

HIQ25 – ECI Design Finalisation and Construction – Stage One with option for Stage Two

Volume 2 of 4 – Conditions of Contract

Project Name

Project Number

Guide note: *Delete this guide note*
These draft Conditions of Contract are under development.

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CONDITIONS OF CONTRACT

1. CONSTRUCTION OF CONTRACT

- 1.1 This Contract is governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.
- 1.2 Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at Brisbane, Queensland.
- 1.3 Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth).
- 1.4 This Contract is not subject to escalation unless expressly stated otherwise.

2. INTERPRETATION

Guide note: Delete this guide note

Some words and phrases have special meanings in the Contract. In some cases, the defined meaning is different from the meaning that the word or phrase might have in ordinary usage, or it might include conditions that don't normally apply. In order to understand the Contract, you need to take these special meanings into account.

2.1 Definitions

In the Contract, except where the context otherwise requires:

Aconex means the online collaboration platform operated by Aconex at website www.aconex.com.au;

Approval means any licence, permit, registration, consent, assessment, approval, authorisation, determination, certificate, accreditation, clearance, permission or the like which is required by a Government Department or Instrumentality, statutory or other public authority or under any Statutory Requirements to be issued, obtained, held or satisfied to perform the work under the Contract or to occupy or use the Works;

Asset Management and Maintenance Database means the asset management and maintenance database required by the Stage Two Project Brief;

Best Endeavours Process means the process set out in the Contractor's Tender by which the Contractor will use its best endeavours to engage Subcontractors who will implement best practice workplace health and safety systems and standards, and best practice commitment to apprentices and trainees;

Best Practice Principles means the Queensland Government guidelines titled "Best practice principles: Quality, safe workplaces" or any guidelines which replace those guidelines;

BIF Act means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and the regulations made under or in respect of that Act;

Building Certifier means a Queensland Building and Construction Commission licensed Building Certifier;

business day means a day that is not:

- (a) Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place where the Works will be situated; or
- (c) a day in the period from 22 December in a particular year to 10 January in the following year, both days inclusive;

Certificate of Practical Completion means the certificate referred to in Clause 57.9;

Claim includes any claim, demand, action, proceeding or suit which the Contractor may make or bring against the Principal or any of the Principal's agents or employees relating to the construction of the Contract or as to any fact, matter or thing arising out of or in connection with the Contract or the work under the Contract including (without limitation) any claim, demand, action, proceeding or suit seeking the payment of money, or any costs, expenses, loss or damages on any ground whatsoever including (without limitation) pursuant to the Contract, on a quantum meruit, in quasi contract, for unjust enrichment and insofar as is permitted by law, pursuant to any other principle of law;

Clerk of Works means a person appointed in writing by the Principal's Representative pursuant to Clause 36;

Completion Amount means an amount stated in the Annexure and included in the Contract Sum, which becomes payable only after Practical Completion of the whole of the Works as further outlined in Clause 57.6;

Completion of Stage One means the stage in the execution of the work under the Contract when the Contractor has provided to the Principal a Stage Two Offer in accordance with Clause 11.1 and Schedule 14, which has been either accepted or rejected by the Principal pursuant to Clause 11.3.1;

Construction Documentation means the documentation prepared by the Contractor in the performance of the Documentation Work.

Construction Work comprises work under the Contract:

- (a) including, without limitation:
 - (i) Works;
 - (ii) Early Works;
 - (iii) Temporary Works;
 - (iv) plant and equipment required for the performance of the work under the Contract; and
 - (v) work and items to establish and maintain the safety, security and amenity of the Site and persons on the Site;
- (b) but excluding:
 - (i) On Site Overheads;
 - (ii) Off Site Overheads;
 - (iii) Design Work;
 - (iv) Documentation Work; and
 - (v) any other work performed by Consultants;

Consultants means the consultants engaged by the Contractor in connection with carrying out the work under the Contract;

Consultants Fee means:

- (a) for Stage One, the portion of the lump sum amount, inclusive of GST, contained in the Contractor's Tender, payable by the Contractor to the Consultants identified on the Contractor's Tender Form, that represents the value of work performed by the Consultants in accordance with the Contract in the performance of the work under the Contract during Stage One, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment of the Consultants Fee;
- (b) for the purposes of calculating the Contract Sum pursuant to Clause 11.1.2, the lump sum amount, inclusive of GST, contained in the Contractor's Tender, payable by the Contractor to the Consultants identified on the Contractor's Tender Form, for the work to be performed by those Consultants, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment of the Consultants Fee;

Contract has the meaning in Clause 4;

Contractor means the party bound to execute the work under the Contract and includes that party's heirs, executors and permitted assigns and in the case of a body corporate its successors and permitted assigns;

Contract Materials means any work produced in the course of performing the work under the Contract and provided to the Principal, including without limitation the Works, Design Documents, and the Construction Documentation;

Contractor's Representative means a person appointed in writing by the Contractor under Clause 37.2;

Contract Sum means the lump sum amount, inclusive of GST, calculated in accordance with Clause 11.1.2 and contained in the Contractor's Stage Two Offer, accepted by the Principal as the total price payable by the Principal to the Contractor for the performance of all work under the Contract, including work performed during Stage One, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the Contract Sum;

Contractor's Tender means the tender submitted by the Contractor and accepted by the Principal;

Date of Acceptance of Tender means the date which appears on the Principal's written letter of acceptance of the Contractor's Tender;

Date of Commencement of Stage Two means the date of acceptance, if any, of the Contractor's Stage Two Offer by the Principal pursuant to Clause 11.3.1;

Date for Practical Completion means the last day of the period of time for Practical Completion provided in the Contractor's Stage Two Offer and accepted by the Principal as the Date for Practical Completion of the Works, or if none the Date for Practical Completion specified in the Annexure, but if any extension of time for Practical Completion is granted by the Principal's Representative it means the date resulting therefrom;

Date of Practical Completion means the date certified by the Principal's Representative in a Certificate of Practical Completion issued pursuant to Clause 57.9, as the date upon which Practical Completion was reached;

day means calendar day except where the context otherwise indicates;

Defects Liability Work means the work required by Clause 51;

Design Documents means the documents prepared by the Contractor in the performance of the Design Work;

Design Work means all work required to be undertaken or managed by the Contractor to achieve the Developed Design, which may include:

- (a) final completion of designs, documentation and workshop detailing for designs provided by the Principal, including coordination of design activities and the interaction of the various disciplines;
- (a) development of design provided by the Principal;
- (b) development of full design by the Contractor; or
- (c) a combination of above,

for various elements of the Works as identified in the Project Brief (as may be updated in the agreed Stage Two Project Brief).

Developed Design means the stage when, in the opinion of the Principal's Representative, the scope, functionality and quality standards of the Works are specified with sufficient particularity;

Documentation Work means all work required to be undertaken or managed by the Contractor to achieve the Construction Documentation;

Early Works means Construction Work the subject of a direction by the Principal's Representative pursuant to Clause 17;

Early Works Subcontracts means the Subcontracts entered into by the Contractor for Early Works;

Early Works Sum means the lump sum amount, inclusive of GST, contained in the Contractor's Tender as the Early Works Sum for all costs of any nature related to the performance of the Early Works (including pursuant to Early Works Subcontracts), as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the Early Works Sum;

Ethical Supplier Mandate means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" or any policy that replaces that policy;

Ethical Supplier Threshold means the Ethical Supplier Threshold described in the Queensland Procurement Policy;

Final Certificate means a certificate issued by the Principal's Representative to the Principal and to the Contractor pursuant to Clause 57.12;

Final Payment Claim means the final payment claim referred to in Clause 57.11;

Formal Instrument of Agreement means the formal instrument of agreement in the form in Schedule 12;

Government Department or Instrumentality means:

- (a) any government department responsible for compliance with government policy, including without limitation:
 - (i) the QGP Compliance Branch;
 - (ii) the Queensland Apprenticeship and Traineeship Office within the Department of Trade, Employment and Training; and
 - (iii) Local Content with the Department of State Development, Infrastructure and Planning; and
- (b) any government regulator, including without limitation:
 - (i) the Queensland Building and Construction Commission;
 - (ii) the Office of Industrial Relations;
 - (iii) the Fair Work Commission;
 - (iv) the Australian Taxation Office; and
 - (v) the Office of the Federal Safety Commissioner.

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

Latent Condition means any of the conditions referred to in Clause 22.1;

Local Benefits Test means the local benefits test described in the Queensland Procurement Policy;

Management Fee means:

- (a) for Stage One, the lump sum amount, inclusive of GST, contained in the Contractor's Tender as the Management Fee for Stage One for all costs of any nature related to the Contractor's obligations under the Contract, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the Management Fee;
- (b) for the purposes of calculating the Contract Sum pursuant to Clause 11.1.2, the sum of the lump sum amounts, inclusive of GST, contained in the Contractor's Tender as the Management Fee for Stage One and Stage Two, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the Management Fee;

which shall not include a cost or expense included in the On Site Overheads Fee, the Consultants Fee or the Off Site Overheads and Profit Fee, or in respect of performing Construction Work (including Early Works);

Minimum Consultancy Services means those consultancy services identified in Schedule 5;

Moral Rights means the moral rights granted to creators under the *Copyright Act 1968* (Cth) and any similar rights existing under foreign laws;

notice has the meaning given to it by Clause 10;

Off Site Overheads and Profit Fee means:

(a) for Stage One, the sum of:

- (i) the lump sum amount, inclusive of GST, contained in the Contractor's Tender as the Off Site Overheads and Profit Fee for Stage One; and
- (ii) the amount calculated by applying the Off Site Overheads and Profit Fee Stage Two percentage contained in the Contractor's Tender to the Early Works Sum;

(b) for the purposes of calculating the Contract Sum pursuant to Clause 11.1.2, the sum of:

- (i) the lump sum amount, inclusive of GST, contained in the Contractor's Tender as the Off Site Overheads and Profit Fee for Stage One; and
- (ii) the amount calculated by applying the Off Site Overheads and Profit Fee Stage Two percentage contained in the Contractor's Tender to the tendered cost of Construction Work, including the Early Works Sum;

which shall include an allowance for all costs associated with the Contractor's obligations related to insurance policies under Clauses 30, 31, 32 and 33, and security, retention moneys, performance undertakings and Deeds of Guarantee and Indemnity under Clause 9, and shall be the Contractor's fee for all costs associated with off site overheads and the Contractor's profit margin, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the Off Site Overheads and Profit Fee;

On Site Overheads means the following work or items required for the construction of the Works:

- (a) all work performed by the Contractor's on site management, administrative and supervisory personnel identified in the costed methodology statement for On Site Overheads provided in the Contractor's Tender or otherwise required to be notified by the Contractor to the Principal's Representative pursuant to Clause 37.1.3, including all attendant labour and attendance on Subcontractors, and all on site management, administration, supervision and attendance for Defects Liability Work; and
- (b) all on site furniture, equipment, hardware, software (including any web based document management system) and consumables required for the on site management, administration, supervision or attendance of work under the Contract, including the provision and maintenance of site safety equipment, clothing and related items required for the Contractor's personnel and visitors to the Site;

but excluding Construction Work and any items or work the subject of the Management Fee, Consultants Fee or Off Site Overheads and Profit Fee;

On Site Overheads Fee means:

- (a) for Stage One, the portion of the lump sum amount, inclusive of GST, contained in the Contractor's Tender as the On Site Overheads Fee that represents the value of Construction Work performed as Early Works;
- (b) for the purposes of calculating the Contract Sum pursuant to Clause 11.1.2, the lump sum amount, inclusive of GST, contained in the Contractor's Tender as the On Site Overheads Fee;

for all costs associated with On Site Overheads, inclusive of salaries, wages, allowances, on-costs, benefits, bonuses, lodgings, travelling expenses, vehicles, phones and any other expenses associated

with the Contractor's on site management, administrative, supervisory and attending personnel, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the On Site Overheads Fee;

person includes an individual and a corporation;

Practical Completion is that stage in the execution of the work under the Contract when:

- (a) the Works are complete without any omission or defect, except for omissions or defects not known at the time;
- (b) those tests which are required by the Contract to be carried out and passed or satisfied before the Works can be regarded as having reached the stage of Practical Completion, have been carried out and passed or satisfied;
- (c) all specific requirements for Practical Completion set out in the Project Brief or the Stage Two Project Brief, have been fully satisfied;
- (d) documents and other information required under the Contract which, in the opinion of the Principal's Representative, are essential for the use, operation and maintenance of the Works have been supplied to the Principal's Representative; and
- (e) all other necessary permits, registrations, approvals, certifications, consents, or licences have been provided to the Principal's Representative;

Preferred Subcontractor means a Subcontractor, supplier or Consultant listed in the Annexure for a specified trade or class of work to be subcontracted;

Prepayment means the amount (if any) stated in the Annexure to be advanced by the Principal in accordance with Clause 57.15.

Prequalified Subcontractor means a subcontractor who, at the time of entering into a Subcontract, is registered on the whole-of-Government Prequalification (PQC) System for the PQC Rating and Registration Category relevant to the proposed Subcontract;

Principal means the person stated in the Annexure as the Principal;

Principal's Representative means the person stated in the Annexure as the Principal's Representative or other person from time to time appointed in writing by the Principal to be the Principal's Representative and notified as such in writing to the Contractor by the Principal and, so far as concerns the functions exercisable by a Site Representative, includes a Site Representative;

Program means a program for the purposes of Clause 45.1;

Project Advisory Group and **PAG** have the meanings given to them in Clause 13;

Project Brief means the document provided by the Principal in the Tender Documents which describes and informs the Principal's requirements for the work under the Contract including, without limitation the performance, scope, quality, functional and technical requirements of the Works;

Project Cost Estimate means the Principal's project cost estimate stated in the Annexure, or as revised by the Principal and advised to the Contractor in writing;

Provisional Delay Allowance means the allowance provided for in Clause 50;

Provisional Sum has the meaning given to it in Clause 57.8;

Queensland Procurement Policy means the Queensland Government policy titled "Queensland Procurement Policy" or any policy which replaces that policy from time to time;

QGP Compliance Branch means the State of Queensland's Queensland Government Procurement Compliance Branch within the Department of Housing and Public Works;

Site means the land or places to be made available to the Contractor and any other land or places made available by the Principal for the purpose of the Contract;

Site Representative means a person appointed in writing by the Principal's Representative under Clause 36;

Stage One means the stage during which the Contractor produces a Stage Two Offer pursuant to Clause 11.1 and Schedule 14, and during which the Contractor may undertake Design Work, Documentation Work and Early Works in accordance with the Contract, including without limitation the activities specified in Schedule 15;

Stage Two means, if a notice is given under Clause 11.3.1(a), the stage commencing on the date upon which that notice is given, during which Construction Work and all remaining Design Work, Documentation Work and any other work under the Contract not completed during Stage One is performed by the Contractor;

Stage Two Offer means the Stage Two offer to be submitted by the Contractor during Stage One, in accordance with the requirements set out in Clause 11.1 and Schedule 14;

Stage Two Project Brief means the revised Project Brief to be submitted as part of the Stage Two Offer, and where the Stage Two Offer is accepted and Stage Two proceeds, means the Stage Two Project Brief that is accepted by the Principal;

Statutory Requirements includes:

- (a) Acts of the Commonwealth;
- (b) Acts of the State or Territory in which the work under the Contract or any part thereof is carried out;
- (c) ordinances, regulations, by laws, orders and proclamations under the Acts referred to in paragraphs (a) and (b) above;
- (d) principles of common law and equity established by decisions of courts;
- (e) Approvals (including the conditions or requirements, if any, of those Approvals); and
- (f) directions affecting the work under the Contract given by persons acting in the exercise of statutory powers enabling them to give such directions, including the Building Certifier;

Subcontract means a subcontract under Clause 21;

Subcontract Tender Documentation means the documentation required to be prepared by the Contractor to enable the Contractor to call tenders and enter into Subcontracts with proposed Subcontractors to construct and complete the Works;

Subcontractor means a person engaged by the Contractor to perform any part of the Construction Work;

Subcontractors' Charge means a charge on moneys payable by the Principal to the Contractor under the Contract arising by operation of the BIF Act;

Supplier Code of Conduct means the Queensland Government Code titled "Queensland Government Supplier Code of Conduct" or any code that replaces that code;

Survey Mark means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking, or measuring work under the Contract;

Temporary Works means works used in the execution of the work under the Contract but not forming part of the Works;

Tender Documents means:

- (a) the Invitation to Tender;
- (b) the Tender Form;
- (c) Volume 1 of 4 – Tender Requirements;
- (d) Volume 2 of 4 – Conditions of Contract;

- (e) Volume 3 of 4 – Conditions of Contract – Schedules;
- (f) Volume 4 of 4 – Project Brief;
- (g) Australian Standard® Code of Tendering (AS4120-1994), as amended by the Conditions of Tender;
- (h) any documents or parts of documents expressly referred to in the Tender Documents; and
- (i) any other document provided to the Contractor by or on behalf of the Principal for the purpose of tendering;

Variation means any of the matters specified in Clauses 19.1.1 or 53.1, which the Principal's Representative may direct the Contractor to do pursuant to Clauses 19 or 53;

work under the Contract means all work and activities which the Contractor is or may be required to undertake or manage to comply with its Contract obligations;

Working Day has the meaning given to it by Clause 44;

Working Hours has the meaning given to it by Clause 44;

Works means the whole of the work to be executed in accordance with the Contract, including Variations provided for by the Contract, which by the Contract is to be handed over to the Principal or a nominee of the Principal.

2.2 General

- 2.2.1 In addition to these definitions, some terms, specific to a clause, are defined in that clause.
- 2.2.2 The clause headings in the Contract shall not form part of the Contract and shall not be used in the interpretation of the Contract.
- 2.2.3 Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender.
- 2.2.4 If any part of this Contract is or becomes illegal, invalid, or unenforceable, the legality, validity or enforceability of the remainder of the Contract will not be affected and the Contract will read as if the part had been deleted.
- 2.2.5 Except where the context otherwise requires, references to the Annexure shall be read as reference to the Annexure to these Conditions of Contract – Volume 2 references to Schedules shall be read as reference to the Schedules to the Conditions of Contract – Volume 3 and references to a Clause shall be read as reference to a Clause in these Conditions of Contract.

3. NATURE AND SCOPE OF CONTRACT

Guide note: *Delete this guide note*

This clause sets out the basic structure of this Contract. To promote value engineering and forward planning for project delivery, this contract is split into two stages. Stage One is the planning phase, during which the selected Contractor will work with the Principal to finalise the whole or part of the design, a detailed project brief, and a fixed price (based on the pricing parameters submitted by the Contractor in its tender) in order to prepare a Stage 2 Offer. If the Principal accepts that offer, Stage Two will form part of the Contract. Stage Two is the works phase during which the Contractor will complete the project. This two stage approach is designed to optimise the design and construction solution and associated pricing.

- 3.1 The Principal engages the Contractor to execute and complete the work required during Stage One.
- 3.2 If the Annexure indicates that the Best Practice Principles apply:
 - (a) the Contractor must uphold any commitments in relation to the Best Practice Principles made in the Contractor's Tender when executing and completing the work under the Contract and must ensure

that Subcontractors uphold commitments in relation to the Best Practice Principles in their tenders; and

- (b) if the Principal is not satisfied, in its absolute discretion, that the Contractor has implemented the commitments set out in the Contractor's Tender for the Best Practice Principles by the date specified in the Contractor's Tender, or if no date is specified within a reasonable time, then the Principal may, by written notice to the Contractor, terminate the Contract. If the Principal terminates the Contract under this Clause, Clauses 60.2.2 to 60.2.6 shall apply as if the termination had been made under Clause 60.2.1.
- 3.3 If the Principal accepts the Contractor's Stage Two Offer pursuant to Clause 11.3.1(a), the Principal shall engage the Contractor to execute and complete the work required during Stage Two.
- 3.4 For the avoidance of doubt and notwithstanding any other provision of this Contract, there shall be no contract in existence between the parties in respect of Stage Two unless and until the Principal accepts the Contractor's Stage Two Offer pursuant to Clause 11.3.1(a).
- 3.5 The Contractor shall execute and complete the work under the Contract.
- 3.6 Without limiting the generality of the Contractor's responsibilities, the Contractor:
- (a) shall ensure that the work under the Contract progresses to completion in accordance with the Contract;
 - (b) is responsible for (and without limitation shall control, coordinate, administer and direct) all activities for the planning of the work under the Contract with proper skill, care and diligence; and
 - (c) acknowledges that the work under the Contract includes:
 - (i) all work specifically referred to in or contemplated by the Contract;
 - (ii) all work and items necessary to achieve the effective and efficient use and operation of the Works;
 - (iii) all work and items necessary for the Works to be fit for the purposes required by the Contract; and
 - (iv) all work and items reasonably inferred from the documents forming the Contract as necessary to complete the Works properly and to properly perform the other obligations of the Contractor under the Contract.
- 3.7 Subject to the provisions of this Contract, the Principal shall pay the Contractor:
- (a) if the Principal accepts the Contractor's Stage Two Offer pursuant to Clause 11.3.1(a) of the Contract, the Contract Sum, as adjusted in accordance with the provisions of the Contract expressly allowing for an adjustment to the Contract Sum; or
 - (b) if the Principal rejects the Contractor's Stage Two Offer pursuant to Clause 11.3.1(b) of the Contract, the sum of:
 - (i) the Management Fee for Stage One;
 - (ii) the Consultants Fee for Stage One;
 - (iii) the On Site Overheads Fee for Stage One;
 - (iv) the Off Site Overheads and Profit Fee for Stage One; and
 - (v) the Early Works Sum;
- as those terms are defined in Clause 2.1, provided that the amount calculated under this Clause 3.7(b) shall not exceed the Project Cost Estimate.

4. EVIDENCE OF CONTRACT

- 4.1 Until a Formal Instrument of Agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the Contract.

Guide note: Delete this guide note

The Contract is formed by the Principal sending a letter of acceptance of tender to the Contractor, unless the Principal expressly states, in the letter of acceptance of tender or other document given to the Contractor before the letter of acceptance of tender, that no contract is formed until a formal instrument of agreement is executed. The formal instrument of agreement is contained in Schedule 12, and includes certain details to be completed after the close of tenders. When the Contract is formed, only Stage One forms part of the work required under the Contract until the Stage Two Offer is accepted.

- 4.2 Within 10 business days after receiving the Formal Instrument of Agreement in duplicate from the Principal, the Contractor shall (if they are correct) properly execute both copies and return them. Within 10 business days after receiving them, the Principal shall execute both copies and send one copy to the Contractor.
- 4.3 The Principal's Representative may extend the time under Clause 4.2 by written notice to the parties.
- 4.4 The Formal Instrument of Agreement shall be a Deed in the form in Schedule 12.
- 4.5 If any party to this Contract consists of one or more persons this Contract shall bind such persons and their respective executors, administrators, successors (in the case of the Contractor) and permitted assigns (in the case of the Principal) jointly and severally and this Contract must be read and construed accordingly.

5. CONTRACT DOCUMENTS

Guide note: Delete this guide note

The documents which make up the Contract are expressly set out in clause 6 of the formal instrument of agreement contained in Schedule 12.

- 5.1 The several documents forming the Contract are to be taken as mutually explanatory of one another.
- 5.2 If there is any ambiguity, discrepancy, or inconsistency in or between the documents comprising the Contract, the documents shall rank in order of precedence set out in the Formal Instrument of Agreement.
- 5.3 The Developed Design will comply in all respects with the Stage Two Project Brief, provided that:
- (a) if there is an ambiguity or inconsistency between any standard required by the Stage Two Project Brief, then the standard to be achieved shall be the higher of the standards prescribed; and
 - (b) if the Stage Two Project Brief does not specify the standard of workmanship, material, finish, or any other aspect of the Works then the standard of such workmanship, material, finish, or other aspect shall be fit for its intended purpose.
- 5.4 The Construction Documentation will comply in all respects with the Developed Design as varied from time to time pursuant to the terms of the Contract provided that:
- (a) if there is an ambiguity or inconsistency between any standard required by the Developed Design, then the standard to be achieved shall be the higher of the standards prescribed; and
 - (b) if the Developed Design does not specify the standard of workmanship, material, finish, or any other aspect of the Works then the standard of such workmanship, material, finish, or other aspect shall be fit for its intended purpose.

- 5.5 The Construction Work will comply in all respects with the Construction Documentation as varied from time to time pursuant to the terms of the Contract provided that:
- (a) if there is an ambiguity or inconsistency between any standard required by the Construction Documentation, then the standard to be achieved shall be in accordance with the Developed Design; and
 - (b) if the Construction Documentation does not specify the standard of workmanship, material, finish, or any other aspect of the Works then the standard of such workmanship, material, finish, or other aspect shall be fit for its intended purpose.
- 5.6 Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.
- 5.7 No rule of construction shall apply to the disadvantage of one party on the basis that that party put forward the documents comprising the Contract or any of them.
- 5.8 The party discovering an alleged ambiguity, discrepancy or inconsistency shall notify the Principal's Representative in writing of the ambiguity, discrepancy or inconsistency within 10 business days of the party becoming aware of the ambiguity, discrepancy or inconsistency, who shall then direct the Contractor in writing as to the interpretation to be followed by the Contractor in carrying out the work.
- 5.9 The Contractor shall, at the Contractor's own cost and expense comply with any direction given to the Contractor by the Principal's Representative under this Clause 5.
- 5.10 The Contractor acknowledges that it assumes the risk of all delays and increased costs, losses and expenses caused by or resulting from any such ambiguity, discrepancy or inconsistency and that any direction given pursuant to this Clause 5 shall in no event, constitute an approved Variation and the Contractor shall not be entitled to:
- (a) reimbursement or monetary compensation whether for damages for breach of contract or otherwise in respect of the direction or any such ambiguity, discrepancy, and inconsistency; or
 - (b) adjustment to:
 - (i) during Stage One;
 - (A) the Management Fee;
 - (B) the Consultants Fee;
 - (C) the On Site Overhead Fee;
 - (D) the Off Site Overheads and Profit Fee; or
 - (E) Early Works Sum;
 - (F) the Project Cost Estimate; or
 - (ii) during Stage Two, the Contract Sum.

6. COLLUSIVE ARRANGEMENTS, CONFLICT OF INTEREST AND CRIMINAL ORGANISATIONS

- 6.1 For the purposes of this Clause 6:

Personnel means officers, directors, employees, agents, Consultants and Subcontractors;

Conflict of Interest includes any actual, reasonably anticipated, or perceived conflict of interest whether personal, financial, professional, or otherwise.

- 6.2 The Contractor warrants and represents to the Principal that:

- (a) it had no knowledge of the tender price of any other tenderer, nor did it communicate with any other tenderer in relation to its tender price, or a price above or below which a tenderer may tender (excluding any pricing advised by the Principal), nor had it entered into any contract, arrangement or

understanding with another tenderer to the effect that the Contractor or another tenderer would tender a non-competitive price, for the work under the Contract, at the time of submission of the Contractor's Tender;

- (b) except as disclosed in the Contractor's Tender, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade, industry or other association (above the published standard fee) relating in any way to the Contractor's Tender or this Contract, nor paid or allowed any such money, nor will it pay or allow any such money; and
 - (c) except by prior agreement with the Principal, it has not paid or allowed any money or entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to or on behalf of any other tenderer for the work under the Contract, nor received any money or allowance from or on behalf of any other tenderer relating in any way to the Contractor's Tender or this Contract, nor will it pay or allow or receive any money as aforesaid.
- 6.3 In the event of the Contractor paying or allowing any money in breach of this Clause 6, the Principal may deduct from payments to the Contractor an equivalent sum as an amount due from the Contractor to the Principal, in addition to any other claim, demand, action or proceeding the Principal may have against the Contractor (whether for damages or otherwise).
- 6.4 Without limitation, if the Contractor commits a breach of this Clause 6, the Principal may at its discretion terminate the Contract and claim damages for breach of contract.
- 6.5 The Contractor warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated tender or any actual or potential contract with any entity for the Works.
- 6.6 The Contractor warrants that it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under this Contract, except as disclosed. If the Principal requests, the Contractor must obtain from its Personnel a signed Conflict of Interest declaration in a form acceptable to the Principal.
- 6.7 The Contractor warrants that neither it nor its Personnel have been convicted of an offence where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 1601P of the *Penalties and Sentences Act 1992* (Qld).
- 6.8 The warranties in this Clause 6 are provided as at the date of the Contract and on an ongoing basis. The Contractor warrants that it will immediately notify the Principal if it becomes aware that any warranty made in this Clause 6 was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way. In addition to any other remedies available to it under law or contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has breached any warranty in this Clause 6.

7. COMMITMENT AND COOPERATION

Guide note: *Delete this guide note*

This clause sets out the basic principles that govern the parties' relationship over the life of the project, including to work together in a co-operative and collaborative manner, have open and honest communication, continually innovate, establish clear roles and responsibilities and build an environment that fosters a best for project approach.

7.1 Commitment

The parties are committed to working together in a cooperative and collaborative manner with a view to:

- (a) encouraging cooperation and innovation;
- (b) establishing and maintaining an environment which encourages honest, open, and timely sharing of information; and

- (c) sharing and transferring such behavioural aspects to all persons associated with the work under the Contract to achieve a successful outcome in all respects.

7.2 Cooperation

Guide note: Delete this guide note

Although the parties have different responsibilities, co-operation is a key element of the Contract.

- 7.2.1 The parties must do all they reasonably can to cooperate in all matters relating to the Contract, but their rights and responsibilities under the Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.
- 7.2.2 Each party must do all it reasonably can to avoid hindering the performance of the other under the Contract.

7.3 Start-up workshop

Guide note: Delete this guide note

The start-up workshop is held to encourage the parties to work co-operatively towards achieving a successful Contract. The workshop provides the opportunity for both parties to commit to effective contract management, including by discussing the Contractor's management plans & Contract Program. Start-up workshop guidance material is provided at Schedule 1 (which does not form part of the Contract).

- 7.3.1 The Principal's Representative may convene a start-up workshop within 28 days after the Date of Acceptance of Tender or such other period as the parties agree.
- 7.3.2 The parties must attend the start-up workshop and must jointly decide who else will attend. Participants in the workshop must meet their own costs for attendance, and the parties must share equally the other costs.
- 7.3.3 The objective of the start-up workshop is to promote a culture of co-operation and teamwork for the management of the Contract. The parties agree to conduct the workshop collaboratively so as to achieve this objective.

8. QUALITY ASSURANCE

- 8.1 The Contractor shall establish, implement and maintain a quality plan to the satisfaction of the Principal which shall comply with ISO 9001:2008.
- 8.2 The Contractor shall ensure that all provisions for quality assurance apply equally to all Consultants and Subcontractors engaged by the Contractor.
- 8.3 Within 10 business days after the Date of Acceptance of Tender the Contractor shall submit to the Principal's Representative for approval, the Contractor's quality plan including as minimum:
 - (a) identification and definition of the key activities and deliverables from the Contractor's Tender;
 - (b) identification of how the Contractor proposes to deliver the activities/deliverables in Clause 8.3(a) including what internal controls, methodology and procedures the Contractor is to utilise to complete the deliverables in Clause 8.3(a) and a sample of the Contractor's procedures;
 - (c) identification of how the Contractor is to verify its deliverables in Clause 8.3(a) and a sample of the Contractor's verification plan; and
 - (d) identification of review and agreement of quality assurance records that the Contractor is to provide to the Principal confirming compliance to the Contractor's Tender.

- 8.4 The Contractor shall comply with directions by the Principal's Representative to change the Contractor's quality assurance system and quality plan to provide assurance of satisfactory compliance to the documents.
- 8.5 The Contractor shall participate in and allow reasonable access to the Principal's agents to audit the Contractor's quality assurance program and quality plan. Verification by the Principal's agents shall not relieve the Contractor of any of the Contractor's liabilities and obligations under the Contract.

9. SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

Guide note: Delete this guide note

The Contractor is required to provide security to the Principal in the form of retention moneys or an unconditional undertaking provided by financial institutions on the Contractor's behalf. Additional security in the form of an unconditional undertaking or cash may also be provided, if required in the Annexure.

9.1 Purpose

Security, retention moneys and performance undertakings are for the purpose of ensuring the due and proper performance of the Contract and for the purpose of providing security of payment to the Subcontractors of the Contractor.

9.2 Provision of Security

The Contractor shall provide security to the Principal in the amount stated in the Annexure.

9.3 Form of Security

- 9.3.1 All security provided by the Contractor shall be in the form of, as stated in the Annexure or otherwise approved by the Principal, either cash or an approved unconditional undertaking given by an approved financial institution or insurance company. The unconditional undertaking in the form in Schedule 2 is approved.
- 9.3.2 The Principal shall have a discretion to approve or disapprove of the form of unconditional undertaking and the financial institution or insurance company giving it, or other form of security offered.

9.4 Time for Lodgement of Security

Security provided pursuant to Clause 9.2 (other than retention moneys) shall be lodged with the Principal by the Contractor within 10 business days of the Date of Commencement of Stage Two.

9.5 Retention Moneys

From the commencement of Construction Work, if the Annexure states or the Principal otherwise determines that security will be in the form of cash, the Principal may deduct from moneys otherwise due to the Contractor amounts at the rate of 10% of each progress payment up to the limit of the amount stated in the Annexure.

9.6 Subcontract Retentions

Where pursuant to a term in a Subcontract the Contractor withholds any retention money from a payment to a Subcontractor, the Contractor will hold those moneys for the benefit of the Subcontractor, until the retention moneys become payable, in accordance with the terms of the Subcontract, to either:

- (a) the Subcontractor, in which case the moneys shall be paid to the Subcontractor; or
- (b) the Contractor.

9.7 Substitution of Security for Retention Moneys

The Contractor shall be at liberty at any time to provide in lieu of retention moneys, security in any of the forms permitted in Clause 9.3. To the extent that such security is provided, the Principal shall not deduct retention moneys and shall forthwith release retention moneys.

9.8 Additional Security – Unfixed Plant and Materials

Security provided by the Contractor for unfixed plant and materials pursuant to Clause 57.7 shall be:

- (a) subject to the terms of Clauses 9.3 and 9.9; and
- (b) in an amount equal to the payment claimed for the plant or materials.

9.9 Conversion of Security and Recourse to Retention Moneys

The Principal may at any time, convert into money, security and retention moneys that does not consist of money whether or not the Principal is then entitled to exercise a right under the Contract in respect of the security or retention moneys. The Principal shall not be liable in any way for any loss occasioned by the conversion. The Principal may have recourse to security, retention moneys or both including moneys obtained by conversion of security and retention moneys where the Principal has become entitled to exercise a right under the Contract in respect of retention moneys or security, an amount is owing from the Contractor to Principal under the Contract or the Principal is otherwise entitled at law to have recourse to such moneys or security.

9.10 Reduction of Security and Retention Moneys

- 9.10.1 Subject to Clause 9.9, upon issue of the Certificate of Practical Completion, the Principal's entitlement to security and retention moneys shall be reduced to the amount or percentage thereof stated in the Annexure or, if no amount or percentage is stated, to 50% thereof.

9.11 Release of Security

- 9.11.1 Where the Contractor has provided additional security pursuant to Clause 57.7, the Principal shall release that additional security within 10 business days of the certification by the Principal's Representative of:
 - (a) the incorporation into the Works of the unfixed plant or materials in respect of which the additional security was furnished; and
 - (b) that such unfixed plant or materials are in accordance with the terms of the Contract.
- 9.11.2 Subject to the Principal's rights to set-off under Clause 57.14 and to have recourse to cash security or retention moneys under Clause 9.9, and subject to Clause 9.11.3, the Principal shall release security or retention moneys provided by the Contractor pursuant to Clause 9.2 or 9.7, or so much as may remain after the application of Clause 9.10, within 20 business days of the later of:
 - (a) the requirement to do so by Clauses 60.1 and 60.2; or
 - (b) the date which is 12 months after the Date of Practical Completion for all of the Works.
- 9.11.3 Where there is any claim, adjudication or proceeding commenced pursuant to or in connection with the BIF Act, including proceedings commenced by the Principal to recover an amount the subject of a payment claim pursuant to the BIF Act, the Principal is not obliged to release security or retention moneys until 20 business days after the finalisation of such claim, adjudication or proceeding.

9.12 Interest on Security and Retention Moneys

The Principal shall own any interest earned on retention moneys and security provided pursuant to this Contract.

9.13 Deed of Guarantee and Indemnity

Where the Contractor is a related or subsidiary corporation (as defined in the *Corporations Act 2001* (Cth)) the Contractor shall, within 10 business days after receiving a written request from the Principal, provide a Deed of Guarantee and Indemnity by the corporation to which the Contractor is a related or subsidiary corporation duly executed and enforceable. The form of such Deed of Guarantee and Indemnity shall be that in Schedule 10.

9.14 Early Works Security

- (a) If Early Works forms part of the Contract, the Principal or Principal's Representative may request additional security from the Contractor in connection with the Early Works by providing written notice of the request to the Contractor. The written request must state:
 - (i) the amount of the security to be provided, which must not exceed 5% of the Early Works Sum; and
 - (ii) the form of security required which must be either cash retention or an approved unconditional undertaking given by an approved financial institution or insurance company. The unconditional undertaking in the form in Schedule 2 is approved.
- (b) If additional security is requested in accordance with clause 9.14(a):
 - (i) the Contractor must provide such security (other than retention moneys) within 10 business days of receipt of the request under clause 9.14(a);
 - (ii) clauses 9.5 (if applicable), 9.7 and 9.9 to 9.12 will apply to the security for Early Works; and
 - (iii) if the Principal accepts the Stage Two Offer, any security for Early Works held by the Principal at that time will be retained by the Principal and be deemed to form part of the security required to be lodged by the Contractor (or retained by the Principal) after the Date of Commencement of Stage Two.

10. SERVICE OF NOTICES**10.1 Address**

The Principal, the Contractor and the Principal's Representative and the Contractor's Representative shall each notify the others of a change of address and phone number.

10.2 Service**10.2.1 A notice in connection with the Contract:**

- (a) must be signed by a duly authorised representative of the party giving the notice;
- (b) must be in writing;
- (c) must be:
 - (i) given to the other party by uploading it to Aconex; or
 - (ii) to the extent approved by the Principal in writing:
 - (A) delivered by hand to the address of the addressee contained in the Contract or which is subsequently notified under Clause 10.1; or
 - (B) sent by prepaid ordinary post to the address of the addressee contained in the Contract or which is subsequently notified under Clause 10.1; and
- (d) is deemed to be received:
 - (i) in the case of a notice delivered by hand, upon delivery, except if delivery occurs:
 - (A) after 5pm on a business day; or
 - (B) on a day which is not a business day;in which case delivery will be deemed to have occurred at 9am on the next business day;
 - (ii) in the case of a notice forwarded under Clause 10.2.1(c)(ii)(B), within 5 business days of its posting; and

- (iii) in the case of a notice uploaded to Aconex, when the notice has been uploaded to Aconex by the first party, and the second party receives a notification from Aconex that the notice has been uploaded, except if the notification from Aconex occurs:

- (A) after 5pm on a business day; or
- (B) on a day which is not a business day;

in which case the notice will be deemed to have been received at 9am on the next business day.

- 10.2.2 Unless a later time is specified in it, a notice, approval, consent, or other communication takes effect from the time it is received.
- 10.2.3 Notwithstanding Clause 10.2.1, the Principal's Representative may direct that specified notices or other communication may be effected by specified electronic means such as by email or another document management system. In any such direction, the Principal's Representative must specify when such notices and communications shall be deemed to be received.

Guide note: *Delete this guide note*

This clause sets out the process of making, assessing and accepting or rejecting the Stage Two Offer. Stage Two does not form part of the Contract unless the Stage Two Offer is accepted by the Principal.

11. STAGE TWO OFFER

11.1 Contractor's Stage Two Offer

- 11.1.1 During Stage One of the Contract and within eight (8) weeks of receiving a written request by the Principal, the Contractor shall provide a Stage Two Offer. The Stage Two Offer must meet all the requirements of Schedule 14 and this Clause 11.1.
- 11.1.2 The Contractor's Stage Two Offer shall account for all matters which are or should reasonably be known to the Contractor at the time of providing the Stage Two Offer, and shall provide an all up lump sum total of the following (as defined in Clause 2.1 as being for the purposes of calculating the Contract Sum pursuant to this Clause 11.1.2, where applicable), tendered as the Contract Sum:
 - (a) the cost of Construction Work, including the Early Works Sum;
 - (b) the Management Fee;
 - (c) the Consultants Fee;
 - (d) the On Site Overheads Fee;
 - (e) the Off Site Overheads and Profit Fee;
 - (f) the Provisional Delay Allowance; and
 - (g) any adjustments to which the Contractor claims to be entitled under Clause 11.2 or any other provision of the Contract in respect of:
 - (i) the Management Fee;
 - (ii) the Consultants Fee;
 - (iii) the On Site Overheads Fee; and
 - (iv) the Provisional Delay Allowance;

which must not be greater than the Project Cost Estimate.

- 11.1.3 The Contractor's Stage Two Offer shall set out the basis upon which the Contractor asserts an entitlement to any adjustments referred to in Clause 11.1.2(g).

11.1.4 The Contractor acknowledges and agrees that any documents to be provided as part of the Contractor's Stage Two Offer for information only:

- (a) will not be considered to be part of the Contractor's Stage Two Offer for the purposes of acceptance by the Principal; and
- (b) will not be taken to qualify the Contractor's obligations under the Contract, nor the Contract Sum.

11.1.5 The Contractor further acknowledges and agrees that:

- (a) the Stage Two Offer must include a Stage Two Project Brief in accordance with the requirements of Schedule 14, which requires the Contractor to identify each and every change from the Project Brief to the Stage Two Project Brief, including any omissions from the Project Brief; and
- (b) the Principal will be relying upon the Contractor to comply with its obligation under Schedule 14 to specifically identify each and every change from the Project Brief to the Stage Two Project Brief, including any omission from the Project Brief.

11.1.6 The Contractor's Stage Two Offer shall remain open for acceptance until the Principal notifies the Contractor in writing of the Principal's acceptance or rejection of the Stage Two Offer in accordance with Clause 11.3.1, which shall be given within a reasonable time.

11.1.7 Failure to comply with Clause 11.1 will constitute a substantial breach of contract.

11.2 Adjustment of Fees

11.2.1 If there are changes:

- (a) between the scope of Works contained in the Project Brief and the scope of Works in the Stage Two Project Brief;
- (b) in the scope of the Works caused by a Latent Condition encountered on the Site during Stage One; or
- (c) between the Date for Practical Completion specified in the Annexure and the last day of the period of time for Practical Completion provided in the Contractor's Stage Two Offer;

which result in a material effect on the tendered resources included in the Management Fee, then the Contractor shall be entitled to a reasonable adjustment to the Management Fee, having regard to any applicable rates or prices provided in the costed methodology statement provided with the Contractor's Tender and such amount must be included in the lump sum amount in the Contractor's Stage Two Offer.

11.2.2 If there are changes:

- (a) between the scope of Works contained in the Project Brief and the scope of Works in the Stage Two Project Brief; or
- (b) between the Date for Practical Completion specified in the Annexure and the last day of the period of time for Practical Completion provided in the Contractor's Stage Two Offer;

which result in a material effect on the tendered On Site Overheads, then the Contractor shall be entitled to a reasonable adjustment to the tendered On Site Overheads Fee, having regard to any applicable rates or prices provided in the costed methodology statement provided with the Contractor's Tender and such amount must be included in the lump sum amount in the Contractor's Stage Two Offer.

11.2.3 If there are changes between the scope of Works contained in the Project Brief and the scope of Works in the Stage Two Project Brief, which result in an increase or decrease to the work to be performed by, and fees payable to, one or more of the Consultants listed in the Contractor's Tender Form, then the Contractor shall be entitled to a reasonable adjustment to the tendered Consultants Fee, having regard to the terms of the contract between the Contractor and the Consultant and such amount must be included in the lump sum amount in the Contractor's Stage Two Offer.

11.2.4 If there are changes between the scope of Works contained in the Project Brief and the scope of Works in the Stage Two Project Brief which result in a material effect on the tendered Provisional Delay Allowance, then the Contractor shall be entitled to a reasonable adjustment to the applicable rate or rates contained in

the Contractor's Tender in relation to the Provisional Delay Allowance, only to the extent of the material effect of any increase or decrease in the scope of Works between the Project Brief and the Stage Two Project Brief and such amount must be included in the lump sum amount in the Contractor's Stage Two Offer.

11.3 Principal's Options

- 11.3.1 The Principal shall not be bound to accept the Contractor's Stage Two Offer but shall, at its sole discretion and without obligation to act reasonably, be free to:
- (a) accept the Contractor's Stage Two Offer, in which case the Contract Sum calculated in accordance with Clause 11.1.2 and included in the Contractor's Stage Two Offer shall become the lump sum amount for the Contract Sum under the Contract; or
 - (b) reject the Contractor's Stage Two Offer.
- 11.3.2 If the Contractor's Stage Two Offer is rejected by the Principal, the Contractor will have no further entitlement or remedy, other than for payment of any outstanding amount by the Principal for the work under the Contract in respect of Stage One, calculated in accordance with Clause 3.7(b).

12. WARRANTIES

12.1 Contractor's Warranties

- 12.1.1 The Contractor warrants that at all times the Contractor shall be suitably qualified and experienced and shall exercise due skill, care and diligence in the execution and completion of the work under the Contract.
- 12.1.2 The Contractor further warrants to the Principal the following:
- (a) in submitting the Stage Two Offer, the Contractor warrants that it has investigated and satisfied itself of the adequacy and suitability of the Stage Two Project Brief and the Contract to enable the Contractor to perform all the work under the Contract without limitation in accordance with the Contract. In particular, the Contractor warrants the sufficiency of the Contract Sum;
 - (b) those things referred to in Clause 6;
 - (c) the warranties pursuant to Clause 21.4;
 - (d) the Contractor has assessed the potential for delays, disruption, suspension and extra costs in the performance of the work under the Contract from any cause associated with noise, dust and other nuisances, the presence of other contracts that are notified by the Principal to the Contractor before the time of submission of the Stage Two Offer, and the use of the premises in which the Site is located and has made due allowance in its Stage Two Offer and will not claim any extra amount or extension of time from the Principal due to compliance with Clause 25;
 - (e) the Contractor shall perform all duties and act in good faith;
 - (f) in respect of Design Work:
 - (i) in carrying out Design Work, the Contractor will exercise the degree of skill, care and diligence expected of a skilled and competent design professional, who regularly acts in the capacity in which the Contractor is engaged;
 - (ii) the Contractor will prepare the Developed Design in accordance with the Stage Two Project Brief and other requirements of the Contract so that the Developed Design will be suitable, appropriate, and adequate:
 - (A) for the purpose stated in the Stage Two Project Brief; and
 - (B) to produce an end product that meets the requirements of the Stage Two Project Brief;
- having regard to the assumptions that the Contractor can be reasonably expected to make in accordance with sound professional principles;

- (iii) in preparing the Developed Design, the Contractor will not depart from the design included in the Design Work submitted as part of the Stage Two Offer, except:
 - (A) to the extent necessary to comply with the Contractor's obligations under the Contract in respect of the Design Work; and
 - (B) provided such departures will not adversely affect the construction, operation or maintenance of the Works; and
- (iv) where the Contractor changes the Project Brief in accordance with Clause 19.2, such changes will not, without limitation, affect the suitability for purpose of the Developed Design;
- (g) Subject to Stage Two proceeding, in respect of Documentation Work:
 - (i) in carrying out Documentation Work, the Contractor will exercise a degree of skill, care and diligence expected of a skilled and competent design professional who regularly acts in the capacity in which the Contractor is engaged;
 - (ii) the Contractor will complete all Documentation Work in accordance with the Developed Design and the requirements of the Contract so that the Construction Documentation will be suitable, appropriate, and adequate:
 - (A) for the purpose stated in the Stage Two Project Brief; and
 - (B) to produce an end product that meets the requirements of the Stage Two Project Brief;having regard to the assumptions that the Contractor can be reasonably expected to make in accordance with sound professional principles;
- (iii) the Contractor will not modify the Developed Design except insofar as it is necessary to overcome any ambiguity or discrepancy in accordance with Clause 5; and
- (iv) the Contractor has sufficient design resources (including Consultants) to maintain efficient and timely production of all Construction Documentation;
- (h) Subject to Stage Two proceeding, in respect of Construction Work:
 - (i) Construction Work and the Works when constructed will be in accordance with the Construction Documentation, all other requirements of the Contract and the requirements of all statutory authorities;
 - (ii) the Construction Work will comply with any relevant standards of Standards Australia or the Contract, and if more than one, the highest such standard;
 - (iii) if the Construction Documentation does not specify the standard of workmanship, material, finish or any other aspect of the Works then the standard of such workmanship, material, finish, or other aspect will be in accordance with the Developed Design, and will be fit for their intended purpose as described in the Stage Two Project Brief and consistent with the nature and character of the Works; and
 - (iv) all Construction Work and the Works when completed will be free from defects and fit for their intended purpose as described in the Stage Two Project Brief.

12.2 Warranties and Indemnities Unaffected

The Contractor acknowledges that all warranties and indemnities given under the Contract will remain unaffected notwithstanding:

- (a) any advice, review, comment, approval or direction by the Principal, the Principal's Representative, or the employees, consultants, or agents of the Principal in respect of:
 - (i) any matter which the Contractor has an obligation under the Contract to undertake its own investigations; and
 - (ii) Design Work, Documentation Work or Construction Work produced by the Contractor;

- (b) subject to Clause 53.2.4, any Variation under Clause 53;
- (c) any modifications to the Project Brief pursuant to Clause 19; and
- (d) that the Contractor engages any Subcontractor or any Consultant in connection with any of the work under the Contract (whether with or without the consent of the Principal).

12.3 Principal's Reliance on Warranties

The Contractor acknowledges that the Principal has entered into the Contract in reliance upon the warranties set out in the Contract.

12.4 Subcontractor Warranties

12.4.1 The Contractor shall procure a warranty for:

- (a) each trade, item or package of work listed in Schedule 3;
- (b) or if none are listed in Schedule 3, shall request from the Principal during Stage One trades, items or packages of work that require warranties,

which are to form part of the Works from the relevant Subcontractor, Consultant supplier or manufacturer and give an executed copy to the Principal's Representative. The warranty shall be in the form in Schedule 3.

12.4.2 The warranties which are required by the preceding paragraph shall not be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the Contractor, whether under the Contract or otherwise in respect of the materials, goods, plant and equipment the subject of a warranty, and the Contractor must discharge the Contractor's obligations under the Contract in relation to any defective work in respect of materials or goods for which such a warranty has been obtained, despite the Principal having the benefit of the warranty.

12.4.3 If requested by the Contractor, the Principal's Representative may issue a direction under Clause 53.3 varying the terms of a warranty to be obtained from a supplier or manufacturer under Clause 12.4.1.

12.4.4 When deciding whether a variation referred to in Clause 12.4.3 should be issued, the Principal's Representative shall take into account:

- (a) the quantum of any additional amount required by a supplier or manufacturer as consideration for providing a warranty in terms of Schedule 3;
- (b) whether an alternative supplier or manufacturer would be prepared to provide a warranty in those terms;
- (c) whether the Contractor has used its best endeavours to obtain a warranty in those terms from the manufacturer or supplier; and
- (d) whether the supplier or manufacturer is not prepared to provide a warranty in the form in Schedule 3 but is prepared to provide a warranty which is generally representative of warranties commercially available for the relevant item.

12.4.5 Without limiting the obligations of the Contractor under the Contract, during the currency of the warranties referred to in this Clause 12.4, the Contractor must, at its own cost:

- (a) if required by the Principal, arrange and coordinate any necessary inspections, tests, replacements or rectification work under such warranties; and
- (b) assist the Principal in the pursuit of any warranty claims.

12.4.6 The Principal's Representative may at any time by notice in writing to the Contractor direct that a performance trial or trials be carried out to verify that the Works or any part of the Works (as the case requires) complies with a performance warranty or specification. Such performance trial or trials shall thereafter be carried out in accordance with Clause 43 as soon as practicable.

- 12.4.7 Performance trials shall be carried out in accordance with the relevant Australian Standard or, if there is no relevant Australian or overseas standard, in accordance with the recognised industry practice. The Contractor shall supply all equipment and suitably qualified and experienced technical staff necessary to conduct the performance trials.
- 12.4.8 The cost of all performance trials shall be borne in accordance with Clause 43.7.
- 12.4.9 In the event that any performance trial shows that the Works or any part of the Works fails to comply with the performance warranty or specification, the Contractor shall at the Contractor's own expense arrange for such modifications or additional work as may be necessary to enable the Works to comply with the performance warranty or specification and conduct a further formal performance trial to verify that the Works or such relevant part of the Works complies with that performance warranty and/or specification. The cost of this and any subsequent performance trials necessary to verify that the Works comply with the performance warranty or specification shall be borne by the Contractor.

13. PROJECT ADVISORY GROUP

Guide note: Delete this guide note

A Project Advisory Group ('PAG') will be established to evaluate and monitor the project as it proceeds. The PAG is responsible for oversight of the project, and should be used by the parties to identify and wherever possible overcome issues as and when they arise. The PAG is an important tool, but does not relieve the Contractor, as an experienced professional in project delivery and management, from any of its obligations under the Contract.

13.1 Establishment, Duration and Purpose

- 13.1.1 Within 5 business days after the Date of Acceptance of Tender, a Project Advisory Group ('PAG') shall be established.
- 13.1.2 The PAG shall monitor, decide, and advise on all aspects of the work under the Contract.
- 13.1.3 The first meeting of the PAG shall be convened by the Principal's Representative within 10 business days of the Date of Acceptance of Tender and thereafter meetings shall be held at least once during each month provided that special meetings shall be convened at the request of either party.
- 13.1.4 The PAG shall operate until the issue of the Final Certificate under Clause 57.12 or such other time determined by the Principal's Representative.

13.2 Membership

- 13.2.1 The Principal and the Contractor shall be entitled to have a representation on the PAG as stated in the Annexure. The Principal's Representative shall be one of the Principal's delegates. The Contractor's Representative shall be one of the Contractor's delegates.
- 13.2.2 Each party shall by notice in writing advise the other party of the names, addresses, telephone numbers and email addresses of its delegates.
- 13.2.3 The Chairperson may, at the request of either party, include as attendees of PAG meetings, representatives of Consultants and Subcontractors involved as well as other individuals who may be able to assist the PAG in the performance of its functions.
- 13.2.4 The Chairperson may, at the request of any delegate to the PAG and at the cost of that delegate, call upon any person for a report or other advice to assist the PAG in the PAG's deliberations.
- 13.2.5 The Principal may in the Principal's discretion require each delegate to the PAG to execute a warranty that each delegate to the PAG shall perform all duties and act in good faith as defined in Clause 7.

13.3 Meetings

- 13.3.1 A quorum for the PAG shall be the Principal's Representative and the Contractor's Representative.

13.3.2 The Principal's Representative shall determine the agenda, chair, take and distribute minutes of the first meeting of the PAG. Thereafter the Contractor's Representative shall determine the agenda, chair, take and distribute minutes of all meetings of the PAG.

13.3.3 Agenda items shall include reviews of:

- (a) the Contractor's activities;
- (b) the Principal's duties;
- (c) programming and in particular programming for the period until the next meeting of the PAG;
- (d) budgeting and costs including where applicable the most recently submitted cost plan report created by the Contractor in accordance with Schedule 15;
- (e) quality;
- (f) safety;
- (g) the Design Work undertaken by the Contractor and any Design Documents submitted to the Principal's Representative for review;
- (h) Variations which in the opinion of the Contractor require cost adjustments; and
- (i) any other items identified by the Principal's Representative or the Contractor's Representative.

13.3.4 The Chairperson of each meeting of the PAG shall provide to the Principal and the Contractor a written report within 2 business days after each PAG meeting.

13.4 Decisions of the PAG

All matters arising at a meeting of the PAG shall be determined by unanimous agreement of the PAG delegates. If the delegates cannot reach unanimous agreement on any matter it shall be decided by the Principal's Representative.

13.5 Contractor's Reports

13.5.1 Within 5 business days of the end of each month, the Contractor shall provide to the Principal's Representative a report for consideration by the PAG.

13.5.2 This report shall be in a format and to a level of detail agreed to by the Principal's Representative and without limitation contain:

- (a) procedural matters/outstanding action;
- (b) Consultant's design and documentation reports including test results and statements advising of any departures from the Project Brief or Stage Two Project Brief;
- (c) construction report, which shall include statements from Consultants advising of any departures from the Stage Two Project Brief;
- (d) financial report;
- (e) program report including potential causes of delay;
- (f) key issues;
- (g) general business;
- (h) instructions or advices given to the Contractor as these relate to non-conformance issues; and
- (i) defects lists;

and have appended to it:

- (j) site inspection reports;
- (k) program detail;

- (l) minutes of previous PAG meeting;
- (m) the original of all Consultants reports;
- (n) Non Conformance Register;
- (o) photographs showing the status of Site;
- (p) the Contractor's cost plan report considered at the previous meeting of the PAG and any subsequent cost plan reports the Contractor has been required to create in accordance with Schedule 15; and
- (q) any other matters requested by the Principal's Representative from time to time.

14. DESIGN WORK

Guide note: Delete this guide note

This Contract can be used to engage contractors at any stage of the design. This Contract recognises that design will always form part of any Works. The level of design required to be completed by the Contractor will be specified in the Stage One and Stage Two Project Briefs.

The Contractor shall, with skill, care, and diligence:

- (a) in undertaking the Design Work, consider reasonable options and alternatives which satisfy the requirements of the Stage Two Project Brief or, during Stage One the Project Brief, and present the Contractor's preferred design solution to the Principal's Representative in a timely manner;
- (b) produce the Developed Design:
 - (i) in accordance with the Stage Two Project Brief; and
 - (ii) so that work under the Contract can be completed by the Date for Practical Completion;
- (c) obtain the Principal's Representative's written acceptance to proceed with the Developed Design;
- (d) manage the Consultants in the production of the Developed Design; and
- (e) decide on the manner in which the Construction Work should be divided into packages for the purpose of facilitating the calling of Subcontract tenders.

15. DOCUMENTATION WORK

The Contractor shall, with skill, care, and diligence:

- (a) produce the Construction Documentation in accordance with the Developed Design so that the Construction Documentation will be fit for its intended purpose in all respects;
- (b) manage the Consultants in the production of the Construction Documentation;
- (c) not modify the Construction Documentation except insofar as it is necessary to overcome any ambiguity or discrepancy in accordance with Clause 5; and
- (d) decide and advise the Principal on the manner in which the Construction Work will be divided into Construction Documentation.

16. CONSTRUCTION WORK

16.1 Completion of the Works

The Contractor shall, with skill, care and diligence construct and complete the whole of the work under the Contract in accordance with the Contract and without restricting the generality of the foregoing the Contractor shall:

- (a) construct the Works in accordance with the Developed Design and Construction Documentation;

- (b) arrange for the supply of all:
 - (i) materials;
 - (ii) labour;
 - (iii) plant and equipment; and
 - (iv) everything else;necessary for the execution and completion of the Works and the Contractor's obligations under the Contract, including (without limitation) the Site establishment, services, and facilities; and
- (c) prepare a comprehensive management plan incorporating the Program and maintain its currency for the duration of the work under the Contract.

16.2 Commissioning Work

The Contractor shall, with skill, care, and diligence, in accordance with best engineering practice:

- (a) provide the Principal and the Principal's employees assistance with the initial occupation and operation of the Works;
- (b) assist the Principal or the nominated agents of the Principal in understanding the performance of the Works;
- (c) ensure the satisfactory operation of all building components, equipment, and contents;
- (d) provide to the Principal a draft version of the Asset Management and Maintenance Database and all operating manuals and maintenance manuals required by the Principal, sufficient to enable the commissioning of the Works;
- (e) record and submit to the Principal's Representative details of all test results;
- (f) give the Principal's Representative reasonable prior notice of the carrying out of any part of the commissioning required by the Program; and
- (g) immediately notify the Principal's Representative if any portion of work under the Contract fails to pass a commissioning requirement, make good that work and after completion of the remedial work promptly carry out further commissioning of that work.

16.3 12 Week Maintenance, Monitoring and Adjustment Period

The Contractor shall at the Contractor's own cost arrange for a team of suitably qualified and equipped personnel to maintain, monitor and adjust the Works or any part of the Works to comply with the Contract during a period of twelve (12) weeks commencing on the Date of Practical Completion. The Contractor shall arrange for the provision of all replacement parts and labour necessary and required for the performance of the Works during this period including without limitation all consumable maintenance parts (including filters and lubricants).

17. EARLY WORKS

17.1 Early Works Direction

- 17.1.1 The Principal's Representative may direct the Contractor to commence to carry out part of the Construction Work as Early Works prior to the Completion of Stage One.
- 17.1.2 A direction by the Principal's Representative pursuant to Clause 17.1 shall not be a direction to accelerate or be a request for an Acceleration Proposal (as those terms are defined in Clause 47.1).
- 17.1.3 The Contractor shall not be entitled to an adjustment of:
 - (a) the Management Fee;
 - (b) the Consultants Fee;

- (c) the On Site Overheads Fee;
- (d) the Off Site Overheads and Profit Fee; or
- (e) the Contract Sum;

on account of the Principal's Representative issuing a direction pursuant to Clause 17.1.

- 17.1.4 The Principal shall provide access to the Site at the time specified in the direction of the Principal's Representative to enable the Contractor to carry out Early Works. Clause 39 shall apply to any such access given to the Contractor.

17.2 Early Works Subcontracts

- 17.2.1 The Contractor must comply with Clause 21 in respect of all Early Works Subcontracts.
- 17.2.2 Early Works Subcontracts shall include a right to terminate for convenience.
- 17.2.3 If the Principal rejects the Contractor's Stage Two Offer under Clause 11.3.1(b), the Contractor shall continue to carry out and complete all Early Works pursuant to the terms of the Contract unless the Principal directs the Contractor to:
- (a) terminate the Early Works or the Early Works Subcontracts; or
 - (b) assign or novate (at no cost to the Principal) all or some of the Early Works Subcontracts to the Principal by entering into and executing a deed of novation satisfactory to the Principal.

18. CONSULTANTS

18.1 Engagement of Consultants

- 18.1.1 The Contractor shall engage the Consultants in accordance with the Contractor's Tender and any other Consultants that the Contractor considers are required to undertake:
- (a) the Minimum Consultancy Services (if any) as stated in Schedule 5; and
 - (b) any services in addition to the Minimum Consultancy Services to fulfil its obligations under the Contract.
- 18.1.2 The Contractor shall make its own determinations as to the nature, extent and timing of all consultancy services required by the Contractor including any consultancy services additional to the Minimum Consultancy Services.
- 18.1.3 The Contractor shall not be entitled to an adjustment to the Consultants Fee, the Management Fee, the On Site Overheads Fee, the Off Site Overheads and Profit Fee or the Contract Sum for costs of any nature whatsoever associated with the engagement or work of a Consultant where that Consultant was not:
- (a) identified in the Contractor's Tender;
 - (b) directed to be engaged by the Principal under Clause 18.2; or
 - (c) required to perform the work of a Variation directed under Clause 19.1 or 53.1.
- 18.1.4 The Contractor shall provide to the Principal's Representative within a reasonable time a copy of all documents evidencing the entire agreement between the Contractor and each of its Consultants under this Clause 18.1.

18.2 Other Consultancy Services Required by Principal

- 18.2.1 The Principal's Representative may direct the Contractor to engage additional Consultants or extend the services of an existing Consultant. The Principal's Representative shall identify:
- (a) the work to be carried out by such Consultant;
 - (b) the time for performance of such work; and

(c) direct the Contractor to procure from the Consultant the Consultant's fee proposal.

18.2.2 The Contractor shall advise the Principal's Representative, within the time stipulated by the Principal's Representative, the terms of the Consultant's fee proposal and the Principal's Representative may direct the Contractor to engage the additional Consultant or extend the Consultant's services.

18.2.3 If so directed by the Principal's Representative, the Contractor shall engage and manage such Consultants as if they and the required services had been identified in the Tender Documents without adjustment to the Management Fee and at no additional cost to the Principal other than an adjustment to the Consultants Fee to take into account the fees of the additional Consultants the subject of the Principal Representative's direction pursuant to this Clause 18.2. This Clause 18.2 does not apply where the direction is a Variation.

18.2.4 The Contractor shall provide to the Principal's Representative within a reasonable time a copy of all documents evidencing the entire agreement between the Contractor and each of its Consultants under this Clause 18.2.

18.3 Responsibility for Consultants

18.3.1 The Contractor by engaging any Consultant (whether with or without the consent of the Principal) shall not be relieved from any of the Contractor's liabilities or obligations under the Contract.

18.3.2 All Consultants engaged by the Contractor shall be accountable to the Contractor on all matters relating to their engagement and the Contractor shall be responsible to the Principal for any acts, defaults and neglects of the Consultants engaged by it.

18.3.3 The Contractor shall allow the Principal's Representative to communicate directly with any Consultant and ensure, if requested by the Principal, a Consultant's attendance at any meeting in connection with the services being provided by the Consultant.

18.3.4 If requested by the Principal's Representative at any time, the Contractor shall ensure that the Consultant certifies to the Principal that Design Work or Documentation Work carried out by the Consultant complies with the Stage Two Project Brief, or if none, the Project Brief.

18.4 Co-ordination of Consultants

The Contractor shall be responsible for co-ordinating the work of the Consultants and shall provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control the Consultants so as to ensure the completion of the work undertaken by the Consultants in a suitable manner and at a rate of progress consistent with the completion of the Works in accordance with the Program.

18.5 Termination of a Consultancy Agreement

The Contractor agrees that if a contract or agreement with a Consultant is terminated for any reason, the Contractor remains fully responsible in all respects for the proper completion in accordance with the Contract of the Design Work, the Documentation Work and the Construction Work being carried out by the Consultant. All costs, expenses or losses of any kind in relation to such termination shall be the responsibility of the Contractor. Neither the Principal nor the Principal's Representative shall be under any obligation to nominate a replacement Consultant.

18.6 Changes in Consultant's Staff

18.6.1 The Contractor shall immediately notify the Principal's Representative upon the Contractor receiving any notice from a Consultant that the effective control of the Consultant has changed or upon the Contractor being aware that the Consultant has engaged or dismissed or removed key staff.

18.6.2 Upon receipt of such notice the Principal's Representative may direct the Contractor to terminate the engagement of the relevant Consultant.

18.7 Consultant's Deed of Obligation

18.7.1 The Contractor shall procure from each Consultant engaged in connection with the work under the Contract the execution of a copy of the Consultant's Deed of Obligation in Schedule 4 (completed with the relevant particulars) within a reasonable time.

- 18.7.2 If any Consultant fails to execute a copy of the Consultant's Deed of Obligation within a reasonable time, the Contractor shall terminate the engagement of the Consultant and shall engage another Consultant.

19. DESIGN CHANGE VARIATIONS DURING STAGE ONE

Guide note: *Delete this guide note*

This clause sets out a process for the parties to agree and implement design changes during Stage One. This recognises that design flexibility may be required during Stage One as the project is planned and costed.

19.1 Changes at the direction of the Principal's Representative

- 19.1.1 The Principal's Representative may, prior to Completion of Stage One:

- (a) change the Project Brief; or
- (b) direct the Contractor to incorporate an alternative design solution where the Contractor has complied with Clause 14(a);

by providing the Contractor with a Variation direction in writing, stating that it is a Variation directed pursuant to Clause 19.1.

- 19.1.2 If the Principal's Representative issues a Variation direction pursuant to Clause 19.1.1, the Principal's Representative shall determine the amount of a reasonable adjustment (if any) to:

- (a) the Management Fee;
- (b) the Consultants Fee;
- (c) the On Site Overheads Fee;
- (d) the Off Site Overheads and Profit Fee;
- (e) the Early Works Sum; and
- (f) the Date for Practical Completion.

- 19.1.3 The Contractor shall not be entitled to any damages for delay or disruption pursuant to Clause 50 or otherwise, as a result of a Variation direction issued by the Principal's Representative pursuant to Clause 19.1.1.

- 19.1.4 The Principal may, in the Principal's absolute discretion and without obligation to act reasonably, adjust the Project Cost Estimate in accordance with the amounts calculated under Clause 19.1.2.

19.2 Changes for the Convenience of the Contractor

- 19.2.1 The Contractor may, prior to Completion of Stage One, request a change to the Project Brief as a Variation for the convenience of the Contractor. The Contractor shall keep the Principal's Representative informed of the progress of Design Work so as to give the Principal a reasonable time to consider any request pursuant to this Clause 19.2.

- 19.2.2 The Principal's Representative may, at its discretion, approve or reject the Contractor's request pursuant to this Clause 19.2, by notice in writing. Any approval may be subject to conditions imposed by the Principal's Representative.

- 19.2.3 Unless the Principal's Representative otherwise directs in a notice approving the Variation, the Contractor shall not be entitled to:

- (a) any increase to the Management Fee, the Consultants Fee, the On Site Overheads Fee, the Off Site Overheads and Profit Fee, the Early Works Sum, or the Project Cost Estimate; or
- (b) any extension of time for Practical Completion; or
- (c) damages for delay or disruption pursuant to Clause 50 or otherwise;

in respect of the Variation or anything arising out of the Variation pursuant to this Clause 19.2 which would not have arisen had the Variation not been approved.

- 19.2.4 The Principal's Representative shall not be obliged to approve a Variation for the convenience of the Contractor.

20. SUPPLY OF DOCUMENTS

20.1 Supply of Documents by Principal

- 20.1.1 Unless otherwise stated, the Principal shall supply to the Contractor 4 copies or an electronic copy of the documents required by the Contract to be supplied to the Contractor by the Principal.
- 20.1.2 Documents supplied to the Contractor by the Principal shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing.
- 20.1.3 The documents shall not, without the prior written approval of the Principal, be used, copied, or reproduced for any purpose other than the execution of the work under the Contract.

20.2 Supply of Documents by Contractor

- 20.2.1 If the Contract requires the Contractor to supply documents to the Principal, the Contractor shall, unless otherwise stated, supply 4 hard copies and an electronic copy in a format which is acceptable to the Principal.
- 20.2.2 The Contractor shall supply to the Principal's Representative the documents and information as required by the Contract, in a form satisfactory to the Principal's Representative and at those times stated in the Contract or requested by the Principal's Representative or, if no times are stated in the Contract or requested by the Principal's Representative, then in a reasonable time before the work contained in those documents is commenced.
- 20.2.3 If the Contract provides that the Contractor must obtain the Principal's Representative's direction whether documents are suitable or are not suitable then, within a reasonable time after receipt of the documents, the Principal's Representative shall notify the Contractor that the documents are suitable or are not suitable.
- 20.2.4 The Principal's Representative's approval to any documentation shall not relieve the Contractor from responsibility for compliance with the requirements of the Contract.
- 20.2.5 If the Principal's Representative notifies the Contractor that the documents are not suitable, the Principal's Representative shall give reasons why the documents are not suitable, and the Contractor shall submit new or amended documents for the Principal's Representative's direction pursuant to this Clause 20.2.

20.3 Supply of documentation

- 20.3.1 The Contractor must maintain a marked up set of all "as constructed" installation drawings and submit these for review to the Principal's Representative within one month of the completion of the relevant trade work.
- 20.3.2 At least three months prior to the Date of Practical Completion, the Contractor shall provide to the Principal two (2) copies of "interim" operating manuals and maintenance manuals for all components of the Works.
- 20.3.3 Within two weeks after the Date of Practical Completion, the Contractor shall provide to the Principal:
- (a) three (3) copies of the final Asset Management and Maintenance Database and all operating manuals and maintenance manuals required by the Principal; and
 - (b) three (3) complete sets of "as constructed" drawings, trade specifications and other required documents.
- 20.3.4 All drawings required to be provided by the Contractor must be in both hard copy and electronic format. The hard copy format shall be in accordance with the relevant standards. The electronic format shall be provided on CD-ROM or any other such electronic format acceptable to the Principal for Maintenance

Manuals (excluding manufacturer's literature) and in "Auto CAD" drawing format for "as constructed" drawings.

20.3.5 Within two weeks after the Date of Practical Completion, the Contractor shall also provide to the Principal:

- (a) all guarantees and warranties required by the Contract;
- (b) certificates from each of the Consultants certifying that the Works comply with the Construction Documentation; and
- (c) all other certificates required by the Contract and evidence of all approvals, consents, and permission from all authorities.

20.4 Availability of Documents

20.4.1 Whilst work under the Contract is being performed, one complete set of written information supplied by the Principal, the Principal's Representative and the Contractor shall be kept by the Contractor at the Site or other location approved in writing by the Principal and shall be available at all times for reference by the Principal, the Principal's Representative and any persons nominated in writing by either of them.

20.4.2 During the manufacture or assembly of any significant part of the work under the Contract away from the part of the Site where the Works are to be constructed, a set of the drawings and written information relevant to that part of the work shall be kept by the Contractor at the place of manufacture or assembly and shall be available for reference by the Principal, the Principal's Representative and any person nominated in writing by either of them.

20.5 Confidential Information

Drawings, specifications, information, samples, models, patterns and other documents, supplied or produced by either the Contractor, a Consultant or the Principal and which relate in any way to the Contract or the work under the Contract, shall be regarded as confidential and shall not be disclosed to a third party, including without limitation any generative artificial intelligence technology except with the prior written agreement of the Principal.

20.6 Media Releases

The Contractor, the Contractor's Subcontractors and Consultants shall not issue or be involved with the release of, any information, publication, statement, interview, document, or article for publication concerning the Works or the Site in any media without the prior written approval of the Principal. The Contractor shall refer to the Principal any enquiries concerning the Works from any media and shall advise the Principal of all approaches by any media.

21. ASSIGNMENT AND SUBCONTRACTING

Guide note: Delete this guide note

Subcontractors, suppliers and Consultants cannot generally be engaged without the Principal's consent. The Contractor remains responsible for all acts and omissions of the people it engages to carry out work under the contract. Contractual relationships between the Contractor and Subcontractors, suppliers and Consultants must be on a similar basis to those between the Principal and Contractor, and in accordance with the Queensland Procurement Policy and if required, the Best Practice Principles. Specific requirements for Subcontracts are set out in clause 21.3.1. The Contractor must also ensure its Subcontractors, suppliers and consultants are appropriately insured in accordance with clause 32.

21.1 Assignment

21.1.1 The Principal may, at any time, by notice in writing to the Contractor, assign all or any of its rights under the Contract to any person identified in the notice ("the assignee").

21.1.2 The Contractor acknowledges and agrees that from the date of any notice given by the Principal pursuant to this Clause 21.1, any assignment by the Principal takes effect as if the assignee had been originally named as a party to the Contract in place of the Principal.

- 21.1.3 The Contractor must not, without the prior written approval of the Principal, and except on such terms and conditions as are determined in writing by the Principal, assign the Contract or any payment or other right, benefit, or interest under or in respect of the Contract.

21.2 Subcontracting

Subcontractor Relationship

- 21.2.1 The Contractor is solely responsible for all Subcontractors (including Subcontractors engaged in accordance with Clauses 21.2.7 and 21.2.8) and is liable for their acts and omissions as if such acts or omissions were those of the Contractor. Subcontracting of any obligation under the Contract does not affect the Contractor's obligations or liability under the Contract.
- 21.2.2 The Contractor indemnifies the Principal against all claims, actions, loss or damage and all other liability arising out of any acts or omissions of Subcontractors.
- 21.2.3 The Contractor must include in every Subcontract the details and requirements set out in Clause 21.3

Engaging Subcontractors

- 21.2.4 The Contractor must not subcontract the whole of the work under the Contract, but may subcontract parts of the work under the Contract in accordance with this Clause 21.
- 21.2.5 If requested, before engaging any Subcontractor and at any other time, the Contractor must provide the Principal's Representative with an unpriced copy of the Subcontract and the name and address of the proposed or engaged Subcontractor (as applicable). The Contractor must provide the requested information within 7 days of the Principal's Representative's request. The Principal's Representative may object to the appointment of any proposed Subcontractor on reasonable grounds. If the Principal's Representative objects to any proposed Subcontractor, the Contractor must propose another Subcontractor.
- 21.2.6 If the Annexure includes a list of Preferred Subcontractors for a particular class of work, the Contractor must only engage a Subcontractor from that list for work of that class.
- 21.2.7 If instructed by the Principal's Representative, the Contractor must accept novation of the contracts of specified Principal's consultants, contractors or suppliers stated in the Annexure, on the terms specified in the Contract.
- 21.2.8 Where the Contractor engages a Preferred Subcontractor has or accepts the novation of a contract:
- (a) the Contractor must not terminate the Subcontract or novated contract without reasonable cause and must give a minimum of 14 days notice to the Principal's Representative of its intention to terminate with reasons justifying the intended termination; and
 - (b) where the work under a terminated Subcontract or novated contract is not complete, the Principal's Representative may require the Contractor to subcontract the remaining work to another subcontractor or consultant nominated by the Principal.

Queensland Procurement Policy

- 21.2.9 The obligations of government agencies contained in the Queensland Procurement Policy shall apply equally to the Contractor as though it is a government agency, and the Contractor shall procure Subcontracts for Construction Work in accordance with the requirements of the Queensland Procurement Policy.
- 21.2.10 The Principal may at any time prior to the issue of the Final Certificate, undertake an audit in respect of the Contractor's compliance with Clause 21.1.2, in accordance with the provisions of Clause 64.4.
- 21.2.11 Where the Principal is of the opinion that the Contractor has not complied with its obligations pursuant to Clause 21.2, the Principal may direct the Contractor to procure a Subcontract for the relevant portion of the Works in accordance with Clause 21.2, and the Contractor shall promptly comply with the Principal's direction. Failure by the Contractor to promptly comply with the Principal's direction shall be a substantial breach of contract.

21.3 Subcontract Documentation

21.3.1 The Contractor shall prepare and produce all required copies of Subcontract Tender Documentation and Subcontracts, which:

- (a) include details of the Contractor's obligations in connection with the Contract which are to be carried out by the Subcontractor;
- (b) include consent for the Subcontract to be novated to the Principal or its nominee, if required by the Principal in the circumstances contemplated by Clause 17.2.3 and 60.2.2(c);
- (c) include a right of termination for convenience;
- (d) require Subcontract tenderers and Subcontractors to consent to a relevant Government Department or Instrumentality providing information to the Principal and the QGP Compliance Branch about the tenderer's or Subcontractor's compliance with government policies and legislation, including without limitation, commitments made in relation to or required by the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the Queensland Government Building and Construction Training Policy, the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld);
- (e) require Subcontract tenderers and Subcontractors to acknowledge that the information referred to in Clause 21.3.1(a), which includes without limitation payroll records, management records, time recordings and records of project-specific training that may be held by any Government Department or Instrumentality, may be obtained by or made available to the Principal and the QGP Compliance Branch, for information and verification of the Subcontract tenderer's or Subcontractor's compliance with commitments made in relation to or required by government policies and legislation;
- (f) include terms that evidence the right of the Principal and the QGP Compliance Branch to exercise the discretion in Clause 64.10 to publish any information relevant to the Ethical Supplier Mandate, including but not limited to information about the Subcontractor's compliance with the Ethical Supplier Mandate, and prohibits the Subcontractor from exercising any rights at law, including in contract, at common law or in equity, against the Principal or the Contractor in relation to that publication;
- (g) if the Annexure indicates that the Best Practice Principles apply, incorporate the requirements of Clause 21.3.2;
- (h) require the Subcontractor to submit statutory declarations in the form in Schedule 7, if requested by the Principal's Representative under Clause 58.2(c);
- (i) require the Subcontractor to execute a deed poll in favour of the Principal in the form set out in Schedule 16 and provide this as part of its tender;
- (j) require the Subcontractor to make and keep the records referred to in Clause 64.1;
- (k) include relevant Construction Documentation prepared in accordance with Clause 15;
- (l) provide for evaluation of Subcontract tender responses against clear evaluation criteria and weightings; and
- (m) incorporate any other documentation or information required for the tendering or the completion of the relevant Construction Work.

21.3.2 If the Annexure indicates that the Best Practice Principles apply and the proposed Subcontract has a value of \$20,000 exclusive of GST or more and meets the other requirements of the Best Practice Principles, when preparing Subcontract Tender Documentation the Contractor shall:

- (a) include the following best practice principles in Subcontract Tender Documentation:
 - (i) best practice workplace health and safety systems and standards; and
 - (ii) best practice commitment to apprentices and trainees;

- (b) provide for evaluation of Subcontract tender responses against clear evaluation criteria, weighted in accordance with the weightings nominated in the Annexure relevant to Best Practice Principles and the Local Benefits Test;
- (c) provide Subcontract tenderers with the following guidance examples of best practice in relation to the best practice principles described at Clause 21.3.2(a), which are examples only and are not comprehensive, compulsory, or exhaustive:
 - (i) demonstrated commitment to training, including the engagement of apprentices and trainees;
 - (ii) demonstrated history of and commitment to compliance with work health and safety laws; and
- (d) require Subcontract tenderers to:
 - (i) demonstrate how they propose to address each of the best practice principles described at Clause 21.3.2(a); and
 - (ii) acknowledge that information relating to the Subcontractor relevant to the evaluation of the subcontractor's tender or the Subcontractor's compliance with commitments made in its tender relating to the Best Practice Principles that may be held by any Government Department or Instrumentality, may be obtained by or made available to the Principal and the QGP Compliance Branch for information and verification.

21.3.3 The Contractor must ensure that all Subcontractors and any sub subcontractors:

- (a) for the purposes of the Queensland Procurement Policy are:
 - (i) local suppliers as described in the Queensland Procurement Policy, and if a local supplier is unable to be sourced by the Contractor having used its best endeavours to do so, the Contractor shall seek approval from the Principal's Representative to use a supplier who is not a local supplier and in doing so shall provide evidence, satisfactory to the Principal's Representative, of its efforts to source a local supplier;
 - (ii) compliant with the Ethical Supplier Threshold;
 - (iii) not subject to a current sanction under the Ethical Supplier Mandate;
- (b) are informed of the existence of the BIF Act; and
- (c) either:
 - (i) have a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
 - (ii) in relation to the work to be performed under the Subcontract (or sub subcontract):
 - (A) will be paid to achieve a specified result or outcome;
 - (B) are required to supply the plant and equipment or tools of trade needed to perform the work; and
 - (C) will be liable for the cost of rectifying any defect in the work performed.

21.3.4 If the Annexure indicates that the Best Practice Principles apply and the proposed Subcontract has a value of \$20,000 exclusive of GST or more and meets the other requirements of the Best Practice Principles, the Contractor must diligently apply the Best Endeavours Process when selecting tenderers and seeking tenders for Subcontracts.

21.3.5 The Principal's Representative may direct the Contractor to select Prequalified Subcontractors. The Contractor may not claim and warrants to the Principal that it shall not claim any extra amount or extension of time from the Principal a result of complying with a direction given pursuant to this Clause 21.3.5.

21.4 Responsibilities, Warranties and Indemnities

21.4.1 The Contractor warrants that in procuring Subcontracts the Contractor will comply with:

- (a) the requirements of this Clause 21 in every respect;
- (b) the requirements of Australian Standards® Code of Tendering (AS4120-1994); and
- (c) the requirements of the Queensland Procurement Policy, and where the Annexure indicates that the Best Practice Principles apply, the Best Practice Principles.

21.4.2 In respect of the procurement of Subcontracts, the Contractor indemnifies and shall keep indemnified the Principal, the Principal's Representative and the employees, consultants and agents of the Principal against all consequences and claims, demands, actions, proceedings or suits by any person, including (without limitation) any person who may have an interest in a Subcontract tender or Subcontract, seeking the payment of money, or any costs, expenses, losses or damages on any ground whatsoever including (without limitation) in relation to the Queensland Procurement Policy.

21.4.3 The Contractor warrants that all Subcontractors engaged by the Contractor shall have the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted and the Contractor shall not engage a subcontractor if the Contractor knows of any reason why that subcontractor's tender should not be accepted.

21.4.4 The Contractor's warranties and indemnity provided pursuant to this Clause 21.4 shall remain unaffected notwithstanding any approval, direction, or advice given by the Principal, the Principal's Representative or the employees, consultants, or agents of the Principal.

21.4.5 This Clause 21 applies to Consultants in the same way as it applies to Subcontractors.

22. LATENT CONDITIONS

22.1 Definition

Latent Conditions are physical conditions on the Site or the Site's surroundings, including artificial things, but excluding weather conditions or the results of such conditions, whether on or off the Site, which differ materially from the physical conditions which should reasonably have been anticipated by a suitably qualified and experienced contractor at the time of the submission by the Contractor of the Stage Two Offer, if that suitably qualified and experienced contractor had:

- (a) examined all information referred to in the Project Brief;
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the work under the Contract and obtainable by the making of reasonable enquiries or the carrying out of reasonable tests and investigations; and
- (c) inspected the Site and the Site's surroundings.

22.2 Notification

If during the execution of the work under the Contract, the Contractor becomes aware of a Latent Condition, the Contractor shall forthwith and where possible before the Latent Condition is disturbed, provide to the Principal's Representative a statement in writing specifying:

- (a) the Latent Condition encountered and in what respects it differs materially;
- (b) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
- (c) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion;
- (d) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
- (e) other details reasonably required by the Principal's Representative.

22.3 Cost of Dealing with Latent Condition

If a Latent Condition causes the Contractor to:

- (a) carry out more work;
- (b) use more constructional plant; or
- (c) incur extra cost,

which the Contractor could not reasonably have anticipated at the time of submission of the Stage Two Offer by the Contractor, a valuation shall be made by the Principal's Representative in accordance with Clause 53.4.

22.4 Extension of Time

Delay caused by a Latent Condition may justify an extension of time under Clause 49.3 and costs assessed pursuant to Clause 50.

23. PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS**23.1 Warranty and Indemnity**

The Contractor warrants to the Principal that the Contract Materials and methods of working will not infringe any patent, copyright, moral right, registered design, trademark or name, or other protected right and the Contractor indemnifies the Principal in respect of any such infringement.

23.2 Intellectual Property Rights granted to Principal

23.2.1 The ownership of and copyright in all Contract Materials shall vest absolutely in the Principal upon their creation.

23.2.2 To the extent that copyright in or relating to the Contract Materials is not capable of being vested in the Principal because the Contractor does not own the copyright, the Contractor shall ensure that the Principal is irrevocably licensed to use the relevant Contract Materials.

23.3 Moral Rights

23.3.1 To the extent the Contractor has Moral Rights in the Contract Materials, the Contractor consents to:

- (a) the Principal;
- (b) any third party to whom the Principal expressly or impliedly licenses, or grants any other right to use or possess, any Contract Materials ("licensee"); or
- (c) any third party to whom the Principal assigns copyright in any part of the Contract Materials ("assignee");

doing any of the following for purposes connected with this Contract or the Works:

- (d) acknowledging in any manner or failing to acknowledge the Contractor's or any other person's authorship of any Contract Materials;
- (e) modifying, varying, or amending any Contract Materials; or
- (f) altering any Contract Materials by adding to, or removing elements from, any Contract Materials, including by combining elements of any Contract Materials with any other material.

23.3.2 The Contractor must use its best endeavours to obtain a signed, written consent from all individuals who create or may create any Contract Materials to enable the Principal or any licensee or assignee to use the Contract Materials as provided for in Clause 23.3.1.

23.3.3 Upon request by the Principal's Representative, the Contractor will produce to the Principal's Representative the written consents obtained pursuant to Clause 23.3.2.

24. STATUTORY REQUIREMENTS**24.1 Variance with the Contract**

24.1.1 The Contractor shall satisfy all Statutory Requirements except those which the Principal's Representative directs are to be satisfied by or on behalf of the Principal.

24.1.2 If a Statutory Requirement is at variance with a provision of the Contract, as soon as the Contractor discovers the variance, the Contractor shall notify the Principal's Representative in writing specifying the difference.

24.2 Changes in Statutory Requirements

If the Contractor becomes aware of a change to a Statutory Requirement that:

(a) necessitates:

- (i) a change to the Works;
- (ii) an increase or decrease in a fee or charge or payment of a new fee or charge; or
- (iii) an increase or decrease in GST;

(b) has effect after the 14th day prior to the date of submission of the Stage Two Offer; and

(c) could not reasonably have been anticipated,

the Contractor must notify the Principal's Representative in writing as soon as possible and in any event within 7 days after becoming aware of the change to the Statutory Requirement. The notification must include details of:

- (i) the change to the Statutory Requirement;
- (ii) why the change to Statutory Requirement should not reasonably have been anticipated by the Contractor;
- (iii) the changes to the Works that the Contractor considers necessary;
- (iv) any additional work and resources required and the Contractor's estimate of its entitlement to any adjustment to the Contract Sum; and
- (v) other matters the Contractor considers relevant, including potential delays.

After considering the Contractor's notice, the Principal's Representative must notify the Contractor whether it agrees with the Contractor's notice.

Subject to the Contractor complying with its obligations in this clause 24.2, to the extent that a change in Statutory Requirements meeting the requirements in paragraphs (a) – (c) above causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference shall be valued under Clause 53.4 and the Contract Sum adjusted.

24.3 Contractor's Declaration and Indemnity

The Contractor agrees that except insofar as it is expressly provided otherwise by the Contract:

- (a) the Contractor does not act as agent of the Principal in complying with any Statutory Requirement; and
- (b) the Contractor indemnifies the Principal against any damages, costs, and consequences of failing to comply with any Statutory Requirement.

24.4 Documents Evidencing Approvals of Authorities

The Contractor shall give the Principal copies of documents issued to the Contractor by municipal, public, or other statutory authorities in respect of the work under the Contract and, in particular, any approvals of work.

24.5 Work Health and Safety

24.5.1 For the purposes of this Clause:

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

construction work and **principal contractor** have the same meaning as in the Regulation;

inspector, **notifiable incident**, **structure**, **regulator** and **workplace**, have the same meanings as in the Act;

Regulation means the *Work Health and Safety Regulation 2011* (Qld);

WHS Laws means the Act, the Regulation and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards.

24.5.2 From the Date of Acceptance of Tender:

- (a) the Principal engages the Contractor to be the principal contractor under the Regulation in relation to the work under the Contract and authorises the Contractor to:
 - (i) have management and control of the workplace at which the work under the Contract is being undertaken including the Site; and
 - (ii) discharge the duties of the principal contractor under the Regulation;
- (b) the Contractor accepts the engagement as principal contractor from the Principal and agrees to fulfil all requirements and give effect to that engagement prior to commencing any of the work under the Contract;
- (c) the Contractor will comply with and discharge all obligations imposed on the Contractor, as principal contractor, as a person who conducts a business or undertaking and otherwise, by the WHS Laws;
- (d) the Contractor will consult with the Principal and will consult with the designers of the whole or any part of a structure to be constructed under the Contract, about how to ensure that risks to health and safety arising from the design are eliminated during construction of the work under the Contract or, if it is not reasonably practicable to eliminate the risks, minimise, so far as is reasonably practicable;
- (e) the Contractor will, in performing its obligations under the Contract, take into account and take appropriate action having regard to any information given to the Contractor by the Principal or any other person, about hazards and risks at or in the vicinity of the workplace where the work under the Contract is being carried out; and
- (f) without limiting Clause 24.5.2(c), ensure its officers, workers and agents, subcontractors and its subcontractors' officers, workers, and agents, discharge their respective duties under the WHS Laws in connection with the work under the Contract.

24.5.3 The Contractor will indemnify the Principal against any claim, action, demand, loss, damage, cost, or expense which may be brought against, or suffered or incurred by, the Principal as a result of or in connection with:

- (a) any breach of this Clause 24.5 by the Contractor;
- (b) any breach by the Contractor of its obligations under the WHS Laws;
- (c) any enforcement of obligations imposed on the Contractor under the WHS Laws.

24.5.4 If a notifiable incident occurs at the workplace at which the work under the Contract is being undertaken, the Contractor must:

- (a) immediately notify the regulator and the Principal's Representative of the notifiable incident and provide copies of any communications, notices or reports provided to or received from the regulator or any Authority regarding the notifiable incident to the Principal's Representative;
- (b) take all reasonably practicable steps to secure the Site where the notifiable incident occurred until an inspector arrives at the Site or any earlier time that an inspector directs;

- (c) conduct a thorough investigation in relation to the root cause and contributing factors of the notifiable incident and provide a copy of the written investigation report within 10 business days of the Principal's Representative's request; and
 - (d) if the Principal wishes to conduct its own investigation, provide the Principal with reasonable assistance (including access to relevant documents and the Contractor's personnel) in investigating any such notifiable incident.
- 24.5.5 Without limiting any other obligation of the Contractor under this Contract or the WHS Laws, if material which might contain asbestos or other hazardous substance is discovered, the Contractor must:
- (a) immediately notify the Principal's Representative; and
 - (b) comply with all applicable obligations and restrictions imposed by the WHS Laws.

24.6 Building Act Compliance

- 24.6.1 A Building Certifier is required to be engaged by the party stated in the Annexure to provide advice on compliance of the Works with the provisions of the *Building Act 1975* (Qld) and, in the performance of the Building Certifier's duties, must be required to act as an independent party and not as an agent of the Principal.
- 24.6.2 The Contractor shall ensure the Building Certifier shall have sufficient access to the Works to ensure compliance with the provisions of the *Building Act 1975* (Qld) and any regulations, by laws, orders and proclamations made thereunder but shall have no authority on behalf of the Principal to order a Variation.
- 24.6.3 Subject to Clauses 24.2 and 53.1 and notwithstanding Clause 20.2, the party stated in the Annexure shall:
- (a) comply with; and
 - (b) bear the costs of, and pay any fees due with respect to complying with;
- all requirements of the Building Certifier, the Queensland Fire and Emergency Services or other relevant authority, including but not limited to those requirements as set out in Schedule 11.
- 24.6.4 During construction of the Works, the Contractor shall arrange for the plumbing and drainage installations to be inspected by all relevant authorities. All fees associated therewith shall be included in the relevant Subcontract packages.
- 24.6.5 Approvals and certificates issued to the Contractor by the Building Certifier and any authorities in respect of the work under the Contract shall be surrendered to the Principal prior to issue of the Final Certificate. Prior to Practical Completion the Contractor shall deliver to the Principal all permits, registrations, approvals, certifications, consents, or licences obtained by the Contractor in respect of the Works. This shall include, but is not limited to, all certificates, approvals or permits required from the Building Certifier and any authority for the lawful occupation or use of the Work.
- 24.7 **Building and Construction Industry (Portable Long Service Leave) Act Compliance**
- The Principal shall pay the building and construction industry training levy and portable long service leave levy, pursuant to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld).

25. NOISE, DISTURBANCE AND NUISANCE CONTROL

- 25.1 The Contractor shall take all steps to:
- (a) minimise noise, dust, and other nuisances; and
 - (b) prevent the escape of any material from the Site onto property and roads near the Site.
- 25.2 The Contractor warrants that it has assessed the potential for delays, disruption, suspension and extra costs in the performance of the work under the Contract because of potential noise, dust and all other nuisances and made due allowance in the Contractor's Tender, including taking into account any operational requirements of the Site included in the Tender Documents.

- 25.3 If there are delays, disruption, suspension, or extra costs (including a requirement to alter Working Hours and methods) caused by the Contractor's compliance with this Clause 25 then:
- (a) the Contractor may not claim and warrants to the Principal that it shall not claim any extra amount or extension of time from the Principal; and
 - (b) this Contract shall not be frustrated.
- 25.4 The Contractor shall indemnify the Principal against all costs, damages, and expenses the Principal may sustain as a result of neglect or default of the Contractor in complying with this Clause 25.

26. PROTECTION OF PEOPLE AND PROPERTY

26.1 Protection Measures

26.1.1 The Contractor shall:

- (a) be responsible for:
 - (i) preventing personal injury or death;
 - (ii) preventing loss or damage to the Site and the Works;
 - (iii) preventing loss or damage to adjoining and other properties and the environment arising in connection with carrying out the Works;
 - (iv) locating and caring for existing services;
 - (v) repairing or making good loss or damage to the Works and the Site; and
 - (vi) bearing the cost of repairing, or making good, loss or damage to adjoining and other properties and the environment arising in connection with carrying out the Works;
- (b) provide all things and take all measures necessary to protect people and property; and
- (c) avoid unnecessary interference with the passage of people and vehicles.

26.1.2 Without limiting the generality of the Contractor's obligations, they include:

- (a) the provision of:
 - (i) barricades;
 - (ii) guards;
 - (iii) fencing;
 - (iv) temporary roads;
 - (v) footpaths;
 - (vi) warning signs;
 - (vii) lighting;
 - (viii) watching;
 - (ix) traffic flagging; and
 - (x) safety helmets and clothing; and
- (b) removal of obstructions and protection of services.

- 26.1.3 If the Contractor or the employees or agents of the Contractor damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Contractor shall promptly make good the damage and pay any compensation which the law requires the Contractor to pay.

26.1.4 If the Contractor fails to comply with an obligation under Clause 26 the Principal may, in addition to any other remedy, perform the obligation on the Contractor's behalf and the cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

26.2 Occupational Health and Safety Audit

26.2.1 This Clause 26.2 will apply unless otherwise noted in the Annexure.

26.2.2 For the purposes of this Clause 26.2:

Accredited Auditor (Construction) means a person accredited by Workplace Health and Safety Queensland as an occupational health and safety auditor to undertake auditing pursuant to the *Work Health and Safety Act 2011* (Qld).

26.2.3 Within 10 Working Days of the Date of Acceptance of Tender, the Contractor must engage an Accredited Auditor (Construction) to perform the functions specified in the Contract.

26.2.4 The cost of performance by the Accredited Auditor (Construction) of the required functions will be reimbursed by the Principal in accordance with the Contract. The reimbursable amount will be a debt due from the Principal to the Contractor.

26.2.5 The Contractor must ensure that the Accredited Auditor (Construction) engaged under Clause 26.2.3 has not:

- (a) in the two years prior to the Date of Acceptance of Tender, had a business or employment relationship with the Contractor including without limitation where the Accredited Auditor (Construction) has, either personally or as an employee or an agent of another person or entity, been involved in the development and/or maintenance of the Contractor's occupational health and safety management system in any capacity other than by reason of having been engaged as an Accredited Auditor (Construction); or
- (b) been engaged by the Contractor as an Accredited Auditor (Construction) more than three times within a 12 month period to perform the functions specified in the Contract.

26.2.6 The Contractor must provide copies of all reports and any corrective action notices received from the Accredited Auditor (Construction) to the Principal's Representative within 3 Working Days of receipt. In relation to corrective action notices, in addition to any other avenues available under the Contract:

- (a) the Principal's Representative may direct the Contractor, by written notice, to carry out any required corrective action within the time specified in the Principal's Representative's notice; or
- (b) the Principal may take action under Clause 27.

26.2.7 A direction given under Clause 26.2.6(a) constitutes a direction under Clause 42.2. If such a direction is given, the Contractor must inform the Principal's Representative in writing immediately upon completion of the corrective actions.

26.3 Work Health and Safety Accreditation Scheme

26.3.1 If stated in the Annexure, this Clause 26.3 will apply.

26.3.2 For the purposes of this Clause:

builder, building work and **WHS Accreditation Scheme** have the same meanings as in the *Federal Safety Commissioner Act 2022* (Cth).

26.3.3 The builder must maintain accreditation under the WHS Accreditation Scheme while building work is carried out.

26.3.4 The builder must comply with all conditions of the WHS Accreditation Scheme accreditation.

27. URGENT PROTECTION

27.1 If urgent action is necessary to protect the work under the Contract, other property or people and the Contractor fails to take the action, the Principal or Principal's Representative may take the necessary

action. If the action was action which the Contractor should have taken at the Contractor's cost, the cost incurred by the Principal shall be a debt due from the Contractor.

- 27.2 If time permits, the Principal's Representative shall give the Contractor prior written notice of the Principal's intention to take action under this Clause 27.

28. CARE OF THE WORK UNDER THE CONTRACT AND REINSTATEMENT OF DAMAGE

28.1 Care of the Work Under the Contract

- 28.1.1 From and including the date of commencement of work under the Contract to 4.00 pm on the Date of Practical Completion of the Works, the Contractor shall be responsible for the care of the work under the Contract.

- 28.1.2 Without limiting the generality of the Contractor's obligations, the Contractor:

- (a) shall be responsible for the care of:
 - (i) unfixed items for which payment has been received;
 - (ii) things entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract;
 - (iii) things brought on the Site by Subcontractors for the purpose of carrying out work under the Contract;
 - (iv) the Works; and
 - (v) the Temporary Works and constructional plant; and
- (b) shall provide the storage and protection necessary to preserve these items and things, and the Works, the Temporary Works and constructional plant.

- 28.1.3 After 4.00 pm on the Date of Practical Completion the Contractor shall remain responsible for the care of outstanding work and items to be removed from the Site by the Contractor and shall be liable for damage occasioned by the Contractor in the course of completing outstanding work or complying with obligations under Clause 43.1 and Clause 51.

28.2 Reinstatement

If loss or damage occurs to anything while the Contractor is responsible for its care, the Contractor shall promptly ensure the loss or damage is made good unless the loss or damage is a direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk defined in Clause 28.3.

28.3 Excepted Risks

The Excepted Risks are:

- (a) any negligent act or omission of the Principal, the Principal's Representative or the employees, other contractors, consultants, or agents of the Principal;
- (b) any risk specifically excepted in the Contract;
- (c) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), civil war, terrorism, rebellion, revolution, insurrection or military or usurped power, martial law, or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents;
- (e) use or occupation by the Principal or the employees or agents of the Principal or other contractors or consultants to the Principal (not being employed by the Contractor) of any part of the Works or the Temporary Works; and

- (f) any part of the design of the work under the Contract that is the Principal's responsibility.

29. DAMAGE TO PERSONS AND PROPERTY OTHER THAN THE WORK UNDER THE CONTRACT

29.1 Indemnity by the Contractor

29.1.1 The following Clause 29.1.3 shall not apply to:

- (a) the extent that the liability of the Contractor is limited by another provision of the Contract;
- (b) any other right of the Principal to be indemnified by the Contractor;
- (c) things for the care of which the Contractor is responsible under Clause 28.1;
- (d) claims in respect of the right of the Principal to construct the work under the Contract on the Site; or
- (e) damage which is the unavoidable result of the construction of the Works.

29.1.2 Insofar as this Clause 29.1 applies to property, it applies to property other than the work under the Contract.

29.1.3 The Contractor shall indemnify the Principal against:

- (a) loss of or damage to property of the Principal, including existing property in or upon which the work under the Contract is being carried out; and
- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property;

arising out of or as a consequence of the carrying out by the Contractor of the work under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that the act or omission of the Principal or employees, consultants, other contractors or agents of the Principal (not being employed by the Contractor) may have contributed to the loss, damage, death or injury.

29.2 Indemnity by the Principal

The Principal shall indemnify the Contractor in respect to claims referred to in Clause 29.1.1(d).

30. INSURANCE OF THE WORK UNDER THE CONTRACT

Guide note: Delete this guide note

The Contract is flexible as to whether the Principal or the Contractor is to provide Works and/or public and products liability insurance (the party required to provide these insurances is to be specified in the Annexure). All other insurances must be provided by the Contractor.

Alternative 1 (Contractor Controlled)

30.1 Before the Contractor commences work on the Site (including Early Works) the Contractor must have in place an insurance policy covering all the things referred to in Clause 28.1 against loss or damage until the Contractor ceases to be responsible for their care and include cover for:

- (a) plant and materials for incorporation into the Works while in storage away from the Site within the territory in which the Works are situated ('materials in off Site storage'); and
- (b) plant and materials for incorporation into the Works while in transit to the Site within the territory in which the Works are situated, including inland waterways and coastal marine transits ("inland transit").

30.2 The amount of cover provided by the insurance policy shall be for not less than the combined value of:

- (a) the base amount stated in the Annexure;
- (b) the amount stated in the Annexure for the costs of demolition and removal of debris;

- (c) the amount stated in the Annexure to provide for professional fees necessarily and reasonably incurred in the repair or reinstatement of insured damage to the Works;
- (d) the value stated in the Annexure of any materials or things to be supplied by the Principal for the purposes of the work under this Contract; and
- (e) escalation in the value of the Construction Work under this Contract for the amount stated in the Annexure (being a percentage of the total of the items referred to in subparagraphs (a) to (d) of this paragraph).

30.3 The insurance policy must cover the:

- (a) the Contractor and name the Principal as an additional insured; and
- (b) extend to cover the following parties as an insured:
 - (i) all Subcontractors employed from time to time in relation to the work under the Contract;
 - (ii) consultants, engineers, suppliers and/or manufacturers (for their on-Site manual activities only); and
 - (iii) other parties for whom the Contractor has assumed an obligation under contract or agreement.

30.4 The insurance cover may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration but must not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials but must not exclude the loss or damage resulting therefrom;
- (c) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (d) consequential loss of any kind, but must not exclude loss of or damage to the Works;
- (e) damages for delay in completing or for the failure to complete the Works; and
- (f) loss or damage resulting from the Excepted Risks in Clauses 28.3(b) and 28.3(c).

30.5 The insurance required under this Clause 30 must be on terms that are reasonably commercially available in the insurance market, evidenced by the information provided by the Contractor in accordance with Clause 34.1 and that are acceptable to the Principal (acting reasonably).

Alternative 2 (Principal Controlled/Arranged)

30.1 Before the Contractor commences work on the Site (including Early Works), the Principal must have in place an insurance policy covering all the things referred to in Clause 28.1 against loss or damage for not less than the combined value of:

- (a) the base amount stated in the Annexure;
- (b) the amount stated in the Annexure for the costs of demolition and removal of debris;
- (c) the amount stated in the Annexure to provide for professional fees necessarily and reasonably incurred in the repair or reinstatement of insured damage to the Works;
- (d) the value stated in the Annexure of any materials or things to be supplied by the Principal for the purposes of the work under this Contract; and
- (e) escalation in value of the Works under this Contract for the amount stated in the Annexure (being a percentage of the total of the items referred to in subparagraphs (a) to (d) of this paragraph).

30.2 The Principal shall pay all premiums in relation to the policy.

30.3 The policy will include the Principal, the Contractor and all Subcontractors employed from time to time in relation to the work under the Contract as insured parties.

- 30.4 As an insured under the insurance policy effected in accordance with this Clause 30, all insured parties have an obligation to notify insurers (via the Principal or the Principal's appointed insurance advisor) of incidents that may give rise to claims for indemnity for damage to the Works under the insurance required to be maintained under Clause 30. Once notified, the Contractor has an ongoing obligation to assist insurers in managing any insurance claim until that insurance claim is finalised.

31. PUBLIC LIABILITY INSURANCE

Alternative 1 (Contractor Controlled)

- 31.1 Prior to the commencement of the work under the Contract, the Contractor must have in place an insurance policy that covers:
- (a) public liability for an amount not less than the amount stated in the Annexure, that covers legal liability for third party personal injury and property damage arising from:
 - (i) occurrences that happen whilst the Contractor is performing work under the Contract; and
 - (ii) the insureds' business activities in connection with this Contract; and
 - (b) product liability for an amount not less than the amount stated in the Annexure that covers legal liability for third party personal injury and property damage arising from the completed Works.
- 31.2 The insurance policy must cover the:
- (a) the Contractor and name the Principal as an additional insured; and
 - (b) extend to cover the following parties as an insured:
 - (i) all Subcontractors employed from time to time in relation to the work under the Contract;
 - (ii) Consultants, engineers, suppliers and/or manufacturers (for their on-Site manual activities only); and
 - (iii) other parties for whom the Contractor has assumed an obligation under contract or agreement.
- 31.3 With respect to the insurance required by this Clause 31, the Contractor must ensure that:
- (a) if the policy is an 'occurrence' based policy, the policy is maintained until the Final Certificate is issued at a minimum; or
 - (b) if the policy is a 'claims made' based policy, an annual insurance policy or run off cover is in place such that insurance policy coverage is maintained for a minimum period of 6 years after the Final Certificate is issued.
- 31.4 The insurance required under this Clause 31 must be on terms that are reasonably commercially available in the insurance market, evidenced by the information provided by the Contractor in accordance with Clause 34.1 and that are acceptable to the Principal (acting reasonably).

Alternative 2 (Principal Controlled/Arranged)

- 31.1 Prior to the commencement of the work under the Contract, the Principal must have in place an insurance policy that covers:
- (a) public liability for an amount not less than the amount stated in the Annexure, that covers legal liability for third party personal injury and property damage arising from:
 - (i) occurrences that happen whilst the Contractor is performing work under the Contract; and
 - (ii) the insureds' business activities in connection with this Contract; and
 - (b) product liability for an amount not less than the amount stated in the Annexure that covers legal liability for third party personal injury and property damage arising from the completed Works.
- 31.2 The Principal shall pay all premiums in relation to the policy.

- 31.3 The policy will include the Principal, the Contractor and all Subcontractors employed from time to time in relation to the work under the Contract as insured parties.
- 31.4 As an insured under the insurance policy effected in accordance with this Clause 31, all insured parties have an obligation to notify insurers (via the Principal or the Principal's appointed insurance advisor) of incidents that may give rise to a claims for indemnity for under the insurance required to be maintained under this Clause 31. Once notified the Contractor has an ongoing obligation to assist insurers in managing any claim until that claim is finalised.

32. INSURANCE OF EMPLOYEES AND SUBCONTRACTORS

- 32.1 Prior to the commencement of the work under the Contract, the Contractor must have in place workers compensation insurance as required by Statutory Requirements and the Contractor must maintain the insurance cover until all work under the Contract, including Defects Liability Work and other remedial work, is completed.
- 32.2 Failure by the Contractor to provide evidence of the insurance will constitute a substantial breach of the Contract by the Contractor.
- 32.3 The Contractor must ensure that each Subcontractor and Consultant engaged in connection with this Contract holds and maintains relevant and adequate insurance coverage appropriate to the nature of the services or work to be performed by the Subcontractor or Consultant, including:
- (a) workers compensation insurance as required by applicable Statutory Requirements; or
 - (b) where the Subcontractor or Consultant is a sole trader and not otherwise required by Statutory Requirements to hold workers compensation insurance, one of the following types of insurance that provide cover for occupational injuries:
 - (i) workplace personal injury insurance;
 - (ii) income protection insurance; or
 - (iii) personal accident and illness insurance.

The Contractor is responsible for verifying that such insurance is in place prior to the commencement of any subcontracted work and for ensuring it remains in effect for the duration of the Subcontractor's or Consultant's engagement in connection with this Contract.

33. PROFESSIONAL INDEMNITY INSURANCE

- 33.1 Prior to the commencement of the work under the Contract, the Contractor must hold, or be covered under, a professional indemnity insurance policy that insures the Contractor and its employees against civil liability for third party financial loss or damages arising from any act, error, omission or negligence in connection with their professional activities and duties under this Contract, for not less than the amount specified in Annexure.
- 33.2 The Contractor must maintain an insurance policy or run off cover such that professional indemnity insurance coverage is maintained for a minimum period of 6 years following the issue of the Final Certificate for the Works.
- 33.3 Unless otherwise agreed in writing by the Principal, the Contractor must provide the Principal with a certificate of currency or other evidence of insurance that is sufficiently detailed to demonstrate compliance with the requirements of this Clause 33. The certificate must include, at a minimum, the following details, to the extent that providing such information does not cause the Contractor to breach the terms and conditions of its insurance policy:
- (a) name of the insurer;
 - (b) name of the policyholder/insured;
 - (c) policy number;
 - (d) type of insurance policy;

- (e) period of insurance;
- (f) description of the insured professional services; and
- (g) limits of indemnity.

33.4 Failure by the Contractor to provide evidence of insurance in accordance with this Clause 33 will constitute a substantial breach of the Contract by the Contractor.

33.5 The Contractor:

- (a) must promptly notify the Principal if the insurance policy required under this Clause 33 is cancelled or there is any significant change to the coverage that which may impact the Contractor's ability to meet its insurance obligations under this Clause 33;
- (b) must effect the insurance policy required under this Clause 33 with an insurer authorised and licensed to operate in Australia or otherwise with an insurer with a security rating of A or better from Standard & Poor's (or equivalent rating from another recognised rating organisation);
- (c) warrants that any retained exposure arising from policy deductibles or from limitations or exclusions introduced by endorsements to the insurance policy required under this Clause 33 will not impair the Contractor's ability to meet any claim or otherwise prejudice the Principal's rights under this Contract; and
- (d) must comply with the terms of the insurance policy effected in accordance with this Clause 33 and not do, permit to be done or omit to do anything which prejudices the insurance policies.

34. INSPECTION AND PROVISION OF INSURANCE POLICIES

34.1 Proof of Insurance

34.1.1 A party obliged to effect and maintain insurance under this Contract must produce sufficiently detailed evidence of insurance to the satisfaction and approval of the other party of its compliance with its obligations under Clauses 30, 31 and 32, including by providing copies of the insurance policy wording and policy schedule signed by the insurer or the insurer's authorised representative:

- (a) before the Contractor commences the work under the Contract; and
- (b) thereafter:
 - (i) within five (5) Business Days after being requested by the other party to do so; and
 - (ii) within ninety (90) days of renewing or changing the insurance policy .

34.1.2 The effecting of insurance shall not limit the liabilities or obligations of a party under other provisions of the Contract.

34.2 Failure to Produce Proof of Insurance

If, after being requested in writing by the other party to do so, a party fails to produce evidence of compliance with its insurance obligations under Clauses 30, 31, 32 or 33 to the satisfaction and approval of the other party, the other party may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the party in default to the other party. Where the defaulting party is the Contractor, the Principal may refuse payment until evidence of compliance with the Contractor's insurance obligations under Clauses 30, 31, 32 or 33 is produced by the Contractor to the satisfaction and approval of the Principal. The rights given by this Clause 34.2 are in addition to any other right.

34.3 Notices of Potential Claims

34.3.1 The Contractor must:

- (a) promptly notify the Principal in writing of any event, incident, or circumstance that may reasonably be expected to give rise to a claim under any insurance policy required under Clauses 30, 31, 32 or 33, except where to do so could prejudice the Contractor's right to indemnity under such policy of

insurance. The Contractor must keep the Principal reasonably informed of all material developments relating to such claim or potential claim;

- (b) ensure that all Subcontractors engaged by the Contractor are contractually required to, and do, notify the Principal in a similar manner in respect of any such occurrences arising from their operations; and
- (c) comply with all terms and conditions of the insurance policies effected under Clauses 30, 31, 32 and 33 including but not limited to any notification and cooperation requirements.

34.3.2 Where any such insurance policy has been effected by the Principal, the Principal must similarly notify the Contractor of any occurrence that may give rise to a claim and, except where to do so could prejudice the Principal's right to indemnity under such policy of insurance, keep the Contractor reasonably informed of all material developments.

34.4 Settlement of Claims

When a claim is settled under the insurance referred to in Clause 30:

- (a) if the Principal has already paid or allowed for the reinstatement work under the Contract, and the Contractor has not yet completed that reinstatement:
 - (i) any insurance money received for that work must, if either party requests, be deposited into a jointly held bank account at a bank agreed upon by both parties; and
 - (ii) as the Contractor carries out the reinstatement, the Principal's Representative will certify the costs, and payments will be made from the joint account accordingly; or
- (b) if the Principal has not paid or allowed for the reinstatement work under the Contract, the Contractor is entitled to immediately receive the portion of the insurance money that corresponds to the loss they suffered for that work.

34.5 General Requirements

34.5.1 If any insurance required by this Contract is to be effected in the names of more than one insured, the party effecting the insurance must ensure that the policy includes provisions by which the insurer agrees:

- (a) that the term 'insured' and all insuring agreements and endorsements (except for the overall limit of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) except in circumstances of fraud, misrepresentation, non-disclosure or breach of any warranty or condition of the policy of insurance, to waive all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured other than insureds that are architects, consultants, engineers, surveyors, manufacturers or suppliers in respect of their off-Site non-manual activities;
- (c) that any failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (d) that any non-disclosure, misrepresentation (whether fraudulent or otherwise), breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim on the policy;
- (e) that a notice to the insurer by one insured will be deemed to be notice by all insured parties;
- (f) to notify both the Principal and the Contractor in writing at the same time whenever the insurer issues a notice of cancellation or any other notice concerning the policy; and
- (g) to promptly notify both the Principal and the Contractor in writing if the policy is not renewed or if a premium is not paid. This notice must be given before the insurer issues any cancellation notice.

34.5.2 The insurances required under Clauses 30 and 31 must be effected with an insurer authorised and licensed to operate in Australia or otherwise with an insurer with a security rating of A or better from Standard & Poor's (or equivalent rating from another recognised rating organisation).

- 34.5.3 The parties must comply with the terms of each insurance policy effected in accordance Clauses 30 and 31 and not do, permit to be done or omit to do anything which prejudices the insurance policies.

34.6 Excess / Deductible

The Contractor shall bear or pay any excess or deductible which is applicable to any claim made under any of the policies of insurance effected under Clauses 30 or 31 except to the extent the claim is with respect to loss or damage which is the direct consequence, of an Excepted Risk referred to in Clause 28.3.

35. PRINCIPAL'S REPRESENTATIVE

35.1 General

- 35.1.1 The Principal shall ensure that at all times there is a Principal's Representative and that in the exercise of the certification and valuation functions of the Principal's Representative under the Contract, the Principal's Representative acts honestly and fairly.
- 35.1.2 Except for the functions identified in Clause 35.1.1, the Principal's Representative acts only as an agent of the Principal.
- 35.1.3 If, pursuant to a provision of the Contract enabling the Principal's Representative to give directions, the Principal's Representative gives a direction, then the Contractor shall comply with the direction.

Guide note: Delete this guide note

The Contractor is required to comply with instructions given by the Principal's Representative under this Contract. The instruction may initially be given orally, but must be confirmed in writing as soon as practicable in accordance with the QBCC Act.

- 35.1.4 In Clause 35 "direction" includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request, or requirement.
- 35.1.5 Except where the Contract otherwise provides, a direction may be given orally but the Principal's Representative shall as soon as practicable thereafter confirm it in writing.
- 35.1.6 For the purposes of the BIF Act, the Principal's Representative is authorised (but not exclusively) to receive payment claims and to issue payment schedules on behalf of the Principal.

35.2 Site Accommodation

The Contractor shall provide adequate furnished Site accommodation for the Principal's Representative.

36. SITE REPRESENTATIVE AND CLERK OF WORKS

36.1 General

- 36.1.1 The Principal's Representative may from time to time appoint:
- (a) a Site Representative to exercise any functions of the Principal's Representative under the Contract but not more than one Site Representative shall be delegated the same function at the same time. The appointment of a Site Representative shall not prevent the Principal's Representative from exercising any function; and
 - (b) a Clerk of Works, who shall not be empowered to issue instructions but shall at all times deal with and through the Principal's Representative or Site Representative. The Clerk of Works shall be permitted access to:
 - (i) all work under the Contract;
 - (ii) wherever work under the Contract is being performed; and
 - (iii) all places where goods and/or materials are being stored, fabricated, or manufactured for incorporation in the Works;

whether or not on the Site.

36.1.2 The Principal's Representative shall forthwith notify the Contractor in writing of:

- (a) the appointment and the name of any Site Representative and Clerk of Works and the functions delegated to the Site Representative; and
- (b) the termination of the appointment of a Site Representative.

36.1.3 If the Contractor makes a reasonable objection to the appointment of a Site Representative, the Principal's Representative shall terminate the appointment.

36.1.4 The Contractor shall provide adequate furnished Site accommodation for the Site Representatives and Clerks of Works.

37. CONTRACTOR'S REPRESENTATIVE, MANAGEMENT STRUCTURE AND PERSONNEL

37.1 Personnel

37.1.1 The Contractor shall have competent and sufficient representatives present on the Site and, if required by the Principal's Representative, at other places at which activities relating to the execution of the work under the Contract are taking place.

37.1.2 The Contractor shall ensure that any key personnel nominated in the Contractor's Tender, including those personnel described in the costed methodology statements for On Site Overheads and Management Fee in the Contractor's Tender, remain working on the project to the extent indicated, unless the Principal otherwise consents in writing.

37.1.3 Where, for any reason other than to execute a Variation directed under Clause 53.1, the Contractor requires On Site Overheads personnel in addition to those described in the costed methodology statement for On Site Overheads in the Contractor's Tender, the Contractor shall, within 2 days of the personnel commencing work on the Site, notify the Principal's Representative of the names, roles and responsibilities of those personnel, and any further information that the Principal's Representative may reasonably require.

37.1.4 The Contractor shall not be entitled to an adjustment to the On Site Overheads Fee or Management Fee for costs of any nature whatsoever associated with personnel required to be notified to the Principal's Representative pursuant to Clause 37.1.3.

37.2 Contractor's Representative

37.2.1 The Contractor shall ensure that at all times there is a Contractor's Representative who possesses the appropriate skill, expertise, and qualifications and that in the exercise of the functions of the Contractor's Representative under the Contract, the Contractor's Representative acts in good faith.

37.2.2 The Contractor shall forthwith notify the Principal's Representative in writing of the name of the Contractor's Representative and of any subsequent changes.

37.2.3 Matters within the knowledge of, and matters which should have been within the knowledge of, the Contractor's Representative shall be deemed to be within the knowledge of the Contractor.

37.3 Management Structure

The Contractor shall ensure that it has at all times appointed to the positions set out in the Contractor's Tender, individuals who possess the appropriate skill, expertise and qualifications and are the individuals identified in the Contractor's Tender or alternative individuals acceptable to the Principal.

38. CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

38.1 The Principal's Representative may direct the Contractor to have removed from the Site or from any activity connected with the work under the Contract, within such time as the Principal's Representative directs, any person employed in connection with the work under the Contract who, in the opinion of the Principal's Representative, does not meet the requirements of Clause 37.3 or is guilty of misconduct or is incompetent or negligent in relation to any aspect of the work under the Contract.

- 38.2 The person shall not thereafter be employed on the Site or on activities connected with the work under the Contract without the prior written approval of the Principal's Representative.

39. SITE

39.1 Access to and Possession of Site

- 39.1.1 The Principal shall give the Contractor access to the Site sufficient to enable the Contractor to commence and carry out work under the Contract in accordance with the Contract by the later of:
- (a) the time set out in the Annexure; or
 - (b) the time when the Contractor has provided the Principal with the security and evidence of insurance required under the Contract, and has satisfied any other requirements required to be satisfied prior to accessing the Site.
- 39.1.2 The Principal shall give the Contractor possession of the Site or sufficient part of the Site to enable the Contractor to commence further work under the Contract by the later of:
- (a) the expiration of the time stated in the Annexure; or
 - (b) the time when the Contractor has provided the Principal with the security and evidence of insurance required under the Contract, and has satisfied any other requirements required to be satisfied prior to accessing the Site.
- 39.1.3 If the Principal has not given the Contractor possession of the whole Site despite the satisfaction of the requirements in clause 39.1.2, the Principal shall from time to time give the Contractor possession of such further parts of the Site as may be necessary to enable the Contractor to execute the work under the Contract in accordance with the requirements of the Contract.
- 39.1.4 The Principal shall advise the Contractor in writing of the date upon which the Site or any part thereof will be available.
- 39.1.5 A delay by the Principal in giving the Contractor access or possession as required by this Clause 39.1 shall not be a breach of contract but may be a ground for an extension of time.
- 39.1.6 Notwithstanding the provisions of this Clause 39.1, if the Contractor is in breach of Clause 34.1, the Principal may refuse to give the Contractor possession of the Site or any part of the Site until the Contractor has complied with Clause 34.1.
- 39.1.7 Access to or possession of the Site shall confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to execute the work under the Contract.

39.2 A Native Title Act

The Principal's obligation to provide access to the Site under Clause 39.1 includes an obligation to undertake any 'Future Act' process under the *Native Title Act 1993* (Cth) which is necessary to enable the Contractor to carry out the work under the Contract on parts of the Site to which access has been given.

39.3 Access for the Principal and Others

- 39.3.1 The Principal and the Principal's employees and agents may at any time after reasonable notice to the Contractor have access to any part of the Site for any purpose.
- 39.3.2 The Contractor shall permit the execution of work on the Site by persons engaged by the Principal and shall co-operate with them and coordinate the Contractor's work with their work.
- 39.3.3 If requested by the Contractor, the Principal shall provide to the Contractor the names of the persons so engaged.
- 39.3.4 The Contractor shall at all reasonable times give the Principal, the Principal's Representative and other persons authorised in writing by the Principal or by the Principal's Representative access to the work under the Contract at any place where the work is being carried out or materials are being prepared or stored.

- 39.3.5 The Principal shall ensure that the Contractor is not impeded in the execution of the Contractor's work by any persons referred to in Clause 39.2, whilst exercising the right of access given by Clause 39.2.

39.4 Delivery of Materials to and Work on Site Before Possession

Until possession of the Site or part of the Site is given to the Contractor under Clause 39.1, the Contractor shall not deliver materials to or perform work on the Site or part of the Site, as the case may be, unless approval in writing is given by the Principal's Representative.

39.5 Use of Site by the Contractor

Unless the Contract otherwise provides or the Principal's Representative gives prior written approval, the Contractor shall not use the Site or allow it to be used for:

- (a) camping;
- (b) residential purposes; or
- (c) any purpose not connected with the work under the Contract.

39.6 Finding of Minerals, Fossils and Relics

- 39.6.1 Valuable minerals, fossils, articles, or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site shall as between the parties be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor shall take precautions to prevent their loss or removal or damage and shall notify the Principal's Representative of the discovery.

- 39.6.2 If compliance with obligations under Clause 39.5 causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 53.4.

39.7 Extra Land Required by the Contractor

The Contractor shall procure, at the Contractor's own cost, the right to the occupation or use of any land in addition to the Site which the Contractor may deem necessary for the execution of the work under the Contract or for the purposes of the Contract, and shall, as a condition precedent to the issue of the Final Certificate if so required by the Principal's Representative, provide a properly executed release from all claims or demands (whether for damages or otherwise howsoever) from the owner or occupier of and from other persons having an interest in such land. Any such release shall be in a form approved by the Principal.

40. SETTING OUT THE WORKS

40.1 Setting Out

- 40.1.1 The Principal's Representative shall supply to the Contractor the information and Survey Marks necessary to enable the Contractor to set out the Works.
- 40.1.2 Upon receipt of any necessary information and Survey Marks, the Contractor shall set out the Works in accordance with the Contract and shall provide all instruments and things necessary for that purpose.

40.2 Care of Survey Marks

- 40.2.1 The Contractor shall keep in their true positions all Survey Marks supplied by the Principal.
- 40.2.2 If a Survey Mark is disturbed or obliterated, the Contractor shall immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor shall reinstate the Survey Mark.
- 40.2.3 If the disturbance or obliteration is caused by a person referred to in Clause 39.2, other than the Contractor, the cost incurred by the Contractor in reinstating the Survey Mark shall be valued under Clause 53.4.

40.3 Errors in Setting Out

- 40.3.1 If the Contractor discovers an error in the position, level, dimensions, or alignment of any work under the Contract, the Contractor shall immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor shall rectify the error.
- 40.3.2 If the error has been caused by incorrect information, Survey Marks or data supplied by the Principal, the cost incurred by the Contractor in rectifying the error shall be valued under Clause 53.4.

41. MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

41.1 Provision of Materials, Labour and Constructional Plant

Except to the extent that the Contract otherwise provides, the Contractor shall supply everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities under the Contract.

41.2 Removal of Materials and Constructional Plant

- 41.2.1 From time to time the Principal's Representative may by written notice to the Contractor direct the Contractor not to remove from the Site constructional plant or materials.
- 41.2.2 Thereafter, the Contractor shall not remove the materials or the constructional plant without the prior written approval of the Principal's Representative, which approval shall not be unreasonably withheld.

41.3 Manufacture and Supply of Materials

The Principal's Representative may direct the Contractor to supply particulars of:

- (a) the mode and place of manufacture;
- (b) the source of supply;
- (c) the performance capacities; and
- (d) other information;

in respect of any materials, machinery, or equipment to be supplied or used by the Contractor under or in connection with the Contract.

41.4 Queensland Government Building and Construction Training Policy

41.4.1 For the purposes of this Clause:

Aboriginal or Torres Strait Islander means a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives;

Apprentice has the same meaning as in the *Further Education and Training Act 2014* (Qld);

Compliance Plan means the plan submitted electronically by the Contractor in TPAS demonstrating how the Contractor will comply with its obligations under this Clause 41.4 and the Training Policy;

DWATSIPM means the Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism;

Deemed Hours means the number of on-the-job training hours required under this Clause 41.4 and the Training Policy, and are calculated using the following formula:

- (a) for building projects, except for Major building projects - $\text{Contract Sum (including GST)} \times 0.0006$;
- (b) for Major building projects - $\text{Contract Sum (including GST)} \times 0.0009$; DTET means the Department of Trade, Employment and Training; Eligible Project means a contract where:
 - (i) the work under the Contract is carried out in Queensland; and

- (ii) the Contract Sum is \$500,000 or greater (including GST);

IEO Plan means the Indigenous Economic Opportunities Plan developed by the Contractor that complies with the requirements of the Training Policy and is agreed to and signed by:

- (a) the Contractor;
- (b) the Principal; and
- (c) the relevant Aboriginal or Torres Strait Islander council or authority, or where there is no relevant Aboriginal and Torres Strait Islander council or authority, DWATSIPM;

Indigenous Project means an Eligible Project, located in:

- (a) an Aboriginal or Torres Strait Islander community, or in the township of Weipa, as indicated in the Annexure; or
- (b) a part of Queensland not referred to in subparagraph (a) of this definition that is selected as an Indigenous Project by Queensland Government agencies, government owned corporations or by the Director-General of DWATSIPM, as indicated in the Annexure.

Major building project means a project where the Contract Sum (including GST) is \$100 million or greater;

Practical Completion Report means the report submitted electronically by the Contractor in TPAS demonstrating compliance by the Contractor with this Clause 41.4 and the Training Policy;

Trainee has the same meaning as in the *Further Education and Training Act 2014* (Qld);

Training Policy means the Queensland Government policy titled “Queensland Government Building and Construction Training Policy” or any policy which replaces that policy;

TPAS means the Training Policy Administration System being the electronic reporting system administered by DTET for contract compliance reporting under the Training Policy.

41.4.2 Where the work under the Contract constitutes an Eligible Project, the Contractor must:

- (a) within 10 Working Days of the date of commencement of Construction Work on Site, submit the Compliance Plan electronically in TPAS, and as soon as possible afterwards provide a copy of the TPAS email notification for the submitted Compliance Report to the Principal’s Representative;
- (b) allocate a minimum of 60% of the Deemed Hours towards the employment of new entrant Apprentices and Trainees, as required by the Training Policy;
- (c) for the remaining Deemed Hours not allocated under Clause 41.4.2(b), undertake other workforce training, as required by the Training Policy;
- (d) provide the privacy statement contained in Schedule 8 to each Apprentice or Trainee regarding the collection and use of personal information; and
- (e) within 15 Working Days of the date of Practical Completion, or, if there is more than one, the last occurring date of Practical Completion, submit the Practical Completion Report electronically in TPAS, and as soon as possible afterwards provide a copy of the TPAS email notification for the submitted Practical Completion Report to the Principal’s Representative.

41.4.3 If the Annexure states that the Contract is an Indigenous Project, the Contractor must also:

- (a) within 10 Working Days of the date of commencement of Construction Work on Site, submit the IEO Plan as part of the Compliance Plan electronically in TPAS, and as soon as possible afterwards provide a copy to the Principal’s Representative;
- (b) prioritise the employment of Aboriginal or Torres Strait Islander Apprentices and Trainees, and local Aboriginal and Torres Strait Islander workers to meet the Deemed Hours requirement under Clause 41.4.2(b);

- (c) allocate an additional amount towards the IEO Plan, which must be a minimum of 3% of the Contract Sum including GST; and
- (d) within 15 Working Days of the Date of Practical Completion, or if there is more than one the last occurring Date of Practical Completion, submit the achievement of outcomes against the IEO Plan as part of the Practical Completion Report electronically in TPAS, and as soon as possible afterwards, provide a copy of the submitted achievement of outcomes against the IEO Plan to the Principal's Representative.

41.4.4 For Major building projects, the Contractor must also:

- (a) develop a skills development plan;
- (b) deliver training linked to occupational outcomes in applicable national accredited training packages; and
- (c) employ a training coordinator to ensure the implementation of the skills development plan.

41.4.5 Nothing in Clauses 41.4.2, 41.4.3 or 41.4.4 limits or alters the Contractor's obligation to comply with the Training Policy.

41.4.6 The Contractor acknowledges that failure to comply in part or in whole with the requirements of this Clause 41.4 and non-compliance with the Training Policy will be considered in any review of the Contractor's eligibility to tender for future Queensland Government contracts in addition to any other sanctions that may apply.

41.5 **Queensland Charter for Local Content**

41.5.1 This Clause 41.4.5 applies if specified in the Annexure.

41.5.2 The Contractor must, and must ensure its Subcontractors, in carrying out the work under the Contract:

- (a) comply with the principles of the Queensland Charter for Local Content ("Charter") and any requirements under the Contract in this regard;
- (b) comply with any Statement of Intent or equivalent local content statement under the Contract; and
- (c) complete and submit a Charter for Local Content – Project Outcome Report (available from www.dsdmip.qld.gov.au/charter) to the Principal at Practical Completion and at such other times as reasonably requested by the Principal, with a copy to qclc@qld.gov.au.

41.6 **Site Personnel Register**

41.6.1 From the commencement of work under the Contract until Practical Completion, the Contractor must maintain a register in the form in Schedule 13 ("Site Personnel Register") of all individuals who carry out work under the Contract on Site.

41.6.2 The Site Personnel Register must be available for inspection at all times by the Principal's Representative.

41.6.3 The Contractor must provide statistical information in the form in Schedule 13 ("Site Personal Register Summary") to the Principal's Representative every 13 weeks and at such other times as the Principal's Representative may direct.

41.7 **Queensland Procurement Policy**

41.7.1 The Contractor must, and must ensure its Subcontractors:

- (a) in carrying out the work under the Contract, comply with the principles of the Queensland Procurement Policy and any requirements under the Contract in this regard;
- (b) for the term of the Contract, comply with:
 - (i) the Ethical Supplier Threshold;
 - (ii) the Ethical Supplier Mandate;

- (iii) the Supplier Code of Conduct; and
 - (iv) if the Annexure indicates that the Best Practice Principles apply:
 - (A) the Best Practice Principles when procuring or entering into Subcontracts in relation to work under the Contract; and
 - (B) any commitments made in the Contractor's Tender or the Subcontractors' tenders for work under the Contract in relation to the Best Practice Principles.
- 41.7.2 The Contractor acknowledges that a failure to comply with government policies and legislation that apply to the work under the Contract or the Contractor's obligations under the Contract can result in the imposition of a penalty under the Ethical Supplier Mandate, in addition to any other remedies available to the Principal under this Contract.
- 41.7.3 The Contractor:
- (a) consents to a relevant Government Department or Instrumentality providing information to the Principal and the QGP Compliance Branch; and
 - (b) authorises the Principal and the QGP Compliance Branch to obtain information;
- about the Contractor's compliance with government policies and legislation, including without limitation the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the Supplier Code of Conduct, the Queensland Government Building and Construction Training Policy, the Best Practice Principles (if applicable), the *Work Health and Safety Act 2011* (Qld), and the *Electrical Safety Act 2002* (Qld).
- 41.7.4 If the Annexure indicates that the Best Practice Principles apply, the Contractor:
- (a) acknowledges that the Principal values a commitment to the Best Practice Principles; and
 - (b) acknowledges and agrees that the Contractor's compliance with its obligations under this Clause 41.7 and Clause 21.3.2, and the results of any audit under Clauses 21.2.10 or 64.4 in connection with the Best Practice Principles may be taken into account in any future tender process or similar procurement process undertaken by the Principal.

42. MATERIALS AND WORK

42.1 Quality of Materials and Work

The Contractor shall use the materials and standards of workmanship required by the Contract. In the absence of any requirement to the contrary, the Contractor shall use suitable new materials.

42.2 Defective Materials or Work

42.2.1 If the Principal's Representative discovers material or work provided by the Contractor which is not in accordance with the Contract, the Principal's Representative may direct the Contractor to:

- (a) remove the material from the Site;
- (b) demolish the work;
- (c) redesign, reconstruct, replace, or correct the material or work; and/or
- (d) not to deliver the material or work to the Site.

42.2.2 The Principal's Representative may direct the times within which the Contractor must commence and complete the removal, demolition, redesign, reconstruction, replacement, or correction.

42.2.3 The Contractor shall comply with a direction pursuant to this Clause 42.2 at the Contractor's own expense.

Guide note: *Delete this guide note*

A similar provision applies to defects discovered after Practical Completion. See clause 51.

42.2.4 If the Contractor fails to comply with a direction issued by the Principal's Representative pursuant to this Clause 42.2 within the time specified by the Principal's Representative in the direction and, provided the Principal's Representative has given the Contractor notice in writing that after the expiry of 5 Working Days from the date on which the Contractor receives the notice the Principal intends to have the work carried out by other persons, the Principal may have the work of removal, redesign, reconstruction, demolition, replacement or correction carried out by other persons and the cost incurred by the Principal in having the work so carried out shall be a debt due from the Contractor to the Principal. Until the cost of such work has been incurred by the Principal, the Principal may deduct the estimated cost of such work from payments to the Contractor as an amount due from the Contractor to the Principal.

42.2.5 The Contractor will be responsible for any work the Principal arranges to have carried out by other persons pursuant to Clause 42.2.4 as if the Contractor had carried out the work.

42.3 Variations due to Defective Materials or Work

42.3.1 Instead of a direction under Clause 42.2, the Principal's Representative may direct a Variation pursuant to Clause 53.1.

42.3.2 The Variation shall be valued under Clause 53.4 and:

- (a) if the Variation causes an increase or decrease in the value to the Principal of the Works, regard shall also be had to the increase or decrease; and
- (b) if the Variation results in the Contractor incurring more or less cost than would reasonably have been incurred had the Contractor been given a direction under Clause 42.2, regard shall also be had to the difference.

42.4 Acceptance of Defective Material or Work

Instead of a direction under Clause 42.2 or 42.3, the Principal's Representative may notify the Contractor that the Principal elects to accept the material or work notwithstanding that it is not in accordance with the Contract. In that event the resulting increase or decrease in the value to the Principal of the Works and any other loss suffered by the Principal shall be valued under Clause 53.4.

42.5 Generally

42.5.1 The Principal's Representative shall give either a direction under Clause 42.2 or 42.3 or a notice under Clause 42.4 as soon as practicable after the Principal's Representative becomes aware that material or work is not in accordance with the Contract.

42.5.2 The Principal's Representative may give the direction or notice at any time before the issue of the Final Certificate under Clause 57.12.

42.5.3 Except to the extent that to do so would be inconsistent with a direction under Clause 42.3 or a notice under Clause 42.4 and notwithstanding that the Principal's Representative has not given a direction under Clause 42.2, the Contractor shall promptly remove, demolish, replace or correct material or work that is not in accordance with the Contract.

42.5.4 A payment to the Contractor, or a test or a failure by the Principal's Representative or anyone else to disapprove any material or work shall not prejudice the power of the Principal's Representative to subsequently give a direction under Clause 42.2 or 42.3 or a notice under Clause 42.4.

42.5.5 Nothing in Clause 42 shall prejudice any other right which the Principal may have against the Contractor arising out of the failure of the Contractor to provide material or work in accordance with the Contract.

42.5.6 The Principal's Representative shall not be obliged to give a direction under Clause 42.3 or a notice under Clause 42.4 to assist the Contractor.

43. EXAMINATION AND TESTING

43.1 Principal's Representative May Order Tests

43.1.1 At any time prior to the issue of the Final Certificate the Principal's Representative may direct that any material or work under the Contract be tested.

43.1.2 The Contractor shall provide such assistance and samples and make accessible such parts of the work under the Contract as may be required by the Principal's Representative.

43.1.3 On completion of the tests, the Contractor shall make good the work under the Contract so that it fully complies with the Contract.

43.2 **Covering Up of Work**

The Principal's Representative may direct that any part of the work under the Contract shall not be covered up or made inaccessible without the Principal's Representative's prior approval.

43.3 **Who Conducts Tests**

Tests shall be conducted as provided in the Contract or by the Principal's Representative or a person (which may include the Contractor) nominated by the Principal's Representative.

43.4 **Notice of Tests**

Before conducting a test under the Contract, the party conducting the test, being the Principal's Representative or the Contractor, shall give reasonable notice in writing to the other of the time, date, and place of the test. If the other does not then attend, the test may nevertheless proceed.

43.5 **Procedure if Tests Delayed**

Without prejudice to any other right, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

43.6 **Results of Tests**

Results of tests shall be promptly made available by each party to the other and to the Principal's Representative.

43.7 **Costs of Testing**

43.7.1 Costs of and incidental to testing shall be valued under Clause 53.4 and shall be borne by the Principal or paid by the Principal to the Contractor unless:

- (a) the Contract provides that the Contractor shall bear the costs, or the test is one which the Contractor was required to conduct other than pursuant to a direction under Clause 43.1;
- (b) the test shows that the material or work is not in accordance with the Contract;
- (c) the test is in respect of work under the Contract covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
- (d) the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract.

43.7.2 Where such costs are not to be borne by the Principal, they shall be borne by the Contractor or paid by the Contractor to the Principal.

43.8 **Access for Testing**

If:

- (a) the Principal or the Principal's Representative asserts that material or work is not in accordance with the Contract; and
- (b) the Contractor requests permission to test the material or work;

the Principal shall not unreasonably refuse the Contractor access to test the material or work.

44. **WORKING HOURS AND WORKING DAYS**

44.1 The Working Days on the Site shall be as stated in the Annexure but excluding public holidays and industry rostered days off. Except where otherwise nominated, Working Hours on the Site shall be up to 9 hours per Working Day between the hours stated in the Annexure.

- 44.2 The hours and days prescribed in Clause 44.1 shall not be varied without the prior approval of the Principal's Representative except when in the interests of safety of the work under the Contract, or to protect life or property, the Contractor finds it necessary to carry out work outside the hours or on days other than the days as stated or approved by the Principal's Representative. In such cases, the Contractor shall notify the Principal's Representative in writing of the circumstances as early as possible.
- 44.3 Notwithstanding any approval by the Principal's Representative to otherwise vary the Working Hours or Working Days, events occurring outside of the Working Hours or Working Days stated in Clause 44.1 shall not be grounds for an extension of time.
- 44.4 In approving a variation to the hours or days prescribed in Clause 44.1, the Principal's Representative may attach conditions. Such conditions may include, but are not limited to:
- (a) a prohibition of or restriction on the performance of work which requires inspection; and
 - (b) a requirement that the Contractor meets the costs of contract administration including but not limited to costs of inspections, by or on behalf of the Principal's Representative, of work during times approved by the Principal's Representative that are outside of the hours stated in Clause 44.1.

45. PROGRAMMING

45.1 Submission

- 45.1.1 Within 10 business days after the Date of Commencement of Stage Two, the Contractor shall submit to the Principal's Representative a Program in such detail as the Principal's Representative may require which:
- (a) confirms or revises any Program submitted with the Contractor's Stage Two Offer;
 - (b) contains a date for Practical Completion not later than the Date for Practical Completion and identifies other applicable milestones for the Works;
 - (c) sets out the manner in which and times by which the various tasks comprising the work under the Contract shall be completed;
 - (d) shows, and is consistent with, all constraints on access, performance and coordination;
 - (e) shows the start and finish dates and the percentage complete or, in the case of future activities, the intended start and finish dates, of all design and construction activities including any work specified against Provisional Sums and other significant events;
 - (f) identifies and shows the logical relationship between activities and events, the sequence of activities which constitute the current critical path or paths, time leads and lags, and resource and other constraints;
 - (g) shows the dates when the Contractor:
 - (i) will require information, documents, or materials from the Principal;
 - (ii) will require instructions from the Principal, including an instruction to carry out work specified against a Provisional Sum where a delay in issuing such an instruction will result in delays to the work under the Contract; and
 - (iii) will provide information or documents to the Principal's Representative;
 - (h) is accurate, comprehensive and complete;
 - (i) complies with any reasonable requirements of the Principal's Representative;
 - (j) makes reasonable allowance for the Principal's Representative to consent to or comment on, in accordance with the Contract, the documentation submitted to the Principal's Representative and shall also make reasonable allowance for any resubmission of this documentation which may be required.
- 45.1.2 The Contractor must submit an updated Program to the Principal's Representative at the following times:

- (a) at least once every month;
- (b) whenever there is a significant change in scheduling;
- (c) within 7 days after receiving an instruction from the Principal's Representative to do so; and
- (d) following the claim for, and granting of, an extension of time under Clause 49.3.

45.1.3 Updated Programs:

- (a) must reflect scheduled progress and take account of the Contractor's actual progress to the date of the update,
- (b) must otherwise comply with the requirements in clause 45.1.1; and
- (c) where submitted in accordance with Clause 45.1.2(a), must be submitted by the last business day of the month, unless an updated Program has been submitted within the preceding 14 days.

45.1.4 The Principal's Representative shall acknowledge receipt and provide any comment on submitted Programs within 10 business days of receipt.

45.2 **Rights Not Affected**

45.2.1 A Program shall not affect the Contractor's rights or obligations under Clause 46.1 nor shall it form part of the Contract.

46. PROGRESS

46.1 **Rate of Progress**

46.1.1 The Contractor shall:

- (a) proceed with the work under the Contract with due expedition and without delay; and
- (b) reach Practical Completion of the Works by the Date for Practical Completion.

46.1.2 For these purposes and without limiting the generality of the foregoing, the Contractor shall be obliged, in consultation with the Principal's Representative, to take such positive steps to reschedule, re-program, expedite and adjust activities, sequences and the carrying out and execution of the work under the Contract generally so as to ensure that a rate of progress satisfactory to the Principal's Representative is maintained.

46.1.3 The Contractor shall not suspend the progress of the whole or any part of the work under the Contract except where the suspension is under Clause 59.9 or is directed or approved by the Principal's Representative under Clause 48.

46.1.4 The Contractor shall give the Principal's Representative reasonable advance notice of when the Contractor requires any information, materials, documents or instructions from the Principal's Representative or the Principal. The Principal and Principal's Representative shall not be required to give any information, materials, documents, or instructions earlier than would have been reasonably anticipated at the time of submission of Contractor's Tender.

47. ACCELERATION

47.1 **Acceleration Proposal**

47.1.1 The Principal's Representative may at any time prior to the Date of Practical Completion direct the Contractor to provide a proposal to accelerate completion of the work under the Contract or any part thereof (in this Clause 47 called the "Acceleration Proposal"). Such direction may require the Contractor to propose:

- (a) a revised Date for Practical Completion;
- (b) the measures the Contractor considers necessary to meet the requirements of the Principal's Representative; and

- (c) the adjustment required in the opinion of the Contractor, inclusive of all costs howsoever arising, to:
 - (i) if during Stage One, the Management Fee, the Consultants Fee, the On Site Overheads Fee and the Early Works Sum; or
 - (ii) if during Stage Two, the Contract Sum; to carry out those measures.

47.1.2 Within 5 business days of the direction or such further time as may be agreed, the Contractor shall provide to the Principal's Representative an Acceleration Proposal.

47.1.3 The Contractor acknowledges that the adjustments referred to in Clause 47.1.1(c) are contingent upon achievement of Practical Completion on or before the revised Date for Practical Completion, such that if Practical Completion is not achieved on or before the revised Date for Practical Completion, the adjustments may be reversed by the Principal's Representative unless the Contractor establishes to the reasonable satisfaction of the Principal's Representative that the sole reason for the failure to reach Practical Completion on or before the revised Date for Practical Completion is a delay or delays caused by the Principal, the Principal's Representative or one of their servants or agents.

47.2 **Acceptance of Acceleration Proposal**

Within 10 business days of receiving the Acceleration Proposal from the Contractor or such other time as may be agreed, the Principal's Representative may advise the Contractor:

- (a) that the Acceleration Proposal is:
 - (i) acceptable; or
 - (ii) unacceptable, in whole or in part, and agree with the Contractor and accept a revised Acceleration Proposal;

and direct the Contractor to carry out the measures contained in the accepted Acceleration Proposal, and such direction shall be a direction to accelerate; or

- (b) that the Acceleration Proposal is unacceptable and that no acceleration is required; or
- (c) that the Acceleration Proposal or part thereof is unacceptable and give the Contractor a direction to accelerate in which event Clause 47.3 shall apply.

47.3 **Direction to Accelerate**

47.3.1 Notwithstanding that the Principal's Representative has not requested an Acceleration Proposal the Principal's Representative may nevertheless give the Contractor a direction to accelerate.

47.3.2 A direction to accelerate:

- (a) may, but not necessarily, be in response to an Acceleration Proposal;
- (b) shall be in writing and contain a statement that it is a direction to accelerate under this Clause 47.3;
- (c) shall identify generally the measures which the Principal's Representative requires the Contractor to take to accelerate the execution of the work under the Contract;
- (d) may identify the parts of the work under the Contract which the Principal's Representative requires the Contractor to accelerate;
- (e) shall state:
 - (i) the revised Date for Practical Completion; and
 - (ii) if during Stage One, the quantum of adjustment to:
 - (A) the Management Fee;
 - (B) the Consultants Fee;
 - (C) the On Site Overheads Fee; and

(D) the Early Works Sum; or

(iii) if during Stage Two, the quantum of adjustment to the Contract Sum;

where these revised dates or adjustments are not those contained in an accepted Acceleration Proposal, the Principal's Representative shall determine reasonable revised dates and adjustments;

(f) shall state the time by which the Contractor shall commence to implement the direction to accelerate; and

(g) may not be given unless the work is capable of being performed by the revised Date for Practical Completion.

47.3.3 If the Principal's Representative gives a direction to accelerate then the Contractor shall comply with the direction to accelerate within the time stated in the direction and the:

(a) Date for Practical Completion;

(b) if during Stage One:

(i) the Management Fee;

(ii) the Consultants Fee;

(iii) the On Site Overheads Fee; and

(iv) the Early Works Sum; or

(c) if during Stage Two, the Contract Sum;

shall be revised or adjusted in accordance with the direction to accelerate and the Contractor shall not be entitled to claim further reimbursement of any costs or any damages.

48. SUSPENSION OF THE WORKS

48.1 Suspension by Principal's Representative

If the Principal's Representative considers that the suspension of the whole or part of the work under the Contract is necessary:

(a) because of an act or omission of:

(i) the Principal, the Principal's Representative, or an employee, consultant, or agent of the Principal; or

(ii) the Contractor, a Subcontractor or an employee or agent of either; or

(b) for the protection or safety of any person or property; or

(c) to comply with an order of a court; or

(d) for any other reason which the Principal's Representative in the Principal Representative's absolute discretion considers justifiable in the circumstances;

then the Principal's Representative may direct the Contractor to suspend the progress of the whole or part of the work under the Contract for such time as the Principal's Representative thinks fit.

48.2 Suspension by the Contractor

If the Contractor wishes to suspend the whole or part of the work under the Contract, otherwise than under Clause 59.9, the Contractor shall obtain the prior written approval of the Principal's Representative. The Principal's Representative may approve the suspension and may impose conditions of approval.

48.3 Recommencement of Work

As soon as the Principal's Representative becomes aware that the reason for any suspension no longer exists, the Principal's Representative shall direct the Contractor to recommence work on the whole or on

the relevant part of the work under the Contract. If work is suspended pursuant to Clause 48.2 or 59.9, the Contractor may recommence work at any time after reasonable advance notice to the Principal's Representative.

48.4 Cost of Suspension

Any cost incurred by the Contractor by reason of a suspension under Clause 48.1 or Clause 48.2 shall be borne by the Contractor, but if the suspension is due to an act or omission of the Principal, the Principal's Representative or an employee, consultant or agent of the Principal and the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension, then the difference shall be valued by the Principal's Representative under Clause 53.4. The entitlement of the Contractor under this Clause 48.4 shall be the Contractor's sole remedy in respect of any suspension.

48.5 Effect of Suspension

A suspension shall not affect the Date for Practical Completion, but the cause of the suspension may be a ground for extension of time under Clause 49.3. Notwithstanding any other provision of the Contract, the Contractor shall not be entitled to any damages for delay or disruption pursuant to Clause 50 as a result of a suspension or the cause of the suspension.

49. TIMES FOR COMMENCEMENT AND COMPLETION

49.1 Time for Commencement

Upon receiving the Principal's letter of acceptance of tender the Contractor shall promptly commence work under the Contract.

49.2 Time for Completion

Guide note: Delete this guide note

The Contractor is required to actively monitor and manage progress of the works to achieve Practical Completion by the Date for Practical Completion. The Contractor should keep the Principal regularly informed of its progress through the PAG and Principal's Representative in accordance with clause 46.1.2.

Subject to Stage Two proceeding, the Contractor shall ensure the Works achieves Practical Completion by the Date for Practical Completion.

49.3 Extension of Time

Guide note: Delete this guide note

The initial Date for Practical Completion is stated in Annexure and may be adjusted under the Contract or as part of the Stage Two Offer. The Contractor is responsible for managing progress to achieve Practical Completion for the Works, including any Separable Portions agreed in the Stage Two Offer.

Clause 49.3 sets out the conditions under which the Contractor may claim an extension of time for a delay event (listed in clause 49.3.4). It also entitles the Principal to extend time for any reason, at its sole discretion.

49.3.1 When the Contractor becomes aware of anything including an act or omission of the Principal, the Principal's Representative or the Principal's employees, consultants, other contractors or agents which may delay the work under the Contract, the Contractor shall promptly give written notice of that cause and the estimated delay to the Principal's Representative.

49.3.2 The Contractor shall be entitled to such extension of time to the Date for Practical Completion for carrying out work under the Contract as the Principal's Representative assesses, if:

- (a) the Contractor is or will be delayed in reaching Practical Completion by a cause described in Clause 49.3.4;

- (b) the delay is to an activity or activities on the critical path of the then current Program and work is otherwise proceeding in accordance with this Program;
- (c) the Contractor has complied with Clause 49.3.1; and
- (d) the Contractor gives the Principal's Representative, within 20 business days of when the Contractor should reasonably have become aware of that causation occurring, a written claim for an extension of time evidencing the facts of causation and of the delay to work under the Contract including the extent of the delay.

49.3.3 If further delay results from a cause described in Clause 49.3.4 evidenced in a claim under Clause 49.3.2(d), the Contractor shall claim an extension of time for such delay by promptly giving the Principal's Representative a written claim evidencing the facts of the delay.

49.3.4 The causes are any of the following:

- (a) events whether occurring before, on or after the Date for Practical Completion:
 - (i) delays caused by:
 - (A) the Principal;
 - (B) the Principal's Representative;
 - (C) the Principal's employees, consultants, other contractors, or agents;
 - (ii) any breach of the Contract by the Principal;
 - (iii) any change in Statutory Requirements assessed in accordance with Clause 24.2, irrespective of whether such change causes the Contractor to incur more or less cost than otherwise would have been incurred;
 - (iv) delay caused by any statutory authority in granting approvals, agreements or permits or carrying out works or services for which they are responsible, other than where the reason for the delay is the failure of the Contractor or its Subcontractors to:
 - (A) take any reasonable steps to progress the granting of an approval, agreement or permit or the carrying out of works or services; or
 - (B) comply with a Statutory Requirement;
 - (v) inclement weather which exceeds any inclement weather allowance included in the Contract or agreed Stage Two Offer;
 - (vi) pandemics, fire, explosion, lightning, cyclone, flood which may be expected to occur once or less in every 100 years, earthquake, high sea inundation, landslide, and natural disasters, to the extent they are beyond the Contractor's reasonable control; and
 - (vii) any event identified in any other provision of the Contract entitling the Contractor to an extension of time;
 - (b) industry-wide industrial action not caused by the Contractor occurring on or before the Date for Practical Completion; and
 - (c) delays to Subcontractors and Consultants due to an event set out in the paragraphs above, excluding a Variation direction issued by the Principal's Representative pursuant to Clause 19. However, this Clause 49.3 does not prevent the Principal's Representative from exercising its discretion to extend the Date for Practical Completion pursuant to Clause 19.
- 49.3.5 In assessing each claim for extension of time the Principal's Representative shall disregard questions of whether:
- (a) work under the Contract can nevertheless reach Practical Completion by the Date for Practical Completion without an extension of time; and

- (b) the Contractor can accelerate,
- but shall have regard to what prevention and mitigation of the delay has not been affected by the Contractor.
- 49.3.6 In determining a claim for an extension of time for an event causing delay, the Principal's Representative may have regard to the program at the date of the event or events on which the claim is based and whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.
- 49.3.7 Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause referred to in Clause 49.3.4, then to the extent that the delays are concurrent, the Contractor shall not be entitled to an extension of time.
- 49.3.8 If a Variation or other event results in less time being required to reach Practical Completion, the Principal's Representative may assess a reasonable adjustment to the Date for Practical Completion.
- 49.3.9 If the Contractor is entitled to an extension of time to the Date for Practical Completion then the Principal's Representative shall, within 20 business days after receipt of the notice of the number of days extension claimed, grant an extension of time. Such extension shall be granted in calendar days. If the Principal's Representative does not grant the full extension of time claimed, the Principal's Representative shall before the expiration of the 20 business days give the Contractor notice in writing of the reason.
- 49.3.10 If the adjusted Date for Practical Completion falls on a day which is not a Working Day, the adjusted Date for Practical Completion shall be the next Working Day following that date.
- 49.3.11 Notwithstanding that the Contractor is not entitled to an extension of time, the Principal's Representative may, at any time and from time to time before the issue of the Final Certificate, by notice in writing to the Contractor extend the Date for Practical Completion for any reason. The power given by this Clause 49.3.11 is exercisable by the Principal's Representative for the sole benefit of the Principal.
- 49.3.12 Neither:
- (a) a delay caused by the Principal, the Principal's Representative or any of the Principal's employees, consultants, other contractors, or agents; nor
 - (b) the failure of the Principal's Representative to grant an extension of time,
- shall cause the Date for Practical Completion to be set at large but nothing in this Clause 49.3 shall prejudice any right of the Contractor to damages.
- 49.4 Liquidated Damages**
- 49.4.1 If the Contractor fails to reach Practical Completion by the Date for Practical Completion, the Contractor shall be indebted to the Principal for liquidated damages at the rate stated in the Annexure for every calendar day after the Date for Practical Completion up to and including the Date of Practical Completion, or the date that the Contract is terminated, whichever first occurs.
- 49.4.2 The Principal's Representative may deduct liquidated damages in assessing any amount due to the Contractor under Clause 57.
- 49.4.3 If, after the Contractor has paid or the Principal has deducted liquidated damages, the Date for Practical Completion is extended, the Principal shall forthwith repay the Contractor any liquidated damages paid or deducted in respect of the period up to and including the extended Date for Practical Completion.
- 49.4.4 If the Annexure states that liquidated damages do not apply, the Principal may claim general damages if the Contractor fails to reach Practical Completion by the Date for Practical Completion.
- 49.4.5 The applicable rate of liquidated damages will be reduced where any part of the Works is being used or occupied by the Principal prior to Practical Completion. The reduced rate of liquidated damages will be in the same proportion to the original rate as the value of the remaining work is to the Contract Sum (as adjusted to the time of occupation). The value of the remaining work will be assessed by the Principal's Representative, acting reasonably.

49.4.6 The Contractor acknowledges that the rates for liquidated damages in the Annexure are a genuine pre-estimate of the Principal's loss and agrees that it will not challenge any rate for liquidated damages as being in the nature of a penalty. If the Contractor's obligation to pay liquidated damages is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages for the Contractor's failure to reach Practical Completion by the Date for Practical Completion and such general damages will not exceed the rate of liquidated damages in the Annexure.

49.5 Separable Portions

49.5.1 The interpretations of:

- (a) Date for Practical Completion;
- (b) Date of Practical Completion;
- (c) Practical Completion; and
- (d) Clauses 9.2, 9.5, 9.10, 9.11, 28, 49, 50, 51, 52, 53, and 57.9,

shall apply separately to each separable portion and references therein to the Works and to work under the Contract shall mean so much of the Works and the work under the Contract as is comprised in the relevant separable portion.

49.5.2 The amount of security, retention moneys, liquidated damages or damages for delay or disruption applicable to a separable portion, shall be the respective amounts applicable to such proportion of those items applicable to the whole of the work under the Contract as the value of the separable portion bears to the value of the whole of the work under the Contract, unless the Contract expressly nominates some other specific amount in respect of the particular separable portion.

49.5.3 Separable Portions may be directed by the Principal's Representative at any time or agreed in the Stage Two Offer, and shall clearly identify for each, the:

- (a) portion of the Works;
- (b) Date for Practical Completion;
- (c) respective amounts for security, liquidated damages and delay costs (all calculated pro-rata according to the ratio of the Principal's Representative's valuation of the Separable Portion to the Contract Sum); and
- (d) any other matters that are necessary for the creation of separable portions as determined by the Principal's Representative.

49.6 Use of Partly Completed Works

Guide note: *Delete this guide note*

Where the Works include a building and early occupation is required, the Building Act 1975 (Qld) allows for a Certificate of Occupancy (OC) to be issued for part of a partially completed building. Before considering early occupation, consider the relevant health and safety risks and any building permit requirements.

49.6.1 Before the Contractor achieves Practical Completion, the Principal, or anyone authorised by the Principal, may use or occupy all or any part of the Works which are sufficiently complete and:

- (a) the Contractor's responsibilities are not affected, except if they are reduced under Clauses 28.3, 29.1.3 or 49.4.5 or if the Principal, or anyone authorised by the Principal to use or occupy any part of the Works, directly interferes with the Contractor's work; and
- (b) the Principal becomes responsible for any additional insurance required for occupation of the Works.

- 49.6.2 If the Principal requires use or occupation of any part of the Works before the Contractor achieves Practical Completion, the Principal must give not less than 21 days' notice in writing to the Contractor and must specify the date on which use or occupation is required and those parts to be used or occupied.
- 49.6.3 The Contractor must assist and cooperate with those using or occupying the Works.
- 49.6.4 No later than 21 days after receipt of a notice under Clause 49.6.2, the Contractor must provide to the Principal all the documents and other things required for Practical Completion that are relevant to the parts of the Works to be used or occupied.

50. DELAY OR DISRUPTION COSTS

50.1 Principal's Obligation and Liability

Nothing in Clause 50 shall oblige the Principal to pay extra costs for delay or disruption which have already been included in any other payment under the Contract.

50.2 Damages for Delay or Disruption

- 50.2.1 The Contractor shall only be entitled to damages for any delay in the completion of or disruption in the progress of the work under the Contract if:
- (a) an extension of time to the Date for Practical Completion has been or should properly have been allowed under Clause 49.3.4(a)(i) or (ii);
 - (b) the cause of the delay:
 - (i) is beyond the control of the Contractor; and
 - (ii) arises out of a breach of the provisions of the Contract by the Principal or out of any other act or omission on the part of the Principal, the Principal's Representative, any agent, consultant or contractor of the Principal or any employee of the Principal;
 - (c) the Contractor has taken all proper and reasonable steps necessary and within its control both to preclude the occurrence of the cause of the delay and/or to minimise the consequences thereof; and
 - (d) any costs, expenses or damages suffered or incurred by the Contractor as a result of any such delay have not been included in the value of any Variation and are not payable by virtue of any other provision of the Contract.
- 50.2.2 Subject to compliance with the provisions of this Clause 50.2, the Contractor shall in respect of any such delay or disruption encountered by it in the execution of the work under the Contract be entitled to be paid by the Principal an amount by way of damages for every Working Day of delay calculated and determined by reference to the relevant daily rate for agreed damages contained in the Contractor's Tender.
- 50.2.3 The amount due by the Principal to the Contractor under this Clause 50.2 is the agreed damages due by the Principal to the Contractor and is in full satisfaction of all Claims for damages or any other payment or compensation whatsoever, for breach of contract or otherwise according to law, which the Contractor may make or bring against the Principal arising in connection with all and any delay or disruption howsoever caused or encountered by the Contractor in the execution of the work under the Contract.
- 50.2.4 The amount due by the Principal to the Contractor under this Clause 50.2 includes (without limitation) all Claims for damages or any other payment or compensation whatsoever which Subcontractors of the Contractor may make or bring against the Contractor arising in connection with delay or disruption caused by the Principal, the Principal's Representative, or any of the Principal's employees, consultants, other contractors or agents.
- 50.2.5 All amounts due in respect of such damages shall be separately identified in claims for payment under Clause 57.2.

50.3 Provisional Delay Allowance

- 50.3.1 The Contractor's Tender shall include a Provisional Delay Allowance for delay days as calculated by reference to the provisional number of delay days as stated in the Contract multiplied by the rate per day contained in the Contractor's Tender.
- 50.3.2 If the total amounts due by the Principal to the Contractor pursuant to Clause 50.2.2 is greater or less than the Provisional Delay Allowance, the amount of such difference shall be included in payment certificates issued by the Principal's Representative pursuant to Clause 57.

Guide note: Delete this guide note

The Principal considers the Contractor to be an expert in the design and construction of the Works and holds the Contractor responsible for its work. The Principal requires Practical Completion to be defect-free.

These provisions are to ensure that the Works are constructed to the standards required by the Principal. There is no 'defects liability period' in the Contract – the Contractor remains responsible for defects for the relevant statutory limitation period. For example, under section 10 of the Limitations of Actions Act 1974 (Qld), an action in respect of breach of contract or tort cannot be brought more than 6 years from the date on which the cause of action arose. In addition to its rights under this clause, the Principal can also rely on its common law rights in relation to defects in the Works. See also clause 42.2.1 which deals with defects discovered before Practical Completion.

51. DEFECTS LIABILITY

- 51.1 The Contractor must identify and promptly make good all omissions or defects in the work under the Contract so that the Works comply with the Contract.
- 51.2 At any time after Practical Completion, the Principal's Representative may direct the Contractor to rectify any omission or defect in the work under the Contract which becomes apparent. The direction shall identify the omission or defect and state a date by which the Contractor shall complete the work of rectification and may state a date by which the work of rectification shall commence.
- 51.3 If the work of rectification is not commenced or completed by the stated dates, the Principal may have the work of rectification carried out by others at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such omission or defect and the cost of the work of rectification incurred by the Principal shall be a debt due from the Contractor. Until the cost of the work of rectification has been incurred by the Principal, the Principal may deduct the estimated cost of such work from payments to the Contractor as an amount due from the Contractor to the Principal.
- 51.4 The Contractor will be responsible for any work the Principal arranges to have carried out by other persons pursuant to Clause 51.3 as if the Contractor had carried out the work.
- 51.5 The Contractor shall carry out work of rectification at times and in a manner which cause as little inconvenience to the occupants or users of the Works as is reasonably possible.
- 51.6 The Contractor's liability for omissions and defects in the work under the Contract continues until any limitation period under statute expires.

52. CLEANING UP

- 52.1 The Contractor shall keep the Site and the work under the Contract clean and tidy. The Contractor shall regularly remove rubbish and surplus material.
- 52.2 The Contractor shall ensure that rubbish and surplus materials are removed from areas adjacent to occupied or operational areas on a daily basis, and that access to such areas is not impeded by materials, rubbish, or debris.

- 52.3 The Contractor shall ensure that the removal of all rubbish and surplus material is done in an environmentally conscious manner, with recycling options being utilised at every opportunity.
- 52.4 Within 10 business days after the Date of Practical Completion the Contractor shall remove Temporary Works and constructional plant.
- 52.5 The Principal's Representative may extend the time for removal of Temporary Works or constructional plant necessary to enable the Contractor to perform remaining obligations.
- 52.6 Notwithstanding Clause 59, if the Contractor fails to comply with any obligation imposed on the Contractor by Clause 52 the Principal's Representative may, after the Principal's Representative has given reasonable notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the cost incurred by the Principal in having the work so carried out may be recovered by the Principal as a debt due from the Contractor to the Principal. The rights given by this Clause are in addition to any other right.

53. VARIATIONS

Guide note: Delete this guide note

The Principal will typically obtain, and seek to settle by negotiation, the Contractor's price and allowance for effect on time for a proposed Variation before instructing the Variation in writing (including at PAG level), and clause 53.2 provides for this. However, this does not prevent the Principal from instructing a Variation at any time.

53.1 Variations to the work under the Contract

- 53.1.1 The Principal's Representative may in writing direct the Contractor, pursuant to Clause 53.1, to:

- (a) increase, decrease or omit any part of the work under the Contract;
- (b) change the character or quality of any material or work or anything described in the Stage Two Project Brief, the Developed Design or the Construction Documentation;
- (c) change the levels, lines, positions, or dimensions of anything described in the Stage Two Project Brief, the Developed Design or the Construction Documentation or any part of the work under the Contract;
- (d) during Stage Two, incorporate an alternative design solution where the Contractor has complied with Clause 14(a);
- (e) execute additional work; and/or
- (f) demolish or remove material or work no longer required by the Principal;

except where a Variation may be directed by the Principal's Representative pursuant to Clause 19.

- 53.1.2 The Contractor is bound only to execute a Variation which is within the general scope of the Contract.

- 53.1.3 The Contractor shall not be bound to execute a Variation directed after the Date of Practical Completion unless the Variation is in respect of rectification work referred to in Clause 51.

53.2 Proposed Variations

- 53.2.1 Within 5 business days of receipt of a notice in writing from the Principal's Representative advising the Contractor of a proposed Variation pursuant to Clause 53.2, the Contractor shall advise the Principal's Representative:

- (a) in respect of the Contractor's assessment as to whether the proposed Variation can be effected; and
- (b) details of the work performed by Consultants and associated costs in providing that assessment.

53.2.2 The Principal shall not reimburse the Contractor any of the Contractor's costs of complying with the requirements of this Clause 53.2 other than:

- (a) the reasonable costs incurred for work performed by Consultants; and
- (b) the reasonable costs incurred by the Contractor in engaging additional resources specifically for the purpose of complying with the requirements of this Clause 53.2.

The costs described in Clause 53.2.2(a) and (b) above will only be paid if the proposed Variation does not proceed.

53.2.3 If the Variation can be effected, the Contractor shall:

- (a) advise the Principal's Representative of the effect (if any) which the Contractor anticipates that the Variation will have on the Program and time for Practical Completion, and the amount of any delay or disruption costs under Clause 50;
- (b) provide a detailed quotation of the cost of the proposed Variation, inclusive of GST, including:
 - (i) if during Stage One:
 - (A) any proposed adjustments to the Management Fee, Consultants Fee, On Site Overheads Fee and Early Works Sum; and
 - (B) the amount of the Off Site Overheads and Profit Fee (if any) that will be payable in respect of the Variation;
 - (ii) if during Stage Two, any proposed adjustment to the Contract Sum; and
- (c) provide advice as to the effect of the proposed Variation on any applicable warranty.

53.2.4 Following receipt of the Contractor's quotation pursuant to Clause 53.2.3, the Principal's Representative may, in writing:

- (a) accept the quotation provided by the Contractor and direct a Variation under Clause 53.1 and, in doing so, accept or reject advice (if any) given by the Contractor pursuant to Clauses 53.2.3(a) and 53.2.3(c); or
- (b) reject the quotation, in which case the Principal's Representative may nevertheless direct the Variation under Clause 53.1 and the Variation so directed shall be valued under Clause 53.4.2.

53.3 Variations for the Convenience of the Contractor

53.3.1 If the Contractor requests the Principal's Representative to approve a Variation for the convenience of the Contractor, except where the Contractor has requested a Variation pursuant to Clause 19.2, the Principal's Representative may do so in writing pursuant to this Clause 53.3. The approval may be conditional.

53.3.2 Unless the Principal's Representative otherwise directs in the notice approving the Variation, the Contractor shall not be entitled to:

- (a) any extension of time for Practical Completion; or
- (b) extra costs, any extra payment, or an adjustment to the Contract Sum or to:
 - (i) the Management Fee;
 - (ii) the Consultants Fee;
 - (iii) the On Site Overheads Fee;
 - (iv) the Off Site Overheads and Profit Fee; or
 - (v) the Early Works Sum; or
 - (vi) the Project Cost Estimate;

in respect of the Variation or anything arising out of the Variation which would not have arisen had the Variation not been approved.

- 53.3.3 The Principal's Representative shall not be obliged to approve a Variation for the convenience of the Contractor.

53.4 Valuation of Variations

- 53.4.1 If the Contractor provides a detailed quotation for the work of a Variation under Clause 53.2 which is accepted by the Principal's Representative, then the value of the resulting Variation directed pursuant to Clause 53.1 including any adjustments referred to in Clause 53.2.3(b)(i)(A) shall be in accordance with the accepted quotation and Clause 53.4.2 shall not apply.
- 53.4.2 Where the Contract requires that a valuation be made under Clause 53.4 and Clause 53.4.1 does not apply, the value shall be agreed between the Contractor and the Principal's Representative, or if agreement cannot be reached, the Principal's Representative shall determine a reasonable value, subject to the following:
- (a) where further or reduced Construction Work is required, the value shall include an amount (inclusive of GST) calculated in accordance with rates or prices included in the Contract (if any), but only to the extent to which the Principal's Representative determines that those rates or prices are reasonable and applicable;
 - (b) the value shall include an amount calculated by applying the Off Site Overheads and Profit Fee Stage Two percentage contained in the Contractor's Tender to the amount for any further or reduced Construction Work that has been agreed to or determined by the Principal's Representative pursuant to this Clause 53.4.2, and the amount so calculated (inclusive of GST) shall be the Contractor's only entitlement in respect of additional off site overheads and profit;
 - (c) where further or reduced work is required by a Consultant, the value shall include an amount (inclusive of GST) for that work, calculated having regard to any fee proposal provided by the Consultant to the Contractor for the performance of the additional work and the contract between the Contractor and the Consultant;
 - (d) where the Contractor is not entitled to damages for any delay in the completion of or disruption in the progress of the work under the Contract pursuant to Clause 50, the value shall include an amount of 5% of the amount for any further or reduced Construction Work and any further or reduced work required by a Consultant, that has been agreed to or determined by the Principal's Representative pursuant to this Clause 53.4.2, and the amount so calculated (inclusive of GST) shall be the Contractor's only entitlement in respect of the Management Fee or the costs of managing the work the subject of the valuation;
 - (e) where the Contractor is not entitled to damages for any delay in the completion of or disruption in the progress of the work under the Contract pursuant to Clause 50, and the work the subject of the valuation requires On Site Overheads personnel in addition to those personnel described in the costed methodology statement for On Site Overheads in the Contractor's Tender and required to be notified by the Contractor to the Principal's Representative pursuant to Clause 37.1.3, the value shall include an amount (inclusive of GST) for the additional personnel, which shall be the Contractor's only entitlement in respect of additional On Site Overheads;
 - (f) where the work the subject of the valuation requires fewer On Site Overheads personnel than those personnel described in the costed methodology statement for On Site Overheads in the Contractor's Tender, the value shall include a deduction (inclusive of GST) for those personnel no longer required.
- 53.4.3 The value calculated in accordance with Clause 53.4.2 shall be the amount (inclusive of GST) by which the Contract Sum shall be adjusted, or if during Stage One and there is no Contract Sum, the amount by which the Management Fee, Consultants Fee, On Site Overheads Fee, Off Site Overheads and Profit Fee and Early Works Sum shall be adjusted.
- 53.4.4 During Stage One, the Principal may, in the Principal's absolute discretion and without obligation to act reasonably, adjust the Project Cost Estimate in accordance with the amount calculated under Clause 53.4.2.

53.5 Omissions

- 53.5.1 If the Principal's Representative instructs a Variation omitting any part of the work under the Contract, the Principal may thereafter either perform the omitted work or employ or engage another person to carry out and execute the omitted work.
- 53.5.2 The Contractor shall have no entitlement to make a Claim as a result of any part of the work under the Contract being omitted therefrom, whether or not the Principal thereafter performs the omitted work or employs or engages another person to carry out and execute the omitted work.
- 53.5.3 The work which has been omitted shall be valued in accordance with Clause 53.4.

53.6 Notice of Variations

If the Contractor considers that a direction given by the Principal's Representative while not expressly identified as a Variation constitutes a Variation, the Contractor shall promptly, and within 20 business days after the receipt of such direction, notify the Principal's Representative of such.

54. NOT USED**55. RATES OF EXCHANGE AND DUTY****55.1 Customs Tariff (Anti-Dumping) Legislation**

- 55.1.1 For the purposes of this Clause 55.1:

dumped goods means goods resulting from a practice where a supplier exports goods to another country at a price below the price charged in the country of manufacture or below the cost of manufacturing the goods.

- 55.1.2 The Contractor warrants that:

- (a) it will not supply dumped goods or goods suspected of being Dumped Goods for the term of the Contract;
- (b) it will do business with ethically, environmentally and socially responsible suppliers, and will seek to influence the supply chain in this regard;
- (c) it has put into place all necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and
- (d) should the Contractor become aware of any risk of breaching this warranty, it shall immediately notify the Principal of such risk and the remediation action it proposes to take.

- 55.1.3 Notwithstanding Clause 55.1.2 above:

- (a) the Contractor shall be responsible for the payment of and indemnify the Principal in respect to, any amount which is due or that may become due under the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) and in respect to any security that is due or may become due under the *Customs Act 1901* (Cth) for duty that may become due under the *Customs Tariff (Anti-Dumping) Act 1975* (Cth); and
- (b) the Contract Sum, or the Early Works Sum during Stage One, shall include all amounts due under this Clause 55 and the Contractor shall not be entitled to any additional remuneration whatsoever in respect of any such amounts that are due or that may become due.

55.2 Variations in Rates of Exchange and Duty

- 55.2.1 Subject to Clause 55.2.2, if it is shown to the satisfaction of the Principal's Representative:

- (a) that the Contractor has placed its orders for any materials, machinery, or other goods, forming part of the Works and required to be imported from overseas sources, in time to achieve a rate of progress satisfactory to the Principal's Representative; and
- (b) that at the time of the Contractor's payment of an invoice for any materials, machinery or other goods forming part of the Works a difference has occurred in comparison to the price obtained and included

in the Stage Two Offer of such materials, machinery or other goods, which difference is solely attributable to an alteration in the rates of exchange or duty;

the value of such difference shall, upon application in writing to the Principal's Representative by the Contractor or upon notification in writing to the Contractor by the Principal's Representative, be taken into account in the Final Certificate, and the value of such difference shall be calculated in accordance with the entire example calculation included in Schedule 9.

55.2.2 For the purposes of this Clause 55.2 and the example calculation included in Schedule 9, the evaluation of such difference shall be based upon:

- (a) the selling rate for the appropriate foreign currency as published by the Reserve Bank of Australia at the closing of business on the date the Contractor's Stage Two Offer was submitted to the Principal;
- (b) the selling exchange rate for the appropriate foreign currency as published by the Reserve Bank of Australia as applied at the time of payment of the invoice by the Contractor for the material, machinery, or other goods;
- (c) the rate of duty payable at the closing of business on the date the Contractor's Stage Two Offer was submitted to the Principal; and
- (d) the rate of duty paid at the time of payment of the invoice by the Contractor for the material, machinery, or other goods.

55.2.3 Clause 55.2.1 shall apply only to those goods listed by the Contractor on a form which complies with Schedule 9, properly completed and submitted with the Stage Two Offer, or, in the case of goods required by a Variation to the Contract, to those listed on a Schedule 9 submitted at the time of submission of the Contractor's price for the Variation.

56. NOT USED

57. CLAIMS, CERTIFICATES AND PAYMENTS

57.1 GOODS AND SERVICES TAX (GST) and PAY AS YOU GO (PAYG)

57.1.1 For the purposes of Clause 57.1:

ABN, adjustment event, adjustment note, amount, Australian resident, consideration, GST, GST Law, input tax credit, recipient created tax invoice, registered, tax invoice and taxable supply have the meaning given to that term in *A New Tax System (Australian Business Number Act 1999)* (Cth);

PAYG Law means any Act dealing with or relating to the PAYG system referred to in Schedule 1 of the *Taxation Administration Act 1953* (Cth).

57.1.2 Where a party is obliged to provide consideration to another party for a taxable supply made under or in connection with the Contract:

- (a) any amount which the Contract provides:
 - (i) is to be the amount of the consideration;
 - (ii) is to (or may) be used to calculate the amount of the consideration (and the amount of the consideration so calculated); or
 - (iii) is included (provisionally or otherwise) in the consideration;

shall be taken to include GST payable in connection with the taxable supply unless the amount is specifically stated to exclude GST;

- (b) where, despite Clause 57.1.2(a), any consideration to be provided for a taxable supply is exclusive of GST, the party providing the consideration must also pay the GST payable in respect of the taxable supply, when the consideration is provided; and

- (c) no other provision of the Contract shall apply to give the Contractor any claim in connection with GST.
- 57.1.3 Where under or in connection with the Contract a party is required to pay an amount which is (or is to be calculated by reference to) any cost, expense, loss or other liability suffered or incurred by another party that amount shall be (or be calculated by reference to) the cost, expense, loss or other liability net of any input tax credits available to the other party or the representative member of its GST Group.
- 57.1.4 The Contractor warrants to the Principal that:
- (a) the Contractor is registered for GST; and
 - (b) the Contractor's ABN stated in the Contract (or otherwise notified by the Contractor to the Principal) is correct.
- 57.1.5 The Contractor must notify the Principal immediately if it ceases to be registered for GST at any time.
- 57.1.6 Whenever the Contractor does not have an ABN or the Principal becomes aware that the Contractor's ABN notified to it is incorrect or the Principal otherwise reasonably considers itself bound by PAYG Law to do so, the Principal shall be entitled to withhold from any payment otherwise due to the Contractor under or in connection with the Contract, amounts calculated and to be withheld in accordance with the PAYG Law.
- 57.1.7 Each time the Contractor makes a claim for any payment under or in connection with the Contract, the Contractor shall be taken to warrant to the Principal that it is an Australian resident for the purposes of the foreign resident withholding provisions in Subdivision 12-FB of the *Taxation Administration Act 1953* (Cth), except where the Contractor has notified the Principal in writing that it is not an Australian resident before any claim for payment is made.
- 57.1.8 Except to the extent the Principal at any time gives to the Contractor written notice that it does not intend issuing recipient created tax invoices for any taxable supplies to the Principal by the Contractor under or in connection with the Contract:
- (a) the Principal shall issue tax invoices and adjustment notes in respect of those supplies;
 - (b) the Contractor shall not issue tax invoices or adjustment notes in respect of those supplies;
 - (c) the Principal acknowledges that it was registered for GST when it entered into the Contract and that it will notify the Contractor if it ceases to be registered; and
 - (d) the Contractor must notify the Principal immediately it becomes aware of an adjustment event occurring in respect of those supplies.
- 57.1.9 If the Principal gives a written notice that it does not intend issuing recipient created tax invoices for a taxable supply to the Principal by the Contractor under or in connection with the Contract:
- (a) a party making a taxable supply the subject of the notice must issue to the other a tax invoice or adjustment note (as the case may require) within 5 business days after each of the following occurring in relation to that taxable supply:
 - (i) the party submitting a claim for payment;
 - (ii) the Principal's Representative certifying an amount for payment different to the amount claimed;
 - (iii) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified; and
 - (b) for the purposes of GST Law, upon the occurrence of each of the events specified in Clause 57.1.9(a), the Principal shall be taken to have requested the Contractor to provide to the Principal the tax invoice or adjustment note referred to in Clause 57.1.9(a).
- 57.1.10 Until the Principal notifies the Contractor otherwise, the Principal's Representative is authorised to provide to or receive from the Contractor tax invoices or adjustment notes (as the case may be) on the Principal's behalf.

57.2 Payment Claims

57.2.1 Subject to the prior receipt by the Principal's Representative of the information required by Clause 58, the Contractor shall deliver to the Principal's Representative payment claims:

- (a) at the times for payment claims under the Contract stated in the Annexure;
- (b) upon Completion of Stage One;
- (c) upon the issue of a Certificate of Practical Completion; and
- (d) within the time prescribed by Clause 57.11.

57.2.2 The payment claim shall be supported by sufficiently detailed evidence of the amount claimed to be due to the Contractor and such information as the Principal's Representative may reasonably require including but not limited to:

- (a) evidence satisfactory to the Principal's Representative that the Contractor has complied with Clause 58 so far as applicable and that all amounts included in previous payments to the Contractor in respect of Consultants and Subcontractors and then due for payment have been paid or otherwise discharged;
- (b) certificates from Consultants (signed by a principal of each Consultant) and from Subcontractors certifying that the work comprised in the payment claim has been carried out in accordance with the consultancy agreements or Subcontracts as the case may be; and
- (c) payment claims from Consultants for amounts which form part of the Consultants Fee or the Contract Sum.

57.2.3 If the time for any payment claim falls due on a day which is not a business day, the Contractor shall submit the payment claim on the next business day following that date.

57.2.4 If the Contractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement shall not require the Principal's Representative to issue a payment certificate in respect of that payment claim earlier than would have been the case had the Contractor submitted the payment claim in accordance with the Contract.

57.2.5 If the Contractor fails to make a payment claim, the Principal's Representative may nevertheless issue a payment certificate.

57.2.6 During Stage One, the Contractor shall be entitled to make a payment claim for the total of:

- (a) the portion of the Early Works Sum carried out on the Site to the date of the payment claim;
- (b) the portion of the Management Fee for Stage One equal to the portion of each of the:
 - (i) Design Work;
 - (ii) Documentation Work; and
 - (iii) Early Works carried out on the Site;

carried out by the Contractor to the date of the payment claim;

- (c) the portion of the On Site Overheads Fee equivalent to the portion of Construction Work carried out on the Site as Early Works to the date of the payment claim, having regard to the commencement of Construction Work and the forecast time for Practical Completion as agreed with the Principal's Representative or failing agreement as determined by the Principal's Representative;
- (d) the portion of the Consultants Fee representing the value of the work carried out by Consultants in accordance with the Contract in the performance of work under the Contract to the date of the payment claim;

- (e) in respect of the Off Site Overheads and Profit Fee:
 - (i) the portion of the Off Site Overheads and Profit Fee for Stage One, having regard to the progress of Stage One, as agreed with the Principal's Representative, or failing agreement as determined by the Principal's Representative; and
 - (ii) in relation to any Early Works, the percentage contained in the Contractor's Tender as the Off Site Overheads and Profit Fee for Stage Two multiplied by the portion of the Early Works Sum claimed pursuant to Clause 57.2.6(a); and
- (f) all other amounts due to the Contractor arising under or out of the Contract;
- (g) less amounts already paid;

provided that the progressive total of the amounts calculated pursuant to Clauses 57.2.6(a) to (e) shall not exceed the Project Cost Estimate.

57.2.7 During Stage Two, except where the Contract provides otherwise, the Contractor shall be entitled to make a payment claim for the portion of the Contract Sum that represents the value of the work carried out by the Contractor in the performance of the Contract to the date of the payment claim, together with all amounts otherwise due to the Contractor arising out of the Contract, less amounts already paid.

57.2.8 In making a payment claim the Contractor shall:

- (a) not be entitled to make any claim for costs of:
 - (i) rectifying Developed Design or Construction Documentation faults; or
 - (ii) defective or damaged work, or work not in accordance with the Contract, unless such costs have been caused by the Principal, the Principal's Representative, or the Principal's employees, consultants, other contractors, or agents; and
- (b) take account of Clause 57.7.

57.3 Payment Certificates

57.3.1 Within 10 business days of receipt of a payment claim, the Principal's Representative shall assess the payment claim and determine whether the Contractor has satisfied the provisions of the Contract and issue a payment certificate or give reasons in writing for not issuing the certificate.

57.3.2 The Principal's Representative shall:

- (a) assess the amount claimed by the Contractor under Clause 57.2; and
- (b) issue a payment certificate as its assessment of the amount claimed after adjustment for:
 - (i) liquidated damages due to the Principal;
 - (ii) delay or disruption costs due to the Contractor pursuant to Clause 50 to the date of the payment certificate;
 - (iii) payments already made;
 - (iv) retention moneys and any Completion Amount; and
 - (v) all other adjustments which may be required to be made pursuant to the provisions of the Contract.

57.4 Payment

57.4.1 The Principal shall pay to the Contractor or the Contractor shall pay to the Principal as the case may be, either:

- (a) the amount shown in a payment certificate; or
- (b) if no payment certificate has been issued the amount of the Contractor's payment claim.

57.4.2 In making any payment, the Principal shall be entitled to deduct any sum under Clause 57.14.

57.4.3 The Principal shall make payment to the Contractor or the Contractor shall make payment to the Principal:

- (a) within the earlier of:
 - (i) 15 business days after receipt by the Principal's Representative of a payment claim; or
 - (ii) 5 business days after issue by the Principal's Representative of a payment certificate; and
- (b) within 5 business days after the issue of a Final Certificate.

57.5 Amount Properly Due

57.5.1 A payment made pursuant to this Clause 57 shall not prejudice the right of either party to dispute under Clause 62 whether or not the amount so paid is the amount properly due. On determination (whether under Clause 62 or as otherwise agreed) of the amount so properly due, the Principal or the Contractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due.

57.5.2 Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided under Clause 57.12. Nothing in this Contract shall oblige the Principal to pay for work that is not in accordance with the Contract.

57.6 Completion Amount

Guide note: Delete this guide note

The Completion Amount is intended to provide an incentive for the Contractor to achieve on-time, defects free Completion as soon as possible; the earlier the Contractor achieves defect-free Completion of the whole of the Works (or an earlier Separable Portion), the earlier the Completion Amount is paid.

- (a) If the Annexure specifies a Completion Amount, the Contractor may claim it in the next payment claim after issue of a Certificate of Practical Completion for the whole of the Works, subject to the Principal's right to set-off under Clause 57.14.
- (b) The Principal will retain the Completion Amount (if any) from payments due to the Contractor when the aggregate amount paid to the Contractor exceeds 75% of the Contract Sum as at the Date of Acceptance of Tender. Until the Completion Amount has been retained in full, the Principal may retain against each payment due to the Contractor up to 50% of the value of the payment. Thereafter, the Completion Amount will be held until the Contractor claims it in accordance with Clause 57.6(a).
- (c) The Principal will own any interest earned on the monies retained for the Completion Amount.

57.7 Unfixed Plant and Material

57.7.1 For the purposes of this Clause **Security Interest** and **Personal Property Securities Register** ("PPSR") have the same meanings as in the *Personal Property Securities Act 2009* (Cth) ("PPSA").

57.7.2 The Principal shall not be obliged to pay for plant or materials intended for incorporation in the Works but not yet incorporated unless:

- (a) the item is listed in a list to be provided by the Contractor with the Stage Two Offer or the item is listed in the Annexure or is such that, in the opinion of the Principal's Representative, an early payment is reasonable (including as part of any Early Works);
- (b) the Contractor provides additional security pursuant to Clause 9.8; and
- (c) the Contractor establishes to the satisfaction of the Principal's Representative that:
 - (i) the payment claimed is not in excess of any amount paid by the Contractor in respect of the unfixed plant and materials;

- (ii) the item is:
 - (A) properly stored and labelled the property of the Principal;
 - (B) is adequately protected; and
 - (C) landed in Australia; and
- (iii) the Principal's interest in the unfixed plant or material is registered as a Security Interest on the PPSR.

57.7.3 The Contractor:

- (a) warrants that no security interest (other than set out in Clause 57.7.2(c)(iii)) exists or will be subsequently registered over any of the unincorporated items paid for by the Principal;
- (b) agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) as the Principal may reasonably require for the purposes of:
 - (i) ensuring that the Principal's Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
 - (ii) enabling the Principal to apply for, and obtain, any registration or providing any notification in accordance with the PPSA; and
 - (iii) enabling the Principal to exercise any right in connection with the Security Interest or the property the subject of the Security Interest;
- (c) to the extent permitted under the PPSA, waives each right to receive any notice from the Principal under the PPSA (including notice of a verification statement).

57.7.4 Upon the applicable plant or materials becoming the property of the Principal, they are entrusted to the Contractor for the purpose of carrying out the Works and the Contractor is solely liable for their care. If:

- (a) the Contract is terminated by the Principal; or
- (b) the Principal exercises its right to take work out of the hands of the Contractor which relate to unincorporated plant or materials,

the Contractor must ensure that, in respect of any unfixed plant or materials for which payment has been made by the Principal, the Principal may enter upon any premises of the Contractor where such plant or materials are stored and take possession of them.

57.8 Provisional Sums

57.8.1 A Provisional Sum included in the Contract shall not itself be payable to the Contractor by the Principal.

57.8.2 Where at the direction of the Principal's Representative the work or item to which the Provisional Sum relates is performed or supplied by:

- (a) the Contractor, the work or item shall be valued under Clause 53.4; and
- (b) a Subcontractor to the Contractor, the Principal shall pay the Contractor the total of the amount payable by the Contractor to the Subcontractor for the work or item. This amount is to be taken to be the net cost to the Contractor disregarding any addition of charges for late payment and disregarding any damages payable by the Contractor to the Subcontractor or vice versa.

57.8.3 The Management Fee, On Site Overheads Fee, Off Site Overheads and Profit Fee and Consultants Fee shall include for work under the Contract the subject of Provisional Sums.

57.8.4 The Contract Sum includes all Provisional Sums included in the Contract and shall be adjusted so as to include only the amount calculated pursuant to Clause 57.8.2.

57.9 Certificate of Practical Completion

- 57.9.1 The Contractor shall give the Principal's Representative at least 10 business days' notice of the date upon which the Contractor anticipates that Practical Completion will be reached.
- 57.9.2 When the Contractor is of the opinion that Practical Completion has been reached, the Contractor shall in writing request the Principal's Representative to issue a Certificate of Practical Completion. Within 10 business days of the receipt of the request, the Principal's Representative shall give to the Contractor and to the Principal a Certificate of Practical Completion certifying the Date of Practical Completion or give the reasons in writing for not issuing the Certificate of Practical Completion.
- 57.9.3 Where the Principal's Representative has given reasons for not issuing a Certificate of Practical Completion the Contractor shall proceed to complete the work under the Contract and give the Principal's Representative at least 3 days' notice of the date upon which the Contractor anticipates that Practical Completion will be reached.
- 57.9.4 When the Principal's Representative is of the opinion that Practical Completion has been reached, the Principal's Representative may issue a Certificate of Practical Completion, whether or not the Contractor has made a request for its issue.

57.10 Effect of Certificates

- 57.10.1 The issue of a payment certificate or a Certificate of Practical Completion shall not constitute approval of any work or other matter, nor shall it prejudice any claim by the Principal or the Contractor.
- 57.10.2 At any time and from time to time, the Principal's Representative may by a further certificate correct any error which has been discovered in any previous certificate, other than a Certificate of Practical Completion or Final Certificate.

57.11 Final Payment Claim

- 57.11.1 Within 13 weeks after the issue of the Certificate of Practical Completion for all of the Works, the Contractor shall provide the Principal's Representative with a final payment claim and endorse it 'Final Payment Claim'. Such Final Payment Claim shall include any Notice or Notices of Claim pursuant to Clause 61.3.1(b).
- 57.11.2 After the expiration of the period for lodging a Final Payment Claim, to the extent permitted by law, any Claim:
- (a) which the Contractor could have made against the Principal and has not been made; or
 - (b) for which the Contractor has not given to the Principal's Representative a Notice of Claim,
- shall be barred absolutely.

57.12 Final Certificate

- 57.12.1 If the Contractor has not notified a Claim or Claims in accordance with Clause 61, then within 10 business days of receipt of the Contractor's Final Payment Claim or, where the Contractor fails to provide such Final Payment Claim, the expiration of the period specified in Clause 57.11 for the lodgement of the Final Payment Claim by the Contractor, the Principal's Representative shall issue to the Contractor and to the Principal a final certificate endorsed 'Final Certificate' or give the Contractor in writing the reasons for not issuing the certificate.
- 57.12.2 In the Final Certificate the Principal's Representative shall certify the amount which, in the Principal's Representative's opinion, is finally due from the Principal to the Contractor or from the Contractor to the Principal arising out of the Contract or any alleged breach thereof.
- 57.12.3 In such Final Certificate the Principal's Representative shall also set out:
- (a) amounts paid under the Contract and amounts otherwise due from the Principal to the Contractor and/or due from the Contractor to the Principal arising out of or in connection with the Contract including but not limited to any amount due or to be credited under any provision of the Contract;
 - (b) the Contract Sum adjusted as necessary according to the terms and conditions of the Contract; and

- (c) the total value of all previous certificates, claims and securities issued pursuant to the Contract.

57.12.4 Not Used

57.12.5 Unless either party, either before the Final Certificate has been issued or not later than 21 days after the issue thereof, serves a notice of dispute under Clause 62, the Final Certificate shall be evidence that the Works have been completed in accordance with the terms of the Contract and that any necessary effect has been given to all the terms of the Contract, except in the case of:

- (a) fraud, dishonesty, or fraudulent concealment relating to the work under the Contract or any part thereof or to any matter dealt with in the said Certificate;
- (b) any defect (including omission) in the Works or any part thereof which was not apparent at the time of issue of the Final Certificate, or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate; or
- (c) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation; and
- (d) security provided pursuant to Clause 9.

57.13 Interest on Overdue Payments

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be due thereon from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid. The rate of interest shall be 12% per annum or such higher amount as may be required by statute. Interest shall be compounded at six monthly intervals.

57.14 General right of set off by the Principal

57.14.1 Without limiting the Principal's rights under any other provision in the Contract and notwithstanding the provisions of or the issue of a certificate by the Principal's Representative under Clause 57, the Principal may deduct from any moneys due to the Contractor any sum which is payable by the Contractor to the Principal or the State of Queensland ('State') whether or not the right to payment of the Principal or the State arises by way of damages, debt restitution or otherwise and whether or not the factual basis giving rise to the right to payment arises out of this Contract, any other contract, or is independent of any Contract.

57.14.2 If the moneys payable to the Contractor are insufficient to discharge the liability of the Contractor to pay such sum to the Principal or the State, the Principal may have recourse to:

- (a) retention moneys and any security provided in lieu of retention moneys under Clause 9.7, and if they are insufficient;
- (b) security provided under Clause 9.2 of the Contract.

57.14.3 Where the Principal exercises a right under this Clause 57.14 in respect of an amount payable to the State of Queensland, the Principal must account to the State of Queensland for any amount received by the Principal pursuant to the exercise of that right.

57.14.4 Nothing in this Clause 57.14 shall affect the right of the Principal to recover from the Contractor the whole of such moneys or any balance that remains owing.

57.15 Prepayment

Guide note: *Delete this guide note*

Prepayment is an advance payment against the Contract Sum which provides early cash flow to the Contractor. The Prepayment is repaid by the Contractor progressively by deductions from amounts payable under the Contract. Prepayment is secured by Undertakings provided to the Principal in respect of the Prepayment. Prepayment may be utilised for any purpose related to the Contract.

- 57.15.1 The Contractor may claim Prepayment, as an advance payment against the Contract Sum), at any time before achieving Practical Completion of the whole of the Works if all the following apply:
- (a) the total amount claimed for Prepayment is no more than the amount (if any) stated in the Annexure;
 - (b) the Prepayment does not exceed the remaining balance of the Contract Sum less any amount that the Principal's Representative considers payable by the Contractor to the Principal;
 - (c) no more than one-third of the stated amount for Prepayment is retained by the Contractor and the balance is assigned directly to Subcontractors and Consultants in the proportions notified to the Principal's Representative;
 - (d) the Contractor has established to the Principal's Representative's satisfaction that the Prepayment will be utilised for purposes related to the Contract;
 - (e) the Contractor has provided security in the form of an approved unconditional undertaking from an approved financial institution or insurance company to the Principal for the amount of the Prepayment; and
 - (f) the Contractor has assigned to Subcontractors and Consultants their respective shares of the Prepayment by effective written assignments, and has notified the Principal's Representative of the assignments, including the amounts assigned to each Subcontractor.
- 57.15.2 The Principal must pay the amount claimed within 14 days after the Contractor provides evidence that all the conditions in Clause 57.15.1 have been met.
- 57.15.3 The Contractor must repay the Prepayment by way of progressive deductions (in amounts determined by the Principal) from payments otherwise due to the Contractor under the Contract.
- 57.15.4 The Principal must return the security provided for Prepayment when the amount of the Prepayment has been fully repaid.
- 57.15.5 The Principal may have recourse to the security provided for Prepayment if the Prepayment has not been fully repaid and:
- (a) the unpaid balance of the Contract Sum is insufficient to cover the outstanding balance of the Prepayment;
 - (b) the Contract is terminated; or
 - (c) the Principal takes work out of the Contractor's hands.

58. PAYMENT OF WORKERS AND SUBCONTRACTORS**58.1 Payment direct to worker or Subcontractor**

At the request of the Contractor and out of moneys due to the Contractor the Principal may on behalf of the Contractor make payment directly to a worker or Subcontractor.

58.2 Statutory Declaration

The Contractor must deliver to the Principal with each payment claim:

- (a) a statutory declaration, in the form in Schedule 7, signed by a representative of the Contractor who is in a position to know the facts, attesting that:
 - (i) any Subcontractor performing work under the Contract has been engaged in accordance with Clause 21.2;
 - (ii) the Site Personnel Register is current and correct, maintained in accordance with Clause 41.6;
 - (iii) the Contractor has fulfilled or complied with any commitments made in the Contractor's Tender for the work under the Contract relating to:
 - (A) the Local Benefits Test; and
 - (B) if the Annexure indicates that the Best Practice Principles apply, the Best Practice Principles;
 - (iv) all the Contractor's workers who at any time have been engaged on work under the Contract by the Contractor have been paid all moneys due to them up to the date of submission by the Contractor of a progress claim, in respect of their engagement on the work under the Contract;
 - (v) if a project trust account is required for the Contract under the BIF Act, all Subcontractors have been paid via the project trust account to the extent required by the BIF Act, and all withdrawals from the project trust account have been made in accordance with the BIF Act; and
 - (vi) if required by the BIF Act, all retention moneys in relation to Subcontractors have been paid into the Contractor's retention trust account and all withdrawals from the retention trust account have been made in accordance with the BIF Act;

and, if requested in writing, reasonable supporting documentary evidence thereof;

- (b) either in the statutory declaration required by Clause 58.2(a) or by separate document, a supporting statement for the payment claim required by the BIF Act; and
- (c) if previously requested by the Principal's Representative, the Contractor must deliver a statutory declaration, in the form in Schedule 7, by any Subcontractor, or where the Subcontractor is a corporation, by a representative of the Subcontractor who is in a position to know the facts, attesting that:
 - (i) all workers who have been engaged by a Subcontractor of the Contractor have been paid all moneys due and payable to them up to the date of submission by the Contractor of a progress claim in respect of their engagement on the work under the Contract;
 - (ii) all subcontractors of the Subcontractor have been paid all that is due and payable to such subcontractors up to the date of submission by the Contractor of a progress claim in respect of the work under the Contract; and
 - (iii) the Subcontractor has fulfilled or complied with any commitments made in its tender for the Subcontract works relating to:
 - (A) the Local Benefits Test; and
 - (B) if the Annexure indicates that Best Practice Principles are applicable, the Best Practice Principles;

and, if requested in writing, reasonable supporting documentary evidence thereof.

58.3 Provision of information to Subcontractor

The Contractor acknowledges that the Principal may release to a Subcontractor, details of payments in percentage terms made by the Principal to the Contractor in respect of the Subcontract to which the Subcontractor is a party unless the Contractor shows reasonable grounds why such details should not be released or satisfies the Principal that all payments due to the Subcontractor by the Contractor have been paid.

58.4 Court Order

Unless under the BIF Act a project trust is required for the Contract, if a worker, Subcontractor or subcontractor of a Subcontractor obtains a court order in respect of any moneys unpaid to the worker, Subcontractor or subcontractor of a Subcontractor the subject of a statutory declaration under Clause 58.2 and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker, Subcontractor or subcontractor of a Subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

58.5 Project Trusts

58.5.1 Terms defined by the BIF Act as relevant to the operation of Chapter 2 of the BIF Act and used (without separate definition) in this Clause 58.5, shall have the meaning given to them by the BIF Act.

58.5.2 If:

- (a) at the time of entry into this Contract, a project trust is not required; and
- (b) the Contract later becomes a contract for which a project trust is required,

the Contractor must give the Principal's Representative and Principal written notice of that change promptly (and within 5 business days) of the date on which the Contract becomes a contract for which a project trust is required.

58.5.3 If a project trust is required for the Contract:

- (a) the Contractor must open and maintain a project trust account and retention trust account in accordance with the BIF Act; and
- (b) if a notice is required by the BIF Act to be given to the Principal in respect of or relating to the project trust or project trust account, the Contractor shall give that notice in writing to the Principal's Representative and Principal at the address stated in the Contract or last communicated in writing to the Contractor.

58.5.4 Nothing in this Clause affects the requirements of Clause 21.2.

58.5.5 The Contractor must ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the BIF Act.

59. DEFAULT OR INSOLVENCY**59.1 Preservation of Other Rights**

If a party breaches or repudiates the Contract, nothing in this Clause 59 shall prejudice the right of the other party to recover damages or exercise any other right.

59.2 Default by the Contractor

59.2.1 If the Contractor commits a substantial breach of Contract the Principal may give the Contractor a written notice to show cause.

59.2.2 Substantial breaches include but are not limited to:

- (a) failing to comply with or breaching, in any respect, the requirements of Clause 6;
- (b) failing to comply with Clause 9;
- (c) failing to comply with Clause 11.1;
- (d) failing to do those things which the Contractor warranted it would do or has done in accordance with the terms of the Contract including but not limited to the warranties pursuant to Clause 12;
- (e) failing to produce the Developed Design in accordance with Clause 14;
- (f) failing to engage the Consultants in accordance with Clause 18.1;

- (g) failing to comply in any respect with the requirements of Clause 21.2;
- (h) failing to maintain all necessary licences that are required for the Contractor to perform all of its obligations under the Contract, in breach of Clause 24;
- (i) failing to establish a project trust account as required by the BIF Act, in breach of Clause 24 and Clause 58.5;
- (j) failing to establish a retention trust account as required by the BIF Act, in breach of Clause 24 and Clause 58.5;
- (k) failing to comply with an obligation of the Contractor set out in Part 2, Divisions 4 and 5 of Chapter 2 of the BIF Act, in breach of Clause 24;
- (l) failing to comply with an obligation of the Contractor set out in Part 3, Divisions 4 and 5 of Chapter 2 of the BIF Act, in breach of Clause 24;
- (m) providing with a payment claim a supporting statement required by the BIF Act which is false or misleading, in breach of Clause 24;
- (n) failing to comply in any respect with the requirements of Clause 26.2;
- (o) failing to provide evidence of insurance in accordance with Clause 34.1;
- (p) failing to comply in any respect with the requirements of Clause 41.4;
- (q) failing to comply in any respect with the requirements of Clause 41.5;
- (r) failing to comply in any respect with the requirements of Clause 41.6;
- (s) failing to comply in any respect with the requirements of Clause 41.7 or Clause 55.1;
- (t) failing to use the materials or standards of workmanship in accordance with Clause 42;
- (u) failing to comply with a direction of the Principal's Representative in accordance with Clause 42.3;
- (v) failing to proceed with the work under the Contract with due expedition and without delay in accordance with Clause 46.1;
- (w) failing to suspend the work under the Contract in accordance with Clause 48.1;
- (x) failing to comply with any requirement or request made in accordance with Clause 58;
- (y) providing a statutory declaration pursuant to Clause 58 which is false, misleading, or deceptive in any respect; and/or
- (z) committing an act of insolvency as defined by Clause 59.11.

59.3 Requirements of a Notice by the Principal to Show Cause

A notice given under Clause 59.2 shall:

- (a) state that it is a notice under Clause 59 of the Contract;
- (b) specify the alleged substantial breach;
- (c) require the Contractor to show cause in writing why the Principal should not exercise a right referred to in Clause 59.4;
- (d) specify the time and date by which the Contractor must show cause; and
- (e) specify the place at which cause must be shown.

59.4 Rights of the Principal

- 59.4.1 If, by the time specified in a notice given under Clause 59.2, the Contractor fails to show reasonable cause why the Principal should not exercise a right referred to in this Clause 59.4, the Principal may by notice in writing to the Contractor:

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate the Contract.

59.4.2 Notwithstanding any other provision of this Contract, upon giving a notice under Clause 59.2:

- (a) the Contractor is not entitled to make a claim for payment; and
- (b) the Principal may suspend payments to the Contractor; until the earlier of:
 - (i) the date upon which the Contractor shows reasonable cause;
 - (ii) the date upon which the Principal takes action under Clause 59.4.1; or
 - (iii) the date which is 5 business days after the last day for showing cause in the notice given under Clause 59.2.

59.4.3 If the Contractor by notice in writing advises the Principal that the Contractor is unable or unwilling to complete performance of the Contract, the Principal may forthwith exercise the rights under Clause 59.4.1.

59.4.4 If the Principal exercises the right under Clause 59.4.1(a), the Contractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under Clause 59.6.

59.5 Procedure when the Principal Takes Over Work

59.5.1 If the Principal takes work out of the hands of the Contractor under Clause 59.4.1(a), the Principal shall complete that work and the Principal may without payment of compensation:

- (a) take possession of such of the constructional plant and other things on or in the vicinity of the Site or on or in the vicinity of any land in addition to the Site procured by the Contractor pursuant to Clause 39.6 as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work;
- (b) take possession of the documents, information, materials, and the like produced by the Contractor, which are reasonably required by the Principal to facilitate completion of the work; and
- (c) take an assignment of the Contractor's rights and benefits under Subcontracts including all warranties and guarantees in connection therewith.

59.5.2 If the Principal takes possession of constructional plant, or other things, the Principal shall maintain them and, subject to Clause 59.6, on completion of the work, the Principal shall return to the Contractor the constructional plant and any things taken under this Clause 59.5 which are surplus.

59.5.3 The Contractor agrees to:

- (a) execute all documents and do all things necessary (including giving all necessary notices to Subcontractors and third parties) to allow the Principal to exercise its rights under this Clause 59.5; and
- (b) appoint the Principal as its agent for this purpose which appointment shall not be revoked at any time prior to issuance of the Final Certificate.

59.6 Adjustment on Completion of the Work Taken Out of the Hands of the Contractor

59.6.1 The Principal's Representative shall ascertain the cost incurred by the Principal in completing the work completed under Clause 59.5 and the amount of any damages sustained by the Principal for delay in completion and shall issue a certificate pursuant to this Clause 59.6 to the Principal and the Contractor certifying:

- (a) the amount of that cost and damages, and setting out the calculations employed to arrive at that cost and damages;
- (b) the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor; and

(c) the difference.

59.6.2 If the cost and damages incurred by the Principal are greater than the amount which would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal.

59.6.3 If the cost and damages incurred by the Principal are less than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due to the Contractor from the Principal.

59.6.4 If the Contractor is indebted to the Principal, the Principal may retain constructional plant or other things taken under Clause 59.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the constructional plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.

59.7 Default of the Principal

59.7.1 If the Principal commits a substantial breach of Contract and the Contractor considers that damages may not be an adequate remedy, the Contractor may give the Principal a written notice to show cause.

59.7.2 Substantial breaches include but are not limited to:

- (a) failing to give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence the work under the Contract but only if the failure continues for longer than the period stated in the Annexure;
- (b) failing to make a payment payable under the Contract; and
- (c) failure by the Principal's Representative either to issue a Certificate of Practical Completion or give the Contractor the reasons in writing for not issuing that Certificate within 10 business days of receipt of a request by the Contractor to issue that Certificate, in breach of Clause 57.9.

59.8 Requirements of a Notice by the Contractor to Show Cause

A notice given under Clause 59.7 shall:

- (a) state that it is a notice under Clause 59 of the Contract;
- (b) specify the alleged substantial breach;
- (c) require the Principal to show cause in writing why the Contractor should not exercise a right referred to in Clause 59.9;
- (d) specify the time and date by which the Principal must show cause; and
- (e) specify the place at which cause must be shown.

59.9 Rights of the Contractor

59.9.1 If by the time specified in a notice given under Clause 59.7, the Principal fails to show reasonable cause why the Contractor should not exercise a right referred to in this Clause 59.9, the Contractor may by notice in writing to the Principal suspend the whole or any part of the work under the Contract.

59.9.2 The Contractor shall lift the suspension if the Principal remedies the breach within 20 business days of the date of suspension under this Clause 59.9. If:

- (a) within 20 business days of the date of suspension the Principal fails to remedy the breach; or
- (b) the breach is not capable of remedy and the Principal fails to make other arrangements to the reasonable satisfaction of the Contractor;

then the Contractor may by notice in writing to the Principal terminate the Contract.

59.9.3 The Contractor shall be entitled to recover from the Principal any damages incurred by the Contractor by reason of the suspension.

59.10 Rights of the Parties on Termination

59.10.1 If the Contract is terminated pursuant to Clause 59.4.1 or Clause 59.9.2, the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

59.10.2 The Principal may also, without payment of compensation, take possession of drawings, specifications and other information, samples, models, patterns, and the like created for the construction of the Works and take an assignment of Subcontracts and consultancy agreements.

59.11 Insolvency

59.11.1 If:

- (a) the Contractor informs another party in writing or creditors generally that the Contractor is insolvent or is financially unable to proceed with the Contract;
- (b) execution is levied against the Contractor by a creditor;
- (c) the Contractor, being an individual person, or a partnership including an individual person and that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) presents a debtor's petition or a declaration of an intention to present a debtor's petition to the Official Receiver;
 - (iv) is made bankrupt;
 - (v) under part IX of the *Bankruptcy Act 1966* (Cth):
 - (A) makes a written proposal for a debt agreement; and
 - (B) the proposal becomes a debt agreement; or
 - (vi) makes a proposal for a deed of assignment, deed of arrangement or a composition; or
 - (vii) under Part X of the *Bankruptcy Act 1966* (Cth):
 - (A) has a deed of assignment or deed of arrangement made;
 - (B) accepts a composition;
 - (C) is required to present a debtor's petition; or
 - (D) has a sequestration order made; or
- (d) the Contractor, being a corporation and if:
 - (i) a notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) the Contractor enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) a meeting of creditors is called with a view to:
 - (A) entering a scheme of arrangement or composition with creditors; or
 - (B) appointing a controller or administrator;
 - (v) a receiver of the property or part of the property of the Contractor is appointed;
 - (vi) the Contractor takes or commences or has taken, commenced or instituted against it any process, action or proceeding whether voluntary or compulsory which has an object or may

result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or a controller or administrator is appointed or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on the Contractor's business for the benefit of creditors or any of them;

(vii) a winding up order is made; or

(viii) execution is levied by creditors, debenture holders or trustees or under a floating charge; then the Principal may, without giving a notice to show cause, exercise the rights under Clause 59.4.1.

59.11.2 The rights given by this Clause 59.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of Contract.

59.12 Stay on Rights

The rights given by this Clause 59.11 are subject to any restrictions on their enforcement under Part 5.1, Part 5.2, or Division 17 of Part 5.3A *Corporations Act 2001* (Cth).

60. TERMINATION

60.1 Termination by Frustration

60.1.1 If under the law governing the Contract, the Contract is frustrated, the Principal shall (subject to the Principal's rights under or in connection with the Contract including to withhold or set off payments and recover damages, and subject to any other legal rights or obligations of the Principal):

(a) pay the Contractor:

- (i) the amount due to the Contractor shown in any unpaid payment certificate;
- (ii) for work executed prior to the date of frustration, the amount which would have been due if the Contract had not been frustrated and the Contractor had been entitled to and had made a payment claim on the date of frustration;
- (iii) the cost of materials and equipment which:
 - (A) were required to be ordered by the Contractor to comply with Clause 46;
 - (B) the Contractor is liable to accept; and
 - (C) become the property of the Principal upon payment;
- (iv) costs reasonably incurred by the Contractor in the expectation of completing the whole of the work under the Contract and not included in any payment by the Principal;
- (v) the reasonable cost of removal of Temporary Works and constructional plant; and
- (vi) the reasonable cost of return to their place of recruitment of the Contractor's employees engaged in the work under the Contract at the date of frustration;

provided that and notwithstanding all other provisions of the Contract the payment of the On Site Overheads Fee shall be reduced to such extra costs as are necessarily incurred by the Contractor; and

(b) release security and retention moneys.

60.1.2 The Principal may also take possession of drawings, specifications and other information, samples, models, patterns, and the like created in relation to the Contract.

60.2 Principal's Rights of Termination

60.2.1 In addition to any other right available to the Principal to terminate the Contract, the Principal may, at any time at its sole discretion and without obligation to act reasonably, by written notice to the Contractor terminate the Contract.

- 60.2.2 Upon receipt of the Principal's written notice of termination in accordance with Clause 60.2, the Contractor shall immediately cease the work under the Contract and comply with any directions by the Principal's Representative including, but without limitation, any directions to:
- (a) protect property in the possession of the Contractor in which the Principal has or may acquire an interest;
 - (b) demobilise from the Site persons, construction or plant, vehicles, equipment, and other things;
 - (c) assign to the Principal all rights and benefits under contracts with third parties (including Subcontractors and Consultants) or novate applicable Subcontracts;
 - (d) provide the Principal with possession of all plant and equipment, materials, and other things on and off the Site, which are required for the work under the Contract or for incorporation in the Works; and
 - (e) deliver to the Principal all documentation and other information prepared or created by the Contractor in connection with the work under the Contract (including but not limited to the Developed Design).
- 60.2.3 Where the Principal terminates the Contract pursuant to Clause 60.2, the Principal may have the remaining work under the Contract not completed by the Contractor prior to termination of the Contract carried out by others.
- 60.2.4 Within 10 business days after the issue of the notice of termination in accordance with this Clause 60.2 the Principal shall (subject to the Principal's rights under or in connection with the Contract including to withhold or set off payments and recover damages, and subject to any other legal rights or obligations of the Principal):
- (a) pay the Contractor:
 - (i) the amount due to the Contractor shown in any unpaid payment certificate;
 - (ii) for work executed prior to the date of the notice of termination, the amount which would have been due if the Contract had not been terminated and the Contractor had been entitled to and had made a payment claim on the date of the notice of termination;
 - (iii) the cost of materials and equipment which:
 - (A) were required to be ordered by the Contractor to comply with Clause 46;
 - (B) the Contractor is liable to accept; and
 - (C) become the property of the Principal upon payment;
 - (iv) costs necessarily incurred by the Contractor in the expectation of completing the whole of the work under the Contract and not included in any payment by the Principal;
 - (v) the reasonable cost of removal of Temporary Works and constructional plant; and
 - (vi) the reasonable cost of return to their place of recruitment of the Contractor's employees engaged in the work under the Contract at the date of frustration;
- provided that, and notwithstanding all other provisions of the Contract, the payment of the On Site Overheads Fee shall be reduced to such extra costs as are necessarily incurred by the Contractor; and
- (b) release any security and retention moneys.
- 60.2.5 The Principal may also take possession of drawings, specifications and other information, samples, models, patterns, and the like created in relation to the Contract.
- 60.2.6 The Principal shall not otherwise be liable to the Contractor for any cost, loss, expense, or damage incurred by the Contractor under or in connection with the Contract or its termination, including without limitation compensation for loss of profits.

61. NOTIFICATION OF CLAIMS**61.1 Notice of Intention to Claim**

- 61.1.1 The Contractor shall give to the Principal's Representative a Notice of Intention to Claim as soon as practicable after the Contractor becomes aware of any breach, act, omission, direction, approval, or circumstance which may entitle the Contractor to Claim.
- 61.1.2 The Notice of Intention to Claim shall detail the general basis and quantum of the Claim.
- 61.1.3 This Clause 61.1 shall not apply to any Claim which is required to be notified by another provision of the Contract.

61.2 Liability for Failure to Give Notice of Intention to Claim

The failure of the Contractor to comply with Clause 61.1 shall:

- (a) entitle the Principal to damages from the Contractor for breach of Contract. Such damages shall be assessed by the Principal's Representative and included in a certificate pursuant to Clause 57;
- (b) neither bar nor invalidate the Claim; and
- (c) disentitle the Contractor to interest pursuant to Clause 57.13 in respect of the Claim.

61.3 Notice of Claim

61.3.1 If a Claim is based on a breach, act, omission, direction, approval, or circumstance:

- (a) which occurs, is given or commences prior to the Date of Practical Completion, then the Contractor shall give to the Principal's Representative the Notice of Claim not later than 60 days after the Date of Practical Completion;
- (b) which occurs, is given or commences on or after the Date of Practical Completion, then the Contractor shall give to the Principal's Representative the Notice of Claim not later than 60 days after the Contractor becomes aware of the breach, act, omission, direction, approval, or circumstance. However, such Notice of Claim shall not be given to the Principal's Representative after the date for lodgement of the Final Payment Claim pursuant to Clause 57.11.

61.3.2 A Notice of Claim shall include particulars of:

- (a) the breach, act, omission, direction, approval, or circumstances on which the Claim is based;
- (b) the provision of the Contract or other basis for the Claim; and
- (c) the quantum of the Claim.

61.3.3 This Clause 61.3 shall not apply to any Claim which is required to be notified by another provision of the Contract.

61.4 Liability for Failure to Give Notice of Claim

The Principal shall not be liable upon any Claim by the Contractor in respect of or arising out of the Contract unless the Contractor complies with Clause 61.3 or notifies the Principal's Representative in accordance with the relevant provisions of the Contract, other than Clause 61.1.

62. DISPUTE RESOLUTION**62.1 Notice of Dispute**

Guide note: Delete this guide note

The aim of the Contract is for the parties to resolve matters through discussions as soon as possible and within the times specified. Generally, escalation of the dispute should only be required if the representatives of the parties who are involved in day-to-day management of the Contract are unable to resolve matters themselves.

62.1.1 If a dispute or difference (hereafter called a “dispute”) between the Contractor and the Principal (hereafter called individually “a party” and collectively “the parties”) arises in connection with the Contract or the subject matter thereof, then a party shall deliver by hand or send by registered post to the other party and to the Principal’s Representative a notice of dispute in writing, adequately identifying and providing details of the dispute.

62.1.2 Notwithstanding the existence of a dispute, the Principal and the Contractor shall continue to perform the Contract and, subject to Clause 59, the Contractor shall continue with the work under the Contract and the Principal and the Contractor shall continue to comply with Clauses 57.2 and 57.4.

62.2 Further Steps Required Before Arbitration

Within 10 business days after the service of a notice of dispute, the parties shall confer at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

62.3 Referral to Arbitration

In the event that the dispute cannot be so resolved, or if at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may by notice in writing delivered by hand or sent by registered post to the other party, refer such dispute to arbitration.

62.4 Arbitration

If a dispute is referred to arbitration under Clause 62.3, then:

- (a) the arbitration shall be effected by a single arbitrator:
 - (i) agreed upon in writing by the parties within 20 business days after receipt of the notice of referral to arbitration; or
 - (ii) in the absence of such agreement, nominated by the person named in the Annexure;
- (b) the seat of arbitration will be in Brisbane, Queensland;
- (c) the language of the arbitration will be English;
- (d) the arbitration shall be conducted in accordance with, and subject to, the Resolution Institute Arbitration Rules;
- (e) the powers conferred and restrictions imposed on a court by Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld) are not conferred on an arbitrator appointed in accordance with the provisions of this Contract; and
- (f) the arbitrator will have no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this Clause 62.4, have applied to any dispute referred to arbitration in accordance with Clauses 62.3 and 62.4.

62.5 Summary or urgent relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under Clause 57 or to seek urgent injunctive or declaratory relief in respect of a dispute under this Clause 62 or any matter arising under the Contract.

63. WAIVER OF CONDITIONS

Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior consent in writing in each instance of the party against whom a waiver, discharge or release is claimed.

64. RECORDS AND ACCESS TO RECORDS

64.1 The Contractor shall make and keep and shall ensure that every Subcontractor makes and keeps accurate and complete records of:

- (a) the Contractor's Tender or a Subcontractor's tender, including without limitation the preparation and submission of that tender;
- (b) tenders received by it, whether accepted or not;
- (c) the execution and completion of the work under the Contract or of the work under the Subcontract; and
- (d) compliance with commitments made in the Contractor's Tender or a Subcontractor's tender relating to or required by government policies including but not limited to the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct, the Queensland Government Building and Construction Training Policy and where the Annexure indicates that the Best Practice Principles apply, the Best Practice Principles.

64.2 The records referred to in Clause 64.1 shall include records that are required to be created or provided, or that are otherwise referred to, under the Contract or under the Subcontract, as well as other records including but not limited to those that:

- (a) relate to the Contractor's Tender or a Subcontractor's tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;
- (b) relate to design, including design calculations, option studies, opinions, reviews, and reports;
- (c) relate to the execution and completion of the work under the Contract or a Subcontract, including without limitation labour, subcontracts, subcontractors, consultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
- (d) are required to demonstrate compliance with the matters referred to in Clause 64.1(d) including without limitation payroll records, management records, time recordings and records of project specific training; and
- (e) are in any format or stored on any medium, including without limitation photographs, electronic files, telecommunications, or social media.

64.3 The records referred to in Clause 64.1 shall not be destroyed without the prior written approval of the Principal.

64.4 Without limiting any other rights or obligations under this Clause 64, the Principal and the QGP Compliance Branch may, at any time after giving written notice to the Contractor that an audit shall be undertaken pursuant to this Clause, undertake an audit in respect of the Contractor's compliance with Clause 21.2. In undertaking the audit, the Principal and the QGP Compliance Branch shall have the right to inspect and copy any record referred to in Clause 64.1 and to access any of the Contractor's systems and processes which are in any way connected with subcontracting. Upon receipt of written notice of the audit pursuant to this Clause 64.4, the Contractor shall promptly and at its own cost provide the Principal

and the QGP Compliance Branch with every reasonable facility necessary to undertake the audit, including but not limited to:

- (a) providing to the Principal and the QGP Compliance Branch any record requested by them for inspection or copying pursuant to Clause 64.5;
- (b) making staff available to the Principal and the QGP Compliance Branch to access or explain systems, processes or any record referred to in Clause 64.1; and
- (c) arranging and providing access to the Contractor's or Subcontractor's workplaces, sites, premises, or facilities.

64.5 Subject to the Contractor's (or a Subcontractor's) right to claim legal professional privilege in respect of any record, which is hereby maintained, the Principal and the QGP Compliance Branch shall have the right to inspect and to copy at any time any record referred to in Clause 64.1. In the case of any records referred to in Clause 64.1 stored on a medium other than in writing, the Contractor shall make available forthwith upon request such facilities as may be necessary to enable a legible, operable reproduction thereof to be provided to the Principal and the QGP Compliance Branch.

64.6 Where a record referred to in Clause 64.1 is created, maintained or stored by the Contractor or a Subcontractor in an electronic format, it shall be provided to the Principal and the QGP Compliance Branch in its native, operable form or such other format as may be reasonably required by or acceptable to the Principal and the QGP Compliance Branch.

64.7 Where a record referred to in Clause 64.1 is stored on a medium licensed from a third party, where the Principal is a party to the communication, the Contractor must provide the Principal with a copy of such records in an external electronic storage device, readable on the Principal's information technology system, or such other format as may be reasonably required by the Principal, each month until the issue of the Final Certificate.

64.8 The Contractor shall comply in all respects with any request made pursuant to Clause 64.5 to inspect or copy records referred to in Clause 64.1, or any audit undertaken pursuant to Clause 64.4, and shall not be entitled to refuse audit, inspection or copying of any record referred to in Clause 64.1 on any basis whatsoever other than on the basis that legal professional privilege attaches to the record.

64.9 Records accessed under Clauses 64.4 or 64.5 may be used to assess the Contractor's or its Subcontractors' compliance with the Contract, the Subcontract, the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct, the Queensland Government Building and Construction Training Policy and the Best Practice Principles (if applicable) and may be shared with relevant Government Departments or Instrumentalities for the purposes of making a recommendation about compliance with the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct, the Queensland Government Building and Construction Training Policy and the Best Practice Principles (if applicable).

64.10 The Principal and the QGP Compliance Branch may in their absolute discretion, publish information about the Contractor's or a Subcontractor's compliance with the Ethical Supplier Mandate, including but not limited to any sanctions or penalties imposed, and the parties acknowledge and agree that to do so will not constitute a breach of this Contract by the Principal nor give rise to any other right or remedy of the Contractor at law or in equity against the Principal or the QGP Compliance Branch.

65. INFORMATION PRIVACY

65.1 For the purposes of this Clause **Agency, Held or Holds, Personal Information** and **Sensitive Information** have the same meanings as in the *Information Privacy Act 2009* (Qld) ("IPA").

65.2 If the Contractor collects, Holds or has access to Personal Information in order to carry out work under the Contract, the Contractor must:

- (a) if the Principal is an Agency, comply with Parts 1 and 2 of Chapter 2 and section 41 of Chapter 3 of the IPA, including without limitation the provisions which apply to Sensitive Information, in relation to the discharge of its obligations under the Contract as if the Contractor was the Principal;

- (b) not use Personal Information other than in connection with carrying out work under the Contract, unless required or authorised by law;
 - (c) not disclose outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law;
 - (d) ensure that its officers, employees, agents, and Subcontractors do not access, use, Hold or disclose Personal Information other than in connection with carrying out work under the Contract;
 - (e) ensure that its Subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this Clause 65;
 - (f) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints or data breach assessments and management;
 - (g) contain and mitigate loss or damage in response to any data breach;
 - (h) comply with such other privacy and security measures as the Principal may reasonably require from time to time; and
 - (i) indemnify the Principal against claims arising from any breach of the IPA by the Contractor.
- 65.3 On request by the Principal, the Contractor must obtain from its employees, officers, agents, or Subcontractors carrying out work under the Contract, an executed deed of confidentiality in a form acceptable to the Principal.
- 65.4 The Contractor must immediately notify the Principal on becoming aware of any real or suspected data breach, or any breach of this Clause 65.
- 65.5 The Contractor acknowledges that, in accordance with the Contract, the Principal's Representative, the Principal and the QGP Compliance Branch:
- (a) will collect information for the purposes of administering the Contract that may contain Personal Information, which will be used in accordance with the Contract and may be disclosed to the Principal's Representative, the Principal, the QGP Compliance Branch and agents, consultants, or other contractors engaged by the Principal, but will not be disclosed to any other third party without the Contractor's consent unless authorised or required by law or the Contract; and
 - (b) may collect information containing Personal Information for the purposes of determining the Contractor's compliance with the Ethical Supplier Threshold and the Ethical Supplier Mandate which may be disclosed to the Tripartite Procurement Advisory Panel for compliance purposes, but will not be disclosed to any other third party without the Contractor's consent unless authorised or required by law or the Contract.
- 65.6 Personal Information will be handled in accordance with the IPA.
- 65.7 This Clause 65 will survive the termination or expiry of the Contract.

66. MODERN SLAVERY

- 66.1 For the purposes of this Clause 66:

Modern Slavery has the meaning given to it in the *Modern Slavery Act 2018* (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons;

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth) and any other applicable legislation addressing similar subject matter.

- 66.2 The Contractor warrants that:

- (a) it complies with and will continue to comply with all applicable Modern Slavery Laws;

- (b) it has thoroughly investigated its labour practices, and those of its Subcontractors in respect of any Modern Slavery used anywhere in its operations or supply chain or in the operations or supply chain of any of its Subcontractors (to the extent reasonably possible);
- (c) it has put in place all necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and
- (d) it has taken, and will take in the future, all necessary actions and investigations to validate the warranties provided under this clause.

66.3 Should the Contractor become aware of any:

- (a) Modern Slavery risks in its supply chain or operations, it must notify the Principal of those risks and advise the Principal of the steps it is taking to eliminate or minimise those risks; or
- (b) Modern Slavery practices being carried out within its operations or supply chain, it must:
 - (i) in writing, immediately notify the Principal of those practices and of the remediation action it proposes to take; and
 - (ii) at its cost, take any such additional remediation action required by the Principal (acting reasonably and after due consultation with the Contractor).

66.4 If the Contractor is a 'reporting entity' for the purposes of any state or federal Modern Slavery Laws, including the *Modern Slavery Act 2018* (Cth), it must provide the Principal with a copy of any report it is required to prepare under that legislation at the Principal's request.

67. LIABILITY

67.1 Limitation of Liability

Subject to Clause 67.3, the Contractor's aggregate liability to the Principal arising in connection with this Contract and the Works, whether based in contract, tort (including negligence), equity, statute or otherwise, for any one occurrence is limited to the amount set out in the Annexure.

67.2 Consequential Loss

Subject to Clause 67.3, neither party is liable to the other party for pure economic loss, loss of production, loss of use, loss of opportunity, loss of revenue or loss of profit, but nothing in this clause relieves the Principal's obligation to pay the Contractor any such amounts which are included in:

- (a) during Stage One, the amount calculated in accordance with Clause 3.7(b); and
- (b) during Stage Two, the Contract Sum,

or any amounts otherwise expressly set out in the Contract as to be paid to the Contractor by the Principal or to the Principal by the Contractor for or in connection with the Works.

67.3 Qualification on Limitation of Liability

Clauses 67.1 and 67.2 do not limit or affect in any way:

- (a) liability which cannot be limited at law;
- (b) liability arising in connection with intellectual property, and indemnities given by the Contractor in connection with intellectual property;
- (c) liability for costs, losses or damage caused by conduct of the Contractor which is carried out with wilful or reckless disregard for the consequences to the Principal, to members of the public or to the environment;
- (d) liability for costs, losses or damage caused by malicious, fraudulent or criminal conduct;
- (e) the Contractor's liability for abandonment of its obligations under the Contract;
- (f) liability for property damage, personal injury or death;

- (g) any liability to the extent that the Contractor is entitled to be indemnified in respect of that liability pursuant to an insurance policy required by the Contract;
- (h) any liability to the extent that, but for an act or omission of the Contractor or any of its employees, agents, Subcontractors, suppliers or Consultants, the Contractor would have been entitled to be indemnified in respect of that liability under an insurance policy required by the Contract;
- (i) the Contractor's liability to pay liquidated damages under Clause 49.4; or

in respect of Clause 67.1 only, the Contractor's liability to indemnify the Principal under Clauses 21.4.2, 23.1, 24.3, 24.5.3, 25.4, 29.1.3 or 55.1.

Guide note: Delete this guide note

This Annexure is used to specify key contract details referred to in the Conditions of Contract. All guidance notes in this annexure should be read, actioned (if required) and deleted before releasing this document for tender.

Grey highlight has been used to indicate where input from tenderers is required and items will be completed after the close of tenders.

Yellow highlight has been used to indicate where input is (or may be) required from the project team before releasing this document for tender.

ANNEXURE

This Annexure shall be read as part of the Contract.

Item

- | | | |
|---|--|---|
| 1 | Name of the Principal (Clause 2): | <p>The State of Queensland through
.....</p> <div style="border: 1px solid red; padding: 5px; margin-top: 5px;"> <p>Guide note: Delete this guide note</p> <p><i>Insert the name of the agency that is responsible for the work. The Principal must be an entity that is legally capable of entering into the Contract. This can include the Department.</i></p> </div> |
| 2 | Address of the Principal (Clause 10): | <p>.....</p> <div style="border: 1px solid red; padding: 5px; margin-top: 5px;"> <p>Guide note: Delete this guide note</p> <p><i>Insert the address of the Principal. This should be an address at which mail is monitored.</i></p> </div> |
| 3 | Name of the Principal's Representative (Clause 2): | <p>To be advised in the letter of acceptance of tender</p> <div style="border: 1px solid red; padding: 5px; margin-top: 5px;"> <p>Guide note: Delete this guide note</p> <p><i>This item sets out who the Principal's Representative (responsible for administering the Contract) will be. This is specified in the letter of acceptance of tender. This item does not require any amendment before execution of the Contract.</i></p> </div> |
| 4 | Address of the Principal's Representative (Clause 10): | <p>To be advised in the letter of acceptance of tender</p> <div style="border: 1px solid red; padding: 5px; margin-top: 5px;"> <p>Guide note: Delete this guide note</p> <p><i>This item sets out the Principal's Representative's address. This is specified in the letter of acceptance of tender. This item does not require any amendment before execution of the Contract.</i></p> </div> |
| 5 | Address of the Site (Clause 2): | <p>.....</p> <p>and any other land or places made available by the Principal for the purposes of the Contract</p> <div style="border: 1px solid red; padding: 5px; margin-top: 5px;"> <p>Guide note: Delete this guide note</p> <p><i>Insert a description of the Site being made available to the Contractor to perform the Works. This may be a physical address, however if the works are being performed on a Site at which there are other buildings, or only on part of relevant land, then include cross-reference to the site plans (which should be included in Volume 4, Project brief) which delineate the area of the land comprising the site and if necessary identify the lot on plan description.</i></p> </div> |

- 6 Date for Practical Completion (Clause 2):
Guide note: Delete this guide note
This item must specify the Date for Practical Completion. This date will apply unless an alternate date is accepted in the Stage Two Offer. If the Date for Practical Completion is not known, or will form part of the tender response, this item can be left incomplete and marked in grey highlight.
- 7 Project Cost Estimate (Clause 2) \$.....
Guide note: Delete this guide note
The Project Cost Estimate is the 'not to exceed' limit of the Stage 2 Offer, and the cap on costs payable to the Contractor if the Stage 2 Offer is not accepted. This item should be completed after the close of tenders.
- 8 Payments under the Contract shall be made at: Brisbane
Guide note: Delete this guide note
This item sets out the place at which payments will be made. This item does not require any amendment before execution of the Contract.
- 9 The amount of security (Clause 9.2): 5% of the accepted Contract Sum minus GST, or if none 5% of the Project Cost Estimate exclusive of GST
Guide note: Delete this guide note
The default amount of security under the Contract is 5% of the Contract Sum/Project Cost Estimate. This item has been completed with the default option. If additional security is to be obtained and the requirements of the QBCC Act have been satisfied, this item should be amended to state the amount of security required. See the Formal Instrument of Agreement for further guidance on the requirements of the QBCC Act.
- 10 The form of security (Clause 9.2 and 9.5: [Cash OR retention money OR an approved unconditional undertaking]
Guide note: Delete this guide note
This item specifies the form of security that the Contractor must provide. Security may be provided as cash, retention money (withheld at 10% of each payment claim) or approved unconditional undertaking. Select the applicable option and remove the square brackets once you have completed this item.
- 11 The Principal's entitlement to security and retention moneys shall be reduced to upon issue of the Certificate of Practical Completion (Clause 9.10): [50% OR%]
Guide note: Delete this guide note
This item specifies the amount of security to be returned on the issue of a Certificate of Practical Completion. Default security to be held under the Contract after Practical Completion is security in the amount of 2.5% of the Contract Sum/Project Cost Estimate. Insert 50%, unless item 9 states that the Contractor is to provide security above 5% of the Contract Sum/Project Cost Estimate. If so, you should consider whether more than 2.5% of the Contract Sum/Project Cost Estimate is required as security after Practical Completion (and if not, amend this item accordingly). Under the QBCC Act, more than 2.5% of the Contract Sum/Project Cost Estimate may only be held to secure performance of non-defect obligations. See clause 7 of the Formal Instrument of Agreement for further guidance on the requirements of the QBCC Act. Remove the square brackets once you have completed this item.
- 12 The Principal's entitlement to representation on the PAG (Clause 13.2): delegates
Guide note: Delete this guide note
This item sets out the number of Principal delegates to be appointed to the PAG. If the PAG will only include the Principal's Representative, you can insert 'one'. The number of delegates on the PAG from each party does not need to be equal, as all decisions are made unanimously and if not unanimously, decided by the Principal's Representative. If the number of Principal PAG members will be determined based on the Contractor's proposed PAG members included in the tender response, this item can be highlighted grey.
- 13 The Contractor's entitlement to representation on the PAG (Clause 13.2): delegates
Guide note: Delete this guide note
This item sets out the number of Contractor delegates to be appointed to the PAG. If the PAG will only include the Contractor's Representative, you can insert 'one'. The number of delegates on the PAG from each party does not need to be equal, as all decisions are made unanimously and if not unanimously, decided by the Principal's Representative. If the Contractor's proposed PAG members will form part of the tender response, this item can be highlighted grey.

- 14 Preferred Subcontractors and novated contracts (Clauses 21.2.6 and 21.2.7):

Class of work**Subcontractors****Preferred Subcontractors**

.....	
.....	

*Guide note:**Delete this guide note*

This item can be used to set out the subcontractors included with the Contractor's tender response who are pre-approved to carry out subcontracted work. This item can be completed after the close of tenders.

Novated contracts

.....	
.....	

*Guide note:**Delete this guide note*

This item can be used to set out the consultants or subcontractors to be novated from the Principal to the Contractor. If there are no Principal engaged consultants to be novated to the Contractor, this item can be left blank.

- 15 Application of the Best Practice Principles to the Contract (Clauses 3.2, 21.2, 21.4, 41.7, 58.2 and 64):

[Applicable OR Not Applicable]

*Guide note:**Delete this guide note*

This item is used to indicate whether the Best Practice Principles apply to this project. This item must be completed as applicable if the project value is \$100 million or more and the project meets the relevant criteria, or if the Best Practice Principles are declared to apply to the project by the Minister responsible for Government Procurement. For more information on declarations, see the Best Practice Principles: Quality, safe workplaces and the Queensland Procurement Policy. Remove the square brackets once you have completed this item.

- 16 Weightings for Subcontractor non-price criteria, if Best Practice Principles are applicable (Clause 21.3.2(b)):

Best Practice Principles:%

Local Benefits:%

(If nothing stated – Contractor to determine weightings)

*Guide note:**Delete this guide note*

Complete this item if the Best Practice Principles apply to this project. If the Best Practice Principles will not apply, the yellow highlight can be removed and this item left incomplete. If the Best Practice principles do apply, this item should be completed to indicate the required weighting in the Contractor's valuation criteria for Subcontracts as approved by the Responsible Minister. For more information on how to determine this weighting, see the Best Practice Principles: Quality, safe workplaces.

- 17 The party responsible for engaging the Building Certifier is (Clause 24.6):

.....

*Guide note:**Delete this guide note*

This item sets out which party is responsible for engaging the Building Certifier. As the Building Certifier is engaged as an independent party, this can be either the Contractor or the Principal.

- 18 The party responsible for bearing the costs of and paying any fees due and complying with the requirements of the Building Certifier is (Clause 24.6):

.....

*Guide note:**Delete this guide note*

This item sets out which party is responsible for paying the fees of, and complying with the requirements of the Building Certifier and other authorities. This item should specify the Contractor, unless there is a project-specific reason why the Principal should bear these responsibilities.

- 19 Occupational Health and Safety Audit (Clause 26.2):

Applicable

*Guide note:**Delete this guide note*

This item sets out whether the Contractor must appoint an Occupational health and Safety Auditor. The default position is that this item applies. This item does not require any amendment before execution of the Contract.

- 20 Work Health and Safety Accreditation Scheme (Clause 26.3 and Conditions of Tender Clause 19):

[Applicable OR Not applicable]

Guide note:

Delete this guide note

Where Australian Government funding meets the threshold for the Work Health and Safety Accreditation Scheme accreditation, delete 'Not Applicable'. Where Australian Government funding does not meet the threshold for the Work Health and Safety Accreditation Scheme accreditation, delete 'Applicable'. Remove the square brackets once you have completed this item. For further guidance please refer to the Notice to Tenderers document.]

- 21 Insurance of the work under the Contract – the alternative applying (Clause 30):

[Contractor Controlled OR Principal Controlled/Arranged]

(If nothing stated: Contractor Controlled)

Guide note:

Delete this guide note

This item sets out which party is responsible for insurance of the Works. Contractor controlled insurance is the default option. If neither option is selected, Contractor Controlled insurance will apply, and the Contractor is to effect this insurance. Remove the square brackets once you have completed this item.

- 22 The base amount of insurance (Clause 30):

\$ Click or tap here to enter text.

(If nothing stated, the Contract Sum, or if none, the Project Cost Estimate)

Guide note:

Delete this guide note

This item sets out the amount of works insurance that is required. This amount should be the Project Cost Estimate, and should be completed after the close of tenders.

- 23 The assessment for insurance purposes of the costs of demolition and removal of debris (Clause 30):

\$ Click or tap here to enter text.

Guide note:

Delete this guide note

This item sets out the amount of additional works insurance cover for demolition that is required. If works insurance will be Principal controlled/arranged, insert the amount of cover under the relevant policy that will be available. If this amount will be based on a percentage of the Project Cost Estimate, this item can be highlighted grey and completed after the close of tenders. If works insurance will be Contractor Controlled, this item can be highlighted grey and completed after the close of tenders.

- 24 The assessment for insurance purposes of professional fees (Clause 30):

\$ Click or tap here to enter text.

Guide note:

Delete this guide note

This item sets out the amount of additional works insurance cover for professional fees that is required. If works insurance will be Principal controlled/arranged, insert the amount of cover under the relevant policy that will be available. If this amount will be based on a percentage of the Project Cost Estimate, this item can be highlighted grey and completed after the close of tenders. If works insurance will be Contractor Controlled, this item can be highlighted grey and completed after the close of tenders.

- 25 The value of materials to be supplied by the Principal (Clause 30):

\$ Click or tap here to enter text.

Guide note:

Delete this guide note

This item sets out the amount of additional works insurance cover for Principal Supplied materials that is required. If the value of any Principal supplied material is not known or yet to be determined, this item can be highlighted grey and completed after the close of tenders.

- 26 Escalation in the value of value of the Construction Work as a percentage (Clause 30):

Click or tap here to enter text: %

Guide note:

Delete this guide note

This item sets out the amount of additional works insurance cover that is required to account for inflation and market escalation. If works insurance will be Principal controlled/arranged, insert the amount of cover under the relevant policy that will be available. If this amount will be based on a percentage of the Project Cost Estimate, this item can be highlighted grey and completed after the close of tenders. If works insurance will be Contractor Controlled this item can be highlighted grey and completed after the close of tenders.

- 27 Public liability and product liability insurance – the alternative applying (Clause 30): **[Contractor Controlled OR Principal Controlled/Arranged]**
(If nothing stated: Contractor Controlled)
- Guide note:** Delete this guide note
- This item sets out which party is responsible for public and product liability for the Contract. Contractor controlled insurance is the default option. If neither option is selected, Contractor Controlled insurance will apply, and the Contractor is to effect this insurance. Remove the square brackets once you have completed this item.*
- 28 The amount of public liability and product liability insurance (Clause 31):
Public liability for not less than \$ **Click or tap here to enter text.** per occurrence and product liability for not less than \$ **Click or tap here to enter text.** in the aggregate policy period.
(If nothing stated: \$20 million)
- Guide note:** Delete this guide note
- This item sets out the amount of public and product liability insurance that is required under the Contract, both per occurrence and in the aggregate. If nothing is stated, \$20 million is the default option both per occurrence and in the aggregate. If public and products liability will be Contractor Controlled, this item can be highlighted grey and completed after the close of tenders.*
- 29 The amount of Professional Indemnity Insurance shall be not less than (Clause 33):
\$ **Click or tap here to enter text.** per claim and \$ **Click or tap here to enter text.** in the annual aggregate policy period.
Number of reinstatements (annual policy only): **Click or tap here to enter text.**
(If nothing stated: \$20 million and one reinstatement)
- Guide note:** Delete this guide note
- This item sets out the amount of professional indemnity insurance that is required under the Contract, both per claim and in the annual aggregate. It also sets out the amount of times the policy limit can be reinstated. If nothing is stated, \$20 million is the default option both per claim and in the aggregate, and the policy may be reinstated once.*
- 30 The time by which access to the Site shall be given (Clause 39.1): Date of Acceptance of Tender
- Guide note:** Delete this guide note
- This item sets out the date by which access to the Site will be given. This item has been completed on the basis that the site will be available on the date of accepted of tender. Do not amend this item unless the site will be inaccessible until a particular date or time.*
- 31 The time by which possession of the Site shall be given (Clause 39.1):
.....
- Guide note:** Delete this guide note
- This item sets out the date by which possession of the Site will be given. When completing this item, consider whether possession of the Site will be required for any early works, or whether this will only be required for Stage 2 (if it proceeds). If so, this item can be completed as 'Accepted of the Stage 2 Offer'.*
- 32 The Contract is an Indigenous Project (Clause 41.4.3): **[Yes OR No]**
- Guide note:** Delete this guide note
- This item is used to specify whether or not this project is an Indigenous Project. See the definition of Indigenous Project in clause 41.4.3 to determine whether or not this item should apply. Delete either yes or no as applicable, and remove the square brackets once you have completed this item.*

- 33 Queensland Charter for Local Content (Clause 41.5):

[Applicable OR Not Applicable]

Guide note:

Delete this guide note

This item is used to specify whether the Queensland Charter for Local Content applies. The Charter applies to a number of projects including where the Queensland Government contribution is over \$5 million or \$2.5 million for regional areas. To determine whether the Charter applies to this project, see the Queensland Charter for Local Content: Best Practice Guidelines for Agencies. Delete either Applicable or Not Applicable and remove the square brackets once you have completed this item.

- 34 The Working Days shall be (Clause 44.1):

Monday to Friday

Guide note:

Delete this guide note

This item should set out the working days the Contractor can carry out the Works on the Site. This item has been completed with a default of Monday to Friday. Do not amend this item unless the Site will be accessible to the Contractor on other days.

- 35 The Working Hours shall be (Clause 44.1):

.....
(If nothing stated –between the hours of 6:30 am and 6:00 pm on Working Days.)

Guide note:

Delete this guide note

This item should set out the working hours the Contractor can carry out the Works on the Site. A default of 6:30 am to 6:00 pm on Working Days will apply if this item is left incomplete.

- 36 Liquidated Damages (Clause 49.4):

.....

Guide note:

Delete this guide note

This item should specify the daily rate of liquidated damages that will apply if the Contractor is late in achieving Practical Completion. This rate should be a genuine pre-estimate of the loss which the Principal would expect to suffer if the Contractor is late in achieving practical completion. If Item 37 is marked as 'Not Applicable', the Principal will be able to recover general law damages instead of liquidated damages for delay.

- 37 Time for payment claims (Clause 57.2):

Monthly

Guide note:

Delete this guide note

This item sets out the frequency with which payment claims can be made. This item has been completed with a default monthly frequency. This item does not require any amendment before execution of the Contract.

- 38 Completion Amount (Clause 57.6)

\$Click or tap here to enter text.

Guide note:

Delete this guide note

This item sets out a completion amount payable to the Contractor. The completion amount is retained from payments made to the Contractor once payments under the Contract reach 75%, and is an additional incentive for the Contractor to achieve completion. If no completion amount will be included, the grey highlight can be removed and this item left blank. If the completion amount will form part of the tender response, this item can be highlighted grey and completed after the close of tenders.

- 39 Unfixed plant and materials for which payment claims may be made before they are incorporated in the Works (Clause 57.7):

.....

Guide note:

Delete this guide note

If the Principal will be making payments for unfixed plant and materials, it should list here the items of unfixed plant and materials for which the Contractor may claim payment despite these items not being incorporated in the Works. Otherwise, this item should be completed as not applicable or highlighted grey for the Contractor to propose as part of its tender response and completed after the close of tenders.

40 Prepayment (Clause 57.15)

\$Click or tap here to enter text.

Guide note:

Delete this guide note

This item can be used to set an amount of prepayment the Contractor can claim at any time during the project prior to Practical Completion. This item should be marked as not applicable if no advance payments will be made. If the amount of any advance payment will be expressed as a percentage of the Project Cost Estimate, this item can be highlighted grey and completed after the close of tenders.

41 The period of delay in giving access to and possession of the Site which shall be a substantial breach (Clause 59.7):

13 weeks

Guide note:

Delete this guide note

This item sets out the maximum period of delay in providing access to the site before the Principal will be in breach of the Contract. This item has been completed with a default of 13 weeks, and should not be amended unless extended site access interruptions are expected. This item does not require any amendment before execution of the Contract.

42 The person to nominate an arbitrator (Clause 62):

(If nothing stated – the Chair of the Resolution Institute)

Guide note:

Delete this guide note

This item is used to appoint a person to decide who the arbitrator will be if a dispute is referred to arbitration. If no one is stated, the Chairman of the Queensland Chapter of the Resolution Institute will be appointed.

43 Limit of Liability (Clause 67.1)

The Contract Sum, once Stage Two proceeds;

or

unless and until Stage Two proceeds, the amount calculated in accordance with Clause 3.7(b).

Guide note:

Delete this guide note

This item is used to set the limit of the Contractor's liability to the Principal under the Contract for any one occurrence. This item has been completed with a default of the Contract Sum in Stage Two, and total of the amounts payable during Stage 1. This item does not require any amendment before execution of the Contract. Note that a cap at this level is more common to cap the Contractor's aggregate liability, rather than liability on a per-occurrence basis. As such, if the Contractor resists a cap at this level per-occurrence, it should be considered whether a lower cap can be agreed, or the cap should apply on an aggregate basis, rather than a per-occurrence basis.



HIQ25 – ECI Design Finalisation and Construction – Stage One with option for Stage Two

Volume 3 of 4 – Conditions of Contract – Schedules

Project name

.....

Project number

.....

DRAFT

Guide note: *Delete this guide note*
This draft document is under development.

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Guide note: *Delete this guide note*

This Schedule does not require any amendment before execution of the Contract.

This Schedule sets out a guide for the start-up workshop. The start-up workshop is held to encourage the parties and others concerned with the Contract and the Works to work co-operatively to achieve a successful contract. This Schedule intended as a guide for the participants.

The workshop takes place within 28 days after the Date of Acceptance of Tender. The workshop should take half a day, although large or complex contracts may require longer.

SCHEDULE 1 – Start-up Workshop

Clause 7.3

Participants

The workshop participants include representatives of the Principal, the Contractor and others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Consultants, Subcontractors and suppliers.

Agenda

The agenda should include:

- welcome by the facilitator who outlines the workshop purpose, agenda; and guidelines;
- overview of the Contract;
- introduction of all participants;
- opening statements by key participants;
- co-operative contracting - overview;
- co-operative contracting applied to the Contract;
- monitoring and evaluation;
- development of a communications framework and directory;
- presentation by the Contractor of activities of interest including the Program and management plans;
- identification of key concerns and solutions;
- risk and issue management'
- closing comments and feedback; and
- close of workshop.

Guide note: Delete this guide note

This Schedule does not require any amendment before execution of the Contract.

This is a template form of unconditional undertaking for security given by the Contractor under clauses 9.3 and 9.7. If the Contractor submits a draft form of unconditional undertaking to use as security (e.g. other form of bank guarantee or insurance bonds), the terms of that document should be compared against this template to determine if the alternate form of undertaking is acceptable (noting that other factors, such as the issuing institution, also need to be considered).

SCHEDULE 2 – Approved Form of Unconditional Undertakings

Clause 9.3

CONTRACT for [insert description as per letter of acceptance] (the “Contract”) at the request of [insert Contractor as per letter of acceptance] ACN (the “Contractor”) and in consideration of [insert Principal as per Conditions of Contract Annexure] (the “Principal”) accepting this undertaking [insert the financial institution's details] ACN (the “Financial Institution”) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate of \$ (.....) (the “Sum”).

The undertaking is to continue:

- 1 until notification has been received from the Principal that the Sum is no longer required by the Principal; or
- 2 until this undertaking is returned to the Financial Institution; or
- 3 until payment to the Principal by the Financial Institution of the whole of the Sum.

Should the Financial Institution be notified in writing, purportedly signed by or on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the Sum, such notification to be delivered to any branch of the Financial Institution located within Australia, it is unconditionally agreed that the Financial Institution will make payment or payments to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.

The Principal shall not assign or transfer its rights under this undertaking.

Dated atthis.....day of 20.....

SIGNED for and on behalf of
Financial Institution

By its Attorney(s)
.....
Names of Attorney(s)

Pursuant to Power of Attorney No
who hereby warrant that he/she/they has/have not
received notification of revocation of his/her/their
appointment.

.....
Signature of Attorney

In the presence of
Name of Witness *Signature of Witness*

Branch of issue Telephone:

DRAFT

Guide note: Delete this guide note

This Schedule may be amended before execution of the Contract.

This is a template form of performance warranty, used to create a direct contractual link between the Principal and the subcontractor or supplier. The Contractor must supply a warranty from each of the subcontractors or suppliers specified in this Schedule under clause 12.4. The default position included below is that these subcontractors and suppliers will be determined during Stage One. If details of work, goods, materials etc. for which a separate warranty is required are known, the words 'To be advised by the Principal during Stage One' can be deleted and replaced with that list. Refer to the Annexure at the end of this document for the variable information that will be required to complete this list, including the length of the applicable warranty.

SCHEDULE 3 – Performance Warranty from Subcontractors Suppliers or Manufacturers

Clause 12.4

List Trades, Areas of Work or Items of Materials, Goods, Plant and Equipment Requiring a Performance Warranty

To be advised by the Principal during Stage One

FORM OF WARRANTY

THIS DEED is made the day of20.....

BETWEEN: The State of Queensland through (the "Principal")

AND: [insert name of Contractor] of
 [insert address] (hereinafter with
 its successors, substitutes and permitted assigns called the "Contractor"), and

AND: The party described in Annexure, Item 1 (hereinafter with its successors, substitutes and
 permitted assigns called the "Warrantor")

RECITALS:

- A The Principal and the Contractor have entered into the Contract described in Annexure, Item 2 (the "Contract") pursuant to which the Contractor has agreed to perform the work described in Annexure, Item 3 (the "Works").
- B The Warrantor has agreed to under the work or to supply and/or install the goods described in Annexure, Item 4 (the "Subcontracted Work") for the Works.
- C The Warrantor has agreed to give the warranties and indemnity herein contained to the Principal and the Contractor.

OPERATIVE:

- 1 The Warrantor hereby warrants to the Principal and the Contractor:
 - (a) that all work performed and material supplied as part of the Subcontracted Work shall be in accordance with the quality and/or standard stipulated by the specification described at Annexure, Item 8 and to the extent that the quality and/or standard is not so stipulated, shall be of merchantable quality or standard of workmanship specified in the Contract and be fit for the purpose or purposes for which it is required; and
 - (b) on the terms more particularly set out in Annexure, Item 5 with respect to the Subcontracted Work.
- 2 The above warranties shall be in addition to and shall not derogate from any warranty implied by law in respect of the Subcontracted Work.
- 3 The Warrantor covenants with the Principal and the Contractor to reperform, replace and/or make good to the reasonable satisfaction of the Principal and the Contractor but at the expense of the Warrantor, so much of the works or materials as within the period described in Annexure, Item 6 shall be found to be of a lower quality or standard than that referred to in clause 1 of this Deed or shall show deterioration to such extent that in the opinion of the Principal or the Contractor the Subcontracted Works ought to be made good or replaced in order to achieve fitness for the purpose or purposes for which it is required and whether this is on account of utility, performance, appearance or otherwise.
- 4 The Warrantor further covenants with the Principal and the Contractor to meet the cost of any work necessary to any part of the Works to enable the requirements of clause 3 of this Deed to be carried out and/or necessary to make good the Works afterwards.
- 5 The decision of the Principal as to:
 - (a) the Subcontracted Work failing to comply with quality or standard as abovementioned or otherwise failing to comply with the foregoing warranties;
 - (b) as to the extent of reperformance, replacement and/or making good which shall be necessary to properly remedy the defects; or

(c) as to the extent of any work required under clause 3 of this Deed,

shall be notified in writing to the Warrantor and shall be final and binding upon the parties.

6 The Warrantor further covenants that, within a reasonable time after written notification to the Warrantor of a decision of the Principal or the Contractor as to work required as aforesaid, the Warrantor will reperform, replace and/or make good the Subcontracted Work or parts thereof and/or meet the cost of any work required by clause 3 of this Deed, whether or not any dispute or difference exists between the parties hereto, and the Warrantor hereby agrees to indemnify and keep indemnified the Principal and the Contractor against any direct loss or damages of any nature whatsoever sustained by them or either of them, directly or indirectly arising out of any breach of the warranties, covenants or other conditions hereby given by the Warrantor howsoever arising.

7 If, within the time prescribed in clause 6 of this Deed (and the Principal's decision as to what is a reasonable time in any case shall be final and binding upon the parties), the Warrantor shall fail to fully and properly carry out the work, the Contractor or the Principal may carry out such work, or cause the same to be carried out, and the Warrantor hereby agrees to indemnify and keep indemnified the Contractor and the Principal against all the costs and expenses of and incidental to the carrying out of the work and also against any direct loss or damages sustained by the Contractor or the Principal as a result of the Warrantor's failure as aforesaid.

8 The provisions of this Deed shall come into operation in favour of the Principal and the Contractor as soon as it has been executed by the Warrantor, notwithstanding that it may not have been or may not thereafter be executed by the Principal or the Contractor.

9 Nothing contained in this Deed is intended to nor shall render the Principal in any way liable to the Warrantor in relation to any matters arising out of the Contractor or otherwise.

10 GOVERNING LAW AND JURISDICTION

This Deed shall be construed in accordance with the law of the State or Territory in which the Works are situated and the parties irrevocably submit to the jurisdiction of the Courts of that State or Territory.

11 NOTICES

(a) A party may give a notice required under this Deed by delivering such notice to the address provided in Annexure, Item 7. Such notice may be delivered by hand.

(b) If a party gives the notice by post the notice will be taken as given on the second business day in the place of delivery after the notice is posted.

(c) The parties may give notice of another address (within Australia) to the other party and the new address shall be the address for service of the party for the purpose of this clause.

12 NON REVOCATION OF POWER OF ATTORNEY

Each of the Attorneys executing this Deed states that at the time of execution of this Deed, no notice of revocation of the Power of Attorney, pursuant to which this Deed has been executed, has been received.

13 EXECUTION AS A DEED

The parties agree that this instrument is and shall operate as a Deed.

ANNEXURE**Item**

- 1 The Warrantor:
- 2 The Contract (Recital A):
- 3 The Works (Recital A):
- 4 The Subcontracted Work (Recital B):
- 5 Detailed Warranty of Warrantor (clause 1):
- 6 Period of Years (clause 3): years from the Practical Completion of the Works as defined in the Contract
- 7 Address for notices (clause 11):
- 8 Details of Specification (clause 1):

EXECUTED AS A DEED:**EXECUTED**

on theday of 20..... by

.....
Contractor

.....
ACN

in accordance with s.127 of the *Corporations Act 2001*

.....
Name of Director

.....
Signature of Director

.....
Name of Director / Secretary

.....
Signature of Director / Secretary

EXECUTED

on the day of 20..... by

.....
Warrantor

.....
ACN

in accordance with s.127 of the *Corporations Act 2001*

.....
Name of Director

.....
Signature of Director

.....
Name of Director / Secretary

.....
Signature of Director / Secretary

SIGNED, SEALED AND DELIVERED

on theday of 20.....

for and on behalf of the Principal by an authorised officer

.....
Name of authorised officer

.....
Signature of authorised officer

in the presence of:

.....
Name of Witness

.....
Signature of Witness

Guide note: Delete this guide note

This Schedule does not require any amendment before execution of the Contract.

This is a template deed of obligation for Consultants, used to create a direct contractual link between the Principal and each Consultant. The Contractor must supply a Deed of Obligation from each Consultant under clause 18.7.

SCHEDULE 4 – Consultant’s Deed of Obligation

Clause 18.7

THIS DEED is made on the day of20.....

BETWEEN: The State of Queensland through (the “Principal”)

AND: [insert name of Contractor] of

..... [insert address] (hereinafter with its successors, substitutes and permitted assigns called the “Contractor”), and

AND: The party described in Annexure, Item 1 (the “Consultant”)

RECITALS:

- A The Principal and the Contractor have entered into the Contract described in Annexure, Item 2 (the “Contractor’s Contract”) to effect certain works, brief particulars of which are set out in Annexure, Item 3 (the “Works”).
- B The Consultant has been engaged by the Contractor pursuant to the Contract described in Annexure, Item 4 (the “Consultant Agreement”) to provide services in respect of:
[Insert from the following - Design Work, Documentation Work, Construction Work] as those terms are defined in the Contractor’s Contract and brief particulars of which are set out in Annexure, Item 5 and which works form part of the Works.
- C Pursuant to the Contractor’s Contract, the Contractor must ensure that the ownership of and copyright in all drawings and documents comprising or to comprise the Developed Design and Subcontract Construction Documentation shall vest absolutely in the Principal upon their creation.
- D The Consultant has agreed to assign to the Principal the copyright in the material and to consent to any use of the material which might be inconsistent with any Moral Rights (as defined herein) of the Consultant or any of its servants or agents.

OPERATIVE:

The parties agree:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

this Deed means this document and includes its Annexures and annexure (if any);

Contract Materials means any work produced in the course of performing the Contract;

Moral Rights are the moral rights granted to creators under the *Copyright Act 1968* (Cth) and any similar rights existing under foreign laws.

1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) words importing the singular number includes the plural number and vice versa; and
- (b) references to any party to or in this Deed or in any other document include its successors, substitutes and permitted assigns.

2 COPYRIGHT

- 2.1 The ownership of and copyright in all Contract Materials shall vest absolutely in the Principal upon their creation.
- 2.2 To the extent that copyright in or relating to the Contract Materials is not capable of being vested in the Principal because the Consultant does not own the copyright, the Consultant shall ensure that the Principal is irrevocably licensed to use the relevant Contract Materials.
- 2.3 To the extent that the Consultant has Moral Rights in any Contract Materials, the Consultant:
 - (a) waives those Moral Rights to the extent permitted by law; and
 - (b) unconditionally consents to any use contemplated by the nature of this Deed and any reproduction, publication, adaptation, or communication to the public of the material or on behalf of the Principal.
- 2.4 To the extent that any person other than the Consultant has Moral Rights in Contract Materials the Consultant acknowledges and agrees that:
 - (a) for existing materials, it has used its best endeavours to obtain or procure; and
 - (b) for new materials coming into existence in the course of performing the consultancy services, it will use its best endeavours to obtain or procure prior to or immediately on creation,

all consents or waivers from the individual creator necessary to ensure that the Principal may do or authorise any acts or omissions in relation to the material without infringing any Moral Rights therein.
- 2.5 Upon being requested to do so by the Principal's Representative, the Consultant will produce to the Principal's Representative, all consents and waivers required by this clause to the extent available and will advise the Principal's Representative of any consents or waivers the Consultant has been unable to procure.
- 2.6 The Consultant indemnifies the Principal for all loss, damage, costs, claims, or demands arising out of the Contract Materials infringing any patent, copyright, moral right, registered design, trademark or name or other protected right. However, the Consultant's liability to indemnify the Principal shall be reduced proportionally to the extent that an act or omission of the Principal or the employees, agents or other contractors of the Principal contributed to the loss, damage, costs, claims or demands.
- 2.7 The Principal grants to the Consultant a paid up, non-exclusive, irrevocable license to use the copyright in all material created by the Consultant in respect of the Works that has been vested in the Principal pursuant to clause 2.1 of this Deed, on the condition that the Consultant:
 - (a) does not breach its obligations under this Deed; and
 - (b) indemnifies and holds harmless the State of Queensland and its officers, servants and agents from and against all loss, damage, costs, claims and demands, whatsoever and howsoever arising out of the Consultant's use of the copyright material or any part thereof, which may be brought or made against any of them by any person.

- 2.8 The Consultant shall not be liable for any changes, subtractions or additions to the material created by the Consultant with respect to the Works or other subject matter produced during the performance of or as a result of the services in Annexure Item 5 or any part of any such works or subject matter made, without the express approval of the Consultant, but only to the extent of such changes, subtractions or additions.
- 2.9 The Consultant shall retain the copyright in any original ideas, equipment, processes, or systems created outside the terms of the Consultancy Agreement and used in carrying out the consultancy services. The Consultant shall grant or cause to be granted to the Principal a paid up, non-exclusive, irrevocable license to use such original ideas, equipment, processes, or systems for any purpose for which the consultancy services are provided.

3 DUTY OF CARE

- 3.1 The Consultant hereby acknowledges and agrees to the Principal that it:
- (a) has the necessary expertise to perform the services in Annexure, Item 5 to the standard of skill, care and diligence expected of a competent design professional; and
 - (b) will exercise skill, care, and diligence in performing the services in Annexure, Item 5 to the standard of skill, care and diligence expected of a competent design professional.
- 3.2 The Consultant further acknowledges that the Principal will be relying upon the skill, care, and diligence of the Consultant in performing the services referred to in Recital B and in issuing reports and certificates.

4 FURTHER ASSURANCES

The Contractor and the Consultant undertake upon request by the Principal to execute all documents and do all things necessary to give effect to the terms of this Deed.

5 ASSIGNMENT

- 5.1 The Principal may, at any time, by notice in writing to the Contractor and the Consultant, assign all or any of its rights under this Deed to any government or statutory entity identified in the notice (the "assignee").
- 5.2 The Contractor and the Consultant acknowledge and agree that from the date of any notice given by the Principal pursuant to this clause, any assignment by the Principal takes effect as if the assignee had been originally named as a party to this Deed in place of the Principal.
- 5.3 The Contractor and the Consultant must not, without the prior written approval of the Principal, and except on such terms and conditions as are determined in writing by the Principal, assign all or any part of this Deed.

6 GOVERNING LAW AND JURISDICTION

This Deed shall be construed in accordance with the law of the State of Queensland and the parties irrevocably submit to the jurisdiction of the Courts of the State of Queensland.

7 NOTICES

- 7.1 A party may give a notice required under this Deed by delivering such notice to the address provided in Annexure, Item 6. Such notice may be delivered by hand.
- 7.2 If a party gives the notice by post the notice will be taken as given on the fifth business day in the place of delivery after the notice is posted.

- 7.3 The parties may give notice of another address (within Australia) to the other party and the new address shall be the address for service of the party for the purpose of this clause.

8 NON REVOCATION OF POWER OF ATTORNEY

Each of the Attorneys executing this Deed states that at the time of execution of this Deed, no notice of revocation of the Power of Attorney pursuant to which this Deed has been executed has been received.

ANNEXURE

Item

- | | | |
|---|--|----------------------------|
| 1 | Name and Address of Consultant: | |
| 2 | Details of Contractor's Contract (Recital A): | Project Description: |
| | | Date: |
| | | Parties: |
| 3 | Brief description of the Works (Recital A): | |
| 4 | The Consultant Agreement (Recital B): | |
| 5 | Brief description of the Services (Recital B): | |
| 6 | Address for notices (Clause 7.1): | |

Executed by the parties as a Deed.

EXECUTED AS A DEED:**EXECUTED**

on theday of 20..... by

.....
Contractor

.....
ACN

in accordance with s.127 of the *Corporations Act 2001*

.....
Name of Director

.....
Signature of Director

.....
Name of Director / Secretary

.....
Signature of Director / Secretary

EXECUTED

on the day of 20..... by

.....
Warrantor

.....
ACN

in accordance with s.127 of the *Corporations Act 2001*

.....
Name of Director

.....
Signature of Director

.....
Name of Director / Secretary

.....
Signature of Director / Secretary

SIGNED, SEALED AND DELIVERED

on theday of 20.....

for and on behalf of the Principal by an authorised officer

.....
Name of authorised officer

.....
Signature of authorised officer

in the presence of:

.....
Name of Witness

.....
Signature of Witness

Guide note: Delete this guide note

This Schedule should be completed before execution of the Contract and if possible, prior to releasing this document to tenderers.

This Schedule is to be used to nominate the Minimum Consultancy Services that the Contractor must undertake as part of the Works as required by Clause 18.1.1 of the Conditions of Contract. Under clause 18.1.1 of the Contract, the Contractor remains responsible for any other consultancy services which may be required for the Works. The obligations set out in this schedule should be consistent with the requirements set out in the Project Brief.

SCHEDULE 5 – Minimum Consultancy Services

Conditions of Contract – Clause 18 and Conditions of Tender – Clause 7.12

DISCIPLINE	MINIMUM CONSULTANCY SERVICES
Architects & Primary Consultants	
Quantity Surveyors	
Mechanical Engineers	
Electrical Engineers	
Communications	
Lift Services	
Fire Services	
Security Services	
Hydraulic Services	
Civil Engineers	
Structural Engineers	
Façade Engineers	
Acoustics	
[Other Service]	

SCHEDULE 6 – Not Used

DRAFT

Guide note: Delete this guide note

This Schedule does not require any amendment before execution of the Contract.

This is a template form of statutory declaration which the Contractor must supply with each payment claim submitted under the Contract. There are two forms of Statutory Declaration in this Schedule. Both forms state that the Contractor has complied with the Best Practice Principles and local benefits test (if applicable). The first declaration requires the Contractor to specify which subcontractors or employees it has not paid and why. The second declaration can be used where all subcontractors and employees have been paid.

SCHEDULE 7 – Statutory Declarations

Statutory Declaration by Contractor

Clause 58.2

Oaths Act 1867

Queensland

To Wit

I, of
in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between the State of Queensland through (the “Principal”), and (the “Contractor”) for (the “Contract”),

- 1 I hold the position of, I am in a position to know the facts contained herein and to bind the Contractor by the terms of this declaration, and I am duly authorised by the Contractor to make this declaration on its/their behalf;
- 2 this statutory declaration is made in support of the Contractor’s Payment Claim No. (“Payment Claim”);
- 3 in this declaration, the words “project trust account”, “retention trust account” and “subcontractor” have the meaning given to them in the *Building Industry Fairness (Security of Payment) Act 2017* (“BIF Act”);
- 4 all Subcontractors and sub subcontractors performing work under the Contract have been engaged in accordance with Clause 21.2 of the Contract;
- 5 the Site Personnel Register is current and correct, maintained in accordance with Clause 41.6 of the Contract;
- 6 the Contractor has fulfilled or complied with any commitments made in its tender for the work under the Contract and the obligations under the Contract relating to:
 - (a) the local benefits test contained in the Queensland Procurement Policy; and
 - (b) the Best Practice Principles (as defined in the Contract) (if applicable);
- 7 all of the Contractor’s workers who at any time have been engaged on work under the Contract by the Contractor have been paid all moneys due and payable to them up to the date of submission of the Progress Claim;

- 8 except for those Subcontractors or Consultants listed in the Schedule below (if any), all Subcontractors and Consultants of the Contractor in respect of work under the Contract have been paid the full amount owed to them by the Contractor at the date of the Contractor's submission of the Payment Claim. If no Subcontractor or Consultant is listed in the Schedule, all Subcontractors and Consultants of the Contractor in respect of work under the Contract have been paid all amounts owed to them by the Contractor at the date of the Contractor's submission of the Payment Claim;
- 9 where required by the BIF Act, all Subcontractors of the Contractor have been paid via the project trust account in respect of the work under the Contract;
- 10 where required by the BIF Act, all retention moneys in relation to Subcontractors of the Contractor have been paid into the retention trust account in respect of the work under the Contract; and
- 11 where required by the BIF Act, all withdrawals from the project trust account and the retention trust account have been in accordance with the BIF Act.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the **Oaths Act 1867**.

I declare that the contents of this statutory declaration are true and correct. Where the contents of this declaration are based on information and belief, the contents are true to the best of my knowledge and I have stated the source of that information and grounds for the belief.

I understand that it is a criminal offence to provide a false matter in a declaration, for example, the offence of perjury under section 123 of the *Criminal Code Act 1899* (Qld).

Signed and declared by:

.....
Full name of declarant

.....
Signature of declarant

.....
Place where declarant is located

.....
Date

In the presence of:

.....
Full name of witness

.....
Signature of witness

.....
Type of witness

.....
Date

.....
Name of law practice/ witness's place of employment (cross out if not applicable)

SUPPORTING STATEMENT SCHEDULE

Payment Claim No.

The following Subcontractor(s) have not been paid the full amount that is owed to them by the Contractor at the date of the Contractor's submission of the Payment Claim

Subcontractor Name	Amount still unpaid	Details of the unpaid payment claim for the Subcontractor	Date(s) the Subcontractor carried out the construction work or supplied the related goods and services	Reasons the amount owed to the Subcontractor was not paid in full

Statutory Declaration by Subcontractor**Clause 58.2***Oaths Act 1867*

Queensland

To Wit

I, of
 in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between the State of
 Queensland through (the “Principal”)
 and (the “Contractor”)
 for (the “Contract”),
 (the “Subcontractor”)
 is a Subcontractor to the Contractor for part of the work under the Contract, namely

- 1 I hold the position of I am in a position to know the facts
 contained herein and to bind the Subcontractor by the terms of this declaration, and I am duly authorised
 by the Subcontractor to make this declaration on its behalf;
- 2 all the Subcontractor’s workers who at any time have been engaged on work under the Contract by the
 Subcontractor have been paid all moneys due and payable to them up to the date of submission by the
 Contractor of Progress Claim No
- 3 all subcontractors of the Subcontractor have been paid all that is due and payable to them up to the date of
 submission by the Contractor of Progress Claim No in respect of their part of the work under the
 Contract;
- 4 all sub subcontractors performing work under the Contract have been informed of the existence of the
Building Industry Fairness (Security of Payment) Act 2017 (Qld); and
- 5 the Subcontractor has fulfilled or complied with any commitments made in its tender for the Subcontract
 work and the obligations incorporated in the Subcontract relating to:
 - (a) the local benefits test contained in the Queensland Government’s Queensland Procurement Policy;
 and
 - (b) the best practice principles contained in the Queensland Government guidelines document titled
 “Best practice principles: Quality, safe workplaces” (if applicable).

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of
 the ***Oaths Act 1867***.

I declare that the contents of this statutory declaration are true and correct. Where the contents of this declaration
 are based on information and belief, the contents are true to the best of my knowledge and I have stated the
 source of that information and grounds for the belief.

I understand that it is a criminal offence to provide a false matter in a declaration, for example, the offence of
 perjury under section 123 of the *Criminal Code Act 1899* (Qld).

Signed and declared by:.....
Full name of declarant.....
Signature of declarant.....
Place where declarant is located.....
*Date***In the presence of:**.....
Full name of witness.....
Signature of witness.....
Type of witness.....
Date.....
Name of law practice/ witness's place of employment (cross out if not applicable)

Guide note: Delete this guide note

This Schedule does not require any amendment before execution of the Contract.

Where the project is an 'Eligible Project' for the Queensland Government Building and Construction Training Policy, the Contractor will use this form as a template Privacy Statement which must be submitted to apprentices and trainees regarding the collection of their information for compliance with the policy.

SCHEDULE 8 – Queensland Government Building and Construction Training Policy

Clause 41.4

Privacy Statement – The Queensland Government Building and Construction Training Policy

This Privacy Statement is to be provided to each participant on an eligible Queensland Government funded Building and Civil Construction project to comply with the *Information Privacy Act 2009* (Qld).

The Queensland Government Building and Construction Training Policy (the Training Policy) requires that a minimum of 10 per cent of the total labour hours on eligible Queensland Government building be undertaken by apprentices and/or trainees and through other workforce training. For eligible major building projects, a minimum 15 per cent of the total labour hours is required.

Compliance and reporting requirements under the Training Policy are conditions of contract for contractors and compliance is measured using data recorded in the Training Policy Administration System (TPAS). This information will ultimately be considered in any review of contractors' eligibility to tender for future government work.

The Queensland Government requires that contracted organisations collect personal information from participants including:

Apprentice or Trainee	Registration ID Name Engaged as Apprentice or Trainee Employer Indigenous status Total hours
Cadet Undergraduate Employee Student Indigenous Employee	First & surname name Engaged as Cadet/Undergraduate/ Tradesperson/ Non-Tradesperson/ Prevocational Student (SWL) Indigenous status Total Hours

Contracted organisations must report this information to the Queensland Government in TPAS. The Department of Trade, Employment and Training (DTET) administers contractor compliance data through TPAS on behalf of the Queensland Government.

In addition to any contractual provisions, performance reports regarding a contractor's compliance with the policy will be provided by DTET to the Director-General or Chief Executive Officer of each Queensland Government agency or Government Owned Corporation as required.

Records collected will be treated as a public record and will be retained as required by the Public Records Act 2002 (Qld). For the term that the record is maintained, the Queensland Government will only use this information to administer the Training Policy and report on contractor compliance.

Only authorised officers will have access to this information and personal information will not be disclosed to any other third party without consent unless authorised or required under law.

A person may apply to access their personal information stored. Should a person have any queries regarding the information held about themselves, including if they think that the personal information held is incorrect in any way, or is out of date, please contact DTET on 1300 369 935 or TrainingPolicy@desbt.qld.gov.au.

DRAFT

Guide note: Delete this guide note

This schedule may require amendments before execution of the contract or release of this document to tenderers.

Under clause 55.2 of the Contract, the Contractor may be entitled to an adjustment of the Contract Sum for rise and fall for exchange rates and duty if the Contractor intends to procure goods or materials from overseas. This schedule includes an example adjustment mechanism to determine that amount.

If there is an process or method by which the adjustment should be determined, that process should be included in this schedule instead.

SCHEDULE 9 – Variations in Rates of Exchange and Duty

Clause 55.2

Costs inserted in the Schedule are costs on the date the Contractor's Stage Two Offer was submitted.

A	B	C	D	E
Description of goods obtained from overseas	Cost free on board at overseas port from which despatched \$AUD	Duty payable expressed as a percentage of Column B cost	Duty Payable (Column B multiplied by Column C percentage) \$AUD	Total included in Tender (Column B + Column D) \$AUD
	\$	%	\$	\$

Signed:

Date/...../.....

EXAMPLE CALCULATION

A	B	C	D	E
Description of goods obtained from overseas	Cost free on board at overseas port from which despatched \$AUD	Duty payable expressed as a percentage of Column B cost	Duty Payable (Column B multiplied by Column C percentage) \$AUD	Total included in Tender (Column B + Column D) \$AUD
	\$	%	\$	\$

Exchange rate on the date the Contractor's Stage Two Offer was submitted AUD\$1 = £0.3800

Exchange rate as applied at the time of payment of the invoice by the Contractor AUD\$1 = £0.4200.

Duty paid at the time of payment of the invoice by the Contractor = 15%

The Calculation

$$1. \quad = \quad 0.3800 - 0.4200 \times \$100,000 \quad = \$ (9,523.81)$$

Adjustment to Contract Sum for variation in rates of exchange for and the goods 0.4200

2. *Adjustment to Contract Sum for variation in duty* = $((\$100,000 - \$9,523.81) \times 15\%) - \$10,000$ = \$3,517.43

3. *Hence the total adjustment to Contract Sum in relation to the Chiller* = $(\$9,523.81) + \$3,571.43$ = (\$5,952.38)

Guide note: Delete this guide note

This Schedule does not require any amendment before execution of the Contract.

Where the Contractor is a related body corporate or a subsidiary, under clause 9.13, the Principal may issue a written request for a deed of guarantee and indemnity to be completed and executed. Under the deed, if the Contractor is no longer able to fulfil its obligations or incurs liability under the Contract which the Principal cannot recover, a Group Company will assume the obligations and liabilities of the Contractor.

This is a template form of that deed. If the Contractor supplies an alternative form of deed, the terms in that document should be assessed against this schedule.

SCHEDULE 10 – Deed of Guarantee and Indemnity

Clause 9.13

THIS DEED is made on the day of20.....

BETWEEN: the Group Companies identified in Annexure, Item 1 (the “Group Companies”);

AND: the Trustee identified in Annexure, Item 3 (the “Trustee”);

AND: The State of Queensland through(the “Principal”),

RECITALS:

- A The company identified in Annexure, Item 2 (the “Contractor”) is involved in various trading activities, including construction.
- B The Group Companies have agreed to guarantee and indemnify the Principal and Creditors in respect of the liabilities of the Contractor pursuant to and in respect of a Contract with the Principal (the “Contract”) for the [insert project description] (the “Project”).
- C Each of the Group Companies consider that they will derive a commercial benefit from providing the guarantee and indemnity contained in this Deed.

OPERATIVE:

This Deed provides:

1 INTERPRETATION

1.1 DEFINITIONS

In this Deed, unless the context otherwise requires:

Associate has the meaning given by Division 2 of Part 1.2 of the *Corporations Act 2001* (Cth);

Assumption Deed means a Deed executed pursuant to clause 10 by which a further company or companies may be joined as a Group Company to this Deed of Guarantee and Indemnity;

Contractor’s Obligations means any obligations or liabilities of the Contractor in respect of the Project to the Principal or to any Creditor (present or future, actual or contingent) howsoever arising;

Corporations Act means the *Corporations Act 2001* (Cth) and any regulations or instruments made under that Act, as amended from time to time;

Creditor means a person (whether now ascertained or ascertainable or not) other than a Group Company to whom now or at any future time:

- (a) a Debt is or may at any future time be or become payable by the Contractor; or
- (b) the Contractor's Obligations (whether now existing or not) are or may at any future time be or become owing,

in respect of the Project;

Debt means any monetary sum which is or may at any future time be or become payable by the Contractor in respect of the Project to a Creditor for any reason, in any capacity, and:

- (c) whether the Contractor is liable alone, jointly, severally, or jointly and severally;
- (d) whether the sum is payable as a debt as damages or on any legal or equitable basis whatsoever;
- (e) whether the Contractor is liable as principal debtor, surety or otherwise;
- (f) whether the amount is payable or owing to, or payable, advanced, or paid by, the Creditor alone or with any other person;
- (g) whether the Creditor is entitled for its own account or that of another person;
- (h) whether or not the amounts were of a type originally contemplated by the parties; and
- (i) whether the Creditor is the person originally entitled to payment of the sum or is an assignee of such person and:
 - (i) whether or not the Group Companies or the Contractor consented to, or knew of, any assignment; and
 - (ii) no matter when any assignment occurred;

providing that any assignment is permitted by the relevant agreement between the Contractor and the Creditor and the assignment has been undertaken in accordance with the relevant agreement;

Final Certificate means the Final Certificate under the Contract in respect of the Project;

Group Company means (until this Deed of Guarantee and Indemnity ceases to apply to that company by virtue of a Revocation Deed Poll under clause 5.2):

- (a) any one of the companies listed in Annexure, Item 1; and
- (b) any company joined to this Deed of Guarantee and Indemnity by the execution of an Assumption Deed;

Group Company's Obligations means the obligations of each Group Company under this Deed of Guarantee and Indemnity;

Guarantee means any guarantee, indemnity, letter of credit, performance bond or legally enforceable undertaking or obligation:

- (a) to pay or to provide funds (including by the purchase of any property) in or to enable the payment or discharge of;
- (b) to indemnify against the consequences of default in the payment of; or

- (c) otherwise to be responsible for,

any obligation (whether or not it involves the payment of money) or indebtedness, or otherwise to be responsible for the solvency or financial condition, of any person;

Revocation Deed Poll means a deed poll executed in accordance with clause 5.2 by virtue of which this Deed of Guarantee and Indemnity ceases to apply to one or more of the Group Companies;

Security Interest means:

- (a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secure interest, title retention arrangement, preferential right, trust arrangement or other arrangement having the same or equivalent commercial effect as a grant of security; or
- (b) an agreement to create or give any arrangement referred to in paragraph (a) of this definition;

Trust means the trust described in clause 4.

1.2 GENERAL

In this Deed:

- (a) headings are for convenience of reference only and shall not affect the construction or interpretation of the provisions of this Deed;

and unless the context indicates a contrary intention:

- (b) a reference to any legislation or legislative provision include any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation under that legislation or legislative provision;
- (c) words importing the plural number include the singular and vice versa;
- (d) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state, or government or vice versa;
- (e) a reference to any gender includes all genders;
- (f) a reference to a recital, clause, schedule, or annexure is to a recital, clause, schedule, or annexure of or to this Deed of Guarantee and Indemnity;
- (g) a reference to any party to this Deed of Guarantee and Indemnity or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (h) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (i) a reference to "bankruptcy" or "winding up" includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)) and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters.

2 GUARANTEE

- 2.1 Each Group Company covenants with the Trustee for the benefit of each Creditor and the Principal that each Group Company unconditionally guarantees to each Creditor and the Principal:

- (a) the due and punctual payment of any Debt by the Contractor in accordance with the terms of any agreement between the Creditor and the Contractor and otherwise as required by law; and
- (b) the due and punctual performance by the Contractor of the Contractor's Obligations in accordance with the terms of the Contract and any agreement between the Creditor and the Contractor and otherwise as required by law.

2.2 The Principal may, by notice in writing to the Group Companies, require the Group Companies to forthwith cause the performance of any or all of the Contractor's Obligations, including the performance of the work under the Contract. The Group Companies agree to forthwith comply with such request, and for this purpose to satisfy any legal requirements, including, without limitation, any requirements of the *Queensland Building and Construction Commission Act 1991* (Qld).

3 INDEMNITY

3.1 Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that as a separate and additional covenant each Group Company agrees to unconditionally indemnify, and keep indemnified, the Principal and each and every Creditor against any loss or damage suffered as a result of:

- (a) any delay in the payment of any Debt by the Contractor in accordance with the terms of any agreement between the Creditor and the Contractor and otherwise as required by law;
- (b) any breach by the Contractor of the Contractor's Obligations in accordance with the terms of the Contract and any agreement between the Creditor and the Contractor and otherwise as required by law;
- (c) the Contractor's Obligations being unenforceable, or disclaimed by a liquidator or trustee in bankruptcy, in whole or in part;
- (d) a Debt, in whole or in part being unrecoverable from the Contractor or having been recovered are repaid and restored.

3.2 The Principal shall be obliged to take reasonable steps to mitigate any loss and damage arising out of any breach by the Contractor of the Contractor's obligations and the indemnity provided by the Group Company pursuant to this clause 3 shall be limited to the extent that the Principal does not take reasonable steps to mitigate its loss or damage.

4 BENEFIT OF COVENANTS HELD ON TRUST

The Trustee and each Group Company acknowledges that the Trustee holds the benefit of the covenants of each Group Company made pursuant to this Deed of Guarantee and Indemnity upon trust for each Creditor.

5 CONTINUING GUARANTEE AND REVOCATION

5.1 Continuing Guarantee and Indemnity

The Group Companies agree with the Principal and with the Trustee for the benefit of each Creditor that this Deed of Guarantee and Indemnity may not be revoked or released except as expressly permitted by this Deed of Guarantee and Indemnity.

5.2 Revocation

The Group Companies which are from time to time parties to this Deed of Guarantee and Indemnity may revoke this Deed of Guarantee and Indemnity by executing a Revocation Deed Poll provided that:

- (a) the Revocation Deed Poll is not executed before the later of:

- (i) the date that is 6 months after the date of the Final Certificate; and
 - (ii) the final determination or settlement of all disputes (if any) between the Contractor and the Principal and between the Contractor and all Creditors which arose prior to the date which is 6 months after the date of the Final Certificate;
- (b) the Revocation Deed Poll is conditional upon none of the Group Companies becoming subject to a bankruptcy or winding up within six months following the execution of the Revocation Deed Poll; and
- (c) the Revocation Deed Poll only releases any Group Company in respect of liability arising or accruing from this Deed of Guarantee and Indemnity after the execution of the Revocation Deed Poll.

6 TRUSTEE'S OBLIGATIONS

6.1 The only obligations of the Trustee are:

- (a) to act as bare trustee for the benefit of each Creditor of the covenants of each Group Company contained in this Deed of Guarantee and Indemnity;
- (b) on request, to assign to any Creditor the benefit of this Deed of Guarantee and Indemnity insofar as it benefits that Creditor;
- (c) not to unreasonably withhold its consent upon receipt of a request from any Creditor to permit its name to be used in any demand or notice made or given by or legal proceedings brought by any Creditor seeking to enforce the benefit of this Deed of Guarantee and Indemnity (in which case the Creditor must fully indemnify the Trustee for any liability for legal costs arising in relation to such demand notice or legal proceedings);
- (d) on request, to lodge in its name on behalf of any Creditor or Creditors a proof of debt in the winding up of a Group Company of a claim under this Deed of Guarantee and Indemnity.

6.2 The Trustee has no duty to supervise or monitor any Group Company or to claim or pursue any Debt or, except as provided in clause 6.1, to enforce this Deed of Guarantee and Indemnity.

6.3 The Trustee is hereby indemnified by the Group Companies and each of them jointly and severally in respect of anything done by the Trustee (other than for acts or omissions which are a result of the Trustee's fraud, negligence, or breach of trust) pursuant to this Deed of Guarantee and Indemnity.

6.4 The Trustee may retire and appoint a new Trustee, provided that the new Trustee:

- (a) is not an Associate of the Contractor or any Group Company;
- (b) has the capacity to fulfil the obligations of the Trustee under this Deed of Guarantee and Indemnity; and
- (c) is approved by the Principal.

6.5 The Trustee enters into this Deed of Guarantee and Indemnity only in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Deed of Guarantee and Indemnity is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of property of the Trust out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Deed of Guarantee and Indemnity and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement, or transaction related to this Deed of Guarantee and Indemnity.

6.6 The parties other than the Trustee may not sue the Trustee in any capacity other than as trustee of the Trust, including seek the appointment of a receiver (except in relation to property of the Trust), a liquidator,

an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

- 6.7 The provisions of this clause 6 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed establishing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- 6.8 It is acknowledged that the manager of the Trust is responsible under the trust deed establishing the Trust for performing a variety of obligations relating to the Trust, including under this Deed of Guarantee and Indemnity. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed of Guarantee and Indemnity) will be considered fraud, negligence or breach of trust of the Trustee for the purpose of clause 6.7 to the extent to which the act or omission was caused or contributed to by any failure by the manager or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the manager or any other person.
- 6.9 No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed of Guarantee and Indemnity has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or breach of trust of the Trustee for the purpose of clause 6.7.
- 6.10 The Trustee is not obliged to do or refrain from doing anything under this Deed of Guarantee and Indemnity (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 6.5 to 6.7.

7 GROUP COMPANIES' OBLIGATIONS

7.1 Principal Obligations

- 7.1.1 Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that the Group Company's Obligations:

- (a) are principal obligations and not ancillary or collateral to any other obligations; and
- (b) may be enforced against any or all of the Group Companies without a Creditor being required to exhaust any remedy it may have against the Contractor or to enforce any Guarantee or Security Interest it may hold with respect to any of the Contractor's Obligations.

- 7.1.1 Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that no Creditor is under any obligation to:

- (a) give notice to any Group Company of any amendment of any agreement, Guarantee, Security Interest, or other instrument giving rise to a Debt or to the Contractor's Obligations or of any breach of any such instrument; or
- (b) enforce this Deed of Guarantee and Indemnity against all of the Group Companies but may in its absolute discretion proceed against any or all of them.

7.2 Unconditional Nature of Obligations

Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that the liability of each Group Company under this Deed of Guarantee and Indemnity is not affected by anything which but for this provision might operate to release or otherwise exonerate it from the Group Company's Obligations in whole or in part, including without limitation, any one or more of the following (whether or not done or occurring by or with the consent of the Creditor or with the knowledge or consent of any Group Company):

- (a) the grant to the Contractor, a Group Company or any other person at any time, waiver or other indulgence or the discharge or release of the Contractor, a Group Company, or any other person;

- (b) any transaction or arrangement that may take place between a Creditor and the Contractor, a Group Company, or any other person;
- (c) the winding up or bankruptcy or death of, or appointment of an administrator to, the Contractor, a Group Company, or any other person;
- (d) the fact that a Creditor or any other person takes or fails to take any other Guarantee or Security Interest;
- (e) any other person becoming a guarantor of the Contractor's Obligations or liabilities;
- (f) the fact that a Creditor or any other person exercises or refrains from exercising any other Guarantee or Security Interest or any other rights, powers or remedies against the Contractor, a Group Company, or any other person;
- (g) the amendment, variation (including a variation which increases the Debt or the Contractor's Obligations), replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment, assignment or transfer either in whole or in part of any agreement or document relating to the Contractor's Obligations including any other Guarantee or Security Interest now or in the future held by a Creditor from any person;
- (h) the Contractor's Obligations or a Group Company's Obligations or the obligations of any other person under any agreement or document relating to the Contractor's Obligations or a Group Company's Obligations including any other Guarantee or Security Interest, being or becoming wholly or partly illegal, void, voidable, unenforceable or disclaimed by a liquidator or trustee in bankruptcy;
- (i) the failure or omission by a Creditor to give notice to the Group Companies of any default by the Contractor or any other person;
- (j) any legal limitation, disability, incapacity, or any other circumstance relating to the Contractor, any Group Company, or any other person;
- (k) the fact that any Group Company who is intended to be bound as a guarantor or surety in respect of the Contractor's Obligations does not become bound or, having done so, ceases to be so bound;
- (l) any acquiescence, delay, acts, omissions, or mistake on the part of, or suffered by a Creditor or any other person, in relation to this Deed of Guarantee and Indemnity or any other Guarantee, Security Interest, agreement or negotiable instrument;
- (m) a Creditor becoming a party to any compromise, assignment of property or scheme of arrangement or composition of debts or scheme of reconstruction by or relating to the Contractor or any Group Company or any other person or the acceptance by a Creditor of any dividend or sum of money under such a compromise, assignment or scheme;
- (n) a Creditor obtaining a judgment against the Contractor, any Group Company, or any other person for the payment of any Debt;
- (o) any collateral rights or obligations which may exist between the Contractor and any Group Company and any variation or avoidance of any such collateral rights or obligations;
- (p) the winding up of any Group Company or of any surety of any Group Company;
- (q) if the Contractor or a Group Company is a member of any partnership, any change in the membership of that partnership;
- (r) if the Contractor or a Group Company is a Trustee, any breach of trust or any variation of the terms of the trust, or its determination;
- (s) assent by a Creditor to any assignment to trustees for the benefit of creditors under any scheme or deed or arrangement of the Contractor whether with or without the winding up of the Contractor;

- (t) assent by a Creditor to the appointment of a receiver or administrator of the Contractor; or
- (u) any release, discharge or dealing by a Creditor with any property whether real or personal comprised in any Security Interest held from the Contractor.

7.3 Further Waiver

Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that:

- (a) no failure or delay of a Creditor to exercise any right given to it under this Deed of Guarantee and Indemnity, or to insist on strict compliance by the Contractor or any Group Company with any obligation in respect of any Debt or the Contractor's Obligations under this Deed of Guarantee and Indemnity, and no custom or practice of a Creditor or the Contractor or a Group Company at variance with the terms of this Deed of Guarantee and Indemnity, will constitute a waiver or variation of each Creditor's right to demand exact compliance with the terms of this Deed of Guarantee and Indemnity;
- (b) any delay or omission of any Creditor to exercise any right arising from a breach of any obligation by the Contractor will not affect or prejudice any Creditor's rights arising from such breach, or any subsequent breach, or the continuance of any breach;
- (c) no waiver shall be effective against any Creditor unless it is in writing and signed by the Creditor; and
- (d) any waiver by any Creditor of any particular breach by the Contractor of the Contractor's Obligations will not affect or prejudice any Creditor's rights in respect of any subsequent breach of the same or of a different nature.

7.4 Timing of Payment

All amounts which a Group Company is liable to pay under this Deed of Guarantee and Indemnity must be paid by the Group Company within 10 business days of demand being made on the Group Company by written notice from the Principal or the Trustee in accordance with clause 12.

8 REINSTATEMENT OF CREDITOR'S RIGHTS

8.1 Preference

8.1.1 If, after a Creditor applies any amount against a Debt or the Contractor's Obligations, it is required make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy or winding up:

- (a) the Creditor's rights are to be re-instated and will be the same in respect of that amount, or the relevant part of it as if the application, or the payment or transaction giving rise to it, had not been made; and
- (b) the Group Company shall immediately do anything (including the signing of documents) required by the Creditor to restore to the Creditor any Guarantee or Security Interest to which it was entitled immediately before that application, or the payment or transaction giving rise to it.

8.1.1 If any Security Interest given or payment made to a Creditor by a Group Company or by the Contractor is avoided or reduced by virtue of any law relating to bankruptcy or winding up, the Creditor will then be entitled to recover the value or amount of that Security Interest or payment from each Group Company, despite any prior settlement, discharge or release between the Creditor and any Group Company.

8.2 Conditional Release

Any discharge or release between a Creditor and any of the Group Companies is subject to reinstatement of the Creditor's rights in accordance with this clause.

9 SET-OFF

All payments made by any Group Company under this Deed of Guarantee and Indemnity shall be free of any set-off or counter claim, and free and clear of, and without any deduction or withholding to the maximum extent permitted by law.

10 ASSUMPTION DEED

- 10.1 A further company may be joined as a Group Company to this Deed, by the execution of an Assumption Deed by the company, the Trustee and all of the Group Companies.
- 10.2 Any further company so added by an Assumption Deed will be taken to have assumed liability under this Deed of Guarantee and Indemnity as if that company had executed this Deed of Guarantee and Indemnity.

11 DEED POLL

The covenants and obligations under this Deed of Guarantee and Indemnity are repeated in this clause as a separate covenant by way of Deed Poll between each Group Company and each Creditor.

12 NOTICES

- 12.1 Any notice or other communication which must be given, served, or made under or in connection with this Deed:
- (a) will be deemed to have been duly served, given or made in relation to a person if it is delivered or posted by prepaid post to and is received at the address, or sent by telex or facsimile to the number of that person set out in this Deed (or at such other address or number as is notified in writing by that person to the other parties from time to time);
 - (b) will be deemed to be served, give, or made:
 - (i) (in the case of prepaid post) when delivered;
 - (ii) (in the case of facsimile) on receipt of a transmission report confirming successful transmission; and
 - (iii) (in the case of delivery by hand) on delivery.
 - (c) notices to any of the Group Companies may be given to the address identified in Annexure, Item 1;
 - (d) notices to the Contractor may be given to the address identified in Annexure, Item 2; and
 - (e) notices to the Trustee may be given to the following address identified in Annexure, Item 3.

13 COSTS

- 13.1 Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that it will indemnify every Creditor against, and shall pay to all Creditors on demand the amount of, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) in connection with:
- (a) the enforcement or preservation of any rights under this Deed of Guarantee and Indemnity; and
 - (b) any amendment to, or any consent, approval, waiver, release, or discharge of or under, this Deed of Guarantee and Indemnity if requested by the Contractor or Group Company.

14 LAW AND JURISDICTION

14.1 Governing Law

This Deed of Guarantee and Indemnity is governed by and construed in accordance with the laws of the State of Queensland.

14.2 Submission to Jurisdiction

The parties submit to the non-exclusive jurisdiction of the Courts exercising jurisdiction in the State of Queensland and any Courts that may hear appeals from those Courts in respect to any proceedings in connection with this Deed of Guarantee and Indemnity.

15 GENERAL

15.1 Further Assurance

Each party shall do, sign, execute and deliver and shall procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and act reasonably required of it or them by notice from another party to effectively carry out and give full effect to this Deed of Guarantee and Indemnity and the rights and obligations of the Creditors under it.

15.2 Severability

Any provision of this deed, which is illegal, void or unenforceable is only ineffective to the extent of that illegality voidness or unenforceability, without invalidating the remaining provisions.

15.3 Counterparts

This Deed of Guarantee and Indemnity may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

15.4 Attorneys

Each attorney who executes this Deed of Guarantee and Indemnity on behalf of a party declares that the attorney has no notice of any revocation, suspension, or variation of the power of attorney under the authority of which the attorney executes this Deed of Guarantee and Indemnity.

16 LIMITATION OF LIABILITY

Notwithstanding anything to the contrary in this Deed of Guarantee, the liability of each Group Company under this Deed of Guarantee should be no greater than it would have been if the Group Company were named as party to the Contract, or as applicable, any agreement between the Contractor and a Creditor, in the place of the Contractor.

ANNEXURE

Item		Name	ABN	Address for notice
1	The Group Companies			
				
				
				
				
2	The Contractor			
3	Trustee			

EXECUTED AS A DEED**SIGNED**

on the day of 20..... by

.....
The Group Companies

.....
ABN

in accordance with s.127 of the *Corporations Act 2001*

.....
Name of Director

.....
Signature of Director

.....
Name of Director / Secretary

.....
Signature of Director / Secretary

SIGNED, SEALED AND DELIVERED

on theday of 20.....

.....
Trustee

.....
ABN

in accordance with s.127 of the *Corporations Act 2001*

.....
Name of Director

.....
Signature of Director

.....
Name of Director / Secretary

.....
Signature of Director / Secretary

SIGNED, SEALED AND DELIVERED

on theday of 20.....

for and on behalf of the Principal by an authorised officer

.....
Name of authorised officer

.....
Signature of authorised officer

in the presence of:

.....
Name of Witness

.....
Signature of Witness

Guide note: Delete this guide note

This Schedule may require amendment before execution of the Contract or release of this document to tenderers.

Under clause 24.6.3, the party nominated in Item 18 of the Annexure is required to undertake the actions stated in this Schedule 11, but is also responsible for any additional actions required to fulfill authority requirements in connection with the Contract. Normally, the party responsible will be the Contractor.

This schedule has been completed with default actions required of the Contractor. If Item 18 of the Annexure is completed as the Contractor, and there are no additional authority requirements that need to be brought the Contractor's attention, this Schedule does not require any amendment before execution of the Contract.

SCHEDULE 11 – Requirements of the Building Certifier

Clause 24.6

- 1 In order to comply with the relevant provisions of the *Planning Act 2016 (Qld)* and the *Building Act 1975 (Qld)*, the Contractor shall ensure the Building Certifier is provided with:
 - (a) Completed Approved Forms (Section 282 of the *Planning Act 2016*) being DA Form 2 and where required DA Form 1,
 - (b) Plans, specifications, and other relevant documentation as required by the Building Certifier to enable assessment against Section 30 (building assessment provisions) of the *Building Act 1975* to comply with the information requirements of Chapter 3, parts 1 and 2 of the *Building Act 1975*,
 - (c) Such design, engineering, inspection, and evidence of suitability certificates as are required by the Building Certifier in accordance with the *Building Act 1975* and the *Building Regulation 2006 (Qld)*, in a form approved by the Building Certifier,
 - (d) Where the assessment requires the Building Certifier to make a discretionary decision, such evidence as the Building Certifier may require to support the exercise of that discretion,
 - (e) Where the compliance solution proposed relies upon the performance requirements of the National Construction Code (NCC) or Queensland Development Code, documents as required by Section 26 of the *Building Act 1975*, to the satisfaction of the Building Certifier,
 - (f) One (1) set of general information documents comprising only the site plan, floor plans and elevations, and
 - (g) Where the building contains Special Fire Services as defined in Schedule 2 of the *Building Act 1975*, such information as the Building Certifier may require for submission to the Queensland Fire and Emergency Services including one (1) copy of all plans, specifications and other relevant documentation relating to the Special Fire Services in electronic (PDF) format.
- 2 The Contractor shall submit the plumbing and drainage plans to the relevant authority for review of compliance with the *Plumbing and Drainage Act 2018 (Qld)*, obtain a compliance permit prior to the works commencing, arrange with the authority to inspect the works during construction and issue a compliance certificate on completion, and pay the authority all relevant fees.
- 3 The Contractor shall allow a minimum of 14 days for completion of assessments under the *Building Act 1975*. Where referral agency advice/concurrence is also required, the minimum of 14 days shall apply from the date the Building Certifier accepts the referral agency advice.

- 4 If there are fire safety installations installed in the building, the Contractor shall supply to the Building Certifier one (1) electronic copy (in PDF format) of “as constructed” documents providing details as prescribed by the *Building Act 1975*, Section 102.

DRAFT

Guide note: Delete this guide note

This Schedule requires amendment before execution of the Contract.

This schedule is used to include key contract details referred to in the Conditions of Contract. All Guidance notes and [completion notes] in this annexure should be read, actioned (if required) and deleted before releasing this document for tender.

Yellow highlight has been used to indicate where input is required from the project team.

Grey highlight has been used to indicate where input from tenderers is required – these items will be completed after the close of tenders.

SCHEDULE 12 – Formal Instrument of Agreement

Clause 4

THIS DEED is made on the day of 20..... *[Insert the date the formal instrument of agreement is executed]*

BETWEEN: The State of Queensland through in the State of Queensland (hereinafter with its successors in office called the “Principal”) of the one part *[Insert the name of the agency that is responsible for the work. The Principal must be an entity that is legally capable of entering into the Contract. This can include the Department or the relevant Hospital and Health Service]*

AND: (ACN) of in the State of (hereinafter with its permitted successors and assigns called the “Contractor”) of the other part. *[Insert the name, ACN and address of the Contractor. This item should be completed after the close of tenders.]*

RECITALS

WHEREAS:

- A The Principal invited the submission of tenders by letter of invitation to tender dated the day of 20..... *[Insert the date the tender is to be released]*. (annexed hereto and marked with the letter “A”) for the provision of:
- (i) design services
 - (ii) subcontract construction documentation management services, and
 - (iii) construction management services in relation to *[Insert project description]*
- (hereinafter called the “Project”)
- in accordance with the accompanying Tender Documents:
- (iv) Volume 1 Tender Form and Conditions of Tender, and
 - (v) Volume 2 Conditions of Contract, and
 - (vi) Volume 3 Schedules to the Conditions of Contract, and
 - (vii) Volume 4 Project Brief (annexed hereto and marked with the letters “B”, “C”, “D”, “E” respectively) which were subsequently amended or clarified by addenda numbered,,, and *[Insert Addenda numbers]* (annexed hereto and marked with the letter “F”).

B The Contractor submitted its tender dated the day of 20..... and subsequently clarified or amended its tender by correspondence dated: *[Insert dates of correspondence or delete statement if none]*

the day of 20.....,

the day of 20.....,

the day of 20.....,

the day of 20.....,

(together referred to as the “Contractor’s Tender” and annexed hereto and marked with the letter “G”), agreeably to the letter of invitation to tender and Tender Documents.

C The Contractor has, in lodging the Contractor’s Tender, warranted, and represented to the Principal, inter alia, that:

- (i) it, and the Consultants have the necessary experience, skill, and expertise to perform and complete the work under the Contract and that it shall maintain that skill and expertise; and
- (ii) it had:
 - (1) carried out all relevant investigations, and
 - (2) examined, acquainted, and satisfied itself with all things including the sufficiency of the Project Cost Estimate,

prior to submitting its tender

in accordance with clause 8 of the Conditions of Tender and acknowledges that in entering into this agreement the Principal has relied upon these representations.

D The Principal by notice dated the day of 20..... *[insert date of letter of acceptance of tender]* (annexed hereto and marked with the letter “H”) accepted the Contractor’s Tender and authorised the Contractor to proceed with the provision of work under the Contract.

E The Contractor has deposited with the Principal security to the value of dollars (\$.....) *[insert amount of security held as at execution]* to be held by the Principal:

- (i) firstly, as security for the due and proper performance of the Contractor under this Deed, and
- (ii) secondly, for the purpose of providing security of payment to the “Subcontractors” (as that term is defined in the Conditions of Contract) of the Contractor.

F The parties wish to enter into this Deed to accurately record the terms of their agreement.

OPERATIVE PROVISIONS

1 NOW THIS DEED WITNESSES that:

- (a) The Contractor warrants that each of the recitals is true and correct and acknowledges that the Principal has entered into this Deed in reliance thereon.
- (b) In consideration of the promises on the part of the Principal in this Contract the Contractor:
 - (i) shall provide the materials and perform the work required to complete Stage One in accordance with the Contract;
 - (ii) acknowledges that if the Principal accepts the Contractor’s Stage Two Offer pursuant to clause 11.3.1(a) of the Conditions of Contract, the Contract will include both Stage One and Stage Two and the Contractor shall provide the materials and perform the work required to complete Stage Two; and

- (iii) will otherwise perform, fulfil, comply with, submit to, and observe all provisions of the Contract which are to be performed, fulfilled, complied with, submitted to, or observed by or on the part of the Contractor.
- (c) In consideration of the promises on the part of the Contractor in this Contract the Principal shall make payments to the Contractor in accordance with the Contract and will otherwise perform, fulfil, comply with, submit to and observe all provisions of the Contract which are to be performed, fulfilled, complied with, submitted to and observed by or on the part of the Principal.
- 2 The Contractor acknowledges that, unless and until, the Principal accepts the Contractor's Stage Two Offer pursuant to clause 11.3.1(a) of the Conditions of Contract, the Contract is for the performance of Stage One only, and there is no guarantee that any Contract for Stage Two will proceed.
- 3 This Contract shall take effect according to its tenor notwithstanding any prior contract in conflict with or at variance with it and any correspondence or documents relating to the subject matter of the Contract which may have passed between the parties to the Contract prior to its execution.
- 4 If any party to this Contract consists of one or more persons and one or more corporations this Contract shall bind such person or persons and such corporation or corporations (as the case may be) and their respective executors, administrators, successors (in the case of the Contractor) and permitted assigns (in the case of the Principal) jointly and severally and the person or persons and/or corporation or corporations included in the term "Contractor" or the term "Principal" in this Contract shall jointly be entitled to the benefit of the Contract and the Contract shall be read and construed accordingly.
- 5 The Contract between the Principal and the Contractor comprises the documents listed in clause 6 below.
- 6 Provided that all ambiguities, discrepancies, and inconsistencies, if any, in or between the documents comprising the Contract shall be interpreted in accordance with the Conditions of Contract, should there be any discrepancy or inconsistency between the documents which constitute the Contract the following order of precedence shall apply:
 - (a) This Deed;
 - (b) The Principal's letter of acceptance of the Contractor's Tender;
 - (c) The Annexure to Volume 2 of the Tender Documents - Conditions of Contract;
 - (d) The balance of Volume 2 of the Tender Documents - Conditions of Contract;
 - (e) Volume 3 of the Tender Documents - Schedules to the Conditions of Contract, other than Schedule 1 (which for the avoidance of doubt, does not form part of the Contract);
 - (f) Volume 4 of the Tender Documents - Project Brief (annexed hereto and marked with the letters "B", "C", "D", "E" respectively) which were subsequently amended or clarified by addenda numbered ..., ..., ..., ... and ... *[Insert Addenda numbers]* (annexed hereto and marked with the letter "F");
 - (g) Volume 1 of the Tender Documents - Tender Form and Conditions of Tender; and
 - (h) The Contractor's Tender as clarified by the Contractor and accepted by the Principal,

with the exception that if the Contractor's Stage Two Offer, including a Stage Two Offer Project Brief, is accepted by the Principal, then the accepted Stage Two Offer Project Brief shall take precedence over the Project Brief.

7 QBCC ACT PROVISIONS

Guide note: Delete this guide note

Due to various types of security being required under the Contract (including Completion Amount), it is possible that the total security may exceed 5% of the Contract Sum. Under the QBCC Act, an express agreement by the parties is required for this to occur without breaching the Act.

You must ensure that the space below is separately signed or initialled by both parties.

- (a) Section 67K of the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**) provides that a 'building contract' is subject to a condition that, before practical completion of the building work is reached, the total value of:
- (i) all retention amounts that have been withheld by the principal; and
 - (ii) all securities held by the principal,
- must not exceed 5% of the contract price for the contract.
- (b) The parties expressly agree, by initialling this document in the space below, that the contract is not subject to the condition imposed by section 67K of the QBCC Act.

Principal

Contractor

- (c) Despite any other provision of the Contract, the parties agree that to the extent that:
- (i) the QBCC Act applies; and
 - (ii) the total of:
 - (A) all retention amounts withheld by the Principal; and
 - (B) all securities held by the Principal,
 under the Contract after Practical Completion has been reached exceeds 2.5% of the Contract Sum (which under the QBCC Act includes adjustments for Variations), then the amount of the excess does not relate to the need to correct defects, but instead to the recovery by the Principal of any other costs, damages, liabilities or other amounts which may become payable to the Principal by the Contractor under or in connection with the Contract, the Contractor's performance of the Contract or any breach of contract by the Contractor.

8 ADMINISTRATIVE PROVISIONS

- (a) The Principal must pay all stamp duty on or arising in connection with this Deed. Each party must bear its own costs and expenses arising directly or indirectly with respect to the preparation, execution, completion, and performance of this Deed.
- (b) This Deed and the documents to which it refers contains the entire understanding of the subject matter of this Deed.
- (c) The obligations contained in this Deed will continue until satisfied in full.
- (d) This Deed will be governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.

9 SEVERABILITY

If any part of this Deed is or becomes illegal, invalid, or unenforceable, the legality, validity, or enforceability of the remainder of the Deed will not be affected and this Deed will be read as if that part had been deleted.

10 WAIVER

The failure or omission of a party at any time to:

- (a) enforce or require the strict observance of or compliance with any provision of this Deed; or
- (b) exercise any election or discretion under this Deed,

will not operate as a waiver of the rights of a party, whether express or implied, arising under this Deed.

EXECUTED AS A DEED

[Completion note: Please select and date one of the below execution options:]

Option 1: Corporations Act**EXECUTED**

on theday of 20..... by

.....
Name of Company - Contractor

.....
ACN

in accordance with s.127 of the *Corporations Act 2001*

.....
Name of Director

.....
Signature of Director

.....
Name of Director / Secretary

.....
Signature of Director / Secretary

OR

Option 2: Representative**SIGNED**

on theday of 20..... by

.....
Name of Person - Contractor

.....
Signature of Person – Contractor

in the presence of:

.....
Name of Witness

.....
Signature of Witness

OR

Option 3: Power of Attorney**SIGNED, SEALED AND DELIVERED**

on theday of 20..... by

.....
Name of Company - Contractor

.....
ACN

by its attorneys who declare that they have received no notice of revocation of the Power of Attorney dated [insert] under which this document is signed:

.....
Name of Attorney

.....
Signature of Attorney

.....
Name of Attorney

.....
Signature of Attorney

in the presence of:

.....
Name of Witness

.....
Signature of Witness

SIGNED, SEALED AND DELIVERED

on theday of 20..... by

for and on behalf of the Principal by an authorised officer

.....
Name of authorised officer

.....
Signature of authorised officer

in the presence of:

.....
Name of Witness

.....
Signature of Witness

Guide note: Delete this guide note

This Schedule does not require any amendment before execution of the Contract.

This is a template document that the Contractor must maintain in accordance with clause 41.6 to record information about workers engaged by the Contractor. An updated version of this register must be supplied with each of the Contractor's payment claims.

SCHEDULE 13 – Site Personnel Register

Clause 41.6.1

Project Name:

Project Location:

Contractor's Name:

Project Registration Number:

Name	Is this person an owner/partner of an approved subcontractor/sub contractor? Y or N (if N please complete the rest of the table as applicable)	Is this person remunerated in accordance with an award or industrial instrument? Y or N (if Y please complete column (d) and (e) only; if N complete columns (e) to (i) only)	Name of award or industrial instrument? (if applicable)	Name of this person's Employer?	Is a WorkCover premium paid in respect of this person? Y or N	Aresuperannuation contributions made in respect of this person? Y or N	Is tax withheld from payments made to this person? Y or N	Is Payroll tax paid in respect of this person where applicable? Y or N or N/A
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

Note: If the answer to the question in column (b) is NO, the individual concerned will be considered to be a "worker" as that term is defined in the *Work Health and Safety Act 2011* (Qld) and the *Workers' Compensation and Rehabilitation Act 2003* (Qld) unless evidence can be provided to the contrary.

SCHEDULE 13 (cont'd) – Site Personnel Register Summary**Clause 41.6.3**

Project Name: Project Location:

Contractor's Name: Project Registration
Number:

Response		Total
1	Total number that responded Y to the question in column (b)?	
2	Total number that responded N to the question in column (b) and Y to the question in column (c)?	
3	Total number that responded N to the question in column (b) and N to the question in column (c)?	
4	Total number that responded N to the question in column (f)	
5	Total number that responded N to the question in column (g)	
6	Total number that responded N to the question in column (h)	
7	Total number that responded N to the question in column (i)	

Signed:

Date / /

Guide note: Delete this guide note

This schedule may require amendment before execution of the contract or release of this document to tenderers.

This schedule sets out the minimum requirements for the Stage Two Offer, as required by the Conditions of Contract. A set of standard requirements has been included below. Any additional requirements appropriate and applicable for the specific project should be included (if known, or before contract execution if later agreed with the Contractor during the tender process).

SCHEDULE 14 – Requirements for Stage Two Offer

Clause 11.1

The Stage Two Offer to be submitted by the Contractor during Stage One must meet all the requirements of Clause 11.1 of the Conditions of Contract and must include:

1. **Cost:**

- a Contract Sum which must not be greater than the Project Cost Estimate; and
- the following documents submitted for information purposes only in accordance with clause 11.1.4 of the Conditions of Contract:
 - the basis upon which the Contractor asserts an entitlement to any adjustments referred to in Clause 11.1.2(g) of the Conditions of Contract;
 - an elemental cost plan in accordance with the Australian Institute of Quantity Surveyors' Australian Cost Management Manual 2000 Volume 1, Appendix A1; and
 - the Contractor's proposed trade package break up and budget for each trade package, including without limitation details of any preferred subcontractors for particular trade packages and such further information as may be reasonably required by the Principal or the Principal's Representative.

2. **Time:**

- the period of time for Practical Completion, from which the Date for Practical Completion will be determined; and
- a program that demonstrates how the Contractor proposes to achieve Practical Completion of the Works by the Date for Practical Completion.

3. **Stage Two Project Brief:**

- a Stage Two Project Brief which describes the requirements for the work under the Contract upon which the Contract Sum is based, including without limitation:
 - the performance, scope, quality and functional and/or technical requirements of the Works;
 - any specific requirements in relation to Temporary Works, constructional plant or method of working;
 - the Asset Management and Maintenance Database;

- any specific requirements for Practical Completion; and
- the identification of each and every change from the Project Brief to the Stage Two Project Brief, including any omissions from the Project Brief.

4. *Design Work to date:*

- Drawings and specifications to inform how the Contract Sum has been derived.

5. *Other requirements:*

- a list of performance warranties that the Contractor will obtain from suppliers or manufacturers in accordance with Clause 12.4 of the Conditions of Contract.

Guide note: Delete this guide note

This schedule must be amended before this document is released to tenderes.

This schedule should be completed with the specific activities to be carried out during Stage One, to enable the Contractor to produce the Stage Two Offer in accordance with Clause 11.1 of the Conditions of Contract and Schedule 14.

Detailed requirements should be set out in relation to the following:

- (a) Cost*
- (b) Time*
- (c) Stage Two Project Brief*
- (d) Design Work*
- (e) Other requirements (including performance warranties).*

Note that all requirements in relation to activities to produce the Stage Two Offer should be set out in this Schedule 15, and all requirements in relation to delivering the Project (i.e. Design Work, Documentation Work and Construction Work) should be set out in the Project Brief.

SCHEDULE 15– Activities to be Carried out during Stage One

Clause 2.1

Guide note: Delete this guide note

This Schedule does not require any amendment before execution of the Contract.

This is a template document which the Principal may require the Contractor to provide as part of any subcontractor's tender during the project.

SCHEDULE 16 – Subcontractor Deed Poll

Clause 21.2

FORM OF DEED POLL

THIS DEED POLL is made at on the day of 20.....

BY (ABN) of
..... (the "Subcontractor").

IN FAVOUR OF: The State of Queensland through
.....

(hereinafter with its successors in office, nominated agents and the Queensland Government Procurement Compliance Branch within the Department of Housing and Public Works ('QGP Compliance Branch') called the "Principal").

RECITALS

- A The Principal has entered into an agreement with (the "Contractor") for the provision of design services, subcontract construction documentation management services and construction management services in relation to the (the "Project").
- B The Subcontractor proposes to enter into an agreement (the "Subcontract") with the Contractor or a subcontractor of the Contractor for the execution and completion and/or supply of the (the "Subcontract Works") for the Project.
- C It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

This Deed Poll provides as follows:

- 1 The Subcontractor warrants that:
- (a) it will make and keep accurate and complete records of:
 - (i) its tender, including without limitation the preparation and submission of that tender;
 - (ii) tenders received by it, whether accepted or not;
 - (iii) the execution and completion of the work under the Subcontract; and
 - (iv) compliance with any commitments made in the Subcontractor's tender and its obligations under the Subcontract relating to compliance with government policies including but not limited to the Queensland Procurement Policy, the local benefits test contained in the Queensland Procurement Policy, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the Building and Construction Training Policy and the Best Practice Principles (if applicable);

- (b) the records referred to in clause 1(a) above shall include records that are required to be created or provided, or that are otherwise referred to, under the Subcontract, as well as other records including but not limited to those that:
 - (i) relate to the Subcontractor's tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;
 - (ii) relate to design, including design calculations, option studies, opinions, reviews, and reports;
 - (iii) relate to the execution and completion of the work under the Subcontract, including without limitation labour, subcontracts, subcontractors, consultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost, and cost to complete;
 - (iv) are required to demonstrate compliance with the matters referred to in clause 1(a)(iv) above, including without limitation payroll records, management records, time recordings and records of project-specific training; and
 - (v) are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications, or social media;
- (c) subject to the Subcontractor's right to claim legal professional privilege in respect of any record, which is hereby maintained, permit the Principal, including the QGP Compliance Branch, to inspect and to copy at any time any records referred to in clause 1(a) or 1(b) above, provide electronic copies of such records in native format and provide any access to the Subcontractor's sites, premises or facilities necessary for an inspection referred to in this clause;
- (d) without limiting any other rights or obligations herein, the Subcontractor shall permit the Principal, including the QGP Compliance Branch, to undertake an audit of the records referred to in clause 1(a) or 1(b) above for the purposes of verifying the Subcontractor's compliance with any commitments made in the Subcontractor's tender and its obligations under the Subcontract relating to compliance with government policies including the Queensland Procurement Policy, the local benefits test contained in the Queensland Procurement Policy, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the Building and Construction Training Policy and the Best Practice Principles (if applicable).

- 2 The Subcontractor consents to the Principal, including the QGP Compliance Branch, disclosing or providing copies of any records which the Principal, including the QGP Compliance Branch, inspects or copies in accordance with clause 1 of this Deed Poll to the Contractor.
- 3 The Subcontractor consents to the Principal, including the QGP Compliance Branch, in its absolute discretion, publishing information about the Subcontractor's compliance with the Ethical Supplier Mandate, including but not limited to any sanctions or penalties imposed, and warrants that it will not exercise any right at law, including in contract, at common law or in equity, against the Principal, including the QGP Compliance Branch, in relation to that publication.
- 4 This Deed Poll is governed by and construed in accordance with the laws of Queensland. The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- 5 This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.

EXECUTED as a DEED POLL

on theday of 20..... by

.....
Name of Company - Subcontractor

.....
ACN

in accordance with s.127 of the *Corporations Act 2001*

.....
Name of Director

.....
Signature of Director

.....
Name of Director / Secretary

.....
Signature of Director / Secretary

OR

.....
Name of Person - Subcontractor

.....
Signature of Person – Subcontractor

in the presence of:

.....
Name of Witness

.....
Signature of Witness

DRAFT