



SHAMROCK CIVIL
Safe • Sustainable • Smart • Solutions

Material Supply Agreement

between

Shamrock Civil Engineering Pty. Ltd.
ABN 68 066 655 856.

and

(Supplier Name)

ABN 00 000 000 000

for the supply of

(Insert Supply Item)

for *(Project Name)*

Date: *(Insert Date)*

FORMAL INSTRUMENT OF AGREEMENT

Dated: *[Insert date]*

BETWEEN: Shamrock Civil Engineering Pty Ltd ('SCE')

ABN: 68 066 655 856

OF: 195 Cobalt Street
Carole Park, QLD 4300

AND: *[Insert registered trading name]* ('the Supplier')

ABN: *[Insert]*

OF: *[Insert registered street address]*

QBCC LICENCE NUMBER: *[Insert]*

RECITALS:

- A** SCE is undertaking the *[Insert project description]* (the 'Project').
- B** SCE requires Materials to be supplied to it by the Supplier to satisfy its obligations to the Principal in relation to the Project.
- C** The Supplier agrees to supply the Materials in accordance with the terms set out in this Contract and SCE agrees to purchase the Materials on those terms.

OPERATIVE PROVISIONS

- 1 Definitions:**

In this Formal Instrument of Agreement defined terms have the same meaning as in the General Conditions.
- 2 Supply of Equipment**

The Supplier shall undertake to supply the Materials and otherwise perform all of its obligations in accordance with this Contract.
- 3 Payment to Supplier**

SCE shall pay the Supplier in accordance with the Contract.
- 4 The Contract Sum**

The Contract Sum is calculated in accordance with the General Conditions.
- 5 Contract documents and order of precedence**

The Contract is comprised of the following documents and in the case of any ambiguity, discrepancy or inconsistency the documents will apply in the order of precedence as listed:

 - a) This Formal Instrument of Agreement;
 - b) Schedule 2 – Purchase Order;
 - c) General Conditions of Agreement;
 - d) Schedule 3 – Statutory Declaration;
 - e) Schedule 4 – Agreement to Issue RCTIs; and
 - f) Schedule 5 – Deed of Release.
- 6 Entire Agreement**

This Contract constitutes the entire agreement between SCE and the Supplier in connection with the supply of the Materials in relation to the Project and it supersedes any previous

arrangements, correspondence, tenders, representations, proposals, understandings and communications between the Parties, whether oral or in writing.

Any part of this Contract which is unenforceable or invalid for any reason shall only be ineffective to the extent of such unenforceability or invalidity, and shall not invalidate the remainder of this Contract.

IN WITNESS WHEREOF the Parties have signed this Contract on the date first mentioned herein. Each party warrants that it has the power to execute the Contract and all necessary corporate and other action has been taken to authorise that execution; and the Contract shall be executed on its behalf by an authorised signatory.

EXECUTED BY THE PARTIES

Executed for and behalf of **Shamrock Civil Engineering Pty Ltd** (ACN 066 655 856) by its authorised representative, in the presence of:)
)
)

.....
Signature of authorised representative

.....
Signature of witness

.....
Name of authorised representative

.....
Name of witness

AND

Executed for and behalf of **[INSERT SUPPLIER]** (ACN **[insert]**) by its authorised representative, in the presence of:)
)
)

.....
Signature of authorised representative

.....
Signature of witness

.....
Name of authorised representative

.....
Name of witness

GENERAL CONDITIONS

1 Definitions and Interpretation

1.1 In this Contract, except to the extent the context otherwise requires:

'Acceptance' means notification under clause 5.11 by SCE that the Material is acceptable;

An **'Act of Insolvency'** is deemed to occur if:

- (i) the Supplier:
 - (i) informs SCE in writing or creditors generally that it is insolvent;
 - (ii) commits an act of bankruptcy;
 - (iii) has a bankruptcy petition presented against it;
 - (iv) is made bankrupt;
- (j) a meeting of creditors of the Supplier is called with a view to:
 - (i) entering a scheme of arrangement or composition with creditors; or
 - (ii) placing the party into external administration pursuant to Chapter 5 of the *Corporations Act 2001*;
- (k) the Supplier becomes an externally administered body as defined in section 9 of the *Corporations Act 2001*;
- (l) an application is made to a court for the winding up of the Supplier and not stayed within 14 days;
- (m) a winding up order is made in respect of the Supplier;
- (n) execution is levied against the Supplier by creditors, debenture holders or trustees or under a floating charge; or
- (o) anything analogous or having a similar effect to an event listed in paragraphs (a) to (f) occurs;

'Agreed Arrival Time(s)' means the time(s) specified in the Purchase Order;

'BCIP Act' means the *Building and Construction Industry Payments Act 2004* (Qld) and its regulations and any equivalent legislation;

'Business Day' means a day that is not:

- (a) a Saturday or Sunday or a public holiday at the place specified in Item 2 of Schedule 1; nor
- (b) 27, 28, 29, 30 or 31 December in any year;

'Business Hours' means from 9.00am to 5.00pm on a Business Day;

'Claim' includes any claim, demand, action, proceedings or suit for an increase or adjustment in the Contract Sum or for any payment of money (including damages) or for any extension of time, delay, disruption, acceleration or other time based claim:

- (a) under, arising out of, or in any way in connection with, the Contract, including any direction of SCE;
- (b) arising out of, or in any way in connection with, the Materials or either party's conduct before the Contract; or
- (c) otherwise at law or in equity, including:
 - (i) by statute;
 - (ii) in tort; or
 - (iii) for restitution;

'Code' means the *Building Code 2013*;

'Confidential Information' means all information, in any form or medium (including copies of it and information derived from it), made available or disclosed by or on behalf of SCE or the Principal in connection with this Contract, including information of a technical, financial or commercial nature and information that in any way relates to the business of SCE or the Principal;

'Contract' is as defined in clause 2;

'Contract Sum' means:

- (a) the Contract Sum is calculated in accordance with the Purchase Orders issued under this Contract (as adjusted for any additions or deductions which may be required to be made in accordance with the Contract);
- (b) where a lump sum amount is agreed to compensate the Supplier for the Materials supplied under a Purchase Order:
 - (i) any documentation that has been used by the Supplier to determine the lump sum amount is acknowledged to be general in nature and not to be utilised to bind SCE to any further payment except for the lump sum amount (unless agreed to by SCE); and
 - (ii) the Supplier agrees that the lump sum amount reflects the remuneration for everything to complete the supply of the Materials under that Purchase Order; and
- (c) where rates are agreed to compensate the Supplier for the Materials supplied under a Purchase Order:
 - (i) quantities in a schedule of rates contained in the Purchase Order are estimated quantities only; and
 - (ii) SCE is not required to give a direction by reason of the actual quantity of a Good required to perform the Purchase Order being greater or less than the quantity shown in any schedule of rates contained in the Purchase Order;

'Date for Delivery' means, where either of "Option 1" or "Option 2" in the Purchase Order are selected, the date(s) specified in the Purchase Order;

'Date of Commencement' means the Date of Commencement stated in Item 1 of Schedule 1;

'Date of Delivery' means the last date on which the Materials are actually Delivered in accordance with this Contract. For clarity, where a Delivery Rate applies, the Date of Delivery is the date on which the total required quantity of Materials has been Delivered under this Contract;

'Defects Liability Period' is the period commencing on the Date of Delivery and lasting for the period specified in Item 6 of Schedule 1, or the period specified on the Purchase Order, whichever is the greater;

'Delivery' or **'Delivered'** is that stage in the supply of the Materials (or any part of them) when:

- (a) the Materials have been supplied in accordance with the Contract except for minor defects which do not prevent the Materials from being reasonably capable of being used for the purpose stated in or implied by the Contract;
- (b) the Supplier has provided SCE with three (3) copies of all necessary warranties, guarantees, certificates, operating manuals and other operating literature, shop drawings, as built drawings, technical specifications and quality assurance materials required or reasonably inferred by the Contract;
- (c) the items, documents and information specified in the Purchase Order have been provided to SCE; and
- (d) the tests specified in the Purchase Order have been carried out (at the Supplier's cost) and SCE is satisfied that the testing results are in accordance with the Contract;

'Delivery Rate' means the rate at which the Supplier must provide the Materials to SCE between the Date of Commencement and the Final Delivery Date specified in the Purchase Order;

'Direction' includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

'Fax Point' means the facsimile address specified in Item 1 of Schedule 1;

'Final Delivery Date' means, where "Option 3" in the Purchase Order is selected and Materials are to be provided at a set rate, the date specified in the Purchase Order;

'Final Progress Claim' has the meaning in clause 14.2.

'General Conditions of Contract' means the part of this Contract entitled "General Conditions of Contract";

'GST' has the same meaning as in the GST Law;

'GST Law' has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

'Head Contract' means the contract between the Principal and SCE identified in Item 1 of Schedule 1;

'Head Contract Arbitrator' has the meaning given to it in clause 18.4;

'Information Privacy Act' means the *Information Privacy Act 2009 (Cth)*;

'Intellectual Property Rights' means any patent, registered design, trademark or name, copyright or other protected right;

'Item' means an item in Schedule 1;

'Lead Times for Orders' means the timeframe specified in the Purchase Order;

'Legislative Requirements' includes:

- (a) acts, ordinances, regulations, bylaws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the Materials, any part of it is being carried out, at the Site and at the place at which the Materials will be performed;
- (b) certificates, licenses, consents, permits, approvals and requirements of organisations, bodies, authorities or similar having jurisdiction in connection with the supplying of the Materials;
- (c) fees and charges payable in connection with paragraphs (a) and (b); and
- (d) any applicable Australian Standards;

'Liquidated Damages' means the amount calculated at the daily rate specified in the Purchase Order;

'Materials' means the goods, materials and other tangible items which the Supplier is or may be required to supply or use under the Contract as specified in the Purchase Order and any services which are reasonably incidental to or can be inferred from the supply of those goods, materials or other tangible items;

'Normal Working Hours' means those hours specified in Item 4 of Schedule 1;

'Payment Documentation' has the meaning given to it in clause 14.1;

'PPE' means, at a minimum, a long sleeved shirt with reflective tape, long work trousers or work jeans, a hard hat, eye protection, steel cap boots, sunscreen, safety/rigging gloves and ear protection;

'PPSA' means the Personal Property Securities Act 2009 (Cth);

'Pre-Conditions to Site Access' means:

- (a) the Supplier has provided evidence to SCE that it has effected and maintained the relevant insurance policies required by clause 9;
- (b) SCE is satisfied that the Supplier has complied, or is in the position to comply, with the requirements in 11.2 as they relate to Site access;
- (c) the Supplier has provided the required Security to SCE under clause 8 of the Contract (if an unconditional undertaking is being provided);
- (d) SCE is satisfied (in its reasonable opinion) that the Supplier is not otherwise in breach of this Contract; and

- (e) all employees that are on-site other than delivery drivers need to have had a general industry induction prior to attending site, and have had site specific induction prior to commencing works on-site;

'Principal' is the person named as principal in Item 1 of Schedule 1;

'Purchase Order' means the purchase order for Materials as contained in Schedule 2;

'Qualifying Cause of Delay' means a cause of delay specified in Item 3 of Schedule 1;

'RCTI' means a recipient created tax invoice created in accordance with the GST Law and the requirements contained in Tax Ruling GST R2000/10 (as amended from time to time);

'Schedule' means a schedule attached to and forming part of this Contract;

'Security' means security in the amount and form described in Item 9 of Schedule 1;

'SCE' means Shamrock Civil Engineering Pty. Ltd., whose contact details are specified in Item 1 of Schedule 1;

'Shamrock Civil Engineering Purchase Order Number' means the purchase order number specified in the Purchase Order;

'Shamrock Civil Engineering Representative' means the person specified in Item 1 of Schedule 1;

'Site' means the lands and other places described in the Purchase Order;

'Supplier' means the person specified in Item 1 of Schedule 1;

'Supplier's Representative' means the person described in Item 1 of Schedule 1;

'Tax Invoice' has the same meaning as in the GST Law;

'Taxable Supply' has the same meaning as in the GST Law;

'Term' means the period of time referred to in Item 1 of Schedule 1.

'Variation' means any of the following directed in writing by SCE under the Contract:

- (a) addition of or amendment to any third party interface;
- (b) increase, decrease or omission of any part of the Materials;
- (c) change in the character or quality of any Materials;
- (d) change in the levels, lines, positions or dimensions of any part of the Materials;
- (e) supply of additional Materials; and/or
- (f) removal of Materials no longer required by SCE,

'WHS Act' means *Work Health and Safety Act 2011* (Qld);

'WHS Regulation' means *Work Health and Safety Regulation 2011* (Qld).

1.2 In this Contract, except to the extent the context otherwise requires:

- (i) a reference to a "person" includes an individual, the estate of an individual, a corporation, an authority, association or a joint venture (whether incorporated or not), a partnership or a trust;
- (j) a reference to time in this Contract is a reference to that time at the place specified in Item 2 of Schedule 1;
- (k) "includes" in any form is not a word of limitation;
- (l) the singular includes the plural and vice versa and a gender includes other genders;
- (m) a reference to a party is to be construed as a reference to a party to this Contract;

- (n) a reference to a party to this Contract or any other document or Contract includes its executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (o) a reference to a clause, Schedule, annexure or appendix is a reference to a clause of or Schedule, annexure or appendix to this Contract;
- (p) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (q) a reference to a document including this Contract includes a reference to that document or Contract as amended, novated, supplemented, varied or replaced from time to time;
- (r) in the interpretation of this Contract, headings are to be disregarded;
- (s) where a party comprises 2 or more persons, an Contract or obligation to be performed or observed by that party binds those persons jointly and severally and a reference to that party includes a reference to any one or more of those persons;
- (t) a reference to a direction, instruction, request or similar by SCE or the Principal includes one given in writing, verbally or by email;
- (u) references to '\$A', 'dollar', '\$' and to any amount not otherwise designated is to be construed as a reference to Australian currency; and
- (v) a reference to a statute, ordinance, code or other law or section or schedule of a statute, ordinance, code or other law includes all statutory instruments or regulations issued under any of them and any statutory modification or re-enactment, or substitution, of any of them.

1.3 Nothing in this Contract will be construed or interpreted against SCE or to SCE's disadvantage on the basis that SCE prepared or caused this Contract to be prepared.

2. DOCUMENTS CONSTITUTING THE CONTRACT

2.1 If, after this Contract is formed, the Supplier discovers a discrepancy within the documents forming the Contract which is not resolved by the order of precedence in the Formal Instrument of Agreement, the Supplier must immediately seek SCE's instructions to resolve the discrepancy.

2.2 The Supplier must comply with SCE's instructions and is not entitled to any Claim in relation to the instructions and the resolution of the discrepancy referred to in clause 2.1.

2.3 Subject to SCE giving the Supplier instructions to the contrary, the discrepancies within the documents forming the Contract referred to in clause 2.1 will be resolved by applying the following rules:

- (i) the requirement that requires the higher standard of materials prevails;
- (j) the requirement that requires the higher standard of workmanship prevails;
- (k) the requirement that requires the most work prevails;
- (l) the requirement that requires the higher capacity or higher performance prevails; and
- (m) if there is any discrepancy between the drawings and the specification which is not resolved by applying the rules in paragraphs (i) to (l), then:
 - (i) the specification will take precedence over the drawings;
 - (ii) large scale drawings and detail drawings will take precedence over small scale drawings; and
 - (iii) figured dimensions will take precedence over scaled dimensions.

3. TERM OF CONTRACT

3.1 Subject to clause 3.3, irrespective of the date the parties to this Contract execute the Contract, once executed the Contract shall be deemed to have commenced on the Date of Commencement and

conclude on the last day of the Term of the Contract or the date of expiry of the last Defects Liability Period, whichever is the later.

3.2 The parties acknowledge and agree that:

- (i) they have been complying with the terms of this Contract on and from the Date of Commencement; and
- (j) in addition to this clause, the clauses 5.3, 6, 7, 8.7, 9.4, 14.1(i), 14.5, 15.5, 15.6, 16, 17, 18, 19, 20, 21 and 22 will survive the termination or expiry of this Contract.

3.3 If SCE is required by the Head Contract to obtain the Principal's consent to subcontract any of the works required by the Head Contract, at the sole option of SCE, this Contract will not be valid and binding on the parties (regardless of whether it has been executed by both parties or not) until the Principal has provided its consent under the Head Contract for the Materials to be supplied by the Supplier.

4. OBLIGATIONS OF THE PARTIES

4.1 In consideration for the Supplier supplying the Materials in accordance with this Contract, SCE agrees to pay the Contract Sum to the Supplier in accordance with this Contract.

5. SUPPLIER'S MAIN OBLIGATIONS

5.1 Supply of the Materials

- (i) The Supplier acknowledges and agrees that the Materials form part of a larger portion of work being completed by SCE under the Head Contract and that SCE and the Principal will be relying upon the Supplier to supply the Materials in accordance with this Contract.
- (j) The Supplier shall supply and deliver the Materials identified in a Purchase Order that is issued under this Contract, in accordance with any additional specifications or special conditions contained in a Purchase Order, which shall take precedence over the terms and conditions contained in these General Conditions.
- (k) SCE agrees to pay the Supplier the Contract Sum in accordance with the Contract.
- (l) The Supplier shall supply and deliver the Materials as identified in a Purchase Order in a proper and workmanlike manner within the time specified.
- (m) The Supplier must Deliver the Materials to SCE:
 - (i) if:
 - (i) "Option 1" or "Option 2" in the Purchase Order apply, on the relevant Date for Delivery; or
 - (ii) "Option 3" in the Purchase Order applies, between the Date of Commencement and Final Delivery Date at the Delivery Rate;
 - (ii) to the Site, during Normal Working Hours;
 - (iii) at the Agreed Arrival Time(s);
 - (iv) in strict accordance with the requirements of this Contract;
 - (v) in accordance with all Legislative Requirements; and
 - (vi) in a proper and workmanlike manner; and
 - (vii) otherwise in accordance with the Directions of SCE given from time to time.
- (n) The Supplier must not do any of the following without the prior written consent of SCE:
 - (i) alter the Delivery Rate (if applicable);
 - (ii) supply the Materials to any other place other than the Site; or
 - (iii) supply the Materials to the Site outside of Normal Working Hours.

- (o) The Supplier acknowledges and agrees that unless otherwise stated in this Contract, in connection with the supply of the Materials, the Supplier is responsible for those matters specified in the Purchase Order as the Supplier's responsibility at its own cost (each of these being a pre-condition to Delivery of the Materials) and the Contract Sum includes all remuneration payable to the Supplier in this regard.
- (p) Except to the extent that the Contract otherwise provides, the Supplier must supply everything necessary for the proper performance of the Supplier's obligations and discharge of the Supplier's liabilities under the Contract.
- (q) The Supplier shall ensure that vehicles carrying plant and Materials over State-controlled roads and Local Government controlled surface streets shall comply with the vehicle weight limit requirements set out in the *Transport Operations (Road User Management) Act*, and with any other vehicle weight limit requirements imposed by duly constituted authorities on whose roads such vehicles operate. The Supplier shall, prior to the delivery of the Materials on the Site, submit evidence to SCE that the approvals of the relevant authorities have been obtained for the haulage of plant and Materials over surface streets along nominated routes. The Supplier shall be responsible for the rectification of any damage to surface streets attributable to its operations. If the Supplier fails to rectify the damage, SCE may, after giving reasonable notice, arrange for the necessary rectification work to be carried out and the cost incurred can be backcharged by SCE.
- (r) As far as it is economically and technically reasonable and practicable to do, the Supplier must give local subcontractors, vendors and suppliers a full, fair and reasonable opportunity to supply labour, services, materials, plant, machinery, equipment and other items required by this Contract.

5.2 Quality of Materials

- (i) The Supplier must ensure that the Materials:
 - (i) are new, fit and suitable for the purpose for which they will be used;
 - (ii) conform as to quality, quantity and description with the description of the Materials included in this Contract;
 - (iii) are free from defects in design, materials and workmanship;
 - (iv) are free of all liens and encumbrances so that the Supplier has good title to them; and
 - (v) if they have a proprietary brand, are affixed strictly in accordance with the manufacturer's instructions, directions, specifications, recommendations or similar. In this regard:
 - (iii) where any ambiguity exists between the Contract and the manufacturer's instructions, directions, specifications, recommendations or similar, the matter must be referred to SCE for clarification, prior to implementation;
 - (ii) where a trade name appears in the specification or similar or is shown on the drawings, equal or better materials bearing other trade names may, unless otherwise specified, be used in Materials, provided they have been first approved in writing by SCE; and
 - (iii) Materials bearing the hallmark of the Standards Association of Australia must be used in preference to any other Materials.
- (j) Immediately after being requested by SCE, the Supplier must supply particulars to SCE of:
 - (i) the mode and place of manufacture;
 - (ii) the source of supply;
 - (iii) the performance capacities; and
 - (iv) other information reasonably requested by SCE,
 in respect of any Materials supplied or to be supplied by the Supplier under or used in connection with the Contract.

5.3 Reporting & Meetings

- (i) The Supplier must report to SCE in connection with the supply of the Materials in the form and at the frequency specified in Item 5 of Schedule 1. If nothing is specified in Item 5 of Schedule 1, the Supplier must report to SCE in the form and at the frequency requested by SCE in connection with the supply of the Materials.
- (j) Without limiting clause 5.3(a), SCE may request the Supplier provide a conformance report in the form and at the time specified by SCE which specifies how the results of any testing required by the Contract demonstrates that the Materials comply with the Contract.
- (k) The Supplier must attend and participate in any meetings related to the supply of the Materials that SCE requests.

5.4 Legislative Requirements

- (i) The Supplier must continually indemnify SCE against any Claim by any person brought against it due to any failure by the Supplier to comply with any of the relevant Legislative Requirements. The Supplier shall give all necessary notices and pay all necessary fees and shall comply with all legislative provisions and requirements, statutory or otherwise, relevant to the Materials including SCE's safety requirements, and shall be responsible for the supply of all safety Materials and protective clothing required by his personnel in compliance with any of the foregoing.
- (j) Where any change to Legislative Requirements after the date of the Contract, which a competent and experienced supplier would not have been aware of at the date of the Contract, requires a change to the Materials, then to the extent that change results in more or less cost incurred to the Supplier, the difference shall be assessed by SCE and added or subtracted from the Contract Sum.
- (k) The Supplier, in carrying out the delivery of the Materials, shall provide all necessary safety and precautionary measures to avoid personal injury and damage to property. If in the opinion of SCE the Supplier fails to comply with this requirement SCE shall perform such remedies as may be required, the costs of which shall be a debt due and recoverable from the Supplier.
- (l) The Supplier must, within 3 Business Days of receipt, supply to SCE any documents in its possession issued by or evidencing the approval or similar under any Legislative Requirements in connection with the Materials.

5.5 PPSA

- (a) For the purposes of this clause:
 - (i) **SCE's Personal Property** means all personal property the subject of a security interest granted in favour of SCE under this Contract; and
 - (ii) words and phrases used in this clause that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.
- (b) If SCE determines that this Contract (or a transaction in connection with it) is or contains a security interest, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which SCE asks and considers necessary for the purposes of:
 - (i) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
 - (ii) enabling SCE to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
 - (iii) enabling SCE to exercise rights in connection with the security interest,

SCE need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

- (c) The Supplier shall give to SCE notice of registration or verification of registration of any security interest it registers on the PPSA register in connection with the Contract.
- (d) For the avoidance of doubt, any security interest in favour of the Supplier ceases on the passing of ownership under clause 5.10.
- (e) The Supplier shall cause to be removed all data from the PPSA register it has registered or caused to be registered in connection with the Contract following delivery.
- (f) The Supplier indemnifies SCE against all loss, cost, damage or expense that SCE suffers or incurs in connection with the registration of a security interest in connection with the Contract or the failure to remove the registered data relating to a security interest from the PPSA register.
- (g) The Supplier shall notify SCE as soon as SCE becomes aware of any of the following:
 - (i) if any personal property which does not form part of SCE's Personal Property becomes an accession to SCE's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession;
 - (ii) if any of the SCE's Personal Property is located or situated outside Australia; or
 - (iii) upon request by the SCE, of the present location of the SCE's Personal Property.
- (h) The Supplier shall not:
 - (i) create any security interest or lien over any of the SCE's Personal Property (other than security interests granted in SCE's favour);
 - (ii) sell, lease or dispose of its interest in the SCE's Personal Property;
 - (iii) give possession of the SCE's Personal Property to another person except where SCE expressly authorises it to do so;
 - (iv) permit any of the SCE's Personal Property to become an accession to or commingled with any asset that is not part of the subject of this Contract; or
 - (v) change its name without first giving SCE 15 Business Days notice of the new name or relocate its SCE place of business outside Australia or change its place of registration or incorporation.
- (i) Everything the Supplier is required to do under this clause is at SCE's expense.

5.6 Neither SCE nor the Supplier will disclose information of the kind mentioned in section 275(1) of the PPSA and SCE will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA. **Quality Assurance**

- (i) At all times during the supply of the Materials, the Supplier must:
 - (i) have quality management system which complies with AS9001 and is certified by an appropriate third party; and
 - (ii) supply the Materials in accordance with that quality management system.
- (j) Within 3 Business Days of a request by SCE, the Supplier must do all things necessary to allow SCE and the Principal to audit the Supplier's quality management system, including but not limited to, allowing SCE and the Principal to access the Supplier's premises or other place

where the Materials are being prepared or supplied and providing copies of documentation to SCE and the Principal. If the audit reveals what SCE or the Principal consider to be deficiencies in the Supplier's quality management system, the Supplier must immediately rectify those deficiencies at its own cost.

- (k) The Supplier acknowledges that the purpose of the Supplier having a quality management system is to assist the Supplier comply with its obligations under this Contract. Accordingly, compliance by the Supplier with its quality management system will not relieve the Supplier from any of its obligations under this Contract.

5.7 **The Code**

- (i) The Code applies to the Head Contract. Accordingly, the Supplier must, and must ensure that its employees, contractors and agents, comply with the Code in the supply of the Materials.
- (j) The Supplier acknowledges that it has obtained its own copy of the Code.
- (k) The Supplier agrees that that information concerning compliance with the Code, including details of whether or not a sanction has been imposed, may be used by the Commonwealth, its agents and ministers, and disclosed to others for the purposes of facilitating compliance with the Code and the exercise of their statutory and portfolio responsibilities. The Supplier must ensure that its contractors are also aware of, and agree to comply with, these rights of use and disclosure.
- (l) The Supplier must not engage a subcontractor in relation to the Services unless they are compliant with the Code.
- (m) When requested by SCE, the Supplier must provide all information reasonably necessary to satisfy SCE of its compliance with this clause.

5.8 **Testing**

- (a) SCE may direct that the whole or any part of the Materials be tested before Acceptance. Such Acceptance testing shall be completed by the date stated in the Purchase Order. The Supplier must comply with any reasonable Directions of SCE in respect of Acceptance testing or otherwise as stated in this Contract.
- (b) Tests shall be conducted by either SCE or a person nominated by SCE, which may be the Supplier.
- (c) SCE or the Supplier (whichever is to conduct the test) shall give reasonable written notice to the other of the date, time and place of the test. The test may nevertheless proceed if a party does not attend. Either party may carry out a test without the other if the other has caused a delay to testing, provided that reasonable notice of the test has been given.
- (d) On completion of the tests, the Supplier shall ensure the Materials fully comply with the Contract and promptly provide the results to SCE. If SCE has carried out the testing, it shall provide the results to the Supplier.
- (e) SCE will be responsible for the costs of testing except where the Contract otherwise provides or the test is consequent upon, or reveals a failure of the Supplier to comply with the Contract.
- (f) If at any time before the expiry of the Defects Liability Period, SCE directs the Supplier to test the Materials due to an assertion that the Materials do not comply with the Contract, SCE shall not refuse the Supplier reasonable access to test the Materials.

5.9 **Risk in the Materials**

- (i) Risk in the Materials shall pass from the Supplier to SCE on the Date of Delivery and have been Accepted by SCE, or where Materials are supplied using the Delivery Rate, when a particular supply of Materials is Accepted by SCE.

5.10 **Ownership of Materials**

- (a) Ownership of, and unencumbered title in, the Materials or any part of it shall pass to SCE at the date of payment for the Materials.
- (b) Ownership of any imported portion of the Materials will pass to SCE upon:
 - (i) payment to the Supplier of the value of the Materials to be so imported; and
 - (ii) receipt by SCE or an agent of SCE of a clean on board bill of lading or airways bill, as the case may be, drawn or endorsed to the order of SCE, appropriate insurance certificates and a customs invoice for the Materials or that part, as the case may be.
- (c) If SCE does not accept the Materials for any reason, then ownership will revert to the Supplier upon the Supplier repaying to SCE any money paid to the Supplier in respect of the non-accepted Materials and the Supplier removing the Materials from SCE's possession.
- (d) If SCE is the owner of the Materials which is not in the possession of SCE a security interest under the PPSA is created in favour of SCE.

5.11 **Acceptance or rejection of Materials**

- (a) Within a reasonable time of delivery, SCE will give a written notice to the Supplier either accepting or rejecting the Materials. Where the Materials are rejected, reasons will be given. Failure to notify of acceptance will be deemed acceptance of the Materials.
- (b) Where SCE has rejected the Materials, SCE may direct the Supplier to either:
 - (i) correct the Materials in its place or take the Materials away for correction; or
 - (ii) replace the Materials.
- (c) The Supplier must reasonably assist SCE in any inquiries it may have as to the costs, time, disruption and potential damages that may be associated with either option it elects under this clause.

6. SUPPLIER'S WARRANTIES

The Supplier warrants and agrees that:

- (i) it will strictly comply with clause 5;
- (j) it holds all required licences, approvals, consents and the like required to lawfully supply the Materials;
- (k) it is expert and experienced in supplying materials similar to the Materials;
- (l) it will employ suitably qualified and experienced employees, agents and subcontractors to strictly discharge the Supplier's obligations;
- (m) it has inspected the Site and has satisfied itself that the Materials are suitable for the Site; and
- (n) the Contract Sum is sufficient to cover the discharge of all the Supplier's obligations under this Contract.

7. REPRESENTATIVES

7.1 **Shamrock Civil Engineering Representative**

- (i) SCE has appointed the SCE Representative as its disclosed and authorised agent to do anything SCE is required, or entitled, to do under this Contract.
- (j) The Supplier must comply with all instructions, Directions and notices given by the SCE Representative.

- (k) The Supplier is not entitled to rely, for any purpose whatsoever, on any instruction, direction or notice given by the SCE Representative that is not given or confirmed in writing.
- (l) SCE or its agents (including the SCE Representative) will only be available for supervision during the Normal Working Hours for the Site as directed by SCE, unless special arrangements are made in writing between the parties.
- (m) Where SCE supervision is required outside the Normal Working Hours for the Site, all costs incurred by SCE for that supervision and the cost of any necessary additional security will be payable to SCE by the Supplier and will be a debt due and owing to SCE under this Contract.

7.2 Supplier Representative

- (i) The Supplier must at all times while actually supplying the Materials have a Supplier Representative in charge who must:
 - (i) be authorised and able to take and carry out such instructions as SCE may give regarding the Materials;
 - (ii) understand, speak and write fluent English for the purpose of communications at the Site;
 - (iii) be fully conversant with the Materials and the Supplier's obligations under this Contract; and
 - (iv) be authorised by the Supplier to represent it in relation to all matters under this Contract.
- (j) SCE may at any time, acting reasonably, instruct the Supplier to replace the Supplier Representative, in which case the Supplier must promptly appoint a replacement who is acceptable to SCE.
- (k) The Supplier must not replace the Supplier Representative without first obtaining SCE's written consent.
- (l) All instructions given by SCE under this Contract will be given to the Supplier's Representative. Matters within the knowledge of the Supplier Representatives are deemed to be within the knowledge of the Supplier.

8. SECURITY

- 8.1 Security is for the purpose of securing to SCE the performance of the Supplier's obligations under the Contract.
- 8.2 If the Security is in the form of an unconditional undertaking or a performance undertaking, the Supplier agrees to provide SCE with the Security in the form and amount specified in Item 9 of Schedule 1 within 10 Business Days of the date of this Contract.
- 8.3 SCE may have recourse to Security (and/or convert non-cash Security to cash) if the Supplier fails to pay SCE any moneys due to it in accordance with this Contract or (in the reasonable opinion of SCE) fails to comply with any of its obligations under the Contract.
- 8.4 If Security is to be provided in the form of retention money deducted as stated at Item 9 of Schedule 1, and the Supplier subsequently seeks to substitute an unconditional undertaking to pay in place of retention money, the Supplier must pay SCE a sum equivalent to 10% of the total amount of retention held under the Contract by SCE for SCE's administration and financing costs associated with the substitution.
- 8.5 If the Supplier has supplied the Materials in accordance with clause 5.1, SCE will return 50% of the Security to the Supplier within 10 Business Days following the final Date of Delivery or Final Delivery Date.
- 8.6 The remaining Security will be returned to the Consultant by SCE four (4) months after the expiry of the last Defects Liability Period, provided that the Consultant has made a written request to SCE to return the Security.

8.7 Any interest earned on the Security will be retained by SCE.

9. INSURANCE

9.1 Workers Compensation

- (i) During the Term, the Supplier must insure against liability for death of or injury to persons employed by the Supplier including liability imposed by statute and at common law.
- (j) The Supplier must ensure that every secondary contractor to the Supplier is similarly insured.

9.2 Transportation

- (i) If the Supplier is responsible for transportation of the Materials to Site under the Purchase Order, the Supplier must ensure that it effects and maintains insurance for loss of or damage to the Materials in transit, the transportation vehicles and third parties.

9.3 General

- (i) The details of the insurance policies required by this clause 9 which are held by the Supplier at the Date of Commencement are contained in Item 10 of Schedule 1.
- (j) Before the Supplier commences supplying Materials and whenever requested in writing by SCE, the Supplier must produce evidence (in the form of a certificate of currency) to the satisfaction and approval of SCE of all policies of insurance required by this Contract have been effected and maintained.
- (k) The provision of evidence of compliance with the insurance obligations to the satisfaction and approval of SCE is a condition precedent to SCE's obligation to pay any amount due in accordance with the Contract.
- (l) If, within 3 Business Days of being requested in writing by SCE to do so, the Supplier fails to produce evidence of compliance with its insurance obligations, SCE may on behalf of the Supplier, take out any insurance policy for which the Supplier has not given SCE a certificate of currency as required by clause 9.4(b) and pay the premiums. The costs incurred by SCE in effecting and maintaining such insurance shall be a debt due from the Supplier to SCE.
- (m) The effecting of insurance will not limit the liabilities or obligations of the Supplier under other provisions of the Contract.
- (n) The Supplier must immediately inform SCE in writing of any occurrence that may give rise to a claim under a policy of insurance and must keep SCE informed of subsequent developments concerning the claim. The Supplier must ensure that secondary subcontractors in respect of their operations similarly inform SCE.

10. SITE

10.1 Site Access

- (i) SCE will provide the Supplier with access to the Site sufficient to enable the Supplier to deliver the Materials at the times agreed by the parties. Notwithstanding this, the Supplier acknowledges that SCE may not be the owner or lessee of the Site, therefore any failure of SCE to give the Supplier access to the Site will not be a breach of this Contract.
- (j) Notwithstanding clause 10.1(a), SCE will not be required to provide the Supplier with access to the Site and the Supplier will not be entitled to deliver Materials at the Site until the Supplier has complied with the Pre-Conditions to Site Access. If access to the Site is refused under this clause 10.1(b), the Supplier will have no Claim against SCE.
- (k) The Supplier is not entitled to sole possession of any part of the Site. The Supplier acknowledges and agrees that:
 - (i) SCE and others (including but not limited to the Principal and its contractors) will be carrying out work on the Site concurrently with the supply of the Materials;

- (ii) the Supplier must cooperate with and not hinder SCE and others undertaking work on the Site;
 - (iii) the Supplier has allowed for concurrent works by SCE and others in its planning and coordination of the supply of the Materials; and
 - (iv) the Supplier will not be entitled to make any Claim against SCE in connection with SCE and others performing work on Site concurrently with the supply of the Materials.
- (l) Whilst on Site, the Supplier agrees to follow all lawful Directions of SCE and the Principal.
 - (m) The Supplier must allow access at all times to the Site (or any part of it) to SCE, the Principal and any other person nominated by SCE or the Principal.
 - (n) The Supplier will not supply Materials on the Site or part of the Site, as the case may be, until access to the Site or part of the Site is given by SCE to the Supplier for that purpose, unless approval is given in writing by SCE. All Materials must be safely and securely stored on Site in accordance with the Directions of SCE.
 - (o) Access to the Site is restricted to those avenues directed by SCE. Only approved vehicles may enter the Site to unload Materials. The Supplier must have a representative on Site to receive Materials otherwise they will not be received.
- (p) In delivering the Materials, the Supplier shall not enter or permit its constructional plant and equipment (including that of any subcontractor) to enter private land adjoining the Site without first obtaining the written approval of the land occupier and the land owner (where these are not the same person). The Supplier shall submit a copy of this written approval to SCE upon request. Notwithstanding the granting of such approval of entry, the Supplier shall comply with the following conditions relating to private land adjoining the Site:
 - (i) privacy of the land owner/occupier shall be paramount;
 - (ii) the land owner/occupier shall be notified in advance when entry onto private land is required for any purpose;
 - (iii) vehicles shall be driven at a maximum speed of 20 kilometres per hour when in close proximity to any dwellings; and
 - (iv) where a permanent access structure to private land is to be constructed under this Contract, SCE shall maintain access for others across the Site at all times.

Upon completion of work on private land, the Supplier shall forward to SCE a statement signed by the land owner and occupier to the effect that the land owner and occupier are satisfied that any damage to the land which may have arisen from the Supplier's operations has been adequately repaired or otherwise compensated by the Supplier. All costs associated with work on private land shall be borne by the Supplier.

10.2 Normal Working Hours

- (i) The Supplier will only have access to the Site during Normal Working Hours, unless otherwise agreed in writing with SCE.
- (j) If the Supplier is given permission to work on Site outside of Normal Working Hours the Supplier may be required, at SCE's discretion, to meet any additional costs incurred by SCE in connection with the additional access and SCE will be entitled to set off any amount in this regard against the Contract Sum.

10.3 Control of Personnel on Site

- (i) The Supplier must in connection with the supply of the Materials only employ or engage persons on Site who are careful, skilled and experienced in their respective trades and occupations. All persons must comply with SCE's employment procedures and may be required to undertake any testing or other induction SCE may require. Prior to commencing the supply of the Materials, SCE may in its sole discretion direct that any person not be employed by the Supplier on the Site.

- (j) SCE may at any time instruct the Supplier to remove from the Site, within such time as SCE directs, any person employed or engaged by the Supplier (including the Supplier Representative) or by any of its secondary contractors if such person, in the opinion of SCE, misconducts himself or herself or is incompetent or negligent in the performance of Materials.
- (k) The Supplier must:
 - (i) comply with such instruction given pursuant to clauses 10.3(e) and any such person must not be further employed in, upon or about the Site without the prior approval of SCE; and
 - (ii) must promptly appoint an appropriate replacement.

10.4 **Protection of Persons and Property**

- (i) The Supplier must ensure that the Materials are supplied in a way which does not cause injury to any person or damage to any property.
- (j) The Supplier must do everything reasonably necessary, having regard to any other work performed concurrently with the supply of the Materials or after the supply of the Materials which may affect the Materials, to ensure the Materials, SCE's works generally or adjoining properties, are not damaged. This may include, where appropriate, providing, erecting and maintaining all barricades, guards, fencing, temporary roadways and footpaths, signs, lighting and other things required by any authority, or necessary for the protection of the work under the Contract, or of other property, or for the safety and convenience of the public, and the Supplier must remove them when no longer required.
- (k) The Supplier must avoid obstruction or damage to roadways and footpaths, drains and water courses and public utilities and other services on or adjacent to the Site and must have any obstruction removed immediately at the Supplier's own cost. If the Materials are damaged, or unfixed materials lost or stolen while under the Supplier's protection, the Supplier must promptly rectify any damage to the Materials or replace any lost or stolen unfixed materials. The rectification of any Materials damaged or the replacement of lost or stolen unfixed materials does not, of itself, relieve the Supplier from its obligations to complete the Materials in strict accordance with the requirements for Delivery of the Materials.
- (l) The Supplier must avoid interference with or damage to property on or adjacent to the Site and must repair and reinstate all damage caused by the Supplier or its servants or agents.
- (m) The Supplier must:
 - (i) prevent nuisance or inconvenience to the owners, tenants and occupiers of any properties adjoining the Site and to the public; and
 - (ii) comply in all respects with the requirements of any contracts or deeds that may be made from time to time with adjoining owners or for the protection of adjoining property, to which SCE or the Principal may be subject.
- (n) The Supplier must take all reasonable care to not damage any work performed by others on the project, other than disturbance of other work that is strictly required to supply the Materials.
- (o) The Supplier must:
 - (i) provide all things and take all measures necessary to protect people and property;
 - (ii) avoid the unnecessary interference with the passage of people and vehicles; and
 - (iii) prevent nuisance and unreasonable noise and disturbance.
- (p) If the Supplier or its employees, agents or contractors damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Supplier must promptly make good the damage.
- (q) Any cost incurred by SCE in ensuring compliance with this clause 10.5 will be a debt due and payable from the Supplier to SCE and that cost may be backcharged by SCE.

10.5 Urgent protection

- (i) Prior to Delivery of the Materials, or any part thereof, being completed (including any unloading of same), if urgent action is necessary to protect the Materials, other property or people and the Supplier fails to take the action, SCE may take the necessary action. The cost incurred by SCE in taking that urgent action will be a debt due from the Supplier to SCE and that cost may be set off by SCE.
- (j) If time permits, SCE will give the Supplier prior written notice of SCE's intention to take action under this clause.

10.6 Site Cleaning

- (i) The Supplier must at its own cost and to the satisfaction of SCE:
 - (i) during the supply of the Materials or as reasonably directed by SCE, clean up and properly remove from the Site all rubbish and surplus material arising from the supply of the Materials. This includes:
 - (i) removing rubbish (other than spoil) to bins provided by SCE (if any); and
 - (ii) removing spoil off Site on a regular basis or as required by SCE;
 - (ii) promptly on the Date for Delivery or the Final Delivery Date, whichever is applicable, remove all buildings, temporary works, constructional plant and equipment the Supplier may have constructed or brought onto the Site for the purpose of supplying the Materials, thoroughly clean up and clear away from the Site all rubbish and surplus material arising from the execution of the Materials and leave the Site in a condition suitable for handing over to SCE or the Principal or as required by following trades.
- (j) The Supplier is responsible for:
 - (i) the proper disposal of all solid liquid and gaseous wastes in accordance with all Legislative Requirements; and
 - (ii) ensuring pollution and contamination are prevented or minimised in accordance with all Legislative Requirements, including the *Environmental Protection Act*.
- (k) If the Supplier fails to comply with any obligation imposed on it by this clause, SCE may, after giving notice in writing to the Supplier, have the work of cleaning and tidying up performed by other persons and the cost will be set off as a backcharge under clause 14.5.

11. PEOPLE, SAFETY & ENVIRONMENT

11.1 Industrial Relations

- (i) The Supplier:
 - (i) is responsible for managing industrial relations with its workforce (including its subcontractors) on any place at which it works in connection with the supply of the Materials;
 - (ii) must keep SCE fully informed of any disputes with or demands by its workforce or their representatives and any other circumstances which could result in industrial action affecting the supply of the Materials;
 - (iii) comply with all Legislative Requirements concerning industrial relations;
 - (iv) is not entitled to any Claim in relation to any industrial relations matter which arises because of any circumstance, whether caused by the Supplier or not, on the Site or any other site occupied by the Supplier; and
 - (v) if instructed by SCE in writing the Supplier must appoint SCE its agent to deal on its behalf with any industrial relations matters, referred to in the written instruction.

- (j) The Supplier is responsible for the payment of all allowances of any kind including for special clothing, foot wear, trade protection, superannuation schemes, redundancy schemes and site allowances.
- (k) The Supplier must, and must ensure that its Suppliers, consultants and agents, pay all wages, entitlements, taxes and levies to, or on behalf of, or in respect of, its employees, in accordance with any relevant award, industrial contract or Legislative Requirement or if any moneys become payable to the Supplier's employees or contractors but remain unpaid by the Supplier, SCE may withhold from the Supplier an amount sufficient to satisfy such moneys until the Supplier has provided adequate evidence of payment, failing which may make direct payment to the employees or contractors, but is under no obligation of any kind to do so.

11.2 Safety and Environment

- (i) If the Supplier is required to Deliver Materials to SCE's premises or Site, the Supplier must:
 - (i) comply with SCE's and the Principals safety and environmental policies and all Directions of SCE or the Principal whilst at that premises or Site;
 - (ii) ensure that its employees, agents and contractors have and wear PPE;
 - (iii) ensure that it is able to access the premises or Site;
 - (iv) ensure that any vehicles or equipment it brings to SCE's premises or the Site:
 - A. are fit for their purpose;
 - B. meet any specific requirements for vehicles specified by the Site operator, owner, SCE or the Principal;
 - C. are clean and free of materials, flora or fauna (eg. fire ants and noxious weeds). Without limiting this clause, the Service Provider must provide a "Weed Hygiene Declaration" for the purpose of section 45 of the *Land Protection (Pest and Stock Route Management) Act 2002* (Qld) for any Materials which are being delivered; and
 - D. are being operated by competent personnel,
 and all costs associated with this will be borne by the Supplier.
- (j) At the request of SCE, the Supplier must provide evidence satisfactory to SCE of its compliance with this clause.

11.3 Work Health and Safety

- (a) For the purpose of this clause:
 - (i) **"high potential incident"** is a dangerous event or incident that includes all major loss and/or injury events (actual or near miss) where the following has or may have realistically occurred:
 - A. serious injury or illness, lost time injury, a notifiable incident, injury involving hospitalisation or an injury likely to cause permanent total work incapacity. Applies to all incidents involving employees, consultants, principal contractors, contractors, subcontractors, labour hire staff, Contractor's employees;
 - B. significant damage to plant and or equipment;
 - C. incidents likely to result in a regulator investigation (for example, a chemical spill); or
 - D. electric shock.
 - (ii) **"lost time injury"** is an injury that results in at least one full shift being lost at the employee's normal place of work, at some time, (not necessarily immediately) after the shift during which the injury occurred, provided that the day on which the shift would otherwise have occurred was not a rostered day off. If the employee fails to report to their next scheduled work shift due to an injury or illness, and provides a WorkCover medical certificate, it is a Lost Time Injury.

- (iii) **“notifiable incident”** has the meaning assigned to it by the WHS Act and the WHS Regulation;
- (iv) **“regulator”** is Workplace Health and Safety Queensland;
- (v) **“serious injury or illness”** has the meaning assigned to it by the WHS Act and the WHS Regulation; and
- (vi) **“workplace”** means the Site.

(b) Notifiable Incidents

- (i) The Supplier will:
 - A. ensure that the regulator for work health and safety is notified of any notifiable incident immediately after becoming aware of a notifiable incident, arising out of or in connection with the conduct of the business or undertaking of the Supplier.
 - B. notify SCE in writing of every notifiable incident, lost time injury and high potential incident in relation to or in connection with the workplace as soon as possible but not more than six (6) hours after the occurrence;
 - C. keep SCE informed of the status of any safety or health related incidents that have occurred in relation to or in connection with the workplace;
 - D. do all that is necessary to assist SCE, the Principal and their representatives with any investigations into any safety or health related incident in relation to or in connection with the workplace, including requiring, to the extent possible, the Supplier’s agents and subcontractors to assist SCE, the Principal and their representatives;
 - E. as soon as practicable but no later than five (5) days of receiving a request from SCE to do so, provide SCE with a copy of any notification to the regulator for work health and safety of a safety or health related incident; and
 - F. consult, cooperate and coordinate with SCE, the Principal and their representatives in relation to any safety matters arising out of, or in connection with the workplace.

(c) Indemnity

- (i) The Supplier indemnifies and will keep indemnified SCE and the Principal from and against all loss which may be brought against or made on SCE or the Principal or which SCE or the Principal may pay, sustain or be put to, arising by reason of or in connections with:
 - A. any breach of the WHS Act or the WHS Regulation at the workplace;
 - B. any breach by the Supplier of its obligations under this clause or its duties under the WHS Act or the WHS Regulation; and
 - C. SCE or the Principal being deemed under the WHS Act to be the person with management and control of the Workplace, or the person with management and control of any fixtures, fittings and plant in relation to or in connection with the workplace.
- (ii) It is not necessary for SCE or the Principal to incur expense or make a payment before enforcing any indemnity conferred by this clause.

(d) Safety Audit

During the Contract, the Supplier must provide SCE, the Principal or their representatives with all documents, access and assistance necessary for completing a safety audit. The Supplier must comply with all Directions of SCE in relation to the safety audit and as a result of the safety audit. Any non-compliance revealed by the safety audit will be a substantial breach of this Contract.

(e) Additional Obligations

The Supplier must, and must ensure its suppliers, subcontractors, employees, officers and agents:

- (i) are familiar with and comply with all their obligations and exercise due diligence in discharging all their duties under the WHS Act;

- (ii) as a minimum comply with SCE's and the Principal's reasonable policies, procedures and Directions in relation to health and safety;
- (iii) suitable and competent, and must retain evidence of that verification, and
- (iv) provide that evidence to SCE promptly upon written or verbal request.

11.4 Information Privacy

- (a) For the purposes of this clause, the words "bound contracted service provider", "compliance notice", "document", "information commissioner", "personal information", "privacy compliant" and "privacy principles" have the meanings given in the Information Privacy Act.
- (b) The Supplier acknowledges and agrees that it is a bound contracted service provider, and that the Information Commissioner's functions include conducting reviews into personal information handling practices of bound contracted service providers and conducting compliance audits to assess bound contracted service providers' compliance with the privacy principles.
- (c) The Supplier shall promptly advise SCE of any –
 - (i) enforcement action in relation to its obligations under the Information Privacy Act in connection with the Contract, including enforcement through compliance notices given to the Supplier; and
 - (ii) privacy complaints in connection with the Supplier's discharge of its obligations under the Contract, including any privacy complaints to which the Supplier is a respondent.
- (d) The Supplier shall take any actions reasonably required by SCE in connection with the matters referred to in this clause, including steps it has taken to comply with any compliance notice.
- (e) The Supplier shall keep SCE informed about actions of the Information Commissioner, of which the Supplier becomes aware, in connection with the Contract.
- (f) The Supplier shall immediately notify SCE if the Supplier becomes aware that disclosure of personal information held in relation to this Contract is, or may be, required or authorised by law.
- (g) For or in connection with either –
 - (i) an individual's application to SCE or the Principal for access to, or amendment of, a document containing the individual's personal information, whether the application is made under the Information Privacy Act or otherwise; or
 - (ii) a privacy complaint made to SCE or the Principal, including any privacy complaints to which SCE or the Principal is a respondent,
 SCE shall, as soon as possible following SCE's or the Principal's request:
 - (i) submit to SCE or the Principal a document specified by SCE or the Principal;
 - (ii) amend or notate a document specified by SCE or the Principal;
 - (iii) provide information to SCE or the Principal concerning the Supplier's discharge of its obligations under this Clause; and
 - (iv) take other reasonable actions required by SCE or the Principal.
- (h) SCE or the Principal may request SCE to comply with privacy and security measures under the Information Privacy Act and the *Right to Information Act 2009*. Such request will be in writing.
- (i) Following Delivery of the Materials, the Supplier shall forward any personal information of members of the community, held by the Supplier, to SCE. Following confirmation of receipt by SCE, the Supplier shall destroy all such information in the Supplier's possession.
- (j) This clause survives termination or expiry of the Contract.

12. VARIATIONS

12.1 General

- (i) The Supplier must not carry out a Variation except in accordance with a direction in writing from SCE and no Variation shall vitiate the Contract.
- (j) If the Supplier has received a direction which it considers to be a direction to vary the Materials it shall notify SCE within 3 Business Days and must not vary the Materials until a direction in the form of a Purchase Order has been provided by SCE to vary the Materials.
- (k) If the Supplier does not strictly comply with the requirements set out in this clause, it shall not be entitled to make any Claim in connection with a direction.
- (l) SCE may, at any time prior to the Date of Delivery, direct the Supplier, by notice in writing to the Supplier, to carry out a Variation.
- (m) Within 48 hours of receiving a Variation direction from SCE under clause 12.1(d), the Supplier will provide SCE with an estimate of the cost to carry out the Variation, calculated strictly in accordance with clause 12.2 (where applicable).
- (n) If SCE:
 - (i) accepts the Variation cost submitted by the Supplier under clause 12.1(e):
 - (A) SCE will issue the Supplier with a notice that the Variation cost has been accepted by SCE;
 - (B) from the date of the notice under clause 12.1(f)(i)(A), the Contract Sum will be adjusted to include the cost of the Variation accepted by SCE;
 - (C) the Supplier will comply with all Directions of SCE in relation to the Variation, including (where necessary) consulting with and handing over documentation to other parties); and
 - (D) the Variation will form part of this Contract; or
 - (ii) rejects the Variation cost submitted by the Supplier, the Contract will remain unchanged (ie the Supplier will not have to perform the Variation) and the Supplier will not be entitled to payment, compensation, damage or any other Claim in connection with the Variation.
- (o) The Supplier is not entitled to any payment, damages or compensation and must not make any Claim in relation to the cost involved in pricing proposed Variations it is required to give under clause 12.1(e).
- (p) If SCE directs a Variation which decreases or omits any part of the Materials to be supplied, it will not be a breach of this Contract if SCE supplies those Materials itself or engages a third party to do so. SCE may also bring forward the Date for Delivery or the Final Delivery Date, whichever is applicable, by a reasonable period if the omission or decrease in the Materials to be supplied reduces.

12.2 Valuation

- (a) Where this Contract provides that a valuation shall be made under this clause 12.2, such valuation amount shall be ascertained as follows:
 - (i) if this Contract prescribes specific rates or prices to be applied in determining the value, those rates shall be applied;
 - (ii) if clause 12.2(a)(i) does not apply, the rates or prices in a schedule of rates or schedule of prices shall be used to the extent that SCE's Representative determines that it is reasonable to use them; or
 - (iii) to the extent that neither clause 12.2(a)(i) or clause 12.2(a)(ii) apply, SCE's Representative may apply reasonable rates or prices which are exclusive of GST.

13. PROGRESS OF SUPPLY OF THE MATERIALS

13.1 General

- (i) Time is of the essence in relation to the supply of the Materials in that the Supplier must:

- (i) if “Option 1” or “Option 2” of the Purchase Order applies, ensure that the Materials are supplied on the Date for Delivery; or
- (ii) if “Option 3” of the Purchase Order applies:
 - A. commence the supply of the Materials on the Date of Commencement or on any reasonable other date notified to the Supplier by SCE;
 - B. proceed with the supply of the Materials with due expedition and without delay, in accordance with the Delivery Rate; and
 - C. ensure that the quantity of Materials required by this Contract are supplied until the Final Delivery Date.
- (j) If “Option 3” of the Purchase Order applies and the Supplier’s supply of the Materials falls below the Delivery Rate, SCE may enter the Supplier’s premises and take over the production or supply of the Materials, in which case, the costs incurred by SCE will be a backcharge under clause 14.5.

13.2 Extensions of Time

- (i) Within 48 hours of the Supplier becoming aware of a potential delay to the Delivery of the Materials, the Supplier must notify SCE of the potential delay, including the facts behind and the extent of the potential delay. In the case of an ongoing delay, every seven (7) days after the date on which notice is first given under this clause, the Supplier must provide SCE with the written details of the status of the delay.
- (j) Within 48 hours of the actual delay ceasing, if the Supplier wishes to claim an extension of time to the Date for Delivery or the Final Delivery Date, whichever is applicable, the Supplier must provide SCE with a written claim for an extension of time with evidence of the circumstances set out in clause 13.2(c).
- (k) The Supplier will only be entitled to an extension of time to the Date for Delivery or Final Delivery Date if:
 - (i) the Supplier has complied with clauses 13.2(a) (as applicable) and 13.2(b);
 - (ii) the Supplier is delayed in achieving the Delivery of the Materials by the Date for Delivery or the Final Delivery Date, whichever is applicable;
 - (iii) the Supplier has not caused or, if it contributed to the delay, will not be entitled to an extension of time to the extent it contributed to the delay;
 - (iv) the Supplier has taken all reasonable steps to minimise the delay; and
 - (v) the delay is caused by a Qualifying Cause of Delay.
- (l) After receiving notice from the Supplier under clause 13.2(b) (or any further information or documentation from the Supplier requested by SCE in order to assess the extension of time claim against clause 13.2(b)), SCE will (in accordance with clause 13.2) determine what, if any, extension of time is to be given to the Date for Delivery or the Final Delivery Date and advise the Supplier of its determination. Any revised Date for Delivery or Final Delivery Date accepted by SCE as part of its determination will form part of the Contract from the date of SCE’s determination.
- (m) Notwithstanding that the Supplier is not entitled to or has not claimed an extension of time to the Date for Delivery or Final Delivery Date, SCE may at any time before the Date for Delivery or Final Delivery Date in its absolute discretion and for its sole benefit, but without being under any obligation to do so, extend the Date for Delivery or the Final Delivery Date.
- (n) A delay caused by SCE or its employees or agents, or the failure of SCE to grant any or any reasonable extension of time will not cause the Date for Delivery or the Final Delivery Date to be set at large.
- (o) The Supplier will not be entitled to any additional costs or expenses by reason of any delay or an extension of time to the Date for Delivery or Final Delivery Date.

13.3 Suspension

- (i) SCE may direct the Supplier to suspend the supply of the Materials at any time.
- (j) The Supplier must not suspend the supply of the Materials without a written direction from SCE.
- (k) The Supplier will have no Claim arising from a suspension directed by SCE under this clause 13.2.

13.4 Acceleration

- (i) SCE may direct the Supplier to accelerate the supply of the Materials (or any part of them).
- (j) The Supplier must within 48 hours of the direction under clause 13.4(a), and in any case before it takes steps to comply with SCE's direction to accelerate, notify SCE in writing of the additional direct costs it will incur in complying with the direction to accelerate.
- (k) SCE may, after receiving the Supplier's notice under clause 13.4(b), do one of the following:
 - (i) withdraw the direction under clause 13.4(a); or
 - (ii) affirm the direction in writing and advise:
 - (A) that SCE accepts the amount of additional direct costs notified by the Supplier or any amendments to those costs agreed between SCE and the Supplier;
 - (B) the details of the required acceleration; and
 - (C) the adjusted Date for Delivery or the Final Delivery Date, whichever is applicable.
- (l) The Supplier's entitlement to be paid its additional direct costs of any acceleration of the supply of the Materials under this clause 13.3 is subject to each of the following:
 - (i) the Supplier Delivering the Materials by the adjusted Date for Delivery or the Final Delivery Date stated by SCE under clause 13.4(c)(ii)(C);
 - (ii) the amount of acceleration costs payable to the Supplier (if any) is limited to the actual additional direct costs notified by the Supplier under clause 13.4(b) or as agreed under clause 13.4(c)(ii)(A); and
 - (iii) subject to clause 13.4(e), the Supplier is entitled to only the direct acceleration costs actually expended by the Supplier that the Supplier can verify to SCE's satisfaction.
- (m) The Supplier shall have no Claim arising out of any direction to accelerate under this clause 13.4 where the need to accelerate has arisen as a result of or has been contributed to by an act or omission of the Supplier.

13.5 Recovery

- (i) Where the Supplier has failed, or, in SCE's opinion, will fail to achieve a milestone specified in Item 7 of Schedule 1, a Date for Delivery, or has not achieved the Delivery Rate, SCE may direct the Supplier to immediately take all necessary action to recover the Delivery Rate or to achieve the milestone or Date for Delivery. The Supplier must within 48 hours of the recovery direction under this clause 13.5(a), advise SCE in writing of the steps taken in complying with the direction. The costs of all such measures shall be borne by the Supplier.

13.6 Care of the Materials Prior to Delivery

- (i) The Supplier will be responsible for the care of the Materials and will accept all risk in relation to the Materials until the Materials are Delivered and are accepted by SCE in writing.
- (j) Title to the Materials passes to SCE once:
 - (i) those Materials have been Delivered to and accepted by SCE in writing; or
 - (ii) SCE has paid for the Materials,
 whichever is the earlier.
- (k) If loss or damage occurs to anything while the Supplier is responsible for its care, the Supplier must (at its own cost) promptly make good (which may include re-supply) the loss or damage so that the Materials comply with the provisions of the Contract.

- (l) From the Date of Commencement to the Date of Delivery or the Final Delivery Date, if SCE discovers Materials (or any part of them) provided by the Supplier which is not in accordance with the Contract, SCE may direct the Supplier to:
 - (i) remove the Materials from the Site;
 - (ii) destroy the Materials; or
 - (iii) replace, correct or otherwise rectify the Materials.
- (m) If the Supplier fails to comply with a direction given under clause 13.5(d), SCE may have the action carried out by other persons and the cost incurred by SCE will be a backcharge under clause 14.5.
- (n) Nothing in this clause 13.5 will affect any other right which SCE may have against the Supplier arising out of the failure of the Supplier to supply the Materials in accordance with the Contract.
- (o) SCE may accept Materials that do not strictly comply with the Contract up to the Date of Delivery however is under no obligation to do so. If SCE does so, SCE may reduce the Contract Sum by an amount determined by taking into account the following and adding a 10% mark up:
 - (i) the diminution in the value of the Materials because of the defect;
 - (ii) the costs from which the Supplier is relieved of rectifying the defective Materials; and
 - (iii) the cost to SCE to rectify or re-supply the defective Materials.

13.7 Liquidated Damages

- (a) If the Supplier fails to Deliver the Materials:
 - (i) if "Option 1" or "Option 2" of the Purchase Order applies, the Supplier will pay the Liquidated Damages to SCE between the Date for Delivery and the Date of Delivery;
 - (ii) if "Option 3" of the Purchase Order applies:
 - A. the Supplier will pay the Liquidated Damages to SCE between the Final Delivery Date and the Date of Delivery; and/or
 - B. the Supplier will pay the Liquidated Damages to SCE between the date at which the Supplier first began to fall behind the Delivery Rate and the date on which the Supplier recovered the Delivery Rate (ie. brought the cumulative quantity of the Materials back to what it would have been had the Delivery Rate been complied with).
- (b) The Liquidated Damages may be deducted progressively from time to time by SCE from money then due and owing or which become due and owing to the Supplier by SCE. If no further money is payable to the Supplier under the Contract, or if the Liquidated Damages exceed the amount remaining payable or to become payable to the Supplier under the Contract, SCE may:
 - (i) have recourse to the Security; or
 - (ii) recover such sum, or any excess, as a debt due and payable by the Supplier to SCE.
- (c) The Supplier agrees and acknowledges that the Liquidated Damages are genuine pre-estimate of the damage which SCE will incur due to the failure of the Supplier to achieve Delivery by the Date for Delivery, Final Delivery Date or to maintain the Delivery Rate (as applicable).
- (d) In the event that clause 13.6(a) is found to be void, invalid or inoperative so as to disentitle SCE from any Liquidated Damages, then the parties agree and acknowledge that SCE shall be entitled to claim general law damages for Supplier's failure to meet the Date for Delivery, Final Delivery Date or maintain the Delivery Rate (as applicable).
- (e) If the Purchase Order indicates Liquidated Damages do not apply (i.e. Liquidated Damages are crossed out, left blank or the words "NIL" or "N/A" or similar have been inserted), this

shall not in any way waive SCE's entitlement or ability to claim general damages including but not limited to damages for loss arising out of delays caused by the Supplier.

13.8 Defects Liability Period

- (a) During the Defects Liability Period, Supplier must rectify any defect in the Materials. The Supplier must perform this obligation whether it has been given an instruction by SCE or not.
- (b) If the Supplier does not comply with its obligations under clause 13.8(a), SCE may give the Supplier a written direction to rectify any defect in the Materials, stating:
 - (i) the defect that requires rectification;
 - (ii) the time by which the defect must be rectified; and
 - (iii) any conditions, or restrictions, on access to the part of the project works in which the defect is located.
- (c) If the Supplier rectifies a defect during the Defects Liability Period, a new Defects Liability Period will commence for that defect or those parts of the Materials containing the defect starting on the date the defect was rectified.
- (d) If SCE issues a direction under clause 13.8(b) and the Supplier does not rectify the defect in accordance with SCE's direction:
 - (i) SCE may rectify or engage another person to do this on SCE's behalf the defect and any costs will be set off a backcharge under clause 14.5; and
 - (ii) a new Defects Liability Period will commence for that defect stating on the date the defect was rectified.
- (e) SCE may accept Materials that does not strictly comply with the Contract during the Defects Liability Period however is under no obligation to do so. If SCE does so, SCE may reduce the Contract Sum by taking into account the following:
 - (i) the diminution in the value of the Materials because of the defect; and
 - (ii) the costs from which the Supplier is relieved of rectifying or re-supplying the defective Materials.

14. PAYMENT

14.1 Progress Claims

- (a) It is a precondition to a reference date arising under the BCIP Act and to the Supplier being entitled to make a progress claim under the Contract that the Supplier gives to SCE the Payment Documentation. The Payment Documentation includes:
 - (i) a statutory declaration in a form satisfactory to SCE signed by the Supplier that states, as at the date of the claim for payment, no moneys are due and payable by the Supplier to its subcontractors in respect of the Contract and that all wages due to its employees engaged in the supply of the Materials have been paid;
 - (ii) written confirmation from the Supplier that the Materials Delivered have been and comply with all tests as required under the Contract;
 - (iii) in relation to the Final Progress Claim, a completed and executed Deed of Release in the form contained in Schedule 5; and
 - (iv) any other requirement listed in item 8 of Schedule 1.
- (b) The Supplier shall lodge with SCE a detailed progress claim in a form satisfactory to SCE on the date referred to in Items 7 and 8 of Schedule 1, showing the value of work completed in the performance of this Contract.
- (c) If:
 - (i) "Option 1" in the Purchase Order applies, on the day of each month specified in Item 7 of Schedule 1 up to the Date of Delivery the Supplier must submit to SCE progress claims for the portion of the Materials supplied during that month;

- (ii) "Option 2" in the Purchase Order applies, after the Date of Delivery the Supplier must submit to SCE a progress claim for all the Materials supplied by it under this Contract; or
 - (iii) "Option 3" in the Purchase Order applies, at the times specified in Item 7 of Schedule 1, the Supplier must submit progress claims for the amounts specified in the Purchase Order.
- (d) A progress claim under this clause 14 must:
- (i) include all Payment Documentation;
 - (ii) be in the form of a valid Tax Invoice;
 - (iii) reference the SCE Purchase Order Number;
 - (iv) adequately describes the Materials (or portion thereof) to which it relates;
 - (v) be addressed to:
 - ACCOUNTS PAYABLE*
 - SHAMROCK CIVIL ENGINEERING PTY. LTD.*
 - PO BOX 207*
 - CAROLE PARK, QLD 4300*
 - Email: payables@shamrockcivil.com.au*
 - (vi) the Supplier has complied with clauses 5.6, 9 and 11 (as applicable); and
- (e) SCE shall, within 10 Business Days of receiving a progress claim, determine the amount to be paid to the Supplier and issue a progress certificate stating the moneys due to the Supplier or SCE, as the case may be.
- (f) The amount of each progress claim certified by SCE as being payable under clause 14.1 (e) will be paid by SCE to the Supplier within 25 Business Days after receipt of the progress claim.
- (g) For the avoidance of doubt, a reference date under the BCIP Act shall not arise during the period following the end of the month after the Date of Delivery is reached until the time for making the Final Progress Claim.
- (i) The Supplier agrees that SCE may set off from any monies due to the Supplier pursuant to this Contract (including any retention monies or security) any debt, amount, claim for damages or any other entitlement SCE may have against the Supplier arising from or incidental to the delivery of the Materials or the terms and conditions of this Contract or arising from or incidental to the supply of any other Materials by the Supplier for SCE or the terms of any other agreement between SCE and the Supplier.
- (h) At any time, and from time to time, SCE may, by a further assessment, correct any error that has been discovered by SCE in any previous progress claim or payment.
- (i) All progress payments are made on account. No payment of money by SCE under this clause will be deemed evidence that any Materials to which such payment relates are in accordance with the Contract.

14.2 Final Progress Claim

- (a) The Supplier must give SCE a valid Final Progress Claim and endorse it the 'Final Progress Claim':
- (i) if "Option 1" or "Option 2" in the Purchase Order apply, within 10 Business Days after the Date of Delivery;
 - (ii) if "Option 3" in the Purchase Order applies, within 10 Business Days after the final milestone specified in the Purchase Order.

The Final Progress Claim must comply with the requirement of clause 14.1(c) and must include all money that the Supplier considers payable by SCE under or arising out of the Contract or for any alleged breach of the Contract or in tort or under any statute or in equity.

- (b) SCE shall, within 10 Business Days of receiving the Final Progress Claim, determine the amount to be paid to the Supplier and issue a progress certificate stating the moneys due to the Supplier or SCE, as the case may be.
- (c) The amount of the Final Progress Claim certified by SCE as being payable under clause 14.2(b) will be paid by SCE to the Supplier within 25 Business Days of the date of receipt of the Final Progress Claim.
- (d) If the Supplier fails to make a Final Progress Claim under this clause, the Supplier releases and discharges SCE from any Claim, action or demand whatsoever arising from or in any way connected with the Contract or the supply of the Materials from the date which is 10 Business Days after:
 - (i) if “Option 1” or “Option 2” in the Purchase Order applies, the expiry of the Date of Delivery; or
 - (ii) if “Option 3” in the Purchase Order applies, the last milestone specified in the Purchase Order.

14.3 BCIP Act

- (a) In addition to the requirements of this clause 14, any “payment claim” issued by the Contract pursuant to the BCIP Act must also be submitted to the Fax Point and to SCE’s Representative.

Such payment claim will be deemed to be received in accordance with the provisions of clause 22.6.
- (b) The Supplier shall promptly give SCE a copy of any notice that the Supplier receives from a claimant under the BCIP Act or that the Supplier has been required to supply under the BCIP Act.
- (c) If the Supplier suspends performance of the Contract pursuant to section 33 of the BCIP Act, the Supplier is not entitled to make any Claim against SCE for any costs, losses, damages or expenses in connection with such suspension other than a claim for loss or expenses incurred by the Supplier as a result of the removal by SCE from this Contract.
- (d) If SCE becomes aware that a sub subcontractor is entitled to suspend any obligations pursuant to section 33 of the BCIP Act, SCE may, in its absolute discretion, pay the sub subcontractor such money that is, or may be, owing to that sub subcontractor in respect of any suspension and any amount paid by SCE shall be certified by SCE as a debt due and payable by the Supplier to SCE.
- (e) The Supplier indemnifies SCE against all Claims made against, or losses, damages or expenses (including but not limited to legal costs on a solicitor and own client basis) which SCE suffers or incurs arising out of or in connection with:
 - (i) a suspension by a sub subcontractor of any obligations under the BCIP Act; or
 - (ii) a failure by the Supplier to comply with this clause.

14.4 GST

- (a) The Supplier and SCE agree that:
 - (i) during the term of this Contract, every Tax Invoice relating to a Taxable Supply is to be issued by SCE as an RCTI; and
 - (ii) within 7 days of the date of the Agreement, the Supplier and SCE will enter into an agreement authorizing SCE to issue RCTIs in the form contained in Schedule 4.
- (b) SCE will issue a recipient created Adjustment Note to the Supplier where a Taxable Supply made under this Agreement is subject to an Adjustment Event.
- (c) If the parties do not enter into an agreement authorising SCE to issue RCTIs, the Supplier shall submit to SCE a compliant Tax Invoice with each Payment Claim to enable SCE to claim, where applicable, Input Tax Credits. If the Supplier fails to submit a compliant Tax Invoice, the Payment Claim will not be processed.

(d) Undefined terms in this clause 14.4 have the same meaning as in the GST Act.

14.5 Backcharges

- (a) If SCE (or a third party on behalf of SCE) supplies or rectifies any of the Materials or otherwise carries out the obligations of the Supplier under this Contract, the cost of having the Materials supplied or rectified plus a 10% mark up for overhead costs will be a debt due and owing by the Supplier to SCE.
- (b) All backcharges, debts and other amounts due under this Contract are separately actionable. If there is no progress claim against which SCE can off-set the backcharges, SCE may:
- (i) have recourse to Security provided under the Contract; or
 - (ii) issue a tax invoice to the Supplier for the backcharges and the Supplier must pay the tax invoice within 14 days of the date of the tax invoice.

14.6 Queensland Building and Construction Commission Act

Any notice served by the Supplier under the *Queensland Building and Construction Commission Act 1999* (Qld) shall be served upon SCE's Representative.

15. TERMINATION

15.1 If the Supplier is in breach of the Contract SCE may give to the Supplier notice in writing:

- (a) specifying the breach;
- (b) requiring the breach to be remedied; and
- (c) specifying the time frame in which the breach must be rectified.

15.2 If the Supplier fails to remedy such breach within the time period specified in a notice given under clause 15.1, SCE may, without affecting any other rights or remedies that SCE may have under the Contract or otherwise, supply a written notice to the Supplier terminating the Contract.

15.3 Notwithstanding clause 15.2, SCE may immediately terminate this Contract by written notice to the Supplier if:

- (a) the Supplier commits an Act of Insolvency;
- (b) the Head Contract is terminated or the scope of the Head Contract is varied so as to render the supply of the Materials no longer necessary;
- (c) SCE is of the opinion that the results of an audit under clause 19 indicate the Supplier does not have the financial capacity to complete the Contract;
- (d) the Supplier is in breach of clauses 5.6, 9, 11 or 13.4;
 - (i) in the opinion of SCE, the Supplier has committed a serious safety breach or is supplying the Materials in an unsafe manner; or
 - (ii) the Supplier commits fraud or serious misconduct in the supply of the Materials.

15.4 SCE may also immediately terminate this Contract for any reason upon written notice to the Supplier.

15.5 If this Contract is terminated for any reason, the Supplier must comply with instructions from SCE.

15.6 In addition to clause 15.5, if this Contract is terminated:

- (a) pursuant to clauses 15.2 or 15.3(a), (c),(d), (e) or (f), the parties' rights are the same they would be had the Supplier repudiated the Contract; and
- (b) pursuant to clauses 15.3(b) or 15.4 SCE will pay the Supplier:
 - (i) the value of the Materials supplied by the Supplier up to the date of termination;
 - (ii) the Supplier's actual and reasonable direct costs incurred as a result of the termination but under no circumstance will the Supplier be entitled to payment, damages or compensation in relation to loss of profits, loss of opportunity or

redundancy costs incurred or suffered by the Supplier and the Supplier will have no Claim against SCE in this regard.

16. NOTIFICATION OF CLAIMS

Subject to any other clause of this Contract which specifies a pre-condition to the Supplier making a Claim, SCE will not be liable upon any Claim by the Supplier in respect of any matter arising under or in connection with the Contract or the Materials unless the Claim, together with full particulars of the Claim, is lodged in writing with SCE not later than 10 Business Days after the date of occurrence of events or circumstances on which the Claim is based.

17. INDEMNITY BY SUPPLIER

17.1 The Supplier must fully indemnify SCE, the Principal and their respective employees, agents and representatives against all loss, damages, Claims, liens, actions, liabilities or proceedings whatsoever in any way arising out of or in connection with this Contract or the supply of the Materials, whether arising under contract, any statute or common law or in tort incurred or suffered by SCE relating to any of the following:

- (a) any personal injury to or death of any person caused or contributed to by the Supplier;
- (b) damage to any property, real or personal, caused or contributed to by the Supplier;
- (c) any injury or death of any person involved in the supply of the Materials;
- (d) damage to the Materials that is not caused by SCE or the Principal;
- (e) breach of any Intellectual Property Rights of any person;
- (f) any breach of the provisions of this Contract by the Supplier or any negligent act or omission;
- (g) all legal costs (on a solicitor/own client basis) reasonably incurred by SCE in resisting any Claim by the Supplier on which the Supplier materially fails;
- (h) all legal costs (on a solicitor/own client basis) reasonably incurred by SCE in connection with a claim under the BCIP Act in which the adjudicated amount payable to the Supplier by SCE (if any) is less than 50% of the "payment claim" made by the Supplier;
- (i) damage to the Supplier's plant equipment and vehicles that is not caused by SCE or the Principal;
- (j) any liability or expense incurred by SCE as a result of a breach by the Supplier of any of its warranties stated in clause 6; and
- (k) all legal costs, without reference to any scale of costs, reasonably incurred by SCE, in resisting any Claim, or discrete part of a Claim, made by the Supplier on which the Supplier is unsuccessful, for any breach by the Contract of any of its warranties stated in clause 6.

17.2 It is not necessary for SCE, the Principal or their respective employees, agents and representatives to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

18. DISPUTE RESOLUTION

18.1 Notice of dispute

- (a) If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of the Subcontract, including a dispute concerning:
 - (i) a direction; or
 - (ii) a claim:
 - A. in tort;

- B. under statute;
- C. for restitution based on unjust enrichment or other quantum meruit; or
- D. for rectification or frustration, or like claim available under the law governing the Contract,

then either party shall, by hand or by registered post, give the other a written notice of dispute adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the parties shall, subject to clauses 15 and subclause 18.7, continue to perform the Contract.

18.2 Conference

Within 14 days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the dispute has not been resolved within 28 days of service of the notice of dispute, that dispute shall be and is hereby referred to arbitration.

18.3 Arbitration

Subject to subclause 18.2, if within a further 14 days the parties have not agreed upon an arbitrator, the arbitrator shall be nominated by the President of the Institute of Arbitrators & Mediators Australia. The arbitration shall be conducted in accordance with The IAMA Fast Track Arbitration Rules.

18.4 Head Contract arbitrator

If a notice is given under subclause 18.1, the subject matter of which touches or concerns any Head Contract dispute, then the arbitrator to be nominated pursuant to subclause 18.4 shall be the Head Contract arbitrator unless:

- (a) no Head Contract arbitrator is nominated within 42 days of giving the notice under subclause 42.1; or
- (b) the Head Contract arbitrator is unable or unwilling so to act,

in which case the arbitrator shall be nominated under subclause 18.4.

If the Head Contract arbitrator is nominated under this subclause, the Supplier irrevocably consents to any order pursuant to Section 26(a) of the Commercial Arbitration Act or like provisions under the law governing the Head Contract.

18.5 Head Contract disputes affecting the Subcontract

When SCE becomes aware of a Head Contract dispute which touches or concerns work, material or the performance of this Contract, SCE shall give the Supplier:

- (a) a notice setting out adequate details of the Head Contract dispute; and
- (b) a copy of the Head Contract provisions relating to notification of claims and resolution of disputes.

If SCE has complied with this subclause, SCE may give written notice to the Supplier requiring any dispute which affects the Head Contract dispute to be resolved as part of the Head Contract dispute.

18.6 Precondition to legal proceedings

Neither party may commence legal proceedings in relation to a dispute unless the parties have undertaken the process set out in this clause 18 and those processes have failed to resolve the dispute, or one of the parties has attempted to follow these processes and the other party has failed to participate.

18.7 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

19. AUDIT

- 19.1 The Supplier must satisfy SCE that it has the financial capability to perform all its obligations under this Contract.
- 19.2 At any time during or after the Contract, SCE may appoint an independent financial expert to audit the financial capacity of the Supplier or substantiate any payment claims made by the Supplier under this Contract.
- 19.3 The Supplier must:
- (a) comply with all reasonable requests of the financial expert;
 - (b) provide the financial expert with the Supplier's financial records; and
 - (c) allow the financial expert to inspect any financial data kept by the Supplier.

20. CONFIDENTIALITY

- 20.1 The Supplier shall not, without the prior written consent of SCE, at any time disclose any Confidential Information to any third party except:
- (a) to its:
 - (i) officers, employees and contractors who need to know to fulfil their obligations under the Contract;
 - (ii) professional advisers;
 - (iii) auditors;
 - (iv) joint venture partners;
 - (v) related bodies corporate;but then only if disclosed under a similar duty of confidentiality, or
 - (b) to the minimum extent such disclosure is required by law or a court order;
 - (c) if required as a result of being listed on a recognised stock exchange; and
 - (d) if such information is already in the public domain through no breach of this clause.
- 20.2 The Supplier will not acquire any right, title or interest in or to any Confidential Information of SCE.
- 20.3 The Supplier must not, without the prior written approval of SCE, issue any information, publication, document or article for publication concerning the Materials, Contract or Principal's project in any media and the Supplier must refer all enquiries concerning the Materials, Contract or the Principal's project to SCE.
- 20.4 The Supplier will immediately notify SCE of any breach of this clause 20.

21. INTELLECTUAL PROPERTY RIGHTS

- 21.1 The Supplier shall indemnify SCE any such respective infringements.
- 21.2 Except as otherwise provided in the Contract, the Supplier shall retain ownership of intellectual property rights (other than third party intellectual property rights) associated with the Materials and any documentation provided by the Supplier pursuant to the Contract.
- 21.3 The Supplier grants SCE a royalty-free, non-exclusive, transferable, perpetual licence to use the intellectual property rights associated with the Materials and any documentation provided pursuant to the Contract for the installation, use, support, repair, maintenance or alteration of the Materials by or on behalf of SCE.

22. GENERAL

- 22.1 **Subcontracting**

- (a) The Supplier must not, without the prior written approval of SCE and on such terms and conditions as are determined in writing by SCE subcontract the supply of any of the Materials.
- (b) With a request for approval under clause 22.1(a), the Supplier shall give SCE's written particulars of the Materials and the name and address of the proposed supplier. The Supplier shall give SCE's other information which SCE reasonably requests, including the proposed subcontract documents without prices. Within 14 days of the Supplier's request for approval, SCE shall give the Supplier written notice of approval or of the reasons why approval is not given.
- (c) Approval to subcontract will not relieve the Supplier from any liability or obligation under the Contract. The Supplier will be liable to SCE for the acts and omissions of secondary contractors and employees and agents of secondary contractors as if they were acts or omissions of the Supplier.

22.2 **Assignment & Novation**

- (a) SCE may assign this Contract at any time.
- (b) The Supplier agrees that SCE may, upon providing written notice to the Supplier, assign or novate all of its right, title and interest under this Contract to the Principal or any financier of SCE (SCE's Financier) or any third party nominated by SCE's Financier. The Supplier must upon being requested to do so by SCE, sign a deed of novation, or such other documents as may reasonably be required, in favour of the Principal, SCE's Financier or any third party nominated by SCE, in order to give effect to the assignment or novation.

22.3 **Relationship of the Parties**

No party:

- (a) is in any way the agent or partner of another party for any purpose whatsoever nor has any right to hold itself out as such; and
- (b) may make any promise warranty or representation nor execute any contract or otherwise deal in the name of or on behalf of another party.

22.4 **No Waiver**

- (a) The failure of a party at any time to require full or partial performance of any provision of this Contract does not affect in any way the full right of that party to require that performance subsequently.
- (b) The waiver by any party of a breach of a provision of this Contract is not deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently.
- (c) Any waiver of a breach of this Contract must be in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

22.5 **Governing Law**

- (a) This Contract will be governed by and construed in accordance with the laws of Queensland.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the Courts of Queensland.

22.6 **Notices**

- (a) A notice required or authorised to be given or served upon a party pursuant to this Contract must be in writing in the English language and may be given or served by facsimile, prepaid post or hand to that party at its address or facsimile number appearing in Item 1 of Schedule 1 or such other address or facsimile number as the party may have notified in writing to the other party or parties.
- (b) In the absence of proof to the contrary a notice is deemed to have been given or served on the party to whom it was sent:

- (i) in the case of hand delivery, upon delivery during Business Hours of the recipient;
- (ii) in the case of pre-paid post, 2 Business Days after the date of dispatch; and
- (iii) in the case of facsimile:
 - (i) at the time of dispatch if that dispatch is during Business Hours; or
 - (ii) at 9.00am on the next Business Day following the day of dispatch, if the dispatch is outside Business Hours.
- (iv) in the case of email, on the date it is transmitted unless that day is not a Business Day or if the time of receipt is after 17:00 hours in Brisbane, Queensland, in which case it will be deemed to have been served on the next Business Day. In the absence of proof to the contrary, if the sender does not receive an automated message in response to the effect that the email has not been delivered or that the intended recipient is "out of office" or similar.
- (c) A notice given or served under this Contract is sufficient if:
 - (i) in the case of a corporation, it is signed by a director or secretary of that corporation or by its Representative under this Contract; and
 - (ii) in the case of an individual, it is signed by that individual.
- (d) The provisions of this clause are in addition to any other mode of service permitted by law.
- (e) In this clause 'notice' includes a demand, request, consent, approval, offer and any other instrument or communication made, required or authorised to be given under or pursuant to a provision of this Contract.

22.7 Severability

The parties acknowledge and agree that:

- (a) all the provisions of this Contract are reasonable in all the circumstances and that each provision is and is deemed to be severable and independent; and
- (b) if all or any part of any provision is judged invalid or unenforceable in all the circumstances, it may be construed (or deleted if necessary) so as to be valid and enforceable to the greatest extent possible and does not affect the validity or enforceability of the remaining provisions.

22.8 Amendment

No amendment to this Contract has any force unless it is in writing and signed by all of the parties to this Contract.

22.9 Counterparts

This Contract is validly executed if executed and exchanged in one or more counterparts.

22.10 No Merger

The covenants, conditions, provisions and warranties contained in this Contract do not merge or terminate upon completion of the transactions contemplated in this Contract but to the extent that they have not been fulfilled and satisfied or are capable of having effect, remain in full force and effect.

22.11 Entire Contract

This Contract constitutes the entire Contract of the parties as to its subject matter and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it.

22.12 Further Assurances

Each party must do all things and execute all further documents necessary to give full effect to this Contract and refrain from doing anything that might hinder the performance of this Contract.

SCHEDULE 1 – PARTICULARS

1. Details

Shamrock Civil Engineering details:

Name in full: Shamrock Civil Engineering Pty. Ltd.
ABN: 68 066 655 856
Address: 195 Cobalt Street, Carole Park, QLD 4300.
Telephone no: 07 3727 1100
Facsimile no: 07 3879 4100
Fax Point: 07 3727 1279

Shamrock Civil Engineering Representative Details:

Name in full: *Insert*
Address: *Insert (Office or Project Address)*
Telephone no: *Insert*
Facsimile no: *Insert*
Email: *Insert*

Supplier's Details:

Name in full: *Insert*
ABN: *Insert*
Address: *Insert*
Telephone no: *Insert*
Facsimile no: *Insert*

Supplier's Representative Details

Name in full: *Insert*
Address: *Insert*
Telephone no: *Insert*
Facsimile no: *Insert*
Email: *Insert*

Principal's Details

Name in full: *Insert*
ABN: *Insert*
Head Contract name:

Term of Contract

Date of Commencement: *[insert]*

Term of Contract: **Insert**

2. Notices

Applicable Time: Ipswich, Queensland, Australia

3. Qualifying cause of delay

1. An act or omission of SCE, its employee, agents or other subcontractors.
2. A Variation.
3. A suspension directed by SCE under clause 13.3.
4. **(enter other qualifying causes of delay).**

4. Site Description

Site: **Insert** or as otherwise directed by SCE.

Normal Working Hours: **[Insert]**

For example: Monday –Saturday 7:00am to 5:00pm (including public holidays) as standard but any other hour of the day (ie 24 hours Monday-Sunday) directed by SCE.

5. Reporting Requirements

Form and Frequency: Quantity & Conformance reports are required within 3 working days of supplying the **(enter product description)** product or as otherwise directed by SCE in writing.

6. Defects Liability Period **[INSERT]**

Eg, 12 months or as otherwise specified in the Purchase Order

7. Payment Terms

Payment Documentation to be given by the 25th day of each month/after Delivery.

Progress Claims to be made after 2 Business Days of SCE's receipt of the Payment Documentation.

8. Payment Documentation

[INSERT i.e signed original delivery dockets]

9. Security

Form

An approved unconditional undertaking or an approved performance undertaking given by an approved financial institution or an approved insurance company, in a form approved by SCE.

OR

Retention moneys, deducted at a percentage of 10% of each progress certificate until the limit specified.

Amount

[insert]

10. Insurances to be taken out by Supplier

1. Transit insurance

Amount: *[insert]*

Period for maintenance: *[insert]*

2. Public and product liability

Amount: *[insert]*

Period for maintenance: *[insert]*

3. Worker's compensation

Amount: the minimum required by statute

Period for maintenance: *[insert]*

4. Plant and equipment insurance

Amount: *[insert]*

Period for maintenance: *[insert]*

5. *[insert any additional]*

SCHEDULE 2 – PURCHASE ORDER

Date: [insert]

Purchase Order for Materials



SHAMROCK CIVIL
Safe • Sustainable • Smart • Solutions

Purchase Order #: [INSERT]

Project: [INSERT]

Page: 1

Vendor: [insert]

of [insert]

Attention: [insert]

ABN: [insert]

Email: [insert]

Date Ordered: [insert]

Ordered by: [insert]

Date for Delivery/Final Delivery Date: [insert]

Delivery Rate: [insert]

Defects Liability Period: [insert]

SCE: Shamrock Civil Engineering Pty Ltd
195 Cobalt Street
Carole Park, QLD, 4300
Phone: (07) 3727 1100

Fax: (07) 3879 4100

Ship to: [INSERT SITE ADDRESS]

Via: [INSERT DELIVERY INSTRUCTIONS, INCLUDING 'Agreed Arrival Time']

Item	Phase Code	Description	UM	Units	Unit Cost	Total
1		Remove existing polyblades & install 40mm	LS	0.000	0.00000	4,300.00
Order Value						4,300.00
GST (if applicable)						430.00
Maximum Order Value (incl.GST):						4,730.00

[NOTE: Cost Report output to include detailed description of materials to be supplied and any applicable legislative standards/specifications.]

Ensure that Purchase Order makes it clear which 'Option' is selected:

- Option 1:** A single delivery of Materials is required and the quantity and Date for Delivery has been agreed
- Option 2:** Numerous deliveries of Materials are required and the quantities and Dates for Delivery have been agreed
- Option 3:** Ongoing delivery of Materials at a set rate is required (e.g. 1000T of aggregate per day for 3 months)

Any special conditions e.g. the requirements of acceptance testing, any additional Delay Events, the amount of liquidated damages, additional insurances etc, are to be included in 'Comments/exclusion' field in Cost Report output]

SHAMROCK CIVIL ENGINEERING PTY LTD
195 Cobalt Street, Carole Park, Qld 4300
P.O. Box 207
Carole Park, Qld 4300
Ph: (07) 3727 1100
Fax: (07) 3879 4100
A.B.N. 68 066 655 856
shamrock@shamrockcivil.com.au

Authorized Signature: _____

Position: _____

Vendor Signature: _____

**THIS PURCHASE ORDER IS ISSUED UNDER THE
MATERIAL SUPPLY AGREEMENT BETWEEN THE
VENDOR AND SCE FOR PROJECT [INSERT]**

SCHEDULE 3 – STATUTORY DECLARATION

PROJECT NAME –

To the Finance Director of Shamrock Civil Engineering Pty Ltd
I,.....(Print name) of.....(Address) in the State of Queensland, so
solemnly and sincerely declare that, in relation to the
Agreement between

Shamrock Civil Engineering Pty Ltd (The Contractor)

And

.....(The Supplier)
(Registered Business/Entity
Name)

Contract for [*insert particulars*] (“the Contract”)

1. I,.....(Print name) hold the position of(Director, Partner, Sole Trader etc) for the above named Supplier entity. I am in a position to know the facts contained herein and to bind the Supplier by the terms of this declaration and I am duly authorised to make this declaration on its/his behalf.
2. All(Name of the Supplier) EMPLOYEES, WORKERS, SUBCONTRACTORS, CONSULTANTS and SUPPLIERS who at any time have carried out work or supplied goods under the Contract have been paid in full all monies due and payable to them inclusive of any amounts owing under any industrial instrument and all mandatory statutory obligations, payments, charges or taxes (including but not limited to Goods and Services Taxes and Superannuation where applicable) up to the date of the submission by the Contractor of Progress Claim Number.....

I make this solemn declaration conscientiously believing the information contained herein to be true and correct.

.....
Signature of the Declarant

.....
Name of Declarant

.....
Date

A signed original copy of this declaration must accompany each progress claim submitted for payment

SCHEDULE 4 – AGREEMENT TO ISSUE RCTIs

BETWEEN: [Name of Supplier] _____ ABN [_____] [“Supplier”]

AND: **Shamrock Civil Engineering Pty Ltd** of **195 Cobalt Street, CAROLE PARK Qld 4300 ABN 68 066 655 856**
 (“Recipient”)

Hereby agrees as follows :

1. The Recipient may (but will not be obliged to) issue a Recipient Created Tax Invoice (“RCTI”) in respect of any subcontracts between the Recipient and the Supplier of the supply of goods of services made by the Supplier to the Recipient unless agreed otherwise.
2. The Recipient will issue a copy of the RCTI to the Supplier and retain the original and will issue to the Supplier an adjustment note in relation to adjustment events.
3. The Supplier must not issue tax invoices in respect of any supplies to which this Agreement applies.
4. The Supplier acknowledges that it is registered for GST as at the date of this Agreement and will promptly notify the Recipient if the Supplier ceases to be registered for GST.
5. The Recipient acknowledges that it is registered for GST as at the date of this Agreement and it will notify the Supplier if it ceases to be registered for GST or ceases to satisfy the legal requirements for issuing an RCTI.
6. This Agreement will automatically terminate if the Recipient ceases to satisfy the legal requirements for issuing an RCTI.
7. The Recipient indemnifies the Supplier for any liability for GST or penalty that may arise as a result of an understatement of the GST payable on any supply for which the Recipient issues an RCTI to the Supplier, but only on the extent that any such liability is caused by an act or omission of the Recipient in issuing that RCTI.

Dated this _____ day of _____ 200 .

Signed on behalf of the Supplier by :


Name

Position

Signed on behalf of the Recipient by :

Name

SCHEDULE 5 – DEED OF RELEASE

 <p style="font-size: 24px; font-weight: bold; margin: 10px 0;">SHAMROCK CIVIL</p> <p style="font-weight: bold; margin: 0;">Safe • Sustainable • Smart • Solutions</p> <p style="font-size: 12px; margin-top: 10px;">Shamrock Civil Engineering Pty Ltd ABN 68 066 655 856</p>	<p style="font-weight: bold; margin: 0;">STATEMENT OF FINAL CONTRACT PRICE</p>																																				
<p>Contract Head Subcontract No.</p> <p>Subcontractor Subcontract No.</p>																																					
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<p>1. We hereby accept the above AGREED FINAL SUBCONTRACT SUM, which is to have GST added. And certify that we and/or our agents, servants and subcontractors have no further Claims, demands, accounts, expenses, costs, liens, actions and proceedings of any kind, nature and description whether known or unknown against Shamrock Civil Engineering Pty Ltd (arising out of or relating to this subcontract), beyond the AGREED FINAL SUBCONTRACT SUM stated above and further indemnify Shamrock Civil Engineering Pty Ltd against any further Claims, demands, debts, accounts, expenses, costs, liens, actions and proceedings and further agree to accept the balance stated above as calculated above as full and final settlement of all outstanding monies due either under the subcontract, in tort or otherwise.</p> <p>2. We accept that retention of \$ is included in the Balance or (in the form of a Bank Guarantee to the price of \$.....)and is not presently due for payment. Retention monies will be held in accordance with the Subcontract and will attract GST upon release.</p> <p>3. We hereby declare that all monies due in respect of or in connection with the subcontract works have been duly paid to:-</p> <p style="margin-left: 20px;">(i) employees, including payments to Superannuation, Redundancy and/or other Industrial Funds as applicable.</p> <p style="margin-left: 20px;">(ii) all suppliers and subcontractors.</p> <p>4. We hereby declare that we are a registered employer with the Taxation Department.</p>																																					
<p>Signed Date</p> <p style="text-align: center;">(for and on behalf of Subcontractor)</p>																																					
<p>Witness Date</p>																																					
<p>Distribution: Subcontractor, Contract File:</p> <p>This Statement of Final Contract Price is to be signed by the Subcontractor and returned to Shamrock Civil Engineering Pty Ltd as a condition of final payment and release of retention.</p>																																					

