

Request for Quotation – Invitation to Tender

Contract No. TEN/1064

for

Water Tower Engineering Assessments

Non-Returnable Schedule

1 Agreement to be bound by ITO

In consideration of Council:

- (a) inviting the Respondent to submit an Offer for the Supply; and
- (b) agreeing to receive each Offer submitted by the Respondent in accordance with, and subject to, this ITO,

the Respondent agrees to be bound by this ITO.

2 Definitions

In this ITO:

Closing Date for Enquiries means the date and time specified in clause 3 or such other date as may be determined by Council.

Closing Time means the date and time specified in clause 3 or such other date as may be determined by Council in accordance with this ITO.

E-Procurement Platforms means the e-procurement tools and platforms used by Council for this ITO.

ITO means the documents issued by Council inviting Offers for the carrying out of the Supply, including the Scope and Specification, the Contract Conditions, this Invitation to Offer, the Returnable Schedules and any addenda issued by Council.

Legislative Requirements includes:

- (a) acts, regulations, by-laws, ordinances, orders, awards and proclamations of the Commonwealth, the State or Territory or the local government applicable to the Supply;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Supply; and
- (c) fees and charges payable in connection with the foregoing.

Policies and Plans means Council's published policies and plans which may be amended from time to time, including those published on www.bundaberg.qld.gov.au/council/councildocuments/policies.

Price means the rates or prices specified in the Respondent's Offer for which the Respondent offers to carry out the Supply. All Prices in the Respondent's Offer must be GST exclusive.

Procurement Process means the process of inviting Offers for the carrying out of the Supply, the Respondent's preparation and submission of an Offer, communication between the parties in relation to this ITO and/or an Offer, the evaluation of Offers and the subsequent acceptance or rejection of Offers.

Returnable Schedules means any schedule marked as a 'Returnable Schedule' which must be completed by the Respondent and submitted with its Offer.

Scope and Specification means the document created by or on behalf of Council and included in Schedule 1 of this ITO setting out the Supply which may be required to be carried out by the successful Respondent.

Site means the site or sites at which the Supply is to delivered, performed or be carried out.

Supply means the goods, services and works, as applicable, that are being procured pursuant to this ITO, as described in the Scope and Specification.

3 Timetable

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

Action	Time / Date
ITO released	Friday 24 July 2020
Closing Date for Enquiries	4.00 pm (Australian Eastern Standard Time) on Wednesday 5 August 2020
Offer Lodgement Process	LG Tender Box
Closing Time	2.00 pm (Australian Eastern Standard Time) on Tuesday 11 August 2020

4 Enquiries

If the Offer Lodgement Process is an E-Procurement Platform, any enquiries by Respondents are to be posted to the E-Procurement Platform's 'Online Forum' by the Closing Date for Enquiries. All enquiries and responses may be viewed by other Respondents.

5 Lodgement of Offers

Offers must be submitted electronically via the Offer Lodgement Process.

6 Council's discretion

- (a) Council may, at any time prior to the acceptance of an Offer, modify or clarify any provision or part of this ITO by issuing a written addendum to all Respondents. The Respondent must acknowledge receipt of any written addenda in its Offer, listing all addenda received.
- (b) Council is under no obligation to:
 - (i) review, evaluate or consider any Offer submitted;
 - (ii) accept the lowest Offer;
 - (iii) accept any Offer; or
 - (iv) negotiate or sign a contract for the Supply with any Respondent.
- (c) Without limiting any other term of this ITO, Council may, at any time prior to the acceptance of an Offer, accept or reject any Offer (including rejecting all Offers in order to reissue this ITO), annul the Procurement Process, or terminate the Procurement Process, without any obligation to inform the Respondents of the grounds for Council's action or inaction.
- (d) Council may, in its absolute discretion, do any one or more of the following:
 - (i) request clarification or additional information from any Respondent;
 - (ii) provide additional information to any or all Respondents;
 - (iii) invite all Respondents to change their Offer to take account of a change in any regard concerning Procurement Process, including to the Scope and Specifications;
 - (iv) discontinue, or exclude participation by any Respondent in, the Procurement Process or discontinue negotiations with any Respondent;
 - (v) proceed to negotiate with one or more Respondent or a third party without any obligation to notify other or any Respondents that it is so proceeding;
 - (vi) enter into discussions with one or more Respondents or
- (e) An Offer is deemed to be accepted by Council only when Council provides to a Respondent a letter of award.

7 Warranties

In submitting an Offer, the Respondent warrants that it has carried out all relevant investigations (including of the Site and its surrounds (if applicable)).

8 Information required after opening of Offers

The Respondent must provide, after the opening of Offers, any additional information which may be requested by Council for evaluation of the Offer or Respondent.

9 Evaluation criteria

- (a) Evaluation of Offers will be generally in accordance with the requirements of the *Local Government Act 2009* (Qld) and its regulations.

- (b) Without limiting clause 9(a), factors which will be taken into consideration by Council in evaluating Offers and Respondents include:

Item	Selection Criteria	Weighting (%)
1	Council's Buy Local Policy preference	30%
2	Methodology, availability, skills and experience	20%
4	Price	50%
	Total	100%

10 Reliance by Respondent

- (a) Council does not make any representations, express, implied or inferred, or provide any undertakings to Respondents other than to invite them to submit an Offer. Any information supplied to a Respondent in this ITO or otherwise in subsequent oral or written communication by or on behalf of Council (including at any Site visit or briefing) is provided to the Respondent for convenience only and may not be complete, up to date or accurate.

11 Compliance

The Respondent must prior to lodging any Offer, obtain or procure any approval, qualification, registration or licence required to be held by the Respondent to enable it to lawfully lodge any Offer, enter into the contract for the Supply and carry out the Supply.

12 Conflicts of interest

- (a) If, at any time, an actual or potential conflict of interest arises for any Respondent, that Respondent must immediately notify Council in writing of that conflict of interest.
- (b) Any Respondent who directly or indirectly canvasses support from an elected member, employee or agent of Council will be disqualified and any Offer submitted will not be considered.

13 Respondent's costs

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

14 Privacy

In relation to any Personal Information (as defined in the *Privacy Act 1988* (Cth) (**Privacy Act**)) provided by a Respondent in connection with its Offer, the Respondent warrants to Council that:

- (a) the Respondent has obtained the consent of each individual about which any Personal Information is provided; and
- (b) the Respondent has ensured, or will ensure, within the time required by the Privacy Act, that it has complied with the Privacy Act in relation to each individual about whom any Personal Information is provided.

15 Use of information

Council's property

- (a) All Offers submitted by a Respondent become the property of Council and will not be returned to the Respondents.

- (b) All intellectual property rights which exist in information contained in this ITO or any related material will remain the property of Council but the Respondent is permitted to use that information and material for the purpose only of compiling its Offer.
- (c) The Respondent must keep confidential all documents in connection with its Offer (including this ITO), the matters discussed with Council in connection with the Procurement Process and the Respondent's Offer, all correspondence in connection with the Procurement Process and the Respondent's Offer and any other information obtained by the Respondent in the course of or in connection with the Procurement Process.

16 Governing law and jurisdiction

This Procurement Process is governed by the laws in force in Queensland. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and the courts of appeal from them.

17 Provisional Items

Where nominated in the Returnable Schedule, via the suffix "P", that Work Item shall be deemed to be Provisional and it shall be treated as specified below:

Where a Work Item Number contains a suffix "P" and the words "**Provisional Item, if ordered**" appear in the description of the item, the Contractor shall only be entitled to be paid for that work if the Superintendent has directed the Contractor in writing to undertake that work. It shall be understood that the work represented by that Work Item may not be required under the Contract. Limits of accuracy do not apply to these Work Items.

Schedule 1 – Scope and Specifications

1. Background

Bundaberg Regional Council (BRC) have several elevated water towers that because of operational constraints, are no longer connected and supporting the potable water supply systems or whose operational feasibility/necessity is in question. Whilst some towers are disconnected from the water network, these towers still support a variety of telecommunications equipment.

BRC have undertaken visual drone assessments of all elevated towers in the region and have identified the following as requiring an assessment of a longer term strategy in order to understand measures to be implemented in the short term.

- Childers elevated water tower – Childers (Non-Operational)
- Mt Perry Road elevated water tower – North Bundaberg (Non-Operational)
- Moore Park water tower – Moore Park (Non-Operational)
- Heaps Street water tower – Avenell Heights (Operational)
- Turner Street water tower – Avoca (Operational)

The Heaps Street and Turner Street water towers have been nominated as *Provisional Items – if ordered*. Should the successful Contractor's productivity and performance for the first three water towers suggest that the scope of works associated would be completed to a satisfactory level, the principal may order, in writing, the completion of the Provisional Items works.

Photos and some supporting information on the water towers are contained in Appendix B.

Telecommunication equipment on these towers range from private carriers such as Telstra, Vodaphone and Optus, through to Council equipment that is required to support corporate communications and water and wastewater operations as well as State Government equipment that also supports emergency services and SES.

BRC wishes to appoint a suitably qualified consultant to provide recommendations on the use and function of these towers over the long term. These recommendations should also address other alternate options that would maintain the current telecommunications service levels within these communities. Section 2 of this document provides an outline of the scope of works required. The selected consultant shall be engaged in accordance with Bundaberg Regional Council's standard services contract contained in Appendix A.

A condition assessment of the stairways, platforms, external ladder and roof structure has been completed on the Childers water tower in 2018, which identified some structural metalwork issues. As a result, there are safety concerns with this tower and as a precautionary measure Council has restricted access to this site. The telecommunication equipment at the top of this tower can only be accessed by an EWP. There are similar safety concerns with the Mount Perry Road and Moore Park water towers and as such these two towers have been considered as restricted sites as well.

An EWP will be required to access the towers for inspections to be conducted. The EME guide for each site can be accessed via www.rfnsa.com.au.

2. Scope of Works

The scope of works consists of two (2) sections.

2.1. Task 1: Water Tower condition assessments

Condition assessments shall consist of, but not limited to:-

- Extent of concrete corrosion, including an assessment of aggregate exposure along with failures in any coating systems.
- Areas of concrete spalling and significant cracking including reinforcement corrosion.
- Visual inspections and observations.
- Any chemical testing to determine level of concrete carbonation (if required).
- Any non-destructive testing such as in-situ impact testing to determine concrete integrity and strength.
- An assessment of all metalwork and timberwork (apart from the Childers tower, which has already been assessed) for rust, corrosion and general deterioration. This shall extend to handrails, platforms, stairways, ladders and roofing structures and sheeting.

The successful consultancy shall provide all required tooling, hardware and software required for the provision of the assessment and report.

2.2. Task 2: Evaluation of long term options for each water tower

For each of the five elevated towers, undertake an options analysis to determine the most cost effective long term strategy for these facilities and the provision of telecommunication infrastructure for these communities.

A minimum of three (3) options are to be considered and assessed based on a WOLC analysis. Factors to be considered when undertaking this analysis are:-

- Cost of refurbishing the towers to maximise asset life
- Possible tower decommissioning and demolition costs
- Installation of modern equivalent telecommunications towers
- Annual maintenance costs, including depreciation costs
- Equipment relocation costs
- Tower enhancements that would support existing and future telecommunications equipment
- Future opportunity costs along with an indication of annual lease costs required to recover costs
- Timing of any preferred options to align with the expiry of any third party lease agreements.

Separate technical memos shall be provided for each water tower, which shall be approved by a suitably qualified engineer with RPEQ certification. These technical memos shall also provide estimates for short term repair costs along with an assessment of the remaining useful life of each structure, with and without the recommended remedial works.

In addition, consultants are to outline their approach to the condition assessment of these towers and the development of long term options in their respective methodologies.

3. Key Issues and Risks

Key issues and risks for Council in respect to this project include:

Inadequate information available on the agreements in place between Council and third parties regarding tenure, in order to support a clear strategy. Council is currently undertaking an audit of each tower site to determine the telecommunications equipment on the towers and linking this equipment to owners and whether there are any agreements in place.

That a final decision on the long term strategy may not be made on financial considerations alone, rather what is best approach for each of the communities that are served along with what is the strategic significance of each of the towers.

4. Project deliverables

The deliverables for this project shall be as follows:-

- Attend Council workshop to discuss issues and agree on direction and final deliverables.
- Site inspections of each water tower with a nominated Council officer
- Preparation of five (5) draft and five (5) final technical memos relating to the condition assessment and the strategic options analysis for the Childers, Mt Perry Road, Moore Park, Heaps Street and Turner Street elevated water towers.

BRC shall make available to the successful consultant:-

- Details of the telecommunication equipment that currently exists on the five water towers. This information shall extend, where available to the equipment type, equipment ownership and any relevant information contained within lease documents that would be considered important information when developing long term strategies.
- General layout plans and structural plans available for each tower site.
- Drone survey footage for each of the five tower sites.

5. Program of Works

The key milestones for this project are: -

Milestones	Completion Date
Call for quotations	Friday 24 July 2020
Quotations close	Tuesday 11 August 2020 at 2.00 pm
Award project	Friday 14 August 2020
Council workshop	Week commencing 24 August 2020
Draft technical memos	Friday 25 September 2020
Final technical memos	Friday 16 October 2020

6. Fees

a. Fixed Lump Sum Fee

Payment will be made on a fixed fee lump sum basis for the scope of work nominated above. The lump sum fee must be exclusive of GST and cover all activities to be undertaken by the consultant including the specified time allowances for specific project phases and inputs as specified.

b. Rates

List the roles, names and hourly rates for all nominated project personnel.

The hourly rates must be exclusive of GST. These rates will be used for the valuation of variations and payment for time based activities which will only be undertaken if expressly requested in writing by Council.

c. Basis of Payment

Payment shall be in accordance with the following milestones:-

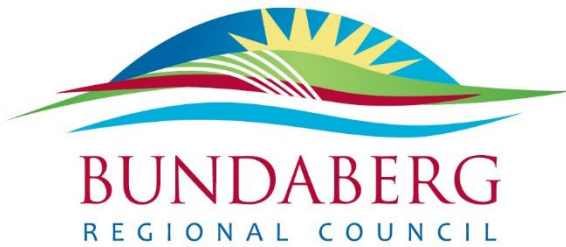
- Site inspection and Council workshop (10%)
- Preparation and approval of all three (3) or five (5) draft technical memorandums (60%)
- Preparation and approval of all three (3) or five (5) final technical memorandums (30%)

The fixed lump sum fee and all hourly will be fixed for the duration of the project and will not be subject to inflation or other adjustment.

Payment terms are 30 days from end of month for valid claims.

Appendix A

Bundaberg Regional Council Services Contract



PO Box 3130,
BUNDABERG QLD 4670
T 1300 883 699 F 07 4150 5410
E ceo@bundaberg.qld.gov.au
W bundaberg.qld.gov.au
ABN 72 427 835 198

Services Contract

<COMPANY NAME>

Water Tower Engineering Assessments

Contract Number TEN/1064

Contents

Parties 3

Background	3
Agreed terms	3
1 Definitions and Interpretation	3
2 Term	7
3 The Agreement	7
4 Issuing Orders	8
5 Supplier's general warranties	9
6 BRC Supplied Information	10
7 BRC's policies and plans	11
8 Representatives	11
9 Indemnity	11
10 Exclusion of consequential loss	12
11 Limit of liability	12
12 Force Majeure	12
13 Reporting and records	13
14 Quality Assurance	14
15 Delivery and Title in and Risk to Services	14
16 Personal Property Securities Act	15
17 Defective Services or Services	16
18 Insurance	16
19 Financial records	17
20 Intellectual Property	17
21 Use of BRC logos	18
22 Confidentiality	18
23 Conflict of Interest	19
24 Change in Control	19
25 Invoicing and Payment	20
26 Costs and taxes	20
27 Occupational, Health, Safety and Environmental Legislation	21
28 Suspension	21
29 Termination	22
30 Dispute resolution	23
31 Parties' relationship	24
33 General	24
34 Notice	25
Schedule 1: Agreement Particulars	27
Schedule 2: Services categories	28
Schedule 3: Rates and Prices	28
Schedule 4: Scope of Works	31
Schedule 5: Insurances	32
Execution	33

The Agreement

PARTIES

BRC	Bundaberg Regional Council
	ABN 72 427 835 198 of PO Box 3130 Bundaberg QLD 4670
Supplier	means the person named as Supplier in Schedule 1

BACKGROUND

- A BRC is establishing a Services Contract for the supply of a range of Services to it.
- B The Supplier has represented to BRC that it has the expertise, capacity and willingness to provide the Services (and associated services) to BRC if and when required, and agrees to supply the Services (and associated services) to BRC 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 15.1(g)
Additional Period	means the period set out in Schedule 1.
Affiliated Supplier Agreement	has the meaning given to that term in clause 22.2. 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.
BRC 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 Services and services dealt with or provided in the course of trade by BRC or a company or other entity associated with BRC.
BRC 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 BRC on, before or after the date of this Agreement.
BRC Trade Mark	means a trade mark owned or used by the BRC irrespective of whether or not that trade mark is registered.
BRC'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 BRC to the Supplier from time to time under clause 8.1.
Business Day	means a day that is not: (a) a public holiday in Bundaberg, 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 through a series of transfers or issues of securities); or (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:

Term	Definition
	<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, 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>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, 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, that is made under or in relation to:</p> <p>(d) the Agreement, any Order, or the Services; or</p> <p>(e) the conduct of, or relationship between, the Supplier and BRC, before or after this Agreement came into force.</p>
Commencement Date	means the commencement date set out in Schedule 1
Confidential Information	<p>means the terms of this Agreement and any information of a party:</p> <p>(a) which the party indicates or has indicated is confidential;</p> <p>(b) which by its nature might reasonably be understood to be confidential or to have been disclosed to the other party in confidence; or</p> <p>(c) which is commercially valuable or would be of commercial value to a competitor of the party to whom it belongs,</p> <p>as well as:</p> <p>(d) all notes and other records prepared by BRC or anybody else, based on or incorporating information referred to in sub-clauses (a) to (c) above; and</p> <p>(e) all copies of the information, notes and other records referred to in sub-clauses (a) to (d) above;</p> <p>but excludes information that:</p> <p>(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;</p> <p>(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</p> <p>(h) is required to be disclosed by Legislative Requirements.</p>
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 15.1(a)
Defective Services	has the meaning given to that term in clause 17.1.
EOT	has the meaning given to that term in clause 15.3(b)
Expiry Date	means the expiry date set out in Schedule 1
Force Majeure Event	<p>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 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> <p>➤ a physical natural disaster including fire, flood, lightning or earthquake;</p>

Term	Definition
	<ul style="list-style-type: none"> ➤ 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; ➤ epidemic or quarantine restriction; ➤ ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; ➤ confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency; and ➤ 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"> ➤ any occurrence which results from the wrongful act or wrongful omission of the Affected Party; ➤ mechanical or electrical breakdown or failure of plant or equipment; ➤ 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 ➤ 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 Services 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.
Services	means the Services (and any associated services) provided, or to be to be provided, pursuant to Orders issued to the Supplier from time to time by BRC.
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.
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 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 (h) anything analogous to the events described in paragraphs (a) to (g) 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 Schedule 2 ;

Term	Definition
	(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, Schedule 2;
	(c) any relevant Australian standards; and
	(d) fees and charges in connection with the foregoing.
Order	means an order issued by BRC 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 30.1
Personnel	means any officer, employee, agent or subcontractor of a party but BRC's Personnel does not include the Supplier or the Supplier's Personnel and the Supplier's Personnel does not include BRC or BRC'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 14
Rates and Prices	means the rates and prices set out in Schedule 3.
Related Bodies	has the meaning given to it in the <i>Corporations Act 2001</i> (Cth).
Corporate	
Review Period	has the meaning given to that term in clause 13.4(a).
Price	means the price or prices payable by BRC to the Supplier pursuant to any Order.
Secured Party	has the meaning given to that term in clause 25.2.
Security Interest	has the meaning given to that term by the PPSA
Special Conditions	means the special conditions set out in Schedule 4 .
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 BRC from time to time under clause 8.2.
Term	means, subject to earlier termination of this Agreement in accordance with clause 29, 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 BRC because BRC prepared or relies on that provision; and
- (m) references to the Supplier includes its Personnel.

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 BRC 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 29; or
- (b) extended under clause 2.2, remains in force during the Term.

2.2 Extension of Term

- (a) BRC 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 BRC 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 4 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 – Services categories;
- (f) Schedule 3 of this Agreement – Rates and Prices
- (g) Schedule 5 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.
- (b) If the order of precedence in clause 3.2 cannot resolve the ambiguity, then BRC will direct the interpretation to be followed and the Supplier must comply with that direction and will have no claim against BRC 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 2 pursuant to Orders issued by BRC from time to time during the Term, and to do so for a Price that must not be less favourable to BRC than the Rates and Prices.
- (b) The Supplier acknowledges and agrees that BRC 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 Services (and associated services) of the same kind as those set out in Schedule 2 from other persons;and the Supplier will have no Claim against BRC 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 BRC during the Term. BRC 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, BRC may:
 - (i) issue an Order; or
 - (ii) notify the Supplier of a proposed Order and request the Supplier to submit to BRC, within the time nominated by BRC, a written proposal (**Proposal**) setting out:
 - (iii) a proposed Price for the Services (which must not be less favourable to BRC than the Rates and Prices); and
 - (iv) any other details reasonably requested by BRC,provided that the Services are largely consistent with those described in Schedule 2.
- (b) The Supplier is not entitled to any Claim in connection with BRC's request.
- (c) The Supplier acknowledges and agrees that BRC 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 BRC may choose not to proceed with any proposal or to proceed with that third parties' proposal.
- (d) BRC 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 BRC 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 BRC 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 BRC to issue, or the Supplier to accept, any new Order under this Agreement after the original Expiry Date.

4.5 Variation of Order

- (a) BRC 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 BRC; or
 - (iv) change the type of Services that have been Ordered,
- (Variation).**
- (b) On receipt of a Variation Order under clause 4.5, 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 BRC, 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 BRC 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 BRC 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 BRC's consideration. BRC 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 be 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 BRC that:
 - (i) it has carefully reviewed the types of Services described in Schedule 2 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 Schedule 3;
 - (iii) it has made its own investigation and assessment of the work and risks involved in providing the Services of the kind described in Schedule 2, and it has reviewed and satisfied itself about any information that BRC 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; and
 - (E) be fit for the purposes described in this Agreement and the Order, for the purposes (if any) informed to the Supplier by BRC, and for the purposes for which Services or services similar to the Services are commonly supplied;
 - (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 BRC each and every time it submits a Proposal and each and every time that an Order is issued.

5.2 BRC's reliance

The Supplier acknowledges that BRC, 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, BRC'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 BRC'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 BRC Supplied Information

6.1 BRC Supplied Information provided for convenience only

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

- (a) any BRC Supplied Information has been or will be provided only for the Supplier's convenience;
- (b) any BRC 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 BRC Supplied Information, before it relies on, or allows any of its Personnel to rely on, that BRC Supplied Information in relation to the provision of any Services.

6.2 Supplier to independently verify and BRC not liable

The Supplier acknowledges and agrees that:

- (a) BRC 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 BRC Supplied Information; and
- (b) it must have no Claim against BRC in relation to any error, omission or inadequacy of BRC Supplied Information or in relation to BRC's failure to provide any BRC Supplied Information.

7 BRC'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 BRC during the Term, comply with all of BRC's policies, procedures and rules, as may be amended from time to time.

8 Representatives

8.1 BRC's representative

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

The Supplier must indemnify BRC from and against any claim, demand, action, proceeding or suit, of any nature suffered or incurred by BRC 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 20,

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

9.2 Effect of indemnities

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

9.3 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(b) 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 15.4; 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, BRC'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 BRC, 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 Force Majeure

12.1 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 BRC, 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.

12.2 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 12.1 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.

12.3 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.

12.4 Termination

If an event of Force Majeure notified under clause 12.1 affects the Supplier's performance of its material obligations (subject to clause 12.3) 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 BRC 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 BRC by written notice to the Supplier, or otherwise BRC may by written notice to the Supplier omit the relevant types of Services set out in Schedule 2 of this Agreement affected by the Force Majeure from Schedule 2 of this Agreement, and;
- (c) subject to clause 12.4(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.

13 Reporting and records

13.1 BRC to be kept fully informed

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

13.2 Reports

Without limiting the generality of clause 13.1, the Supplier must submit the reports in Schedule 1 by the times set out in Schedule 1.

13.3 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, BRC (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 BRC, BRC 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.

13.4 Performance Reviews

- (a) At the time stated in Schedule 1 during the Term, BRC 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 BRC 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 BRC 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 BRC, the Supplier must at its own cost rectify the unsatisfactory performance with a reasonable time specified by BRC.
- (d) If there is a repeat or successive failure by the Supplier to achieve satisfactory performance in any two Review Periods, BRC may at its absolute discretion suspend this Agreement or terminate this Agreement effective immediately by notice in writing given by BRC to the Supplier in that respect.

14 Quality Assurance

14.1 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.

14.2 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 BRC at the times set out in Schedule 1; and
 - (ii) otherwise available to BRC or its nominee at any time upon request.

14.3 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.

15 Delivery and Title in and Risk to Services

15.1 Delivery

- (a) The Supplier must deliver the Services by the date for delivery specified in the Order (**Date for Delivery**).
- (b) The Supplier must pack and label the Services in accordance with the Order, any directions of BRC 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 BRC 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 BRC at delivery will have no application to this Agreement, the Order or BRC.
- (f) Delivery shall not, of itself, constitute Acceptance of the Services by BRC.
- (g) BRC shall be deemed to have accepted the Services on the earlier of:

- (i) the date BRC 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 BRC did not notify the Supplier that any of the Services were defective.

15.2 Title in and Risk to Services

- (a) Title in the Services passes from the Supplier to BRC upon delivery of the Services to BRC 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 BRC (whichever is the earlier to occur).

15.3 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 BRC 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 BRC 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 BRC of the delay in accordance with clause 15.3(a); and
 - (iv) within 10 Business Days of the first occurrence of the circumstance giving rise to the delay commencing, the Supplier provides BRC with a further notice demonstrating to BRC's reasonable satisfaction that the requirements of clauses 15.3(b)(i) and 15.3(b)(ii) have been satisfied,then BRC 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 BRC and the Supplier can provide documentary evidence of such delay costs to BRC's reasonable satisfaction.
- (d) BRC may (at any time in its sole discretion and solely for BRC's benefit) grant an EOT even if the Supplier has not requested an EOT.
- (e) A delay or failure by BRC 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.

15.4 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 BRC 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) BRC and the Supplier agree that all sums payable by the Supplier to BRC under this clause is proportionate to the greatest amount of loss and damage suffered by BRC 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).

16 Personal Property Securities Act

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.

17 Defective Services or Services

17.1 Defective Services

Without limiting any other clause of this Agreement or any other remedy that BRC 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 defective;
- (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), (**Defective Services**), BRC will not be required to pay for those Defective Services and the Supplier must (at its own cost and if required to do so by BRC), promptly remove those Defective Services from BRC's premises (or any other location) and, at the election of BRC, either:
 - (d) rectify or replace the Defective Services with Services that meet the requirements of this Agreement (including the Specifications) and which are acceptable to BRC, within a reasonable period as specified by BRC. If the Supplier fails to rectify or replace the Defective Services within the period specified by BRC, BRC may, without further notice, rectify or replace the Defective Services itself or engage another to do so and BRC's loss, cost, damage and expense arising from the Supplier's failure shall be a debt due and payable to BRC; or
 - (e) refund to BRC all money paid in respect of the Defective Services.

18 Insurance

18.1 Requirement to maintain insurances

As a minimum, the Supplier must procure and maintain the insurances set out in Schedule 5 for the duration set out in Schedule 5.

18.2 Insurer requirements

The insurances required under clause 18.1 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.

18.3 Evidence of insurance

- (a) The Supplier must provide to BRC certificates of insurance for all insurances it is required to effect under clause 18.1:
 - (i) at the times set out in Schedule 1; and
 - (ii) otherwise on request by BRC from time to time.
- (b) If at any time BRC does not receive evidence that the Supplier has in place the insurances required by clause 18.1 with an insurer that complies with clause 18.2:
 - (i) BRC may direct the Supplier to procure the prescribed insurance with an insurer that complies with clause 18.2, within the time directed by BRC; and
 - (ii) if the Supplier fails to strictly comply with clause 18.3(b)(i), BRC may suspend this Agreement or an Order.
- (c) The Supplier must:
 - (i) inform BRC in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 18.1 and keep BRC informed of subsequent developments concerning the claim;

- (ii) ensure that its subcontractors similarly comply with this obligation; and
- (iii) immediately advise BRC of any cancellation or amendment of the terms of any policy.

18.4 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 18.

18.5 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 18.2 (to the extent that they are applicable to the functions performed by that subcontractor).

19 Financial records

19.1 General

At:

- (a) the times set out in Schedule 1; and
- (b) otherwise on request by BRC from time to time, the Supplier must provide to BRC its audited financial statements or a current original signed letter from a qualified accountant (addressed to BRC) which details and explains the current and prospective financial viability of the Supplier. This requirement shall not apply to publicly listed companies.

19.2 Notification

The Supplier must notify BRC 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 BRC,

19.3 Suspension

If BRC 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 effective immediately by notice in writing given by BRC to the Supplier in that respect until such time as the Supplier has demonstrated to BRC's satisfaction that it (or its subcontractors) is financially sound.

20 Intellectual Property

20.1 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 BRC will not infringe the Intellectual Property Rights or other rights of any third party.

20.2 Indemnity

The Supplier indemnifies and will at all times keep BRC 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.

20.3 Licence

- (a) The Supplier grants BRC 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 BRC the full

use and enjoyment of those Services in accordance with this Agreement and the relevant Order and the Supplier must upon request by BRC, do all things reasonably required (including executing any documents) to give full effect to this clause.

- (b) The licence contemplated by clause 20.3(a) includes the right to sublicense to third parties.

20.4 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.

21 Use of BRC logos

21.1 BRC logos

- (a) The Supplier must not, at any time, use in the course of trade or business any BRC Trade Mark or BRC Insignia without the prior written consent of the BRC.
- (b) The operation of this clause 21 survives expiry or termination of this Agreement and any Order, including termination for breach by either party.

22 Confidentiality

22.1 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 BRC's prior written consent except as permitted by this clause 22.

22.2 Permitted Disclosure

- (a) The Supplier may disclose Confidential Information without BRC'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 BRC prior to any such disclosure).
- (b) The Supplier may without BRC'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.

22.3 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 BRC and will ensure that Confidential Information is not used at any time for the benefit of any other person or to the detriment of BRC.
- (b) The Supplier acknowledges that BRC may suffer damage by reason of a breach of the confidentiality obligations under this clause 22.

22.4 Return and Destruction of Confidential Information

- (a) Confidential Information will remain the property of BRC and BRC 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 22.4(b) in accordance with clause 22.5.

22.5 PPSA Confidentiality

- (a) The parties acknowledge and agree that this clause 22.5 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.

22.6 Survival of Obligations

The Supplier's obligations under this clause 22 will survive the expiration or termination of this Agreement.

22.7 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 BRC about the Supplier's Personnel.
- (b) Any Personal Information (as defined in the *Information Privacy Act 2009* (Qld)) exchanged between the Supplier and BRC must be dealt with in accordance with that Act.
- (c) The Supplier must immediately notify BRC upon becoming aware of any breach of clause 22.7.
- (d) The Supplier indemnifies BRC against any that BRC may incur as a consequence of a breach by the Supplier of clause 22.7

23 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 BRC 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 BRC, then without limiting this Agreement, the BRC may in its absolute discretion suspend this Agreement or terminate this Agreement effective immediately by notice in writing given by BRC to the Supplier in that respect.

24 Change in Control

The Supplier must notify BRC in writing of any proposed or impending Change of Control of the Supplier, and BRC may, at its absolute discretion, suspend this Agreement until the Supplier provides evidence to the reasonable satisfaction of BRC that the Supplier is able to continue to perform its obligations under this Agreement

25 Invoicing and Payment

25.1 Invoicing and Payment

- (a) For each Order, the Supplier must submit to the BRC representative set out in that Order, a tax invoice in no later than 30 days following the end of the calendar month in which the relevant Services are provided
- (b) Subject to clauses 25.1(c) and 25.1(d), BRC must pay the invoiced amount to the Supplier within 30 days from the end of month.
- (c) If there is a dispute about an invoice, or whether a refund or other amount is payable, BRC may withhold the amount in dispute without penalty until the resolution of the dispute.
- (d) BRC may set off against any amount payable by it under any Order, any amount payable by the Supplier to BRC, including any amount:
 - (i) payable under an indemnity; or
 - (ii) attributable to loss or damage suffered or incurred by BRC in connection with that Order.

25.2 PPSA

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.

26 Costs and taxes

26.1 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.26.2, 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.

26.2 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.26.2, 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.26.2(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.

27 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 BRC that all of the Supplier's Personnel working on BRC 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) BRC 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 BRC owned or operated work sites.
- (d) BRC has a policy of "zero tolerance" to the use of illegal drugs at BRC 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) BRC 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 BRC.

28 Suspension

28.1 Suspension by BRC

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

28.2 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 BRC, acting reasonably, decides.

28.3 Effect of suspension

During the period of suspension:

- (a) of this Agreement, BRC 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.

28.4 Removal of suspension.

Notwithstanding clause 28.2, BRC may, at its sole direction, remove the suspension of this Agreement or any Order.

28.5 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 BRC or its Personnel.

29 Termination

29.1 Notice

BRC 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.

29.2 BRC's right to terminate for default

BRC 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 BRC 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 BRC's satisfaction within the time notified by BRC in writing to do so;
 - (ii) breaches any term of this Agreement or the relevant Order, in circumstances where BRC 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 BRC, within the time notified by BRC 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 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 BRC in its sole and unfettered discretion;
 - (iv) commits a fraudulent or other illegal act; or
 - (v) suffers an Insolvency Event; or
- (b) as expressly set out in this Agreement.

29.3 Effect of termination

On termination or expiration of this Agreement or the relevant Order, the Supplier must at its cost:

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

29.4 No Claim

- (a) Subject to clause 29.4(b), the Supplier shall have no Claim arising out of or in connection with a termination under this clause 29.
- (b) Subject to clause 29.4(c), if BRC exercises its rights under clause **Error! Reference source not found.**, BRC 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 BRC exercises its rights under clause **Error! Reference source not found.**, 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 BRC (acting reasonably) to be untrue, false or misleading (as applicable),

then BRC will not be liable to make any payment under clause 29.4(b) to the Supplier for the Services.

29.5 Termination not valid

If BRC 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 BRC will be deemed to have terminated for convenience under clause 29.2 as at the same date and time as the original notice of termination (subject to time limits in clause 29.2).

The Supplier's sole entitlement will be a payment (if applicable) under clause 29.4 and the Supplier waives any Claim it has, or would have had, but for this subclause 29.5, arising out of or in connection with any termination, or purported termination, by BRC under clause 29.2 or otherwise at law being subsequently held to be invalid, void or otherwise unenforceable.

29.6 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.

30 Dispute resolution

30.1 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.

30.2 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.

30.3 Interlocutory Relief

Notwithstanding anything in this clause 30 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.

31 Parties' relationship

31.1 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 BRC unless the Supplier has been expressly authorised by BRC in writing.

31.2 No relationship between BRC and the Supplier's Personnel

- (a) No contractual relations will arise between any of the Supplier's Personnel and BRC 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 BRC. The Supplier is solely responsible for providing its Personnel with these entitlements.

32 Orders by other Government Agencies

32.1 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 BRC.

33 General

33.1 Amendments

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

33.2 Assignment and novation

- (a) Subject to clause 33.2(b), neither party may assign, subcontract or otherwise transfer or deal with its rights and obligations under this Agreement or any Order without the prior written consent of the other party.
- (b) Notwithstanding clause 33, BRC may assign, or hold the benefit of, any or all of its rights and interests under this Agreement or any Order to, or for, any one or more of the members of BRC.

33.3 Counterparts

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

33.4 No merger

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

33.5 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.

33.6 Further assurances

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

33.7 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.

33.8 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.

33.9 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.

33.10 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.

34 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:
 - (A) delivered by hand to that person's address;
 - (B) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas;
 - (C) sent by fax to that person's fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission was made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or
 - (D) sent by email to that person's email address.
- (b) A notice, consent or communication given under clause 34(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.

35 Non-disparagement

35.1 The Supplier must not, and ensure that its Personnel do not:

- (a) publicly disparage, denigrate, discredit or criticise BRC or otherwise take any action which could reasonably be expected to adversely affect the reputation of BRC or any of its Personnel in connection with this Agreement; or
- (b) use any form of publicity (including newspapers, radio, television or any form of social media) to disparage, denigrate, discredit or criticise BRC, in connection with any dispute or disagreement that the Supplier or its Personnel has or may have with BRC in connection with this Agreement.

SCHEDULE 1: AGREEMENT PARTICULARS

Supplier:	[#insert legal name and ACN or ABN]	
BRC's Representative:	Name: To be confirmed Bundaberg Regional Council PO Box 3130 Bundaberg Qld 4670 Telephone: Fax: Email address:	
Supplier's Representative:	Name: Postal address: Telephone: Fax: Email address: Email size limit:	
Commencement Date:	21 August 2020	
Expiry Date:	30 October 2020	
Period that Rates and Prices are fixed (Clause 4.7(a))	Life of the Agreement	
Times for submission of revised Rates and Prices (Clause 4.7(b))	Not applicable	
Period that revised Rates and Prices are fixed (Clause 4.7(b))	Not applicable	
Period of time affecting Supplier's performance due to Force Majeure (clause 12.4)	15 Business Days	
Reports (Clause 13.2)	Report	Time for submission
	As per Schedule 2	As per Schedule 2
Time for Performance Review (Clause 13.4(a))	On Request	
Time for submission of quality records (Clause 14.2(b)(i))	Not applicable	
Damages for failure of BRC to grant EOT where Supplier is entitled to it (Clause 15.3(e))	Not applicable	
Time for submission of certificates of insurance (Clause 18.3(a)(i))	Prior to commencement of the Agreement and on the expiry date.	
Time for submission of financial statements (Clause 19.1(a))	10 Business Days	
Notice of termination	10 Business Days	

SCHEDULE 2: SERVICES CATEGORIES

The scope of this engagement is as follows:

Bundaberg Regional Council will provide access to the structures, external drone survey footage and photographs. The successful company will provide all required tooling, hardware and software required for the provision of the assessment and report.

Task 1: Water Tower condition assessments

Condition assessments shall consists of, but not limited to:-

- Extent of concrete corrosion, including an assessment of aggregate exposure along with failures in any coating systems.
- Areas of concrete spalling and significant cracking including reinforcement corrosion.
- Visual inspections and observations.
- Any chemical testing to determine level of concrete carbonation (if required).
- Any non-destructive testing such as in-situ impact testing to determine concrete integrity and strength.
- An assessment of all metalwork and timberwork (apart from the Childers tower, which has already been assessed) for rust, corrosion and general deterioration. This shall extend to handrails, platforms, stairways, ladders and roofing structures and sheeting.

The successful consultancy shall provide all required tooling, hardware and software required for the provision of the assessment and report.

Task 2: Evaluation of long term options for each water tower

For each of the five elevated towers, undertake an options analysis to determine the most cost effective long term strategy for these facilities and the provision of telecommunication infrastructure for these communities.

A minimum of three (3) options are to be considered and assessed based on a WOLC analysis. Factors to be considered when undertaking this analysis are:-

- Cost of refurbishing the towers to maximise asset life
- Possible tower decommissioning and demolition costs
- Installation of modern equivalent telecommunications towers
- Annual maintenance costs, including depreciation costs
- Equipment relocation costs
- Tower enhancements that would support existing and future telecommunications equipment
- Future opportunity costs along with an indication of annual lease costs required to recover costs
- Timing of any preferred options to align with the expiry of any third party lease agreements.

Separate technical memos shall be provided for each water tower, which shall be approved by a suitably qualified engineer with RPEQ certification. These technical memos shall also provide estimates for short term repair costs along with an assessment of the remaining useful life of each structure, with and without the recommended remedial works.

In addition, consultants are to outline their approach to the condition assessment of these towers and the development of long term options in their respective methodologies.

All relevant Australian Standards as well as National, State and Local Acts, Regulations and Laws must be applied and adhered to in the design.

Exclusions

- All the steel elements of the Childers Water Tower which include the outside ladder, internal walkways and roof structure.
- All BRC and third-party communications equipment on all towers.

Milestones and Program of Works

The following table summarises key milestones for the consultancy:

Milestones	Completion Date
Call for quotations	Friday 24 July 2020
Quotations close	Tuesday 11 August 2020 at 2.00 pm
Award project	Friday 14 August 2020
Council workshop	Week commencing 24 August 2020
Draft technical memos	Friday 25 September 2020
Final technical memos	Friday 16 October 2020

Deliverables

The deliverables for this project shall be as follows:-

- Attend Council workshop to discuss issues and agree on direction and final deliverables.
- Site inspections of each water tower with a nominated Council officer
- Preparation of five (5) draft and five (5) final technical memos relating to the condition assessment and the strategic options analysis for the Childers, Mt Perry Road, Moore Park, Heaps Street and Turner Street elevated water towers.

•

BRC shall make available to the successful consultant:-

- Details of the telecommunication equipment that currently exists on the five water towers. This information shall extend, where available to the equipment type, equipment ownership and any relevant information contained within lease documents that would be considered important information when developing long term strategies.
- General layout plans and structural plans available for each tower site.
- Drone survey footage for each of the three tower sites.

SCHEDULE 3: RATES AND PRICES

1. Fees

a. Fixed Lump Sum Fee

Payment will be made on a fixed fee lump sum basis for the scope of work nominated above. The lump sum fee must be exclusive of GST and cover all activities to be undertaken by the consultant including the specified time allowances for specific project phases and inputs as specified.

b. Rates

List the roles, names and hourly rates for all nominated project personnel.

The hourly rates must be exclusive of GST. These rates will be used for the valuation of variations and payment for time based activities which will only be undertaken if expressly requested in writing by Council.

c. Basis of Payment

Payment shall be in accordance with the following milestones:-

- Site inspection and Council workshop (10%)
- Preparation and approval of all five (5) draft technical memorandums (60%)
- Preparation and approval of all five (5) final technical memorandums (30%)

The fixed lump sum fee and all hourly will be fixed for the duration of the project and will not be subject to inflation or other adjustment.

Payment terms are 30 days from end of month for valid claims.

SCHEDULE 4: SPECIAL CONDITIONS

Nil

DRAFT

SCHEDULE 5: INSURANCES

General third party liability insurance	
Limit of cover	\$20 million
Additional requirements	[#insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]
Duration	Current to end of contract
Workers' compensation and employer's liability insurance	
Limit of cover	As required by Law
Addition requirements	[#insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]
Duration	Current to end of contract
Professional indemnity insurance	
Limit of cover	\$5 million
Additional requirements	[#insert any additional requirements e.g. scope of coverage, maximum deductibles, additional insureds]
Duration	Current to end of contract

EXECUTION

Executed as an Agreement

Signed for and on behalf of
Bundaberg Regional Council (ABN 72 427 835 198)
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]

Appendix B

Bundaberg Regional Council

Supporting Information

Request for Quotation – Invitation to Tender

Contract No. TEN/1064

for

Water Tower Engineering Assessments

Supporting Information

Water Tower	Address	Capacity* (ML)	Height* (m)
Childers	5 Churchill Street, Childers	0.5	40
Mt Perry Road	1 Mount Perry Road, Bundaberg North	0.46	35
Moore Park	15 Poinciana Court, Moore Park Beach	0.285	35
Heaps Street	8 Heaps Street, Avenell Heights	1.35	30
Turner Street	4 Turner Street, Avoca	1.4	35

*approximate

Photos of the layout and tower for each site are attached.

Childers Water Tower



Childers Water Tower



Mt Perry Road Water Tower



Mt Perry Road Water Tower



Moore Park Water Tower



Moore Park Water Tower



Moore Park Water Tower



Heaps Street Water Tower



Heaps Street Water Tower



Turner Street Water Tower



Turner Street Water Tower

