / | )  )  )  )  )  )  )  )  ) | Chief Executive Officer  Date: / / |

**EXECUTION BY THE CONTRACTOR (WHERE CONTRACTOR IS A CORPORATION)**

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of the *Contractor* in accordance with its Constitution and Section 127 of the *Corporations Act 2001* in the presence of:    Signature of witness    Name of witness (block letters)  Date: / / | )  )  )  )  )  )  )  )  ) | Director    Director/Secretary  Date: / / |

**EXECUTION BY CONTRACTOR (WHERE CONTRACTOR IS NOT A CORPORATION)**

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of the *Contractor* by its authorised representativein the presence of:    Signature of witness    Name of witness (block letters)  Date: / / | )  )  )  )  )  )  )  )  ) | Signature    Name of authorised representative  Date: / / |

|  |  |  |  |
| --- | --- | --- | --- |
| ANNEXURE to the Australia Standard  General Conditions of Contract  AS4906-2002 | | **PART A** | |
| This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of *Contract* and shall be read as part of the *Contract*. | | | |
| *Item* | |  | |
| 1 | *Principal*  (clause 1) | Carpentaria Shire Council | |
| ABN | 59 242 797 822 |
| ACN |  |
| 2 | *Principal's* address | PO Box 31, Normanton, QLD 4890 | |
| 3 | *Contractor*  (clause 1) |  | |
|  | ACN |  |
|  | ABN |  |
| 4 | *Contractor's* address |  | |
| 5\* | 1. *Date for practical completion*   (clause 1) | day of       20 | |
|  | OR |  | |
|  | 1. Period of time for *practical completion*   (clause 1) | days\* / weeks\* after *date of acceptance of tender* | |
| 6\* | *Contractor's* security |  | |
|  | 1. Form   (clause 3) | Retention moneys\* / Bank guarantee\*  If neither deleted, retention moneys | |
|  | 1. Amount or maximum  percentage of *contract sum*   (clause 3) | $      OR      % of the *contract sum* If nothing stated, 5% of the *contract sum* | |
|  | 1. If retention moneys, percentage of each *progress* certificate   (clause 3) | %, until the limit in *Item* 6(b) If nothing stated, 10% until the limit in *Item* 6(b) | |
|  | 1. Time for provision (except for retention moneys)   (clause 3) | Within       days after the *date of acceptance of tender*  If nothing stated, within 28 days | |
| 6A | Portable long service  (subclause 5A.1) | The:  *Principal*  *Contractor*  is to make payments and give notices under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld)  If nothing selected the *Contractor* is to do so | |
| 7 | Amount of limit of indemnity for damage to other property of the *Principal*  (subclause 10.1(a)) | $  If nothing stated, the amount of the public liability insurance cover in *Item* 9 | |
| 8 | The amount of contract works insurance over  (clause 11) | $  If nothing stated, the *contract sum* plus 20% | |
| 9 | The amount of public liability insurance cover in respect of any one occurrence shall not be less than  (clause 12) | $  If nothing stated, $10,000 000 | |
| 9A | The amount of professional indemnity liability insurance cover in respect of any one occurrence shall not be less than  (clause 2A.3) | $  If nothing stated, $1,000 000  Note// Professional indemnity insurance is only required if a part of *the Works* is to be designed by the *Contractor* | |
| 10 | The time for giving possession of the *site* to the *Contractor*  (Clause 17) | within       days after date of *acceptance of tender*  if nothing stated, 14 days | |
| 11 | Liquidated damages  (subclause 20.5) |  | |
| a) Rate  b) Limit | $      per day  $      OR      % of the *contract sum*  If nothing stated, there is no limit | |
| 12 | Delay Damages, rate  (subclause 20.6) | $      per day  If nothing stated, as reasonably assessed by the *Principal* | |
| 13 | Defects liability period  (clause 21) | weeks  If no period stated, 26 weeks | |
| 14 | *Time for progress claims*  *(subclause 23.1)* | on the       day of each month  if no time stated, then on the last day of each month | |
| 15 | The rate of interest on overdue payments  (subclause 23.4) | % per annum  If no rate stated, 18% per annum | |
| 16 | Arbitration  (subclause 27.3) |  | |
|  | 1. The person to nominate an arbitrator | If no-one stated, the President of the Resolution Institute | |
|  | 1. Rules for arbitration | If nothing stated, Rules 5-18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations | |

**Part B**

Annexure to the   
Australian Standard GeneralConditions of Contract

AS4906 - 2002

**Deletions, amendments and additions**

The following changes have been made to AS4906-2002:

1 INTERPRETATION AND CONSTRUCTION OF *CONTRACT*

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

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

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

'***business day*** means:

* + - 1. when used in paragraph (b) of the definition of *payment period* and paragraphs (a) and (b)(ii) of the definition of *response period*, has the same meaning as in the *security of payments legislation*;
      2. otherwise, means a day that is not:
         1. a Saturday or Sunday; or
         2. a public holiday, special holiday or bank holiday at the *site*.'

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

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

Delete paragraph (b) of the definition of *'qualifying cause of delay'* and replace with:

'(b) inclement weather occurring on or before the *date for practical completion*;

(c) any other cause which the *Contract* elsewhere states is a *qualifying cause of delay*;'

Insert a new definition of ‘*payment period’*:

1. ‘***payment period***means:
   * + 1. if the *Contract* is a *building contract,* 15 *business days*;
       2. otherwise, 25 *business days*,
2. after the progress claim or *final payment claim* (as the case may be) is given to the *Principal;*

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

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

2A design work

Insert a new subclause 2A as follows:

'**2A DESIGN WORK**

2A.1 (**Application**) This clause 2A only applies where a part of *the Works* is to be designed by the *Contractor*.

2A.2 (**Primary obligation**) Where any part of *the Works* is to be designed by the *Contractor*, the *Contractor* must design and construct this part of *the Works* in accordance with the requirements of the *Contract* so that this part of *the Works*, when completed, is fit for the purpose stated in or to be reasonably inferred from the *Contract*.

2A.3 (**Discrepancies**) Notwithstanding clause 5, the *Contractor* shall not be entitled to an adjustment of the *contract sum* for any inconsistency, ambiguity or discrepancy in any document prepared by or on behalf of the *Contractor* for the purpose of carrying out *WUC* or between such a document and any other document prepared for the purpose of carrying out *WUC.’*

2A.4 (**Professional indemnity insurance**) In addition to the insurances required elsewhere in the *Contract*, the *Contractor* must before commencing WUC, effect and maintain professional indemnity insurance with levels of cover not less than stated in Item 9A. The Contractor shall ensure that every design consultant engaged by the Contractor in connection with WUC*,* effects and maintains professional indemnity insurance with equivalent levels of cover. The insurance shall be maintained by the *Contractor* and the contractor’s consultants until the final certificate is issued and thereafter for a period of 6 years.

4 SERVICE OF NOTICES

Insert a new subclause (b)(iv) as follows:

'(iv) the time shown on the sender's email server as the time at which an email containing the notice was successfully sent, unless the intended recipient proves that it was not at that time capable of being retrieved and read by the intended recipient at the intended recipient's email address.'

5A specific legislation AND OTHER REQUIREMENTS

Insert new clause 5A as follows:

**'5A SPECIFIC LEGISLATION AND OTHER REQUIREMENTS**

5A.1 (**Portable Long Service Leave**) The party identified in *Item* 6A shall pay any levy payable and give any relevant notices pursuant to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld)in relation to *WUC*.

5A.2 (**Information Privacy**) The *Contractor* must comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under the *Contract* as if the *Contractor* was the *Principal. Personal information* collected by the *Principal* in connection with the *Contract* is collected for the purposes of enabling the *Principal* to properly discharge its functions as a local government authority in connection with the *Contract* and may be accessible by and disclosed to *personnel* engaged to assist the *Principal* in doing so. *Personal information* will otherwise be dealt in accordance with the *Principal’s* privacy policy. The *Principal* is authorised to collect *personal information* in accordance with the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) and related legislation.

5A.3 (**Goods and Services Tax**) If GST, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), is imposed on any supply made pursuant to this *Contract*, the amount payable for the supply is to be increased by the amount of that GST. The party seeking payment must provide a tax invoice in the form required by the Act. If the payment is a progress payment to be made by the *Principal* to the *Contractor*, then the tax invoice shall be in the amount of the *Superintendent’s progress certificate* issued pursuant to subclause 37.2.

5A.4 (**Local Government**) Nothing in the *Contract* shall be taken to fetter the power, rights or authority of the *Principal* as a local government authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) or any other *legislative requirement*.

5A.5(**Labour Hire**) The *Contractor* must not provide or utilize any labour for any *WUC* unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld).

5A.6 (**Compliance)** The *Contractor* must, and must ensure that to the extent relevant to them, its personnel, carry out *WUC* and perform the *Contractor's* other obligations under the *Contract* consistently with:

* 1. the *Contract*;
  2. applicable *legislative requirements*;
  3. applicable industry standards;
  4. the *Principal's* plans, policies, procedures, codes, standards and guidelines to the extent that these are made available by the *Principal* (whether to the public at large or to the *Contractor*);
  5. any other plans, policies, procedures, codes, standards and guidelines which are identified in the *Contract* or which are otherwise applicable to *WUC*.

The *Contractor* must use its best endeavors to identify and obtain copies of anything mentioned in this clause 5A.

In the event of any inconsistency, ambiguity, discrepancy or conflict in or between anything mentioned in this clause 5A, the *Contractor* must promptly notify the *Principal* who shall direct the *Contractor* as to the interpretation to be followed. In the absence of such a *direction*, the *Contractor* shall, at the *Contractor’s* expense, adopt the interpretation which places the higher or more onerous obligation on the *Contractor*.'

11 INSURANCE OF THE WORKS

In the last paragraph, delete 'be in the joint names of the parties' and insert 'note the *Principal* as an interested party'.

12 PUBLIC LIABILITY INSURANCE

Delete subclause 12(a) and replace with:

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

**23 PAYMENT**

In the first paragraph of subclause 23.2, delete ’within 14 days after receiving such a progress claim’ and replace with ’before the end of the *response period*’; and

In the second paragraph of subclause 23.3 delete ’Within 21 days after receipt by the *Principal* of such a progress claim’ and replace with ’Before the end of the *payment period*’.

In the second paragraph of subclause 23.3, delete ’within 42 days after the expiry of the defects liability period’ and replace with ’before the end of the *response period*’.

Delete the third paragraph of subclause 23.3 and replace with:

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

**25A TERMINATION FOR CONVENIENCE**

Insert new clause 25A as follows:

**'25A Termination for Convenience**

The *Principal* may at any time terminate this *Contract* by giving written notice to the *Contractor*.

If the *Principal* exercises its right under this Clause 25A, then:

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

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

(c) the *Contractor* shall be entitled to payment of:

(i) costs reasonably necessarily and not prematurely incurred by the *Contractor* up to the date of termination; and

(ii) an additional amount equal to 5% of the balance of the *contract sum* unpaid at the time of termination after deducting any amount payable under this clause 25A,

except that the total amount payable to the *Contractor* under the *Contract* shall not exceed the amount which would have been payable had the *Contract* not been terminated and the *Contractor* completed the work in accordance with the *Contract*.

The *Principal* shall not be liable upon any other claim in connection with the termination, including, without limitation a claim for loss of profit, income, opportunity or contract.'

**27 DISPUTE RESOLUTION**

In clause 27.2 delete 'or to agree on methods of doing so' and ‘or methods’ from the first paragraph.

[DELETE THIS PAGE AND INSERT SCOPE OF WORKS INTO EXECUTION COPY OF CONTRACT]

[DELETE THIS PAGE AND INSERT PRICE SCHEDULE INTO EXECUTION COPY OF CONTRACT]

[DELETE THIS PAGE AND INSERT ANY OTHER DOCUMENTS REQUIRED TO BE INSERTED INTO EXECUTION COPY OF CONTRACT. IF THERE ARE NO OTHER DOCUMENTS TYPE ‘NOT USED’ ON THE PREVIOUS PAGE]