



## CONTRACT

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2025 DRFA RESTORATION WORKS – PACKAGE 2

CONTRACT NO: ESC2026-006

# FORMAL INSTRUMENT OF AGREEMENT

## PARTIES

Etheridge Shire Council ABN 57 665 238 857 of 41 St George St, Georgetown 4871 in the State of Queensland

(‘the Principal’)

Click or tap here to enter text. ACN Click or tap here to enter text. of Click or tap here to enter text., in the State of Click or tap here to enter text.

(‘the Contractor’)

## RECITALS:

- A. The Contractor has submitted an offer to carry out and complete the WUC and has given the Principal warranties and made representations to the Principal.
- B. In reliance on the warranties given and representations made by the Contractor, the Principal has accepted the Contractor's offer.
- C. The parties wish to enter into this Contract to record the terms of their agreement.

## THE PARTIES AGREE:

### 1. THE CONTRACT

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1.1 The Contract shall comprise the following documents:

- (a) this [Formal Instrument of Agreement](#);
- (b) Annexure Part A to AS4000-1997 General Conditions of Contract;
- (c) Annexure Part B to AS4000-1997 General Conditions of Contract;
- (d) [AS4000-1997 General Conditions of Contract](#) (as at December 2022, Reissued incorporating Amendment No.3) (as amended);
- (e) Annexure Part D – Scope;
- (f) Annexure Part C to AS4000-1997 General Conditions of Contract – Approved Form of Unconditional Undertaking;
- (g) Annexure Part E – Methodology;
- (h) Annexure Part F – Price Schedule;
- (i) Annexure Part G – Variation Rates;
- (j) Annexure Part H – Training Policy Privacy Statement; and
- (k) Annexure Part I – Contractor's Statutory Declaration.

- 1.2 Subject to Subclause 8.1 of the document listed in Subclause 1.1(d) above, if there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in Clause 1.1 of this Formal Instrument of Agreement, then the documents shall take precedence in the order set out in Clause 1.1 of this Formal Instrument of Agreement, with the Formal Instrument of Agreement being the highest in the order. If that does not resolve the issue then the ambiguity, inconsistency, conflict or discrepancy shall be resolved by giving precedence to the document which places the highest or more onerous requirement on the Contractor.
- 1.3 The Contract constitutes the entire, final and concluded agreement between the parties. To the extent permitted by law it supersedes all prior agreements, statements and understandings between the Contractor and the Principal (whether oral or in writing).
- 1.4 Where any obligation described in the Contract has been carried out by the Principal or the Contractor prior to the date on which the Contract is executed, that obligation shall be taken to have been carried out pursuant to, and the carrying out of that obligation shall be governed by, the Contract as if the obligation had been carried out after the Contract was executed.
- 1.5 In this Formal Instrument of Agreement, words and expressions have the same meanings as defined in the document listed in Subclause 1.1(d) above.
- 1.6 The Contract may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. When executed communication of the fact of execution to the other party may be made by sending evidence of execution by email to the other party. For clarity, the parties consent to the Contract being executed electronically using DocuSign or an equivalent electronic method that is compliant with relevant Legislative Requirements to identify the parties.

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# Australian Standard<sup>®</sup>

## General conditions of contract

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The following are represented on Committee OB/3:

- Association of Consulting Engineers Australia
- Australasian Railways Association
- Australian Chamber of Commerce and Industry
- Australian Procurement and Construction Council
- AUSTROADS
- Construction Industry Engineering Services Group
- Construction Policy Steering Committee
- Electricity Supply Association of Australia
- Institution of Engineers, Australia
- Institution of Professional Engineers, New Zealand
- Law Council of Australia
- Master Builders Australia
- National Construction Council / MTIA
- Process Engineers and Constructors Association
- Royal Australian Institute of Architects

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Australian Standard®

## General conditions of contract

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# Preface

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

This Standard incorporates Amendment 1 (August 1999), Amendment 2 (October 2000), and Amendment 3 (March 2005).

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

## **Warning**

**Users of this Australian Standard are warned that Clause 15 (Damage to persons and property other than work under the Contract (“WUC”)) does not limit the liability of parties for special, indirect or consequential losses.**

**This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance Clauses 16 (Insurance of the Works) and 17 (Public liability insurance).**

**Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.**

**Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.**

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# Annexure Part A

Annexure to the Australian Standard General Conditions of Contract AS 4000—1997

Item		
1	Principal (Clause 1)	Etheridge Shire Council ABN 57 665 238 857
2	Principal's address	[COUNCIL ADDRESS]
3	Contractor (Clause 1)	Click or tap here to enter text. ACN Click or tap here to enter text. ABN Click or tap here to enter text.
4	Contractor's address	Click or tap here to enter text.
5	Superintendent (Clause 1)	Northlane Consulting Engineers Pty Ltd ACN 641 636 115 ABN 29 641 636 115
6	Superintendent's address	5/19 Main Street, Buderim, QLD, 4556
6A	Time for the Contractor to commence Work on the Site (Subclause 34.1)	10 Business Days after the Principal has given possession of sufficient of the Site to enable the Contractor to commence Work. If nothing stated, within 10 Business Days after the Principal has given possession of sufficient of the Site to enable the Contractor to commence Work.
7	(a) Date for Practical Completion (Clause 1)	Refer to Separable Portions section Annexure Part A
	OR	
	(b) Period of time for Practical Completion (Clause 1)	Refer to Separable Portions section Annexure Part A
8	Governing law (Clause 1(f) and 1(h))	Queensland If nothing stated, that of the jurisdiction where the Site is located
9	(a) Currency	AUD

	(Clause 1(g))	If nothing stated, that of the jurisdiction where the Site is located
	(b) Place for payments (Clause 1(g))	Payments will be made by electronic transfer into the bank account last notified in writing by the Contractor to the Principal.  If nothing stated, the Principal's address
	(c) Not used	
10	Not used	
11	Quantities in Price Schedule, limits of accuracy  (Subclause 2.3(a))	Upper Limit <a href="#">Click or tap here to enter text.</a>  Lower limit <a href="#">Click or tap here to enter text.</a>  If nothing stated, upper limit is 120%, lower limit is 80%.
12	Not used	
12A	Principal Supplied Information  (Clause 1 and Clause 2E)	The following documents or information are Principal Supplied Information (in addition the documents identified in the definition of Principal Supplied Information in clause 1)  (a) Nil.  If nothing stated, there is no additional Principal Supplied Information
13	Contractor's Security	
	(a) Form  (Clause 5)	Refer to Separable Portions section Annexure Part A
	(b) Amount or maximum percentage of Contract Sum  (Clause 5)	Refer to Separable Portions section Annexure Part A
	(c) If retention moneys, percentage of each Progress Certificate  (Clause 5 and Subclause 37.2)	Refer to Separable Portions section Annexure Part A
	(d) Time for provision (except for retention moneys)  (Clause 5)	Refer to Separable Portions section Annexure Part A

	(e) Additional Security for unfixed plant and materials  (Subclauses 5.4 and 37.3)	Refer to Separable Portions section Annexure Part A		
	(f) Contractor's Security upon Certificate of Practical Completion is reduced by  (Subclause 5.4)	Refer to Separable Portions section Annexure Part A		
14	Principal's Security			
	(a) Form  (Clause 5)	Refer to Separable Portions section Annexure Part A		
	(b) Amount or maximum percentage of Contract Sum  (Clause 5)	Refer to Separable Portions section Annexure Part A		
	(c) Time for provision  (Clause 5)	Refer to Separable Portions section Annexure Part A		
	(d) Principal's Security upon Certificate of Practical Completion is reduced by  (Subclause 5.4)	Refer to Separable Portions section Annexure Part A		
15	Principal-supplied documents  (Subclause 8.2)	#	Document	No. of copies
		1	PDF copy of Contract	1
		If nothing stated, 1 copy of the Contract		
16	Time for Superintendent's Direction about documents  (Subclause 8.3)	If nothing stated, 10 Business Days		
17	Not used			
18	Novation  (Subclause 9.4)	Subcontractor		Particular part of WUC
		Not applicable		Click or tap here to enter text.

		Click or tap here to enter text.	Click or tap here to enter text.
		Selected Subcontractor	Particular part of WUC
		Not applicable	Click or tap here to enter text.
		Click or tap here to enter text.	Click or tap here to enter text.
19	Legislative Requirements		
	(a) Those excepted (Subclause 11.1)	None excepted	
	(b) Identified WUC (Subclause 11.2(a)(ii))	Click or tap here to enter text.	
	(c) Approvals which Principal has obtained or will obtain (Subclause 11.4)	Click or tap here to enter text.  If nothing stated, the Approvals which the Contract elsewhere expressly provides have been or will be obtained by the Principal	
19A	Portable long service (Subclause 11A)	The Contractor is to make payments and give notices under the <i>Building and Construction Industry (Portable Long Service Leave) Act 1991 (Qld)</i> .  If nothing selected the Principal is to do so.	
19B	Work, health and safety (Clause 11F) Engagement as Principal Contractor	The Contractor is engaged as Principal Contractor under the <i>Work Health and Safety Regulation 2011 (Qld)</i> .  If nothing selected, the Contractor is engaged as Principal Contractor.	
19C	Queensland Code (Clause 11L)	The Queensland Code does not apply to the Contract.  If nothing selected, the Queensland Code does not apply.	
19D	Charter for Local Content (Clause 11M)	The Charter for Local Content <b>Choose an item</b> to the Contract.  If nothing selected, the Charter for Local Content does not apply.	
19E	Training Policy (Clause 11N)		
	(a) Application	The Training Policy <b>Choose an item</b> to the Contract.	

	(Subclause 11N.1)	If nothing selected, the Training Policy does not apply.
	(b) Indigenous Project (Subclause 11N.4)	The Contract does not include Work which is part of an Indigenous Project.  If nothing selected, the Contract does not include Work which is part of an Indigenous Project.
	(c) Major Building Project (Subclause 11N.5)	The Contract does not include Work which is part of a Major Building Project.  If nothing selected, the Contract does not include Work which is part of a Major Building Project.
19F	WHS Accreditation Scheme (Clause 11O)	The WHS Accreditation Scheme <b>Choose an item</b> to the Contract.  If nothing selected, the WHS Accreditation Scheme does not apply.
19G	The Contractor's liability is limited to (Clauses 1 and 15A)	Click or tap here to enter text.  If nothing stated, the Contractor's liability is not limited.
19H	The Principal's liability is limited to (Clauses 1 and 15A)	Click or tap here to enter text.  If nothing stated, the Principal's liability is limited to the amount of the Contract Sum as adjusted pursuant to the Contract.
20	Insurance of The Works (Clause 16)	
	(a) Alternative applying	Alternative 1  If nothing is selected, Alternative 1 applies
	If Alternative 1 applies	
	(b) Provision for demolition and removal of debris	10% of the Contract Sum
	(c) Provision for consultants' fees	10% of the Contract Sum
	(d) Value of materials or things to be supplied by the Principal	\$Nil
	(e) Additional amount or percentage	10% of the total of subparagraphs (a) to (d) in paragraph 3 of Alternative 1 at Clause 16

21	Public liability insurance (Clause 17)			
	(a) Alternative applying	Alternative 1		
	If nothing is selected, Alternative 1 applies			
	If Alternative 1 applies			
21A	Professional indemnity insurance	Not required.		
	(Subclause 2A.10)			
	Product Liability Insurance (Clause 17A)			
	(a) Level of cover of product liability insurance shall be not less than	\$Click or tap here to enter text. per occurrence and \$Click or tap here to enter text. in the annual aggregate  If nothing is stated, then \$20,000,000 per occurrence and \$20,000,000 in the annual aggregate		
21B	(b) Period for which the product liability insurance shall be maintained after issue of the Final Certificate	Click or tap here to enter text.  If nothing stated, 7 years		
	Marine hull insurance (Subclause 18B.1)			
21C	(a) Alternative applying	Not Applicable		
	Marine Protection Insurance (Subclause 18B.2)			
21D	(a) Alternative applying	Not Applicable		
	If Alternative 1 applies			
	(b) Amount per occurrence shall be not less than:	Not Applicable		
21E	Key Personnel	Name	Role	Period*
	(Clause 23.2)			

		* If nothing stated then the key personnel shall perform the role from the Date of Acceptance of Tender until the end of the last Defects Liability Period to expire		
22	(a) Time for giving access  (Subclause 2A.8)	Within 20 Business Days after the Date of Acceptance of Tender  If nothing stated, within 20 Business Days after the Date of Acceptance of Tender		
	(b) Time for giving possession  (Subclause 24.1)	Within 20 Business Days after the Date of Acceptance of Tender  If nothing stated, 20 Business Days after the Date of Acceptance of Tender		
	(c) Additional requirements for access or possession  (Subclause 24.1)	Refer to General Specification in Annexure Part D.		
22A	Working Days and working hours  (Clause 31)	<b>Working Days</b>	<b>Working hours</b>	
		Monday to Sunday	6am to 6pm	
		but shall not include: (a) a public holiday, special holiday or bank holiday at the Site; (b) 15 December to 15 April in any year; or (c) any other day which the Contract elsewhere provides is a day on which Work cannot be carried out.		
23	Qualifying Causes of Delay  (Clause 1 and Subclause 34.3)	Click or tap here to enter text.		
	(a) Additional causes of delay which will constitute a Qualifying Cause of Delay	Click or tap here to enter text.  If nothing stated, there are no additional Qualifying Causes of Delay.		
	(b) Qualifying causes of delay for which EOTs will not be granted	Click or tap here to enter text.  If nothing stated, there are no causes of delay stated in the definition of Qualifying Cause of Delay for which EOTs will not be granted.		

24	Liquidated damages, rate  (Subclause 34.7)	Refer to Separable Portions section Annexure Part A	
25	Bonus for early Practical Completion (Subclause 34.8)		
	(a) Rate	Refer to Separable Portions section Annexure Part A	
	(b) Limit	Refer to Separable Portions section Annexure Part A	
26	Other Compensable Causes  (Clause 1 Compensable Cause and Subclause 34.9)	Refer to Separable Portions section Annexure Part A	
26A	Delay costs, limit per Working Day  (Subclause 34.9)	Refer to Separable Portions section Annexure Part A	
27	Defects Liability Period  (Clause 35)	Nil.  If nothing stated, 12 months	
27A	Variations, percentage for profit and overheads  (Subclause 36.4)	Profit	5%  If nothing stated 5%
		Overheads	5%  If nothing stated 5%
28	Progress Claims (Subclause 37.1)		
	(a) Times for progress claims	21st day of each month in which WUC is carried out up to and including the month in which Practical Completion is reached, for Work done to the 21st day of that month  On the Date of Practical Completion, for work done to the Date of Practical Completion.	
	OR		
	(b) Stages of WUC for progress claims	Click or tap here to enter text.	
29	Unfixed plant and materials for which	Nil	

	<p>payment claims may be made</p> <p>(Subclause 37.3)</p>	
30	<p>Interest rate on overdue payments</p> <p>(Subclause 37.5)</p>	<p>7% per annum</p> <p>If nothing stated, 18% per annum</p>
31	<p>Time for Principal to rectify inadequate possession</p> <p>(Subclause 39.7)</p>	<p>Click or tap here to enter text. days</p> <p>If nothing stated, 25 Working Days</p>
32	Not used	

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# Annexure Part A— Separable Portion 1

	Separable Portion (Clause 1)	No. 1 Click or tap here to enter text.
	Description of Separable Portion (Clause 1)	Gravel Stockpiling
Item		
7	(a) Date for Practical Completion (Clause 1)	No later than 30 September 2026.
	OR	
	(b) Period of time for Practical Completion (Clause 1)	Click or tap here to enter text.
13	Contractor's Security	
	(a) Form (Clause 5)	Two (2) unconditional bank guarantees in equal amounts.
	(b) Amount or maximum percentage value of this Separable Portion (Clause 5)	5% If nothing stated, 5% of value of this Separable Portion
	(c) If retention moneys, percentage of each Progress Certificate applicable to this Separable Portion (Clause 5 and Subclause 37.2)	Nil If nothing stated, 10%, until the limit in Item 13(b)
	(d) Time for provision (except for retention moneys) (Clause 5)	Within 10 Business Days after the Date of Acceptance of Tender  If nothing stated, within 28 days after Date of Acceptance of Tender

	(e) Additional Security for unfixed plant and materials  (Subclauses 5.4 and 37.3)	100% of the payment made by the Principal for unfixed plant and materials listed in Item 29 (if any) Click or tap here to enter text.
	(f) Contractor's Security upon Certificate of Practical Completion is reduced by  (Subclause 5.4)	50% of amount held  If nothing stated, 50% of amount held
14	Principal's Security	
	(a) Form  (Clause 5)	Not applicable
	(b) Amount or maximum percentage of value of this Separable Portion  (Clause 5)	Not applicable  If nothing stated, nil
	(c) Time for provision  (Clause 5)	Not applicable  If nothing stated, within 20 Business Days after the Date of Acceptance of Tender
	(d) Principal's Security upon Certificate of Practical Completion is reduced by  (Subclause 5.4)	Not applicable  If nothing stated, 50% of amount held
24	Liquidated damages, rate  (Subclause 34.7)	per day  \$1,000 per day
25	Bonus for early Practical Completion  (Subclause 34.8) Not applicable	
	(a) Rate	If nothing stated, no bonus is payable.
	(b) Limit	\$  If nothing stated, there is no waiver
26	Other Compensable Causes  (Clause 1 Compensable Cause and Subclause 34.9)	No other Compensable Causes

26A	Delay costs, limit per Working Day  (Subclause 34.9)	If nothing stated, \$500 per Working Day
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# Annexure Part A— Separable Portion 2

	Separable Portion (Clause 1)	No. 2 Click or tap here to enter text.
	Description of Separable Portion (Clause 1)	All works on following roads: a. Abingdon Downs Road b. Ironhurst Road c. Lanes Creek Road
Item		
7	(a) Date for Practical Completion (Clause 1)	No later than 30 November 2026.
	OR	
	(b) Period of time for Practical Completion (Clause 1)	Click or tap here to enter text.
13	Contractor's Security	
	(a) Form (Clause 5)	Two (2) unconditional bank guarantees in equal amounts.
	(b) Amount or maximum percentage value of this Separable Portion (Clause 5)	5% If nothing stated, 5% of value of this Separable Portion
	(c) If retention moneys, percentage of each Progress Certificate applicable to this Separable Portion (Clause 5 and Subclause 37.2)	Nil If nothing stated, 10%, until the limit in Item 13(b)
	(d) Time for provision (except for retention moneys) (Clause 5)	Within 10 Business Days after the Date of Acceptance of Tender If nothing stated, within 28 days after Date of Acceptance of Tender

	(e) Additional Security for unfixed plant and materials  (Subclauses 5.4 and 37.3)	100% of the payment made by the Principal for unfixed plant and materials listed in Item 29 (if any) Click or tap here to enter text.
	(f) Contractor's Security upon Certificate of Practical Completion is reduced by  (Subclause 5.4)	50% of amount held  If nothing stated, 50% of amount held
14	Principal's Security	
	(a) Form  (Clause 5)	Not applicable
	(b) Amount or maximum percentage of value of this Separable Portion  (Clause 5)	Not applicable  If nothing stated, nil
	(c) Time for provision  (Clause 5)	Not applicable  If nothing stated, within 20 Business Days after the Date of Acceptance of Tender
	(d) Principal's Security upon Certificate of Practical Completion is reduced by  (Subclause 5.4)	Not applicable  If nothing stated, 50% of amount held
24	Liquidated damages, rate  (Subclause 34.7)	per day  \$1,000 per day
25	Bonus for early Practical Completion  (Subclause 34.8) Not applicable	
	(a) Rate	If nothing stated, no bonus is payable.
	(b) Limit	\$  If nothing stated, there is no waiver
26	Other Compensable Causes  (Clause 1 Compensable Cause and Subclause 34.9)	No other Compensable Causes

26A	Delay costs, limit per Working Day  (Subclause 34.9)	If nothing stated, \$500 per Working Day
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## 1. Interpretation and construction of Contract

In the Contract, except where the context otherwise requires:

**Item** means an Item in Annexure Part A;

**Clause** and **Subclause** means a clause or subclause of these General Conditions of Contract, unless otherwise expressly stated;

**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;

**Approvals** means certificates, licences, accreditations, clearances, authorisations, requirements, consents, permits, exemptions, waivers, approvals, determinations and permissions and requirements from any Authority and any related fees and charges, including those Approvals in existence at the Date of Acceptance of Tender and any other Approvals obtained during, or as part of WUC;

**Artificial Intelligence System** means any software, tool, or system that performs tasks typically requiring human intelligence, including but not limited to Generative AI, machine learning, natural language processing, or automated decision making technologies;

**Australian Standard** means any standard published by Standards Australia Limited (ABN 85 087 326 690);

**Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality (including a stock exchange) or any other person having jurisdiction in connection with The Works or the carrying out and completion of WUC;

**Bank Guarantee** means an unconditional undertaking in the form of a bank guarantee that:

- (a) does not contain an expiry date;
- (b) is in a form and contains terms approved by the Principal in its absolute discretion (the form in Annexure Part C is approved); and
- (c) is given by a financial institution approved by the Principal;

**Banned AI System** means any Artificial Intelligence System that is:

- (a) expressly identified in the Contract as prohibited; or
- (b) publicly identified by the Australian or Queensland Government (including the Australian Signals Directorate and Queensland Government Chief Information Office or any successor agency with responsibility for cyber security) as prohibited for use in connection with government information; and
- (c) includes, without limitation, 'DeepSeek' and any other system so identified from time to time;

**Building Code** means the National Construction Code published by the Australian Building Codes Board, as in force in Queensland;

**Building Contract** has the same meaning as given to that term in section 67AAA of the QBCC Act;

**Business Day** means:

- (a) when used in the definition of Payment Period, has the same meaning as given to that term in section 67W of the QBCC Act;
- (b) otherwise, has the same meaning as in the Security of Payment Legislation;

**Carry Out Building Work** has the same meaning as given to that term in section 67A of the QBCC Act;

**Certificate of Practical Completion** has the meaning in Subclause 34.6;

**Charter for Local Content** means the Queensland Government Charter for Local Content as amended or replaced from time to time;

**Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including pursuant to a provision of the Contract (including any claim for a Variation, an EOT or other adjustment of the Contract Sum), at law (including a breach of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law, pursuant to any other principle of law, in connection with the Contract, The Works or WUC;

**Claimable Amount** means:

- (a) the value of Work carried out by the Contractor in the performance of the Contract which the Contractor is entitled to include in a progress claim; and
- (b) amounts otherwise due from the Principal to the Contractor pursuant to the Contract;

**Compensable Cause** means:

- (a) any act, default or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor) but unless otherwise stated in Item 26 does not include a Direction by the Superintendent to carry out Provisional Work; or
- (b) those listed in Item 26;

**Compensable Direction** means a Direction pursuant to Subclause 8.1 that is necessitated solely because of an inconsistency, ambiguity, discrepancy or error in or between any documents prepared by or on behalf of the Principal for the purpose of carrying out WUC and which could not have been identified by a competent contractor at the time of the Contractor's tender if that contractor had inspected:

- (a) all written information made available by the Principal to the Contractor for the purpose of tendering;
- (b) all information influencing the risk allocation in the Contractor's tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the Site and its near surrounds.

For clarity, a document identified as Principal Supplied Information is not a document prepared for the purpose of carrying out WUC;

**Compliance Plan** means the plan submitted electronically by the Contractor in TPAS demonstrating how the Contractor will comply with its obligations under Subclause 11N and the Training Policy;

**Conflict of Interest** means any actual, potential or perceived conflict between the interests of the Contractor and the Contractor's obligations under the Contract;

**Construction Plant** means appliances and things used in the carrying out of WUC but not forming part of The Works;

**Construction Program** has the meaning in Clause 32;

**Contract** has, subject to Clause 6, the meaning given in Clause 1.1 of the Formal Instrument of Agreement;

**Contract Sum** means:

(a) for any items identified as "rate only" in the Price Schedule, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the Price Schedule; plus

(b) the aggregate of any lump sums in the Price Schedule,

including Provisional Sums but excluding any additions or deductions which may be required to be made under the Contract;

**Contractor** means the person bound to carry out and complete WUC;

**Contractor's Design Documents** means the drawings, workshop drawings, specifications and other information, samples, models, patterns and the like required by the Contract to be created by the Contractor for the construction of WUC;

**Contractor's Design Obligations** means all tasks necessary to design, engineer and specify WUC, which are required by the Contract to be carried out by the Contractor, including preparation of the Contractor's Design Documents;

**Contractor Documents** means:

(a) those records, reports, designs, specifications, certificates, plans (including management plans), procedures, manuals and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Contractor (including the Contractor's Design Documents); and

(b) all information advice, designs, calculations and recommendations in those documents,

but does not include those that are incomplete at the time at which the Principal exercises its rights under Subclause 39.4 or the Contractor exercises its rights under Subclause 39.9;

**Councillor** has the meaning given to that term in the *Local Government Act 2009* (Qld);

**Data Breach** means either of the following in relation to information Held by the Contractor or the Contractor's Personnel in connection with the Contract:

(a) unauthorised access to, or unauthorised disclosure of, the information;

(b) the loss of the information in circumstances where unauthorised access to, or unauthorised disclosure of, the information is likely to occur;

**Date of Acceptance of Tender** means the date on which the written notice is given by the Principal to the Contractor advising that the Contractor's tender is successful or, where no such notice is issued means the date on which the Contract is executed by the last party to do so;

**Date for Practical Completion** means:

(a) where Item 7(a) provides a date for Practical Completion, the date;

(b) where Item 7(b) provides a period of time for Practical Completion, the last day of the period,

but if any EOT for Practical Completion is directed by the Superintendent or allowed in any expert determination or litigation, it means the date resulting therefrom;

**Date of Practical Completion** means:

(a) the date stated in a Certificate of Practical Completion as the date on which Practical Completion was reached (which may be a date earlier than the date on which the Certificate of Practical Completion is issued); or

(b) where another date is determined in any expert determination or litigation as the date upon which Practical Completion was reached, that other date;

**Deed of Guarantee, Undertaking and Substitution** has the meaning in Subclause 5.6;

**Defects** means any WUC which does not conform with the requirements of the Contract and includes omissions;

**Defects Liability Period** has the meaning in Clause 35;

**Dispute** has the meaning in Clause 42;

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

**EOT (from “Extension of Time”)** has the meaning in Subclause 34.3;

**EP Act** means the *Environmental Protection Act 1994* (Qld);

**Excepted Risk** has the meaning in Subclause 14.3;

**Final Certificate** has the meaning in Subclause 37.4;

**Final Payment** has the meaning in Clause 37;

**Final Payment Claim** means the final payment claim referred to in Subclause 37.4;

**Formal Instrument of Agreement** means the document of that name forming part of the Contract;

**Generative AI** means systems that, by analysing or inferring from input data or prompts, are capable of producing new or synthetic outputs such as text, code, images, audio, video, data, predictions, recommendations or decisions;

**Good Industry Practice** means:

(a) the standard of skill, care, and diligence; and

(b) the practices, methods, techniques, and acts,

of a skilled, competent, and experienced contractor engaged in the business of carrying out Work similar to the WUC;

**Hold** and **Held** have the same meaning as given to those terms in the *Information Privacy Act 2009* (Qld);

**Improper Conduct** means:

(a) engaging in misleading or deceptive conduct;

- (b) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct;
- (c) failing to declare a Conflict of Interest in breach of Subclause 2B.2;
- (d) canvassing, attempting to improperly influence, offering any inducement to, or accepting or inviting improper assistance from, the Principal's Councillors or other Personnel (or former Personnel);
- (e) using any information improperly obtained, or obtained in breach of any obligation of confidentiality;
- (f) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
- (g) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld);

**Informal Variation Direction** means a Direction by the Superintendent for a Variation which is either:

- (a) not in writing; or
- (b) in writing but which does not expressly state that it is a Direction for a Variation pursuant to Clause 36;

**Intellectual Property Right** means any patent, registered design, trademark or name, copyright or other protected right and includes Moral Rights;

**Key Personnel** means the persons (if any) identified in Item 21E;

**Latent Condition** has the meaning in Subclause 25.1;

**Legislative Requirement** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, industrial instruments (including awards) and proclamations of the Commonwealth of Australia or of the jurisdiction where WUC or the particular part thereof is being carried out;
- (b) Approvals;
- (c) the requirements of the Building Code, and to the extent not inconsistent with the Building Code, relevant Australian Standards; and
- (d) fees and charges payable in connection with the foregoing;

**Liability Limit** means:

- (a) in respect of the Contractor:
  - (i) where an amount is specified in Item 19G, that amount; or
  - (ii) where no amount is stated, the Contractor's liability is not limited; and
- (b) in respect of the Principal, the amount specified in Item 19H;

**Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth);

**Moral Rights** means moral rights within the meaning of Part IX of the *Copyright Act 1968* (Cth) and rights of integrity of authorship, rights of attribution of authorship, rights not to have

authorship falsely attributed and rights of a similar nature conferred by statute, that exist, or may come to exist, anywhere in the world;

**Payment Period** means:

- (a) if the Contract is a Building Contract, 15 Business Days;
- (b) otherwise, 25 Business Days,

after the progress claim or Final Payment Claim (as the case may be) is given to the Superintendent;

**Payment Schedule** has the same meaning as in the Security of Payment Legislation;

**Personal Information** has the same meaning as given to that term in the *Information Privacy Act 2009* (Qld);

**Personnel** includes the officers, employees, agents, representatives, consultants and contractors (including, in respect of the Contractor and its Subcontractors), of a party and any other person or entity for whom that party is vicariously liable and in respect of the Principal includes the Councillors of the Principal but does not include the Contractor;

**PPS Act** means the *Personal Property Securities Act 2009* (Cth);

**Practical Completion** is that stage in the carrying out and completion of WUC when:

- (a) The Works are complete except for minor Defects:
  - (i) which do not prevent The Works from being reasonably capable of being used for their stated purpose;
  - (ii) which the Superintendent determines the Contractor has reasonable grounds for not promptly rectifying;
  - (iii) the rectification of which will not prejudice the convenient use of The Works; and
  - (iv) which do not affect compliance with any Legislative Requirement;
- (b) those Tests which are required by the Contract to be carried out and passed before The Works reach Practical Completion have been carried out and passed;
- (c) documents and other information required under the Contract which, in the Superintendent's opinion, are essential for the use, operation and maintenance of The Works have been supplied; and
- (d) anything else which the Contract provides is to be done, provided or otherwise satisfied as a requirement of or prior to Practical Completion has been so done, provided or satisfied;

**Prescribed Notice** means a written notice which contains:

- (a) details of the basis of the Claim; and
- (b) a detailed itemised breakdown of the quantum of the Claim, or, where the quantum cannot be itemised at the time that the Prescribed Notice is given because the costs are not yet known, an itemised breakdown of the estimated quantum of the Claim;

**Price Schedule** means the documents incorporated into Annexure Part F;

**Principal** means the entity stated in Item 1;

**Principal's Policies** means the Principal's plans, policies, procedures, codes, standards and guidelines to the extent that these are made available by the Principal (whether to the public at large or to the Contractor) from time to time;

**Principal Supplied Information** means:

- (a) the documents or information specified in Item 12A; and
- (b) any other information relating to the Contract which either:
  - (i) does not form part of the Contract but which is or has been provided or made available by or on behalf of the Principal to the Contractor; or
  - (ii) does form part of the Contract, but which is expressly identified as Principal Supplied Information or otherwise as information on which the Contractor should not or must not rely,

and includes information in any form and information which is made available before or after the Date Of Acceptance Of Tender.

**Privacy Complaint** has the same meaning as given to that term in the *Information Privacy Act 2009* (Qld);

**Product Liability Policy** has the meaning given in Clause 17A;

**Progress Certificate** has the meaning in Subclause 37.2;

**Project Trust** has the meaning given by the Security of Payment Legislation;

**Project Trust Account** has the meaning given by the Security of Payment Legislation;

**Provisional Sum** means any sum allocated in the Price Schedule in respect of any Provisional Work;

**Provisional Work** means any Work or item:

- (a) which is identified in the Contract as 'provisional sum', 'provisional', 'prime cost', 'PS', 'if ordered', 'as directed', 'optional' or similar; or
- (b) which the Contract otherwise provides is not to be carried out or supplied by the Contractor unless the Contractor is given a Direction to do so;

**Public Liability Policy** has the meaning in Clause 17;

**QBCC Act** means the *Queensland Building and Construction Commission Act 1991* (Qld);

**Qualifying Cause of Delay** means to the extent that they delay activities on the critical path of the Construction Program:

- (a) any of the following, which are beyond the control of the Contractor occurring on or before the Date for Practical Completion:
  - (i) industrial action not exclusively directed at the Contractor;
  - (ii) inclement weather and the effects at the Site of inclement weather;
- (b) any of the following which are beyond the control of the Contractor whether occurring before, on or after the Date for Practical Completion:

- (i) any act, default or omission of the Superintendent, the Principal or the Principal's consultants, agents or other contractors (not being employed by the Contractor);
- (ii) actual quantities of Work described in the Price Schedule as a 'rate only' item being greater than the quantities in the Price Schedule or the quantities determined by reference to the upper limit of accuracy stated in Item 11 (otherwise than by reason of a Variation directed under Clause 36);
- (iii) Variations (other than a Variation for the convenience of the Contractor) or which is directed because of a default by the Contractor);
- (iv) Latent Conditions;
- (v) a change in a Legislative Requirement which comes into effect after the 10th Business Day before the closing of tenders and which could not have been reasonably anticipated by a competent contractor;
- (vi) subject to the Contractor's compliance with Subclause 11.4, delays by an Authority in providing an Approval, but only if, and then to the extent, that the time taken by the Authority exceeds the maximum time permitted under the applicable Legislative Requirement for the provision of that Approval;
- (vii) other delays by Authorities (including the Principal in its capacity as an Authority) except to the extent that the Contractor directly or indirectly caused or contributed to the delay;
- (viii) any breach of the Contract by the Principal;
- (ix) any other cause of delay identified in item 23(a),

but does not include any cause of delay identified in Item 23(b);

**Queensland Code** means the Queensland Government's Code of Practice for the Building and Construction Industry as amended or replaced from time to time;

**Required Deductions** means:

- (a) amounts paid previously under the Contract;
- (b) retention moneys to be deducted pursuant to Item 13;
- (c) amounts which the Superintendent is required to certify pursuant to Subclause 5.7;
- (d) other amounts due from the Contractor to the Principal in connection with the Contract;
- (e) amounts due from the Contractor to the Principal otherwise than in connection with the Contract;
- (f) to the extent that such Work has not yet been carried out by the Contractor and the cost of such Work has not yet been incurred by the Principal, the estimated cost to the Principal of having any Work of removal, demolition, reconstruction, replacement, correction or rectification the subject of a Direction pursuant to Subclause 29.3 or Clause 35 carried out by a third-party;
- (g) amounts in respect of Work which is required by the Contract to be tested and for which any of the following conditions have not been met:
  - (i) all required Tests have been completed;

- (ii) the results of the Tests do not reveal a failure of the Contractor to comply with the Contract; and
  - (iii) the Contractor has made good WUC and provided the results of the Tests to the Superintendent and to the Principal in accordance with Subclause 30.6;
- (h) other amounts which the Contract expressly provides are Required Deductions or which the Contract expressly entitles the Principal or the Superintendent to deduct from payments to the Contractor;

**Response Period** for a progress claim or Final Payment Claim (as the case may be) means 15 Business Days after the claim is given to the Superintendent;

**Security** means:

- (a) cash;
- (b) retention moneys;
- (c) Bank Guarantee; or
- (d) other form approved by the Principal;

**Security of Payment Legislation** means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and any associated subordinate legislation;

**Selected Subcontract Work** has the meaning in Subclause 9.3;

**Selected Subcontractor** has the meaning in Subclause 9.3;

**Separable Portion** means a portion of The Works identified as such in the Contract or by the Superintendent pursuant to Clause 4;

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

**Specified Loss** means:

- (a) any loss of, or loss of anticipated, profit, income, revenue, saving, production, business, good will, contract or opportunity (including access to markets);
- (b) increase in financing or operating costs;
- (c) liability for loss or damage suffered by third parties;
- (d) legal costs (on a solicitor and client basis);
- (e) fines levied;
- (f) loss of reputation or embarrassment and the cost of abating or reducing such;
- (g) damage to credit rating;
- (h) any other financial or economic loss; and
- (i) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraphs, howsoever arising;

**Subcontractor** includes supplier and subconsultant;

**Superintendent** means the person stated in Item 5 as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent and notified as such in

writing to the Contractor by the Principal and, so far as concerns the functions exercisable by a Superintendent's Representative, includes a Superintendent's Representative;

**Superintendent's Representative** means an individual appointed in writing by the Superintendent under Clause 21;

**Temporary Works** means Work used in carrying out and completing WUC, but not forming part of The Works;

**Test** has the meaning in Subclause 30.1 and includes examine and measure;

**The Works** means the whole of the Work to be carried out and completed in accordance with the Contract, including Variations provided for by the Contract, which by the Contract is to be handed over to the Principal;

**Variation** has the meaning in Clause 36;

**Variation Rates** means the rates described as variation rates in Annexure Part G or elsewhere in the Contract;

**Wilful Misconduct** means an intentional act or omission by a party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where that party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;

**Work** includes the provision of materials;

**Working Day** means a day identified as such in Item 22A;

**WUC (from "Work Under the Contract")** means the Work which the Contractor is or may be required to carry out and complete under the Contract and includes Variations, remedial Work, Construction Plant and Temporary Works, and all other Work described in or to be reasonably inferred from the Contract, and like words have a corresponding meaning.

In the Contract:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the Contract shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- (c) clause headings and subclause headings in these General Conditions of Contract shall not form part of these General Conditions and shall not be used in the interpretation of the Contract;
- (d) 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;
- (e) communications between the Principal, the Superintendent and the Contractor shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in Item 8;
- (g) unless otherwise provided, prices are in the currency in Item 9(a) and payments shall be made in that currency at the place in Item 9(b);

- (h) the law governing the Contract, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in Item 8;
- (i) if pursuant to Annexure Part B to these General Conditions of Contract, Clauses or their parts in these General Conditions are deleted, the Contract shall be read and construed as though the Clause or its part has been deleted, whether or not that particular Clause or its part has been struck from these General Conditions;
- (j) the contra proferentem rule and other rules of construction will not apply to the Contract to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it;
- (k) to the extent permitted by law, if either party consists of two or more persons the Contract binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally;
- (l) the rights and remedies of a party to the Contract are in addition to the rights or remedies conferred on the party elsewhere in the Contract, at law or in equity;
- (m) if a provision of the Contract is void or unenforceable it must be severed from this Contract and the provisions that are not void or unenforceable are unaffected by the severance;
- (n) each indemnity provided in the Contract is a continuing indemnity which survives the expiration or termination of the Contract. The Principal need not incur any expense or make any payment in order to rely on an indemnity;
- (o) the words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation';
- (p) a reference to a Legislative Requirement means a reference to that Legislative Requirement as amended or replaced from time to time;
- (q) a reference to a 'tender' includes a 'quotation' or other form of offer which is intended by the offeror to be capable of acceptance and a reference to 'tendering' has a like meaning; and
- (r) each provision of the Contract which is of its nature intended to survive the termination or expiration of the Contract survives the expiration or termination of the Contract, including this Clause 1 and the following Clauses of the amended AS4000-1997 Conditions of Contract which forms part of the Contract: 5, 7, 8.5, 8.6, 9.2, 10, 11, 11A, 11B, 11D, 11G.2, 11G.3, 11H.2, 11L.5, 11M.3, 11P, 15, 15A, 16, 17, 18, 18A, 18B, 19, 34.7, 35, 38, 39, 39A, 39B, 40 and 41.2.

## 2. Nature of Contract

### 2.1 Performance and Payment

The Contractor shall carry out and complete WUC in accordance with the Contract and Directions authorised by the Contract and shall otherwise comply with its obligations under the Contract at its expense.

The Principal shall pay the Contractor:

- (a) for Work described in the Price Schedule as a 'rate only' item, the sum of the products ascertained by multiplying the measured quantity of each section or item of Work actually carried out under the Contract by the rate accepted by the Principal for the section or item; and

- (b) for all other Work, (including Work for which the Price Schedule provides a lump sum), the lump sum identified in the Price Schedule,

adjusted by any additions or deductions made pursuant to the Contract.

Notwithstanding anything else in this Clause 2, where the Price Schedule or the Contract elsewhere contains provisions for determining the Contractor's entitlement to payment for an item then the Contractor's entitlement to payment for that item shall be determined in accordance with such provisions.

## 2.2 Quantities

Quantities in a Price Schedule are estimated quantities only.

The Superintendent is not required to give a Direction by reason of the actual quantity of an item required to perform the Contract being greater or less than the quantity shown in a Price Schedule.

The Principal gives no warranty and makes no representation as to the completeness, accuracy or adequacy of a Price Schedule. If a Price Schedule omits an item which should have been included, the item shall be deemed to have been allowed for in other items.

## 2.3 Adjustment for actual quantities

Where, otherwise than by reason of a Direction to vary WUC, the actual quantity of an item required to perform the Contract is greater or less than the quantity shown in the Price Schedule and:

- (a) the Price Schedule expressly describes the item as a 'rate only' item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a Price Schedule are stated in Item 11, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed Variation; and
- (b) otherwise (including where the Price Schedule expressly provides a lump sum for the item) the Contractor shall carry out that greater or lesser quantity as if it were originally stated in the Contract and there shall be no adjustment to the Contract Sum.

## 2.4 Inclusions

The Contractor acknowledges and agrees that, subject to the Contract, the payment to which it is entitled under Subclause 2.1 is the Contractor's full and sole monetary compensation for:

- (a) all of the risks, contingencies and other circumstances which could have an effect on the Contractor's ability to carry out and complete The Works for the Contract Sum, except to the extent that the Contract expressly allows an adjustment;
- (b) the provision of all materials, plant, labour and other services necessary for the proper completion of The Works, whether or not those items are expressly mentioned in the Contract;
- (c) payment of all royalties, levies, fees, charges, costs, expenses, taxes or duties in connection with WUC;

- (d) any rise and fall in costs (except to the extent that the Contract elsewhere provides that there is to be adjustment for rise and fall); and
- (e) compliance with all of the Contractor's obligations under the Contract, including compliance with Directions of the Superintendent.

## 2A. Design Work

### 2A.1 Application

This Clause 2A only applies where any WUC is to be designed by the Contractor.

### 2A.2 Definitions

In this Clause, **Existing Design** means any design of any part of WUC, including any drawings, specifications and other information, samples, models, patterns and the like which has been prepared by or on behalf of the Contractor prior to the Date of Acceptance of Tender and which is incorporated into the Contract.

### 2A.3 Primary obligations

The Contractor must ensure, and warrants and represents that:

- (a) WUC the subject of an Existing Design has been designed and, will be constructed; and
- (b) WUC to be designed by the Contractor, will be designed and constructed,

in accordance with the requirements of the Contract and applicable Legislative Requirements so that such WUC, when completed, is suitable and adequate for the purpose or purposes stated in or to be reasonably inferred from the Contract.

The Contractor must, and warrants and represents that it will:

- (c) ensure that the Personnel engaged by the Contractor in connection with the Contractor's Design Obligations are suitably qualified and experienced; and
- (d) exercise, and ensure that its Personnel exercise, due skill, care and diligence in carrying out and completing the Contractor's Design Obligations.

A breach of this Subclause 2A.3 shall be a substantial breach of the Contract.

### 2A.4 Warranties and representations

The warranties and representations in Subclause 2A.3 remain unaffected notwithstanding:

- (a) that design work has been carried out by or on behalf of the Principal;
- (b) any receipt or review of, or comment or Direction on, the Contractor's Design Documents by the Superintendent; or
- (c) any Variation, except to the extent that, before complying with a Direction for a Variation, the Contractor has expressly notified the Principal in writing that so complying would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

## 2A.5 Approval of Contractor's Design Documents

The Contractor must not commence any Work in relation to the Contractor's Design Documents until they are approved by the Superintendent pursuant to Subclause 8.3.

The Superintendent may refuse to approve the Contractor's Design Documents if the Superintendent reasonably considers that the proposed Contractor's Design Documents do not comply with this Subclause 2A. The Superintendent must, in writing, approve or refuse to approve the Contractor's Design Documents as soon as reasonably practicable and in any event within the time stated in Item 16 after the Contractor's Design Documents are submitted by the Contractor.

## 2A.6 No amendments to Existing Design

The Contractor must ensure that the Contractor's Design Documents are entirely consistent with the Existing Design (if any), save and except for minor changes which do not:

- (a) adversely affect the quality, standard, functionality, performance or other characteristics of WUC;
- (b) adversely impact on the costs of operation or maintenance of The Works;
- (c) adversely impact on the scope, duration or extent of manufacturers' warranties able to be provided;
- (d) compromise any other warranty given or representation made in the Contract or in the Contractor's tender;
- (e) otherwise result in any non-compliance by the Contractor with an obligation under this Contract.

When submitting the Contractor's Design Documents for review by the Superintendent, the Contractor must identify any aspects of the Contractor's Design Documents which differ from the Existing Design and must provide the Superintendent with all information reasonably requested in respect of such differences, including the reason for the changes and evidence that the changes comply with this Clause 2A.6.

The Contractor must not commence any Work in relation to the Contractor's Design Documents until they are approved by the Superintendent.

## 2A.7 Discrepancies

Notwithstanding Subclause 8.1, the Contractor shall not be entitled to an adjustment of the Contract Sum for any inconsistency, ambiguity, discrepancy or error in or between any document prepared by or on behalf of the Contractor for the purpose of carrying out WUC or between such a document and any other document prepared for the purpose of carrying out WUC.

## 2A.8 Access

The Principal shall give the Contractor access to the Site sufficient to enable the Contractor to commence and carry out the Contractor's Design Obligations in accordance with the Contract on the later of:

- (a) the expiry of the time in Item 22(a); and

- (b) 10 Business Days after the Contractor has:
  - (i) complied with Subclause 19.1; and
  - (ii) given the Superintendent all other information and documentation and done all other things which the Contract elsewhere requires to be given or done before access to the Site is given.

The Principal shall notify the Contractor in writing of the date when access will be available.

## **2A.9 Direction to vary Contractor's Design Documents**

A Direction by the Superintendent to vary anything in the Contractor's Design Documents shall be a Variation to WUC only to the extent that the Contractor's Design Documents, before such variation, complied, or would have complied, with the Contract.

## **2A.10 Professional Indemnity Insurance**

In addition to the insurances required elsewhere in the Contract, the Contractor must before commencing WUC, effect and maintain professional indemnity insurance with levels of cover not less than stated in Item 21A. The policy shall be with an insurer, and otherwise on terms, approved by the Principal (which approval shall not be unreasonably withheld).

The Contractor shall ensure that every design consultant engaged by the Contractor in connection with WUC, effects and maintains professional indemnity insurance with equivalent levels of cover.

The insurance shall be maintained by the Contractor and the Contractor's consultants until the Final Certificate is issued and thereafter for a period of 7 years.

## **2B. Conduct of Contractor and Personnel**

### **2B.1 General**

The Contractor must, and must ensure that its Personnel, at all times whilst engaged in WUC act professionally and treat all of the Principal's Personnel, other contractors and the general public respectfully and comply with all of the Principal's Policies.

### **2B.2 Conflict of Interest**

The Contractor warrants and represents that as at the Date of Acceptance of Tender the Contractor is not aware of any Conflict of Interest. The Contractor must not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which does, or is likely to, result in a Conflict of Interest during the Contract and must immediately notify the Principal in the event that a Conflict of Interest that has not previously been disclosed arises or is likely to arise.

### **2B.3 Improper Conduct**

The Contractor warrants and represents that neither the Contractor nor any of its Personnel engaged in any Improper Conduct in connection with the procurement process pursuant to which the parties entered into the Contract. The Contractor must not, and must ensure that its Personnel do not, engage in any Improper Conduct in connection with the Contract.

## 2C. Nature of the Relationship

The Contractor is an independent contractor of the Principal. The Contractor is solely responsible for payments required to be made to its Personnel for the performance of WUC in connection with the Contract and is solely responsible for determining the manner in which it complies with its obligations under the Contract. The Contractor must provide such materials, equipment, knowledge and Personnel as the Contractor deems necessary to comply with its obligations under the Contract.

## 2D. Contractor's general obligations, warranties and representations

The warranties, representations and obligations contained in this Clause 2D do not limit, and are additional to, any other warranties, representations and obligations contained elsewhere in this Contract.

### 2D.1 Standard of workmanship

The Contractor must, and warrants and represents to the Principal that it will, carry out and complete the WUC and all other obligations under or in connection with the Contract in compliance with:

- (a) all requirements of the Contract;
- (b) applicable Legislative Requirements; and
- (c) Good Industry Practice.

### 2D.2 Ability

The Contractor must ensure, and warrants and represents to the Principal, that the Contractor and its Personnel shall:

- (a) at all times be suitably qualified, skilled and experienced;
- (b) hold, maintain and comply with the requirements of, all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations required under the Contract or pursuant to a Legislative Requirement for the carrying out of the Contractor's obligations under the Contract; and
- (c) exercise due skill, care and diligence in the carrying out and completion of the WUC and all other obligations under the Contract.

### 2D.3 Equipment and other goods

The Contractor must ensure, and warrants and represents to the Principal, that all plant, equipment, materials, parts, consumables or other goods supplied, installed as part of or incorporated into the WUC shall:

- (a) at the time at which they are first supplied, installed or incorporated, be new;
- (b) be free from Defects and of merchantable quality;
- (c) comply in all respects with the Contract, including as to quality, quantity, performance, functionality, durability and other characteristics;

- (d) conform to any sample goods approved by the Principal or the Superintendent;
- (e) comply with all applicable Legislative Requirements;
- (f) comply with any applicable requirement, code, guideline, policy, drawing, or specification included or incorporated by reference into the Contract or, if none is included or incorporated, any relevant Australian Standards; and
- (g) be suitable and adequate for the purposes for which they are supplied, installed or incorporated.

#### **2D.4 Methodology**

The Contractor:

- (a) warrants and represents that the methodology for carrying out and completing WUC stated in the Contract (including in Annexure Part E) is suitable, appropriate and adequate; and
- (b) must, and warrants and represents that it will, carry out and complete WUC in accordance with that methodology unless otherwise expressly permitted under the Contract.

#### **2D.5 Construction Plant**

The Contractor warrants and represents that all Construction Plant utilised in carrying out WUC shall be in good working condition, suitable and appropriate for the Work for which it is used, and compliant with all applicable Legislative Requirements.

#### **2D.6 Contractor Documents**

The Contractor warrants and represents that all Contractor Documents will:

- (a) comply with the requirements of the Contract and applicable Legislative Requirements;
- (b) be of a standard and quality expected of a contractor using Good Industry Practice;
- (c) be suitable and adequate for the purpose for which they are provided; and
- (d) clearly identify output derived from any large language model.

#### **2D.7 Warranties unaffected**

Without limitation, the Contractor's obligations, warranties, representations and liabilities in Clause 2D remain unaffected notwithstanding:

- (a) any receipt or review of, or comment or Direction on, or approval or rejection of any Contractor Documents by the Principal, the Superintendent or their Personnel;
- (b) a failure by the Principal, Superintendent or their Personnel to do anything described in Subclause 2D.7(a);
- (c) any Variation, except to the extent that, before complying with a Direction for a Variation, the Contractor has expressly notified the Principal in writing that so complying would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified;

- (d) the satisfactory completion of any Test (including a test conducted by or on behalf of the Principal) or the comment or failure to comment on any test by the Principal, the Superintendent or their Personnel;
- (e) the provision of, or any error, inaccuracy, ambiguity, inconsistency, deficiency or omission in, the Principal Supplied Information; or
- (f) any supervision of WUC or the inspection of the whole or any part of The Works by the Principal, the Superintendent or their Personnel.

## **2E. Principal Supplied Information**

### **2E.1 No warranty or representation by the Principal**

The Principal gives no warranty and makes no representation that the Principal Supplied Information is accurate, adequate, or complete.

### **2E.2 No reliance by Contractor**

The Contractor:

- (a) acknowledges and agrees that the Contractor has not relied on the Principal Supplied Information in entering into the Contract; and
- (b) must not rely on the Principal Supplied Information unless and until the Contractor has independently verified the adequacy, accuracy, and completeness of that information.

## **3. Provisional Sums**

A Provisional Sum included in the Contract shall not itself be payable by the Principal but where pursuant to a Direction, Provisional Work is carried out or supplied by the Contractor, the Provisional Work shall, unless otherwise agreed between the parties, be priced by the Superintendent, as follows:

- (a) where the Contract elsewhere provides how particular Provisional Work will be priced, in accordance with such provisions;
- (b) where Subclause (a) does not apply and the item in the Price Schedule is described as a "lump sum" item, the Contractor shall be entitled to payment of the lump sum provided in the Price Schedule;
- (c) where Subclauses (a) and (b) do not apply and there is a rate for the item in the Price Schedule (including where the Work or item is described as "rate only"), the Contractor shall be entitled to payment for the item at the rate provided in the Price Schedule for the measured quantity of the item so supplied or carried out; or
- (d) where Subclauses (a), (b) and (c) do not apply, the Superintendent shall value the Provisional Work in accordance with Subclause 36.4.

The Superintendent shall not be obliged to give a Direction that any Provisional Work, or any particular part or quantity of Provisional Work, be carried out or supplied by the Contractor.

The Principal may carry out or supply the whole or any particular part or quantity of Provisional Work itself or engage a third-party to do so on its behalf.

The Contractor shall not be entitled to any monetary compensation (whether for costs incurred, lost profit, lost overheads or otherwise) in connection with any Provisional Work (or any particular part or quantity of Provisional Work) which it is not directed to carry out or supply.

Unless the Superintendent has already directed the Provisional Work to be performed, the Contractor must notify the Superintendent in writing promptly after the Contractor becomes aware, or exercising Good Industry Practice ought to have become aware, that it is necessary for the proper completion of WUC for particular Provisional Work be directed and performed.

#### **4. Separable Portions**

- (a) In addition to any Separable Portions specified in the Contract, Separable Portions may be directed by the Superintendent, who shall clearly identify for each: the portion of The Works;
- (b) the Date for Practical Completion;
- (c) the respective amounts for Security, bonus, liquidated damages and delay costs (all calculated pro-rata according to the ratio of the Superintendent's valuation of the Separable Portion to the Contract Sum), and
- (d) any other Compensable Causes.

The interpretations of:

- (e) Certificate of Practical Completion;
- (f) Date for Practical Completion;
- (g) Date of Practical Completion;
- (h) Defects Liability Period; and
- (i) Practical Completion,

and Clauses 5.4, 14, 27, 34 and 35 will apply separately to each Separable Portion and references therein to The Works or to WUC shall mean so much of The Works or WUC as is comprised in the relevant Separable Portion.

#### **5. Security**

##### **5.1 Provision**

Security shall be provided in accordance with Item 13 or 14. All delivered Security, other than cash or retention moneys, shall be transferred in escrow.

##### **5.2 Recourse**

Security shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

### 5.3 Change of Security

The Contractor may at any time request the Principal's consent to substitute retention moneys or cash Security with another form of Security. The Principal may, at its absolute discretion, give or withhold consent or give consent subject to such conditions as the Principal sees fit. To the extent that another form of Security is provided, the Principal shall not deduct, and shall promptly release and return, retention moneys and cash Security.

### 5.4 Reduction and release

To the extent permitted by law, upon the later of:

- (a) the issue of the Certificate of Practical Completion; and
- (b) in respect of Security under Item 13 only, the rectification of all Defects in respect of which the Superintendent has given the Contractor written notice either in, or prior to the issue of, the Certificate of Practical Completion,

a party's entitlement to Security (other than in Item 13(e)) shall be reduced by the percentage or amount in Item 13(f) or 14(d) as applicable, and the reduction shall be released and returned within 10 Business Days to the other party.

The Principal's entitlement to Security in Item 13(e) shall cease 10 Business Days after incorporation into The Works of the plant and materials for which that Security was provided.

A party's entitlement otherwise to Security shall cease 10 Business Days after the last of the following to occur:

- (i) the issue of the Final Certificate;
- (ii) in respect of Security under Item 13 only, compliance by the Contractor with all Directions given under Subclause 29.3 or Clause 35 (other than Directions which have been the subject of a notice of Dispute); and
- (iii) the resolution (whether pursuant to Clause 42 or otherwise) of any Dispute the subject of a notice of Dispute referred to in Subclause 37.4(g).

### 5.5 Interest

Interest earned on Security not required to be held in trust shall belong to the party holding that Security.

### 5.6 Deed of Guarantee, Undertaking and Substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) a form of Deed of Guarantee, Undertaking and Substitution was included in the tender documents,

that party shall, within 14 days after receiving a written request from the other party, provide such Deed of Guarantee, Undertaking and Substitution duly executed and enforceable.

## 5.7 Failure to provide Security

Without limiting the Principal's other rights, unless and until the Contractor provides Security (other than retention moneys) in accordance with Subclause 5.1 (and where so directed, 5.8) :

- (a) the Superintendent shall certify, as a Required Deduction, an amount equal to the value of the Security which has not been provided; and
- (b) the Principal shall be entitled to hold that amount as Security.

The Principal shall release and return any amounts held under this Subclause 5.7 within the earlier of:

- (c) 10 Business Days after the Contractor provides the Security in accordance with Subclause 5.1 or 5.8 as the case may be; or
- (d) the time required by Subclause 5.4.

## 5.8 Replacement or additional Security

Where:

- (a) due to adjustments made pursuant to the Contract, the Contract Sum is increased by more than 10%; or
- (b) the Principal has had recourse to the Security pursuant to Clause 5.2,

the Superintendent may direct the Contractor to provide additional or replacement Security.

Unless the parties agree otherwise, the additional or replacement Security shall be:

- (c) in the form stated in Item 13;
- (d) in an amount no more than is necessary to ensure that the total Security held by the Principal is equivalent to the percentage stated in Item 13(b) of the Contract Sum as adjusted at the time of the Direction; and
- (e) provided within 10 Business Days of the Superintendent's Direction.

## 5.9 Application of the QBCC Act

If the Contract is a Building Contract, then:

- (a) for the purposes of section 67J of the QBCC Act:
  - (i) the Superintendent is authorised to give the notice required by section 67J of the QBCC Act for and on behalf of the Principal; and
  - (ii) any certificate or other notice issued by the Superintendent that refers to an amount that is owed by the Contractor to the Principal shall be taken to be notice from the Principal to the Contractor of the proposed use of security to obtain the amount owed; and
- (b) for the purposes of section 67N of the QBCC Act, if the value of security held by the Principal after Practical Completion exceeds 2.5% of the Contract Sum, the amount in excess of 2.5% of the Contract Sum is held for purposes other than the need to correct defects identified during the Defects Liability Period.

## 6. Evidence of Contract

Subject to this clause, until a Formal Instrument of Agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the Contract.

Within 10 Business Days after receiving a copy of a Formal Instrument of Agreement for execution, the Contractor shall either:

- (a) properly execute the Formal Instrument of Agreement in the manner requested by the Principal and return it to the Principal; or
- (b) provide the Principal with written notice of any aspect of the Formal Instrument of Agreement which the Contractor considers is in error or which does not reflect the agreement between the Principal and the Contractor.

If the Contractor:

- (c) does not give the Superintendent the written notice required by Subclause 6(b) within the time required by that Subclause; or
- (d) the Contractor commences Work after receiving the Formal Instrument of Agreement and before giving the Principal the written notice required by Subclause 6(b),

then the Contractor shall be deemed to have accepted and agreed to, and shall be legally bound by, the terms of the execution copy.

The Superintendent may extend the time under this Clause by written notice to the parties.

## 7. Service of notices

A notice (and other documents) shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the Contract or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
  - (i) actual receipt;
  - (ii) 5 Business Days after posting; or
  - (iii) the time at which an email comprising or attaching the notice or other document becomes capable of being retrieved and read by the addressee at the addressee's email address, provided that if it becomes so capable after 5:00 pm (local time at the Site) on a Business Day, or at any time on a day that is not a Business Day, it shall be deemed to have been given and received on the next Business Day.

Notwithstanding anything else in this Clause 7, where the Contract elsewhere prescribes the manner in which a particular notice is to be given, then such a notice shall only be deemed to have been given and received if given in the prescribed manner.

## 8. Contract documents

### 8.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity discrepancy or error in or between any document prepared for the purpose of carrying out WUC (including the documents in Annexure Part D and Annexure Part E), that party shall give the Superintendent written notice of it. The Superintendent, thereupon, and upon otherwise becoming aware, shall direct the Contractor as to the interpretation and construction to be followed.

The Principal shall not be liable upon any Claim for compliance with a Direction, under this Subclause 8.1 unless the Direction is a Compensable Direction and either:

- (a) the Direction expressly states that it is a Compensable Direction pursuant to this Subclause 8.1; or
- (b) the Contractor gives the Superintendent a written notice which identifies the Direction and states that the Contractor considers that the Direction is a Compensable Direction within 5 Business Days after the Direction is given to the Contractor.

The Contractor must give the Superintendent such additional information as the Superintendent reasonably requires in relation to a notice given under paragraph (b), within the time directed by the Superintendent.

Subject to the Contractor's compliance with this Clause and Clause 41, if compliance with a Compensable Direction causes the Contractor to incur more cost than otherwise would have been incurred had the Direction not been given, the difference shall be assessed by the Superintendent and added to the Contract Sum.

If compliance with any Direction under this Subclause 8.1 (including a Compensable Direction) causes the Contractor to incur less cost than otherwise would have been incurred had the Contractor not been given the Direction, then the difference shall be assessed by the Superintendent and deducted from the Contract Sum.

### 8.2 Principal-supplied documents

The Principal shall supply to the Contractor the documents and number of copies thereof, both stated in Item 15.

They shall:

- (a) remain the Principal's property and be returned to the Principal on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than WUC.

### 8.3 Contractor-supplied documents

The Contractor shall supply to the Superintendent the documents and number of copies thereof, both stated elsewhere in the Contract.

If the Contractor submits documents to the Superintendent, then except where the Contract otherwise provides:

- (a) the Superintendent shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Contract;

- (b) notwithstanding Subclause 2.1, any Superintendent's acknowledgment or approval shall not prejudice the Contractor's obligations; and
- (c) if the Contract requires the Contractor to obtain the Superintendent's Direction about such documents, the Superintendent shall give, within the time stated in Item 16, the appropriate Direction, including reasons if the documents are not suitable.

Copies of documents supplied by the Contractor shall be the Principal's property but shall not be used or copied otherwise than for the use, repair, maintenance or alteration of The Works.

#### 8.4 Availability

The Contractor shall keep available to the Superintendent and the Principal:

- (a) on Site, one complete set of documents affecting WUC and supplied by a party or the Superintendent; and
- (b) at the place of manufacture or assembly of any significant part of WUC off Site, a set of the documents affecting that part.

#### 8.5 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by the Principal, the Contractor shall enter into a separate agreement not to disclose to anyone else any confidential matter even after issue of the Final Certificate or earlier termination of the Contract.

Notwithstanding anything else in this Subclause 8.5 or elsewhere in the Contract, documents and information provided on behalf of a party to the other party in connection with the Contract may be used, copied, modified or disclosed as required or permitted by any Legislative Requirement or other law and otherwise:

- (a) by the Principal, as the Principal considers to be reasonably necessary to:
  - (i) carry out its obligations and exercise its rights under the Contract;
  - (ii) obtain legal, accounting or other professional advice in connection with the Contract; and/or
  - (iii) otherwise properly carry out its functions as an Authority;
- (b) by the Contractor, as is reasonably necessary to enable the Contractor to:
  - (i) carry out its obligations and exercise its rights under the Contract;
  - (ii) obtain legal, accounting or other professional advice in connection with the Contract; and
  - (iii) comply with the Contractor's corporate governance requirements.

If the Contractor is required by law to disclose confidential information of the Principal, the Contractor must notify the Principal of this prior to making such disclosure and must only disclose the minimum amount of information required to meet its obligation to disclose.

## 8.6 Media\*

The Contractor shall not disclose any information concerning the project for distribution through any communications media (including social media or on any website) without the Principal's prior written approval (which shall not be unreasonably withheld). The Contractor shall refer to the Principal any enquiries from any media concerning the project.

The Principal may organise official media releases for publication in relation to The Works. The Contractor shall provide any assistance that may be reasonably requested by the Principal to facilitate the production of any such media releases.

## 8.7 Artificial Intelligence Systems

The Contractor must not use any Artificial Intelligence System in connection with the Contract in a manner that results in:

- (a) the Principal's Confidential Information or any Personal Information being disclosed to, or stored in, any system that is publicly accessible, trained on, or otherwise available for use by third parties; or
- (b) a breach of the Contractor's obligations under Subclauses 8.5 and 11B, the *Information Privacy Act 2009* (Qld), or any other applicable law.

The Contractor must not use any Banned AI System in connection with the Contract.

The Contractor may use Artificial Intelligence Systems that are closed, secure, and under the Contractor's effective control, provided that:

- (c) the system does not use the Principal's Confidential Information or any Personal Information for training or development of models accessible to third parties;
- (d) appropriate technical and organisational measures are in place to protect the Principal's Confidential Information and all Personal Information against unauthorised access, use, or disclosure.

The Contractor must maintain accurate records of any Artificial Intelligence System used in connection with the Contract, including the nature of the system, the safeguards applied, and the categories of information processed. The Contractor must provide such records to the Principal on request.

On request, the Contractor must provide the Principal with reasonable details of any Artificial Intelligence System used in connection with the Contract, including how compliance with this Subclause 8.7 has been ensured.

Nothing in this clause shall be taken to reduce or limit the Contractor's obligation to comply with the Contract.

## 9. Assignment and subcontracting

### 9.1 Assignment

Neither party shall, without the other's prior written approval (including terms) assign the Contract or any payment or any other right, benefit or interest thereunder.

## 9.2 Subcontracting generally

Subject to the next paragraph, the Contractor shall not without the Superintendent's prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a Subcontractor to subcontract the whole or any part of WUC; or
- (b) allow a Subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

For the purposes of the preceding paragraph, the Subcontractors which the Contractor nominated in its tender (as amended by post-tender negotiation) are deemed to have been approved by the Superintendent.

In considering whether to approve a request by the Contractor to use other Subcontractors, the Superintendent may, in addition to any other matter which the Superintendent considers relevant, also take into account whether the proposed Subcontractor is:

- (c) a local supplier (as defined in the Principal's procurement policy as published at the Date of Acceptance of Tender); or
- (d) at least 50% owned by Aboriginal or Torres Strait Islander persons,

and if not, whether such a Subcontractor is available to undertake the Work which is proposed to be subcontracted.

With a request for approval, the Contractor shall give the Superintendent written particulars of the Work to be subcontracted and the name and address of the proposed Subcontractor. The Contractor shall give the Superintendent other information which the Superintendent reasonably requests, including the proposed subcontract documents without prices.

Within 10 Business Days of the Contractor's request for approval, the Superintendent shall give the Contractor written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- (e) provision that the Subcontractor shall not assign nor subcontract without the Contractor's written consent; and
- (f) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal.

## 9.3 Selected Subcontract Work

If the Principal has included in the invitation to tender a list of one or more Selected Subcontractors for particular Work, the Contractor shall subcontract that Work to a Selected Subcontractor and thereupon give the Superintendent written notice of that Selected Subcontractor's name.

If no Subcontractor on the Principal's list will subcontract to carry out the Selected Subcontract Work, the Contractor shall provide a list for the written approval of the Superintendent.

## 9.4 Novation

When, and within the time directed by the Principal, the Contractor, without being entitled to compensation, shall execute a deed of novation in the form included in the Contract (or where not included, the form reasonably directed by the Principal), such deed being between the

Principal, the Contractor and the Subcontractor or Selected Subcontractor stated in Item 18 for the particular part of WUC.

## 9.5 Contractor's responsibility

Except where the Contract otherwise provides, the Contractor shall be liable to the Principal for the acts, defaults and omissions of Subcontractors (including Selected Subcontractors) and employees and agents of Subcontractors as if they were those of the Contractor.

Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract.

## 10. Intellectual Property Rights

The Principal warrants that, unless otherwise provided in the Contract, design, materials, documents and methods of working, each specified in the Contract or provided or directed by the Principal or the Superintendent shall not infringe any Intellectual Property Right.

The Contractor warrants that any other design, materials, documents and methods of working, each provided by the Contractor, shall not infringe any Intellectual Property Right.

Each party shall indemnify the other against such respective infringements.

## 11. Legislative Requirements

### 11.1 Compliance

The Contractor shall satisfy all Legislative Requirements except those in Item 19(a) or directed by the Superintendent to be satisfied by or on behalf of the Principal.

Within 10 Business Days of becoming aware that a Legislative Requirement is at variance with the Contract, the Contractor shall give the Superintendent written notice thereof.

### 11.2 Changes

If a Legislative Requirement:

- (a) necessitates a change:
  - (i) to The Works;
  - (ii) to so much of WUC as is identified in Item 19(b);
  - (iii) being the provision of services by a municipal, public or other statutory authority in connection with WUC; or
  - (iv) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the 10<sup>th</sup> Business Day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the Contractor to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the Superintendent and added to or deducted from the Contract Sum.

### 11.3 Contractor's General Obligation

The Contractor must, and must ensure that to the extent relevant to them its Personnel, in carrying out the Contractor's obligations under the Contract:

- (a) hold, maintain and are compliant with all requirements of, all necessary Approvals, qualifications, competencies, licences, accreditations, certifications, permits, clearances and other authorisations which are required:
  - (i) under contract;
  - (ii) pursuant to a Legislative Requirement or the Principal's Policies; or
  - (iii) otherwise at law,
 for the Contractor to carry out its obligations under the Contract;
- (b) comply with, act consistently with, and do all things reasonably necessary to enable the Principal to comply with, applicable Legislative Requirements and the Principal's Policies;
- (c) not do, or permit to be done, anything which would cause the Principal to be in breach of any Legislative Requirements or the Principal's Policies;
- (d) notify the Principal immediately if it becomes aware of any breach of Clause 11;
- (e) when directed to do so by the Superintendent, provide the Superintendent with such information and documentation evidence as the Superintendent reasonably requests to satisfy the Superintendent that the Contractor has complied with this Subclause 11.3.

### 11.4 Approvals

The Principal has obtained, or will obtain, the Approvals listed in Item 19(c).

The Contractor must identify and advise the Principal in writing of all other Approvals which are required for the carrying out of WUC or the use (and where relevant, occupation) of The Works, other than those stated in Item 19(c). Unless the Superintendent otherwise directs, the Contractor must take all necessary steps to obtain such Approvals at its expense, and without delaying WUC.

The Contractor must maintain all such Approvals until the earlier of:

- (a) the time at which the Approval is no longer required; and
- (b) the end of the last Defects Liability Period to expire.

The Principal must provide such information and assistance as is reasonably required by the Contractor to comply with this Subclause 11.4 and which the Contractor cannot reasonably obtain from a third-party.

Where the Principal is responsible for obtaining any Approval, the Contractor must, within the time directed by the Superintendent, provide any information and assistance which is reasonably required by the Principal to obtain the Approval.

The Contractor shall be taken to have allowed for the time required for either the Principal or the Contractor (as the case may be) to apply for and obtain such Approvals in the Contractor's Construction Program.

The Principal gives no warranty and makes no representation that:

- (c) it will be able to obtain, or obtain within any particular time; or
- (d) where the Principal is the relevant Authority, that it will grant, any Approval required for the Contractor to carry out and complete WUC.

### 11.5 Goods and Services Tax

If GST, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), is imposed on any supply made pursuant to this Contract, the amount payable for the supply is to be increased by the amount of that GST.

### 11A. Portable Long Service Leave

The party identified in Item 19A shall pay any levy payable and give any relevant notices pursuant to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld) in relation to WUC.

### 11B. Information Privacy

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

- (a) comply with Parts 1 and 2 of Chapter 2 and section 41 of Chapter 3 of the *Information Privacy Act 2009* (Qld) in relation to the discharge of its obligations under this Contract as if the Contractor was the Principal;
- (b) except to the extent required or permitted by law, not disclose Personal Information to any entity outside of Australia without the Principal's prior written consent;
- (c) notify the Principal immediately on becoming aware of an actual or suspected Data Breach or breach of this Subclause 11B and immediately take and continue to take all reasonable steps to contain, stop and mitigate the extent of the Data Breach or breach and to mitigate the harm caused by the Data Breach or breach;
- (d) promptly notify the Principal in writing of any enforcement of the Contractor's obligations under the *Information Privacy Act 2009* (Qld) in connection with the Contract and of any Privacy Complaints in connection with the Contractor's discharge of its obligations under the Contract;
- (e) provide all reasonable assistance to the Principal to enable the Principal to comply with its obligations at law in connection with Privacy Complaints, Data Breaches, or applications for access to, or amendment of a document containing an individual's Personal Information;
- (f) otherwise comply with any reasonable requirements of the Principal in relation to privacy and the security of Personal Information; and
- (g) ensure that any subcontract with a Subcontractor that will collect, hold or have access to Personal Information places the same obligations on the Subcontractor as subparagraphs 11B(a) to (f) of this Clause place on the Contractor.

The Principal collects Personal Information and non-personal information in connection with the Contract so that it can properly administer the Contract and otherwise carry out its functions as a local government authority.

The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information will be accessible by employees of the Principal and third-party personnel engaged to assist the Principal in connection with the Contract or otherwise carrying out the functions of the Principal. Information may also be disclosed as otherwise permitted under the Contract or at law, including under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld).

## 11C. Ethical principles

The Contractor must and must ensure that to the extent relevant to them its Personnel, at all times comply with the ethical principles stated in the *Public Sector Ethics Act 1994* (Qld).

## 11D. Modern Slavery

The Contractor must:

- (a) not engage in Modern Slavery and warrants and represents that it has not engaged in any Modern Slavery;
- (b) take, and warrants and represents that it has taken, all reasonable steps to identify and eliminate Modern Slavery in the business and operations of its Subcontractors; and
- (c) immediately notify the Principal in writing if it becomes aware of any Modern Slavery in the Contractor's business or operations or the business or operations of its Subcontractors.

## 11E. Quarrying

### 11E.1 Application

This Clause applies if, in performing WUC, the Contractor must carry out Operations.

### 11E.2 Definitions

For the purposes of this Clause, the following definitions apply:

- (a) **Acceptable Level, Operations, Operator, Quarry, Safety and Health Management System** and **Site Senior Executive** have the meaning given in the MQSH Act;
- (b) **MQSH Act** means the *Mining and Quarrying Safety and Health Act 1999* (Qld);
- (c) **Quarrying Laws** means the MQSH Act and the *Mining and Quarrying Safety and Health Regulation 2017* (Qld) (as amended or replaced from time to time) and relevant standards published by Standards Australia (as amended or replaced from time to time).

### 11E.3 Contractor's obligations

In addition to the Contractor's obligations under Clause 11F, the Contractor must:

- (a) carry out Operations at the Quarry in accordance with the Quarrying Laws;
- (b) ensure that its Personnel comply with the Quarrying Laws;

- (c) discharge the duties of an Operator under and in accordance with the Quarrying Laws while Operating the Quarry for the purposes of the Works;
- (d) ensure that any Work at the Quarry is carried out in a safe manner and in strict compliance with all applicable Legislative Requirements, including all relevant Quarrying Laws;
- (e) appoint a Site Senior Executive (SSE) for the Quarry in accordance with section 49 of the MQSH Act;
- (f) ensure the SSE carries out the functions of an SSE as set out in sections 36, 36A and 39 of the MQSH Act, including:
  - (i) developing, implementing, and maintaining a Safety and Health Management System (SHMS) for the Quarry that, as a minimum:
    - (A) identifies hazards and assesses risks associated with Operations;
    - (B) ensures risks are controlled to an acceptable level, as defined in the Quarrying Laws;
    - (C) includes procedures for emergency response, incident reporting, and corrective actions;
    - (D) documents the techniques that must be used for investigating incidents; and
    - (E) contains an emergency response plan;
  - (ii) regularly monitoring and reviewing the SHMS to ensure its effectiveness in controlling risks relating to Operations at the Quarry; and
  - (iii) preparing information and reporting to the Principal and the Superintendent in accordance with this Contract;
- (g) comply as soon as reasonably possible with any directions on safety issued by any relevant Authority, the Principal or by the Superintendent, arising out of or in connection with the performance of the Operations;
- (h) not do or omit to do anything that might reasonably be expected to put the Principal in breach of the Quarrying Laws;
- (i) provide a copy of the current SHMS to the Principal and the Superintendent when the Quarry is first operated and thereafter upon request; and
- (j) give the Superintendent, and copied to the Principal, all notices concerning Quarrying Laws in connection with the Works within five Business Days after the dispatch and/or receipt of any such notice or correspondence.

## 11F. Work Health and Safety

### 11F.1 Interpretation

In this Clause and at Item 19B:

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

- (b) **'WHS Authority'** means any government authority having jurisdiction under the WHS Laws;
- (c) **'Regulation'** means the *Work Health and Safety Regulation 2011* (Qld);
- (d) **'Inspector'**, **'Notifiable Incident'**, **'Regulator'**, **'Structure'**, and **'Workplace'** have the same meanings as in the Act;
- (e) **'Principal Contractor'** has the same meaning as in the Regulation;
- (f) **'Statutory Notice'** means any:
  - (i) infringement notice, prohibition notice, improvement notice or non-disturbance notice; and
  - (ii) any electrical safety protection notice or unsafe equipment notice, issued by an Authority pursuant to the WHS Laws;
- (g) **'WHS'** means work, health and safety;
- (h) **'WHS Laws'** means the Act, the Regulation, *Electrical Safety Act 2002* (Qld) and all other applicable work health and safety legislation, regulations, rules, codes of practice published by Work Health and Safety Queensland (as amended or replaced from time to time) and relevant standards published by Standards Australia (as amended or replaced from time to time).

### 11F.2 Appointment as Principal Contractor

Where Item 19B states that the Contractor is engaged as Principal Contractor, then 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 WUC and authorises the Contractor to:
  - (i) have management and control of the Site and any other Workplace at which WUC is carried out; and
  - (ii) discharge the duties of the Principal Contractor;
- (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 WUC; and
- (c) the Contractor must comply with and discharge the duties as person conducting a business or undertaking and the additional duties of the Principal Contractor imposed under the Regulation.

If Item 19B states that the Contractor is not engaged as Principal Contractor, the Contractor must comply with all Directions of the Superintendent relating to WHS.

### 11F.3 Contractor's primary obligations

From the Date of Acceptance of Tender, the Contractor must:

- (a) comply with and discharge all obligations imposed on the Contractor as a person who conducts a business or undertaking and otherwise, by the WHS Laws;

- (b) consult with the Principal and 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 WUC or, if it is not reasonably practicable to eliminate the risks, minimised, so far as is reasonably practicable;
- (c) 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 WUC is being carried out;
- (d) comply with any direction on WHS issued by a WHS Authority issued in relation to the WUC;
- (e) consult, co-operate and co-ordinate work with the Principal in relation to any health and safety matter arising out of or in connection with WUC, the Contract or duties held by either the Principal or the Contractor under the WHS Laws in connection with the WUC; and
- (f) without limiting paragraph 11F.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 WUC.

#### **11F.4 Contractor's WHS systems and documentation**

The Contractor:

- (a) must ensure, and warrants and represents that, it has made its own enquiries in connection with compliance with WHS Laws, including in relation to hazards or risks on the Site, and has not relied on any representations, warranties or information that have been provided by the Principal;
- (b) must ensure, and warrants and represents that it has adequate WHS systems in place having regard to the nature of its obligations under the Contract and any hazards specific to any Workplace at which an obligation under the Contract is to be carried out;
- (c) must inform the Principal of all its WHS policies, procedures or measures implemented for the performance of its obligations under the Contract;
- (d) must prepare and adopt a WHS plan and other documentation which:
  - (i) addresses all the specific WHS hazards and issues relevant to the Contractor's obligations under the Contract which can be reasonably anticipated or ascertained from time to time during the performance of the Contractor's obligations under the Contract;
  - (ii) documents the system and control methods to be implemented for the performance of its obligations under the Contract,

and must update such documentation as required from time to time to ensure that it complies with this Subclause at all times during the performance of its obligations under the Contract;
- (e) must:

- (i) unless otherwise directed by the Principal, prior to commencing WUC, submit the Contractor's WHS plan and other documentation (including the documentation required elsewhere under the Contract) to the Principal for review; and
- (ii) within the time directed by the Principal, submit to the Principal for review any other WHS documentation that the Principal directs it to prepare,

and if the Principal notifies the Contractor that all or part of the WHS documentation is not suitable, at its cost amend and resubmit the relevant WHS documentation;

- (f) must, if the Principal at any time during the performance of the Contractor's obligations under the Contract requests the Contractor to review any of the WHS documentation, promptly and within the time required by the Principal, review any or all of the WHS documentation in accordance with the Principal's request and either:
  - (i) submit revised documentation to the Principal; or
  - (ii) provide written confirmation that the WHS documentation is appropriate to manage the risks associated with the Contractor's obligations under the Contract.

#### 11F.5 Notices and reports

The Contractor must:

- (a) if a Notifiable Incident occurs at the Workplace at which WUC is being undertaken:
  - (i) immediately notify the Regulator and the Superintendent of the Notifiable Incident; and
  - (ii) 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;
- (b) provide a copy of every Statutory Notice received from an Authority in connection with WUC to the Principal and the Superintendent within 1 Business Day after the notice is received;
- (c) if any of the Contractor's Personnel are involved in an accident or other health and safety incident or otherwise suffer an injury in connection with the performance of WUC:
  - (i) immediately notify the Principal of the accident, incident or injury; and
  - (ii) within 3 Business Days of the accident, incident or injury (or such longer period as the Principal may agree) provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for prevention in the future; and
  - (iii) cooperate and assist (and procure its Personnel to cooperate and assist) the Principal with any investigation by the Principal into any accident, injury or other health and safety incident in connection with the Contract; and
- (d) within the time directed by the Superintendent make available to the Superintendent and the Principal all project Site accident data which must include injuries and damage resulting from accidents or any incidents involving harm to a third-party, particularly where legal action may be taken against the Contractor or the Principal.

**11F.6 Site specific induction**

The Contractor must ensure that all Personnel of the Contractor working at the Site receive a site-specific induction and that each person visiting the Contractor or its Personnel at that Site receives a site-specific induction or is accompanied by someone who has received such an induction.

**11F.7 Safety compliance**

If during the performance of WUC the Superintendent informs the Contractor that it is of the opinion the Contractor is:

- (a) not conducting WUC in compliance with the Act, the Regulation, codes of practice or relevant policies and procedures; or
- (b) conducting WUC in such a way as to endanger the health and safety of the Contractor's Personnel, the Principal's Personnel or the general public,

the Superintendent may direct the Contractor to promptly remedy the breach or take any other action permitted by the Contract, including suspending the whole or part of WUC pursuant to Clause 33 until such time as the Contractor satisfies the Superintendent that WUC can be resumed in a safe manner.

**11G. Heavy Vehicle National Law****11G.1 Interpretation**

In this Clause:

- (a) 'HVNL' means the Heavy Vehicle National Law (Queensland); and
- (b) other terms used in this Clause which are defined in HVNL which are not separately defined in the Contract have the same meaning as is attributed to them in the HVNL.

**11G.2 General obligations**

The Contractor must ensure, so far as is reasonably practicable, the safety of the Contractor's transport activities. Without limiting this, the Contractor must, so far as is reasonably practicable:

- (a) eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, minimise the public risks; and
- (b) ensure its' conduct does not directly or indirectly cause or encourage:
  - (i) the driver of the heavy vehicle to contravene the HVNL; or
  - (ii) the driver of the heavy vehicle to exceed a speed limit applying to the driver; or
  - (iii) another person, including another party in the chain of responsibility, to contravene the HVNL.

**11G.3 Notice**

The Contractor must immediately notify the Superintendent if the Contractor considers that anything in this Contract, or any act or omission of the Principal or its respective officers,

employees, agents or representatives has or is likely to directly or indirectly cause or encourage the Contractor or any Personnel of the Contractor:

- (a) being the driver of a heavy vehicle to contravene the HVNL; or
- (b) being the driver of a heavy vehicle to exceed a speed limit applying to the driver; or
- (c) being another person, including another party in the chain of responsibility, to contravene the HVNL.

#### **11G.4 Chain of Responsibility**

In addition to its obligations under the chain of responsibility law, the Contractor:

- (a) warrants and represents that it complies with its obligations under the chain of responsibility laws and has a policy of training and compliance that is subject to periodic review and assessment;
- (b) must require its Subcontractors and agents to comply with chain of responsibility obligations in any supply chain arrangement or any arrangement whatsoever in connection with WUC; and
- (c) as a requirement of access to or possession of the Site, must provide copies of any:
  - (i) chain of responsibility policy;
  - (ii) mass, dimension or load restraint policy;
  - (iii) speed management policy;
  - (iv) fatigue management policy; and
  - (v) maintenance management policy;
 that is in place in respect of the Contractor's business.

#### **11G.5 Contractor's acknowledgement**

Without limiting any other rights of the Principal under the Contract, the Contractor acknowledges that:

- (a) the Principal is committed to taking all reasonable steps to ensure that any carriage of goods by road performed as part of WUC is performed safely and in accordance with the HVNL and the chain of responsibility provisions it contains;
- (b) the Principal will not comply with any instruction or requirement of the Contractor that might have the effect of contributing to a breach of the HVNL or preventing the Principal from taking all steps that it considers necessary to prevent any breach of the HVNL; and
- (c) upon becoming aware of any breach of any mass, dimension, load restraint, fatigue, speed or maintenance requirement, the Principal may report the breach to the relevant Authority and retain records of the breach.

**11G.6 Notice**

The Contractor must notify the Principal and the Superintendent in writing immediately in the event that the Contractor or any of the Contractor's Personnel is issued with any warning, request for information or production of documents, notice or fine in respect of any breach of any chain of responsibility law in respect of WUC. The Contractor undertakes to provide the Principal and the Superintendent with a copy of any such warning, request, notice or fine and any response or submissions made by it in relation to the same.

**11H. Personal Property Securities****11H.1 Interpretation**

Terms used in this Clause which are defined in the PPS Act which are not separately defined in the Contract have the same meanings as attributed to them in the PPS Act.

**11H.2 Disclosure**

If this Contract contains a security interest, then each party agrees for the purposes of section 275(6) of the PPS Act that it will not disclose information of the type referred to in section 275(1) of the PPS Act where a request is made under section 275(1) of the PPS Act in relation to this Contract or any part of it, except in circumstances where the party is compelled by law (other than section 275(1) of the PPS Act) to make that disclosure.

**11H.3 Contractor's obligations**

If the Principal determines that any Clause of this Contract, or a transaction contemplated by this Contract or in connection with the performance of WUC constitutes, or is likely to give rise to a security interest in respect of which the Principal is the security holder, then:

- (a) the Contractor must, within the time required by the Principal, provide all assistance and cooperation requested by the Principal that the Principal determines is reasonably required to:
  - (i) register and maintain the registration of the Principal's security interest on the personal property securities register within any applicable time limits relevant to the effectiveness of the security interest;
  - (ii) ensure that the Principal's security interest is enforceable against third parties, perfected or otherwise effective;
  - (iii) ensure that the security interest has the appropriate priority required by the Principal (including where applicable as a purchase money security interest);
  - (iv) ensure that any security interest granted temporary perfection under the PPS Act is perfected by registration or other appropriate means prior to any applicable expiry of that temporary perfection; and
  - (v) enable the Principal to register financing statements or financing change statements under the PPS Act with respect to any such security interest;
- (b) the Contractor waives the right to receive notice of a verification statement in relation to the registration of that security interest;

- (c) the Contractor shall not register or permit to be registered any other security interest in respect of the personal property that comprises the collateral in respect of that security interest other than one that has been consented to or granted by the Principal;
- (d) the Contractor shall not cause or allow any of the Contractor's personal property to become an accession to the Principal's personal property or cause or allow the Principal's personal property to become an accession to the Contractor's personal property without the prior consent of the Principal; and
- (e) the Contractor must immediately notify the Principal if any other person claims or attempts to enforce a security interest:
  - (i) in the Principal's personal property; or
  - (ii) in the Contractor's personal property to the extent that that purported enforcement affects or has the potential to affect the Contractor's ability to carry out WUC in accordance with the terms of the Contract.

## **11I. Labour Hire**

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

## **11J. Project Trusts and Retention Trusts**

### **11J.1 Application**

This Clause 11J only applies where the Contractor is, or becomes, required to open a Project Trust Account under the Security of Payment Legislation.

### **11J.2 Interpretation**

Terms used in this Clause 11J which are not separately defined in the Contract have the same meaning as is attributed to them in Chapter 2 of the Security of Payment Legislation.

### **11J.3 Contractor's obligations**

Without limiting the Contractor's obligations under Chapter 2 of the Security of Payment Legislation, the Contractor must:

- (a) where the Contractor is required to do so by the Security of Payment Legislation:
  - (i) open and maintain a Project Trust Account; and
  - (ii) give to the Superintendent and Principal all notices which the Security of Payment Legislation requires the Contractor to give in connection with the Project Trust;
- (b) where the Contractor is required to do so by the Security of Payment Legislation:
  - (i) open and maintain a Retention Trust Account; and

- (ii) give to the Superintendent and Principal all notices which the Security of Payment Legislation requires the Contractor to give in connection with the Retention Trust;
- (c) if at the Date of Acceptance of Tender:
  - (i) the Contractor is not required to open and maintain a Project Trust Account but subsequently becomes required to do so under the Security of Payment Legislation; or
  - (ii) the Contractor is not required to open and maintain a Retention Trust Account but subsequently becomes required to do so under the Security of Payment Legislation,

give the Superintendent and Principal written notice of that changed requirement within 5 Business Days of the date on which the Contractor becomes aware, or ought to have become aware of the changed requirement; and
- (d) provide all information and documentation that the Superintendent reasonably directs in connection with the Contractor's compliance with this Subclause.

## **11K. Non-Conforming Building Products**

### **11K.1 Interpretation**

In this Clause 11K, the terms 'Person in the Chain of Responsibility', 'Building Product', 'Minister', 'Non-conforming Building Product' and 'Required Information' each have the respective meanings given to those terms in the QBCC Act.

### **11K.2 General**

The Contractor:

- (a) acknowledges that, to the extent that the Contractor is a Person in the Chain of Responsibility, it has obligations under Part 6AA of the QBCC Act in relation to Non-conforming Building Products;
- (b) warrants and represents that no Building Products incorporated into The Works are Non-conforming Building Products or the subject of a warning statement issued by the Minister;
- (c) must ensure that it, and its Subcontractors provide all Required Information for a Building Product incorporated into The Works to the Principal upon installation of the Building Product into The Works; and
- (d) must provide all Required Information and any other information relevant to a Building Product to the Principal within the timeframes requested by the Principal.

### **11K.3 Failure to comply**

If the Contractor installs or incorporates into The Works a Building Product without the Required Information, the Principal will be entitled to do either of the following in its sole and absolute discretion:

- (a) request the Required Information from the Contractor, in which case the Contractor will provide the Required Information as soon as reasonably practicable, or
- (b) direct the Contractor to remove the Building Product from The Works and replace it with a Building Product that is not non-conforming pursuant to Subclause 29.3 or Clause 35.

#### **11K.4 Requirement of practical completion**

The Contractor must, as a requirement of Practical Completion, provide to the Principal a signed statutory declaration confirming that all Required Information has been obtained and provided to the Principal and that no Non-conforming Building Products have been installed or incorporated into The Works.

#### **11K.5 Indemnity**

Without limiting Clause 11P, the Contractor shall indemnify and keep indemnified the Principal against any Claim which may be brought against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal to the extent caused or contributed to by any breach of the Contractor's obligations under this Clause 11K, or by any failure of the Contractor to comply with its obligations under the QBCC Act in relation to Building Products.

### **11L. Queensland Code of Practice for the Building and Construction Industry**

#### **11L.1 Queensland Code**

This Clause 11L only applies if Item 19C states that the Queensland Code applies.

Terms used in this Clause 11L which are not separately defined in this Contract have the same meaning as is attributed to them in the Queensland Code.

#### **11L.2 Primary obligation**

The Contractor must comply with, and meet any obligations imposed by, the Queensland Code.

The Contractor must notify the Building Construction Compliance Branch (or nominee) and the Principal of any alleged breaches of the Queensland Code and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach.

Where the Contractor is authorised to engage a Subcontractor, and it does so, the Contractor must ensure that any secondary contract imposes on the Subcontractor equivalent obligations to those in this Clause 11L, including that the Subcontractor must comply with, and meet any obligations imposed by, the Queensland Code.

The Contractor must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code.

#### **11L.3 Access and information**

The Contractor must maintain adequate records of compliance with the Queensland Code by it, its Subcontractors and related entities.

The Contractor must allow, and take reasonable steps to facilitate, Queensland Government authorised Personnel (including Personnel of the Building Construction Compliance Branch) to:

- (a) enter and have access to sites and premises controlled by the Contractor, including the Site;
- (b) inspect any Work, machinery, appliance, article or facility;
- (c) access information and documents;
- (d) inspect and copy any record relevant to the project;
- (e) have access to Personnel; and
- (f) interview any person;

as is necessary for the authorised Personnel to monitor and investigate compliance with the Queensland Code by the Contractor, its Subcontractors and related entities.

The Contractor, and its related entities, must agree to, and comply with, a request from Queensland Government authorised Personnel (including Personnel of the Building Construction Compliance Branch) for the production of specified documents by a certain date, whether in person, by post or electronic means.

#### **11L.4 Sanctions**

The Contractor warrants and represents that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code that would have precluded it from tendering for work to which the Queensland Code applies.

If the Contractor does not comply with, or fails to meet any obligation imposed by, the Queensland Code, a sanction may be imposed against it in connection with the Queensland Code.

Where a sanction is imposed:

- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
- (b) the State of Queensland (through its agencies, Ministers and the Building Construction Compliance Branch) is entitled to:
  - (i) record and disclose details of non-compliance with the Queensland Code and the sanction; and
  - (ii) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Contractor, or its related entities, in respect of work to which the Queensland Code applies.

#### **11L.5 Compliance**

The Contractor bears the cost of ensuring its compliance with the Queensland Code. The Contractor is not entitled to make a claim for reimbursement or an EOT from the Principal or the State of Queensland for such costs.

Compliance with the Queensland Code does not relieve the Contractor from responsibility to perform The Works or any other obligation under the Contract, or from liability for any Defect in

The Works or from any other legal liability, whether or not arising from its compliance with the Queensland Code.

Where a change in the Contract or The Works is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:

- (a) the circumstances of the proposed change;
- (b) the extent to which compliance with the Queensland Code will, or is likely to be, affected by the change; and
- (c) what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a workplace relations management plan),

and the Principal will direct the Contractor as to the course it must adopt within 5 Business Days of receiving notice.

## **11M. Queensland Charter for Local Content**

### **11M.1 Application**

This Clause 11M only applies if Item 19D states that the Charter for Local Content applies.

### **11M.2 Definitions**

Terms used in this Clause 11M which are not separately defined in this Contract have the same meaning as is attributed to them in the Charter for Local Content.

### **11M.3 Contractor's obligation**

The Contractor must, and must ensure its Subcontractors, in carrying out WUC:

- (a) comply with the principles of the Charter for Local Content and any related requirements under the Contract;
- (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 <https://www.statedevelopment.qld.gov.au/industry/industry-support/qld-charter-for-local-content>) 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](mailto:qclc@qld.gov.au).

## **11N. Training Policy**

### **11N.1 Application**

This Clause 11N applies if Item 19E(a) states that the Training Policy applies to the Contract.

### **11N.2 Definitions**

In this Clause and in Item 19E:

- (a) **Training Policy** means the Queensland Government policy titled “Queensland Government Building and Construction Training Policy” as amended or replaced from time to time;
- (b) **Apprentice, Indigenous Economic Opportunities Plan, Compliance Plan, Deemed Hours, DTET, Eligible Project, Indigenous Project, Major Building Project, New Entrant, Other Workforce Training, Practical Completion Report, TPAS and Trainee** have the same meaning as in the Training Policy.

### 11N.3 General

The Contractor must comply with the Training Policy and must:

- (a) within 10 Working Days of the Date of Acceptance of Tender 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 Plan to the Superintendent;
- (b) allocate a minimum of 60% of the Deemed Hours towards the employment of Trainees or Apprentices (in each case, New Entrants only), as required by the Training Policy;
- (c) for the remaining Deemed Hours not allocated under Subclause 11N.3(b), undertake Other Workforce Training, as required by the Training Policy;
- (d) provide the privacy statement contained in Annexure Part H to each participant 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 Superintendent.

Nothing in this Clause 11N limits or alters the Contractor's obligation to comply with the Training Policy.

### 11N.4 Indigenous Projects

If Item 19E(b) states that the Contract includes Work which forms part of an Indigenous Project, the Contractor must also:

- (a) within 10 Working Days of the Date of Acceptance of Tender submit the Indigenous Economic Opportunities Plan as part of the Compliance Plan electronically in TPAS, and as soon as possible afterwards provide a copy to the Superintendent;
- (b) prioritise the employment of Aboriginal or Torres Strait Islander Apprentices and Trainees, and local Aboriginal or Torres Strait Islander workers to meet the Deemed Hours requirement under Subclause 11N.3(b);
- (c) allocate an additional amount of labour hours towards the Indigenous Economic Opportunities Plan, equivalent to a further 10% of the total labour hours; 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 Indigenous Economic Opportunities 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 Indigenous Economic Opportunities Plan to the Superintendent.

### **11N.5 Major Building Projects**

If Item 19E(c) states that the Contract includes Work which forms part of a Major Building Project, the Contractor must also:

- (a) Develop and implement 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.

### **11N.6 Failure to comply**

The Contractor acknowledges that failure to comply in part or in whole with the requirements of Subclause 11N and non-compliance with the Training Policy will be considered in any review of a contractor's eligibility to tender for future Queensland Government contracts in addition to any other sanctions that may apply.

## **110. Work Health and Safety Accreditation Scheme**

### **110.1 Application**

This Clause 110 only applies if Item 19F states that the WHS Accreditation Scheme applies.

### **110.2 Interpretation**

In this Clause and in Item 19F:

- (a) 'FCA Act' means the *Federal Safety Commissioner Act 2022* (Cth);
- (b) 'Building Work' has the same meaning as given to that term in section 6 of the FCA Act.
- (c) 'WHS Accreditation Scheme' means the Australian Government Work Health and Safety Accreditation Scheme established by the FCA Act, as amended or replaced from time to time.

### **110.3 Accreditation and compliance**

The Contractor must:

- (a) maintain accreditation under the WHS Accreditation Scheme while Building Work is carried out and for the duration of the Contract; and
- (b) comply with all conditions of such accreditation.

**11P. Indemnity**

The Contractor shall indemnify and keep indemnified the Principal against any Claim which may be brought against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal in connection with:

- (a) the Contractor's failure to satisfy a Legislative Requirement;
- (b) any breach by the Contractor of its obligations under Clause 11 and 11A to 11O;
- (c) a Data Breach;
- (d) any breach by the Contractor of its obligations under any Legislative Requirement; and/or
- (e) any enforcement of obligations imposed on the Contractor under any Legislative Requirement,

but the indemnity shall be reduced to the extent that the act or omission of the Principal or the Superintendent caused or contributed to the Claim, cost, expense, fine, penalty, damages or loss.

**11Q. No fetter**

Nothing in the Contract shall be taken to fetter the power, rights or authority of the Principal as a sublessor under the *Land Act 1994 (Qld)* or as an Authority under the *Local Government Act 2009 (Qld)*, the *Local Government Regulation 2012 (Qld)* or any other Legislative Requirement.

**12. Protection of people, property and the environment**

Insofar as compliance with the Contract permits, the Contractor shall and shall ensure that its relevant Personnel:

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles;
- (c) prevent nuisance and unreasonable noise and disturbance;
- (d) perform the Contractor's obligations under the Contract in accordance with:
  - (i) best practice environmental management (as that term is defined in Section 21 of the EP Act);
  - (ii) the requirements of all other Legislative Requirements relating to the protection of the Environment (as that term is defined in Section 8 of the EP Act); and
  - (iii) the Principal's Policies and procedures relating to the protection of the environment.

If the Contractor damages property, the Contractor shall promptly rectify the damage and pay any compensation which the law requires the Contractor to pay.

If the Contractor fails to comply with an obligation under this Clause, the Principal, after the Superintendent has given reasonable written notice to the Contractor and in addition to the Principal's other rights and remedies, may have the obligation performed by others. The cost

thereby incurred shall be certified by the Superintendent as moneys due from the Contractor to the Principal.

### **13. Urgent protection**

If urgent action is necessary to protect WUC, other property or people and the Contractor fails to take the action, in addition to any other remedies of the Principal, the Superintendent may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the Superintendent shall certify the cost incurred as moneys due and payable from the Contractor to the Principal.

If time permits, the Superintendent shall give the Contractor prior written notice of the intention to take action pursuant to this Clause.

### **14. Care of the Work and reinstatement of damage**

#### **14.1 Care of WUC**

Except as provided in Subclause 14.3, the Contractor shall be responsible for care of:

- (a) the whole of WUC from and including the date of commencement of WUC to 4:00 pm on the Date of Practical Completion, at which time responsibility for the care of The Works (except to the extent provided in paragraph (b)) shall pass to the Principal; and
- (b) outstanding Work and items to be removed from the Site by the Contractor after 4:00 pm on the Date of Practical Completion until completion of outstanding Work or compliance with Clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the Contractor shall be responsible for the care of unfixed items accounted for in a Progress Certificate and the care and preservation of things entrusted to the Contractor by the Principal or brought onto the Site by Subcontractors for carrying out WUC.

#### **14.2 Reinstatement**

If loss or damage, other than that caused by an Excepted Risk, occurs to WUC during the period of the Contractor's care, the Contractor shall, at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the Excepted Risks (whether or not in combination with other risks), the Contractor shall to the extent directed by the Superintendent, rectify the loss or damage and such rectification shall be a deemed Variation. If loss or damage is caused by a combination of Excepted Risks and other risks, the Superintendent in pricing the Variation shall assess the proportional responsibility of the parties.

#### **14.3 Excepted Risks**

The Excepted Risks causing loss or damage, for which the Principal is liable, are:

- (a) any negligent act or omission of the Superintendent, the Principal or its consultants, agents, employees or other contractors (not being employed by the Contractor);
- (b) any risk specifically excepted elsewhere in the Contract;

- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, 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 its Subcontractors or either's employees or agents;
- (e) use or occupation of any part of WUC by the Principal or its consultants, agents or other contractors (not being employed by the Contractor) in breach of this Contract; and
- (f) defects in the design of WUC, other than design provided by the Contractor.

## **15. Damage to persons and property other than WUC**

### **15.1 Indemnity by Contractor**

Insofar as this Subclause applies to property, it applies to property other than WUC.

The Contractor shall indemnify the Principal against:

- (a) loss of or damage to the Principal's property; and
- (b) Claims in respect of personal injury, disease or illness (including mental illness) or death or loss of, or damage to, any other property or the environment,

arising out of or as a consequence of the carrying out of WUC, but the indemnity shall be reduced proportionally to the extent that the act or omission of the Superintendent, the Principal or its consultants, agents or other contractors (not being employed by the Contractor) may have contributed to the injury, death, loss or damage.

This Subclause shall not apply to:

- (c) the extent that the Contractor's liability is limited by another provision of the Contract;
- (d) exclude any other right of the Principal to be indemnified by the Contractor; and
- (e) things for the care of which the Contractor is responsible under Subclause 14.1.

## **15A. Liability**

### **15A.1 Limit and exclusion of liability**

Subject to Subclause 15A.2, to the extent permitted by law:

- (a) the total aggregate liability of each party to the other in connection with the Contract (including in respect of any Claims) shall not exceed that party's Liability Limit; and
- (b) neither party shall be liable to the other upon any Claim for any Specified Loss in connection with the Contract unless and then only to the extent that the Contract expressly provides for that liability.

### **15A.2 Application of Clauses**

Subclause 15A.1 does not apply to:

- (a) liability of the Principal to pay the Contract Sum as adjusted pursuant to the Contract;
- (b) liability of the Contractor to pay liquidated damages pursuant to Subclause 34.7;
- (c) liability of either party in connection with personal injury, disease or illness (including mental illness) or death or damage to property or the environment;
- (d) liability of a party arising as a result of:
  - (i) a breach of any Legislative Requirement;
  - (ii) an infringement of confidentiality or Intellectual Property Rights;
  - (iii) Wilful Misconduct; or
  - (iv) fraud or other criminal conduct,
 by that party or any of that party's Personnel;
- (e) liability of a party arising out of that party's deliberate breach or abandonment of the Contract;
- (f) liability which the Contractor has (or would have had, where clause 15A.2(g)(ii) applies) to pay the amount of any policy excess or deductible, under any insurance policy required to be effected and maintained by the Contractor under the Contract;
- (g) liability of the Contractor which the Contractor:
  - (i) recovers, or is entitled to recover, under any insurance policy required to be effected under the Contract; or
  - (ii) would have been entitled to recover under any insurance policy required to be effected under the Contract but for any act or omission of the Contractor, including:
    - (A) the Contractor failing to effect and maintain insurance as required by the Contract;
    - (B) the Contractor failing to comply with the requirements of any policy of insurance required by the Contract to be effected and maintained, and
    - (C) the Contractor electing not to, or failing to, make or pursue a claim under any policy of insurance required by the Contract to be effected and maintained,

and amounts referred to in paragraphs (a), (b), (c), (d), (e), (f) and (g) shall not be included in calculating whether the Liability Limit of a party has been reached.

When determining the insurance proceeds that the Contractor is entitled to recover or would have been entitled to recover for the purposes of Subclauses 15A.2(g)(i) and 15A.2(g)(ii), Subclause 15A.1 shall not be taken into account.

## 16. Insurance of The Works

The Alternative in Item 20(a) applies.

**Alternative 1: Contractor to insure**

Before commencing WUC, the Contractor shall insure all the things referred to in Subclause 14.1 against loss or damage resulting from any cause until the Contractor ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the Contractor's liability under Subclause 14.2 and things in storage off Site and in transit to the Site but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to The Works;
- (d) damages for delay in completing or for the failure to complete The Works;
- (e) 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;
- (f) loss or damage resulting from the Excepted Risks referred to in paragraphs 14.3(b) and 14.3(c).

The insurance cover shall be for an amount per occurrence of not less than the aggregate of the following, and for an unlimited number of occurrences:

- (a) Contract Sum;
- (b) provision in Item 20(b) to provide for costs of demolition and removal of debris;
- (c) provision in Item 20(c) for consultants' fees;
- (d) value in Item 20(d) of any materials or things to be supplied by the Principal for the purposes of WUC; and
- (e) additional amount or percentage in Item 20(e) of the total of the items referred to in sub paragraphs (a) to (d) of this paragraph.

Insurance shall be in the name of the Contractor and shall note the Principal as an interested party (ensuring the Principal is a third-party beneficiary to the policy), shall cover the parties and Subcontractors whenever engaged in WUC for their respective rights, interests and liabilities and, except where the Contract otherwise provides, shall be with an insurer and in terms both approved in writing by the Principal (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the Contractor ceases to be responsible under Subclause 14.1 for the care of anything.

**Alternative 2: Principal to insure**

Before the Date of Acceptance of Tender, the Principal shall insure WUC in the terms of the policy included in the tender documents and nominating or stating the insurer. The Principal shall maintain such insurance while ever the Contractor has an interest in WUC.

**Alternative 3: Neither Party to insure**

Neither Party is required to effect the insurance contemplated by this Clause 16.

## 17. Public liability insurance

The Alternative in Item 21(a) applies.

### Alternative 1: Contractor to insure

Before commencing WUC, the Contractor shall effect and maintain for the duration of the Contract, a Public Liability Policy.

The policy shall:

- (a) be in the name of the Contractor with the Principal noted as an interested party (ensuring that the Principal is a third-party beneficiary to the policy);
- (b) cover the:
  - (i) respective rights and interests; and
  - (ii) liabilities to third parties,
 of the parties, the Superintendent and Subcontractors from time to time, whenever engaged in WUC;
- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by Clause 16) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any Construction Plant not covered under a comprehensive or third-party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in Item 21(b) and for an unlimited number of occurrences; and
- (f) be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals shall not be unreasonably withheld).

### Alternative 2: Principal to insure

Before the Date of Acceptance of Tender, the Principal shall effect in relation to WUC, a Public Liability Policy in the terms of the policy included in the tender documents and nominating or stating the insurer. The Principal shall maintain such insurance while ever the Contractor has an interest in WUC.

## 17A. Product liability insurance

Before commencing WUC, the Contractor shall effect and maintain a Product Liability Policy.

The Product Liability Policy shall be maintained until the Final Certificate is issued and thereafter for the period as stated in Item **Error! Reference source not found.**.

The policy shall:

- (a) be in the name of the Contractor with the Principal noted as an interested party (ensuring that the Principal is a third-party beneficiary to the policy);
- (b) cover the:
  - (i) respective rights and interests; and

- (ii) liabilities to third parties,  
of the parties, the Superintendent and Subcontractors;
- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by Clause 16) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) provide insurance with levels of cover not less than stated in Item **Error! Reference source not found.**; and
- (e) be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals shall not be unreasonably withheld).

## 18. Insurance of employees

Before commencing WUC, the Contractor shall insure against statutory and common law liability for death of or injury to persons employed by the Contractor. The insurance cover shall be maintained until completion of all WUC.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the Principal's statutory liability to the Contractor's employees.

The Contractor shall ensure that all Subcontractors have similarly insured their employees.

## 18A. Insurance for plant, equipment and motor vehicles

### 18A.1 Insurance for other plant and equipment

Before commencing WUC, the Contractor shall effect and maintain for the duration of the Contract, a policy of insurance for all Construction Plant used in the performance of WUC.

Each such policy shall:

- (a) provide insurance cover for the full market replacement or reinstatement value of the Construction Plant the subject of the policy; and
- (b) be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals shall not be unreasonably withheld).

### 18A.2 Insurance of motor vehicles

Before commencing WUC, the Contractor shall effect:

- (a) compulsory third party motor vehicle insurance in compliance with applicable Legislative Requirements in respect of all motor vehicles used by the Contractor in connection with the Contract; and
- (b) comprehensive motor vehicle insurance covering legal liability to third parties for injury, disease, illness to, or death of, persons or property damage arising from the use of any motor vehicle (whether registered or unregistered) by the Contractor in connection with the Contract.

The Contractor shall maintain such policies at all times whilst the motor vehicles are being used by the Contractor in connection with the Contract, including whilst on the Site.

The Contractor shall ensure that all Subcontractors have similarly insured their motor vehicles.

## 18B. Marine Insurances

### 18B.1 Marine hull insurance

The Alternative in Item 21C applies.

#### **Alternative 1: Contractor to insure**

The Contractor shall, before using any vessel in the performance of WUC, effect for each vessel used in the performance of WUC, a marine hull policy. The Contractor shall maintain such policies at all times whilst the vessel is being used in the performance of WUC.

Each policy shall:

- (a) provide insurance cover for the vessel's full market replacement value; and
- (b) be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals shall not be unreasonably withheld).

#### **Alternative 2: Neither Party to insure**

Neither Party is required to effect the insurance contemplated by this Subclause 18B.1.

### 18B.2 Marine protection insurance

The Alternative in Item 21D applies.

#### **Alternative 1: Contractor to insure**

The Contractor shall, before using any vessel in the performance of WUC, effect for each vessel used in the performance of WUC, a marine protection policy. The Contractor shall maintain such policies at all times whilst the vessel is being used in the performance of WUC.

Each policy shall:

- (a) be in the name of the Contractor with the Principal noted as an interested party (ensuring the Principal is a third-party beneficiary to the policy);
- (b) cover, as a minimum, the:
  - (i) respective rights and interests; and
  - (ii) liabilities to third-parties,

of the parties, the Superintendent and Subcontractors for collision, pollution, removal of wreck and (where the vessel is used to transport materials for use in WUC, cargo damage);

- (c) include cover for specialist operations;
- (d) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in Item 21D(b) and for an unlimited number of occurrences; and
- (e) be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals shall not be unreasonably withheld).

#### **Alternative 2: Neither Party to insure**

Neither Party is required to effect the insurance contemplated by this Subclause 18B.2.

## **19. Inspection and provisions of insurance policies**

### **19.1 Proof of insurance**

Before the Contractor commences WUC and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Neither insurance, nor the review and approval by the Principal or the Superintendent of any evidence of insurance, shall limit liabilities or obligations of the Contractor under other provisions of the Contract.

### **19.2 Failure to produce proof of insurance**

If after being so requested, a party liable to insure fails promptly to provide satisfactory evidence of compliance with Clause 16, 17, 17A, 18, 18A or 18B then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the Superintendent as moneys due and payable from the party in default to the other party. Where the defaulting party is the Contractor, the Principal may refuse payment until such evidence is produced by the Contractor.

### **19.3 Notices from or to insurer**

A party insuring under Clauses 16, 17 or 17A or Subclause 18B.2, shall ensure that each such insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a Subcontractor a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the Superintendent or a Subcontractor shall be accepted by the insurer as a notice of claim given by both parties, the Superintendent and the Subcontractor; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

### **19.4 Notices of potential claims**

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by Clause 16 or 17 and shall keep the other party informed of subsequent developments concerning the claim.

The Contractor shall, as soon as practicable, inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by Clause 17A or Subclause 18B.2 and shall keep the other party informed of subsequent developments concerning the claim.

The Contractor shall ensure that Subcontractors in respect of their operations similarly inform the parties.

### **19.5 Settlement of claims**

Upon settlement of a claim under the insurance required by Clause 16:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the Contractor reinstates the loss or damage, the Superintendent shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the Contractor.

## 19.6 Cross liability

Any insurance required by this Contract to note the Principal as an interested party and ensure the Principal is a third-party beneficiary to the insurance policy, shall include:

- (a) a cross liability clause, in which the insurer accepts the term “insured” as applying to each of the persons constituting the insured (including any person the Contract requires the insurance to cover for its rights, interests and liabilities) as if a separate policy of insurance had been issued to each of them;
- (b) a waiver of subrogation clause, in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured (and any person the Contract requires the insurance to cover for its rights, interests and liabilities);
- (c) a provision 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 (or any person the Contract requires the insurance to cover for its rights, interests and liabilities); and
- (d) a provision that any non-disclosure by one insured does not prejudice the right of any other insured (or any person the Contract requires the insurance to cover for its rights, interests and liabilities) to claim on the policy,

subject always to the overall sum insured not being increased thereby.

## 20. Superintendent

The Principal shall ensure that at all times there is a Superintendent, and that the Superintendent, when acting as certifier, valuer or assessor, fulfils all aspects of the role and functions honestly, fairly, independently, and in accordance with the Contract.

Except where the Contract otherwise provides, the Superintendent may give a Direction orally but shall as soon as practicable confirm it in writing. If the Contractor in writing requests the Superintendent to confirm an oral Direction, the Contractor shall not be bound to comply with the Direction until the Superintendent does so.

The Contractor acknowledges and accepts that the Superintendent and individuals appointed as Superintendent's Representatives under Clause 21 may:

- (a) be employees of the Principal;
- (b) have a general commercial relationship with the Principal beyond the performance of the appointed roles under this Contract; or

- (c) have undertaken or contributed to the design of The Works.

## 21. Superintendent's Representative

The Superintendent may from time to time appoint individuals to exercise delegated Superintendent's functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one Superintendent's Representative;
- (b) delegation shall not prevent the Superintendent exercising any function;
- (c) the Superintendent forthwith gives the Contractor written notice of respectively:
- (i) the appointment, including the Superintendent's Representative's name and delegated functions; and
  - (ii) the termination of each appointment; and
- (d) if the Contractor makes a reasonable objection to the appointment of a Superintendent's Representative, the Superintendent shall terminate the appointment.

## 22. Contractor's representative

The Contractor shall superintend WUC personally or by a competent representative. Matters within a Contractor's representative's knowledge (including Directions received) shall be deemed to be within the Contractor's knowledge.

The Contractor shall within 2 Business Days of the appointment give the Superintendent written notice of the representative's name and any subsequent changes.

If the Superintendent makes a reasonable objection to the appointment of a representative, the Contractor shall terminate the appointment and appoint another representative.

## 23. Contractor's employees and Subcontractors

### 23.1 Removal

The Superintendent may direct the Contractor to have removed, within a stated time, from the Site or from any activity of WUC, any person engaged on WUC who, in the Superintendent's opinion, is incompetent, negligent or guilty of misconduct or has engaged in any Improper Conduct. The Contractor must promptly arrange a replacement approved by the Superintendent (with such approval not to be unreasonably withheld or delayed) to assume the role of that person.

### 23.2 Key Personnel

Unless the Superintendent approves a change in Key Personnel in writing, the Contractor must provide the Key Personnel to perform the roles during the period or periods stated in Item 21E or where no period is stated, from the Date of Acceptance of Tender until the end of the last Defects Liability Period.

If any Key Personnel is not available due to circumstances beyond the reasonable control of the Contractor, the Contractor must promptly notify the Superintendent and arrange a replacement

approved by the Superintendent (with such approval not to be unreasonably withheld or delayed) to assume the role of the Key Personnel.

The Contractor must not, without the written consent of the Superintendent:

- (a) allow Key Personnel to delegate any part of WUC; and
- (b) allocate tasks not connected with WUC to any of the Key Personnel who are engaged in WUC on a full-time basis, until all WUC allocated to that Key Personnel has been completed by that person.

## **24. Site**

### **24.1 Possession**

The Principal shall give the Contractor possession of sufficient of the Site for commencement of WUC on Site on the later of:

- (a) the expiry of the time in Item 22(b); and
- (b) 10 Business Days after the Contractor has:
  - (i) complied with Subclause 19.1;
  - (ii) complied with all requirements identified in Item 22(c); and
  - (iii) given the Superintendent all other information and documentation and done all other things which the Contract elsewhere requires to be given or done before possession of the Site is given.

Possession of the Site may be non-exclusive.

If the Principal has not given the Contractor possession of the whole Site, the Principal shall give the Contractor possession of such further portions of the Site as may, from time to time, be necessary for carrying out WUC. Subject to Subclause 39.7, delay by the Principal in giving possession shall not be a breach of the Contract.

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 carry out WUC and shall exclude camping, residential purposes and any purpose not connected with WUC, unless approved by the Superintendent.

### **24.2 Access for Principal and others**

The Principal and the Principal's employees, invitees, consultants and agents may at any time after reasonable written notice to the Contractor, have access to any part of the Site for any purpose. The Contractor shall permit persons engaged by the Principal to carry out Work on the Site other than WUC and shall cooperate with them. The Principal shall give to the Contractor the names and roles of the persons so engaged.

The Contractor shall at all reasonable times give the Superintendent access to WUC.

The Principal shall ensure that none of the persons referred to in this Subclause impedes the Contractor.

### 24.3 Minerals, fossils and relics

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:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the Superintendent written notice of the discovery.

All costs so incurred by the Contractor shall be assessed by the Superintendent and added to the Contract Sum.

### 24.4 Relations with others

The Contractor must in carrying out and completing WUC:

- (a) cooperate and liaise with; and
- (b) use all reasonable endeavours to avoid interference with or delay or disruption to, the Principal's Personnel and customers and Authorities and other persons, including persons:
  - (c) undertaking Work or services at or in the vicinity of the Site or within the road assets included in the Scope;
  - (d) using or working in gravel pits, turnarounds, water sources;
  - (e) using haulage routes in connection with surrounding Contracts,

so that, to the extent that it is within the control of the Contractor, WUC is coordinated and integrated with the Work and services performed by such other persons.

The Contractor must keep the Superintendent informed and otherwise provide all information reasonably requested by the Superintendent relating to such coordination.

Notwithstanding anything else in the Contract, the Principal shall not be liable upon any Claim (including a claim for delay costs under subclause 34.9) arising as a consequence of any interference with, or disruption or delay to, WUC or any of the Contractor's obligations under this Contract, caused or contributed to by a person referenced in paragraphs (c), (d) and (e).

## 25. Latent Conditions

### 25.1 Scope

Latent Conditions are physical conditions on the Site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the Contractor's tender if the Contractor had inspected:

- (a) all written information made available by the Principal to the Contractor for the purpose of tendering;
- (b) all information influencing the risk allocation in the Contractor's tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the Site and its near surrounds.

## 25.2 Notification

The Contractor, upon becoming aware of a Latent Condition while carrying out WUC, shall promptly, and where possible before the Latent Condition is disturbed, give the Superintendent written notice of the general nature thereof.

If required by the Superintendent after receiving that notice, the Contractor shall, within the time directed by the Superintendent, give the Superintendent a written statement of:

- (a) the Latent Condition encountered and the respects in which it differs materially;
- (b) the additional Work, resources, time and cost which the Contractor estimates to be necessary to deal with the Latent Condition; and
- (c) other details reasonably required by the Superintendent.

## 25.3 Deemed Variation

The effect of the Latent Condition shall be a deemed Variation, priced having no regard to additional cost incurred more than 5 Business Days before the date on which the Contractor gave the notice required by the first paragraph of Subclause 25.2 but so as to include the Contractor's other costs for each compliance with Subclause 25.2.

## 26. Not used

## 27. Cleaning up

The Contractor shall keep the Site and WUC clean and tidy and regularly remove rubbish and surplus material.

Within 10 Business Days after the Date of Practical Completion, the Contractor shall remove Temporary Works and Construction Plant. The Superintendent may extend the time to enable the Contractor to perform remaining obligations.

If the Contractor fails to comply with the preceding obligations in this Clause, the Superintendent may direct the Contractor to rectify the non-compliance and the time for rectification.

If:

- (a) the Contractor fails to comply with such a Direction; and
- (b) that failure has not been made good within 5 Business Days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject Work carried out by others,

the Principal may have that Work so carried out and the Superintendent shall certify the cost incurred as moneys due from the Contractor to the Principal. The rights given by this paragraph are additional to any other rights and remedies.

## 28. Materials, labour and Construction Plant

Except where 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.

In respect of any materials, machinery or equipment to be supplied by the Contractor in connection with the Contract, the Superintendent may direct the Contractor to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the Superintendent, the Principal and persons authorised by the Principal.

The Superintendent may give the Contractor a written Direction not to remove materials or Construction Plant from the Site. Thereafter the Contractor shall not remove them without the Superintendent's prior written approval (which shall not be unreasonably withheld).

## **29. Quality**

### **29.1 Quality of material and Work**

Unless otherwise provided the Contractor shall use suitable new materials and proper and tradesman-like workmanship.

### **29.2 Quality assurance\***

If the Contract elsewhere requires further quality assurance, the Contractor shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the Superintendent has access to the quality system of the Contractor and Subcontractors so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not discharge the Contractor's other obligations under the Contract.

### **29.3 Defective Work**

If the Superintendent becomes aware of Work done (including material provided) by the Contractor which does not comply with the Contract, the Superintendent may direct the Contractor to do any one or more of the following (including times for commencement and completion):

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

If:

- (a) the Contractor fails to comply with such a Direction; and
- (b) that failure has not been made good within 8 days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject Work rectified by others,

the Principal may have that Work so rectified and the Superintendent shall certify the cost incurred as moneys due from the Contractor to the Principal.

For clarity, the Superintendent may give a Direction under this Subclause 29.3 at any time prior to the end of the last Defects Liability Period to expire, irrespective of the time at which the Superintendent became aware of the non-compliance(s) the subject of the Direction. The Principal shall not be liable upon any Claim by the Contractor in connection with any delay by the Superintendent in issuing such a Direction.

#### **29.4 Acceptance of defective Work**

Instead of a Direction pursuant to Subclause 29.3 or Clause 35, the Superintendent may direct the Contractor that the Principal elects to accept the subject Work. Where the Contract elsewhere provides for an applicable reduced level of service for the subject Work, then the Contract Sum shall be adjusted in accordance with such provisions. Otherwise, there shall be a deemed Variation.

#### **29.5 Timing**

The Superintendent may give a Direction pursuant to this Clause at any time before the expiry of the last Defects Liability Period.

### **30. Examination and testing**

#### **30.1 Tests**

At any time before the expiry of the last Defects Liability Period, the Superintendent may direct that any WUC be tested. The Contractor shall give such assistance and samples and make accessible such parts of WUC as may be directed by the Superintendent.

#### **30.2 Covering up**

The Superintendent may direct that any part of WUC shall not be covered up or made inaccessible without the Superintendent's prior written Direction.

#### **30.3 Who conducts**

Tests shall be conducted as provided elsewhere in the Contract or by the Superintendent or a person (which may include the Contractor) nominated by the Superintendent.

#### **30.4 Notice**

The Superintendent or the Contractor (whichever is to conduct the Test) shall give reasonable written notice (which shall not be less than 1 Business Day unless the Contract states otherwise or the parties agree to a different time period) to the other of the date, time and place of the Test. If the other does not attend, the Test may nevertheless proceed.

**30.5 Delay**

Without prejudice to any other right, if the Contractor or the Superintendent delays in conducting a Test, the other, after giving reasonable written notice of intention to do so, may conduct the Test.

**30.6 Completion and results**

On completion of the Tests, the Contractor shall make good WUC so that it fully complies with the Contract.

Results of Tests shall be provided by the Contractor to the Superintendent promptly, and in any event, no later than 2 Business Days after receiving them.

**30.7 Costs**

Costs in connection with testing pursuant to this Clause shall be borne by the Principal except where the Contract otherwise provides or the Test is consequent upon, or reveals a failure of the Contractor to comply with the Contract (including this Clause).

**31. Working hours**

The working hours and Working Days for Work on the Site are stated in Item 22A. They shall not be varied without the Superintendent's prior written approval, except when, in the interests of safety of persons or property, the Contractor finds it necessary to carry out WUC otherwise, whereupon the Contractor shall give the Superintendent written notice of those circumstances as early as possible.

**32. Programming**

The Contractor shall give the Superintendent reasonable advance notice of when the Contractor needs information, materials, documents or instructions from the Superintendent or the Principal.

The Principal and the Superintendent shall not be obliged to give any information, materials, documents or instructions earlier than the Principal or the Superintendent, as the case may be, should reasonably have anticipated at the Date of Acceptance of Tender.

The Superintendent may direct in what order and at what time the various stages or portions of WUC shall be carried out. If the Contractor can reasonably comply with the Direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall give the Superintendent written notice of the reasons.

If:

- (a) compliance with any Directions under the preceding paragraph, except those pursuant to the Contractor's default, causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the Direction; and
- (b) the Contractor has given the Superintendent written notice of its intention to claim costs before complying with the Direction,

then the difference shall be assessed by the Superintendent and added to or deducted from the Contract Sum.

A Construction Program is a written statement showing the dates by which, or the times within which, the various stages or portions of WUC are to be carried out or completed.

The Superintendent may direct the Contractor to give the Superintendent a Construction Program within the time and in the form directed.

The Contractor shall not, without reasonable cause, depart from a Construction Program.

### **33. Suspension**

#### **33.1 Superintendent's suspension**

The Superintendent may direct the Contractor to suspend the carrying out of the whole or part of WUC for such time as the Superintendent thinks fit, if the Superintendent is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
  - (i) the Superintendent, the Principal or its employees, consultants, agents or other contractors (not being employed by the Contractor); or
  - (ii) the Contractor, a Subcontractor or either's employees or agents;
- (b) for the protection or safety of any person or property;
- (c) to comply with a court order; or
- (d) because of a Legislative Requirement which comes into effect after the 10th Business Day before the closing of tenders.

#### **33.2 Contractor's suspension**

If the Contractor wishes to suspend the carrying out of the whole or part of WUC, otherwise than pursuant to Subclause 39.9, the Contractor shall obtain the Superintendent's prior written approval. The Superintendent may approve the suspension and may impose conditions of approval.

#### **33.3 Recommencement**

As soon as the Superintendent becomes aware that the reason for any suspension no longer exists, the Superintendent shall direct the Contractor to recommence suspended WUC as soon as reasonably practicable.

The Contractor may recommence WUC suspended pursuant to Subclause 33.2 or 39.9 at any time after reasonable notice to the Superintendent.

#### **33.4 Cost**

The Contractor shall bear the cost of suspension pursuant to Subclause 33.1(a)(ii) and Subclause 33.2. If the Contractor made the protection, safety or court order or suspension of work necessary, the Contractor shall bear the cost of suspension pursuant to Subclause 33.1(b) or (c). If the Contractor otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the Superintendent and added to or deducted from the Contract Sum.

## 34. Time and progress

### 34.1 Progress

The Contractor must commence Work on the Site by the time stated in Item 6A.

The Contractor shall ensure that WUC reaches Practical Completion by the Date for Practical Completion.

### 34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to WUC shall promptly give the Superintendent and the other party written notice of that cause and the estimated delay.

### 34.3 Claim

The Contractor shall be entitled to such extension of time for carrying out WUC (including reaching Practical Completion) as the Superintendent assesses ("EOT"), if:

- (a) the Contractor is or will be delayed in reaching Practical Completion by a Qualifying Cause of Delay; and
- (b) the Contractor gives the Superintendent, within 10 Business Days of when the Contractor should reasonably have become aware of that causation occurring, a written claim for an EOT evidencing the facts of causation and of the delay to WUC (including extent).

If further delay results from a Qualifying Cause of Delay evidenced in a claim under paragraph (b) of this Subclause, the Contractor shall claim an EOT for such delay by promptly giving the Superintendent a written claim evidencing the facts of that delay.

The Contractor shall provide information in relation to a delay whenever reasonably requested by the Superintendent.

### 34.4 Assessment

To the extent that delays caused by Qualifying Causes of Delay overlap with delays caused by other causes of delay, the Contractor shall not be entitled to an EOT.

In assessing each EOT the Superintendent shall disregard questions of whether:

- (a) WUC can nevertheless reach Practical Completion without an EOT; or
- (b) the Contractor can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the Contractor.

To avoid doubt, all EOTs shall be claimed and granted in Working Days.

The Contractor must provide any additional information reasonably requested by the Superintendent to assist the Superintendent in assessing the EOT.

### 34.5 Extension of time

Within 20 Business Days after receiving the Contractor's claim for an EOT, the Superintendent shall give to the Contractor and the Principal a written Direction evidencing the EOT so assessed.

Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Superintendent may at any time and from time to time before issuing the Final Certificate, in its absolute discretion and without any obligation to do so for the benefit of the Contractor, direct an EOT. The Contractor shall not be entitled to any monetary compensation (whether under Subclause 34.9 or otherwise) in connection with an EOT granted by the Superintendent pursuant to this paragraph.

Neither:

- (a) a delay caused by a Compensable Cause; nor
- (b) a failure by the Superintendent to grant a reasonable EOT or to do so within the time required under Subclause 34.5,

will set the Date for Practical Completion at large or render Subclause 34.7 unenforceable. Nothing in Subclause 34.5 shall affect the Contractor's right to damages for a breach of contract.

### 34.6 Practical Completion

The Contractor shall give the Superintendent at least 10 Business Days written notice of the date upon which the Contractor anticipates that Practical Completion will be reached.

When the Contractor is of the opinion that Practical Completion has been reached, the Contractor shall in writing request the Superintendent to issue a Certificate of Practical Completion. Within 10 Business Days after receiving the request, the Superintendent shall give the Contractor and the Principal either a Certificate of Practical Completion evidencing the Date of Practical Completion or written reasons for not doing so.

If the Superintendent is of the opinion that Practical Completion has been reached, the Superintendent may issue a Certificate of Practical Completion even though no request has been made.

### 34.7 Liquidated damages

If WUC does not reach Practical Completion by the Date for Practical Completion, the Superintendent shall certify, as due and payable to the Principal, liquidated damages in Item 24 for every day after the Date for Practical Completion to and including the earliest of the Date of Practical Completion or termination of the Contract or the Principal taking WUC out of the hands of the Contractor.

If an EOT is directed after the Contractor has paid or the Principal has set off liquidated damages, the Superintendent shall adjust the liquidated damages calculation in the next Progress Certificate after the EOT is granted.

### 34.8 Bonus for early Practical Completion

If the Date of Practical Completion is earlier than the Date for Practical Completion the Superintendent shall certify as due and payable to the Contractor the bonus in Item 25(a) for

every day after the Date of Practical Completion to and including the Date for Practical Completion.

The Contractor hereby waives that part of a bonus exceeding the Item 25(b) amount.

### **34.9 Delay costs**

For every Working Day the subject of an EOT for a Compensable Cause and for which the Contractor gives the Superintendent a claim for delay costs pursuant to Subclause 41.1, the Superintendent shall, under Subclause 41.3 certify as due and payable to the Contractor, such extra costs as are reasonably and necessarily incurred by the Contractor by reason of the delay up to a maximum per Working Day of the amount stated in Item 26A.

Nothing in this Subclause 34.9 shall oblige the Principal to pay extra costs for delay:

- (a) which have already been included in the value of a Variation or any other payment under the Contract;
- (b) caused by inclement weather or its effects, even if that inclement weather or those effects would not have delayed the Contractor but for an earlier delay caused by a Compensable Cause, (except to the extent, if any, that Item 26 provides otherwise);
- (c) to the extent that the Contractor has failed to take all reasonable steps to mitigate the delay or the extra costs incurred.

## **35. Defects liability**

The Defects Liability Period stated in Item 27 shall commence on the Date of Practical Completion at 4:00 pm.

The Contractor shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of The Works as is reasonably possible.

As soon as possible after the Date of Practical Completion, the Contractor shall rectify all Defects existing at the Date of Practical Completion.

During the Defects Liability Period, the Superintendent may give the Contractor a Direction to rectify a Defect which:

- (a) shall identify the Defect and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate Defects Liability Period therefor (not exceeding that in Item 27, commencing at 4:00 pm on the date the rectification is completed and governed by this Clause).

If the rectification is not commenced or completed by the stated dates, the Principal may have the rectification carried out by others but without prejudice to any other rights and remedies the Principal may have. The cost thereby incurred shall be certified by the Superintendent as moneys due and payable to the Principal by the Contractor.

## **36. Variations**

### **36.1 Directing Variations**

The Contractor shall not vary WUC except as directed in writing.

The Superintendent, before the Date of Practical Completion, may direct the Contractor to vary WUC by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the Contract:

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional Work;
- (e) demolish or remove material or Work no longer required by the Principal; or
- (f) change the methodology for carrying out and completing WUC.

The Principal may itself perform or engage others to perform any Work which is omitted pursuant to this Subclause 36.1 without payment of monetary compensation to the Contractor for doing so. No Variation shall invalidate or amount to a repudiation of the Contract.

### **36.2 Proposed Variations**

The Superintendent may give the Contractor written notice of a proposed Variation.

The Contractor shall as soon as practicable after receiving such notice and within the time directed by the Superintendent, notify the Superintendent whether the proposed Variation can be effected, together with, if it can be effected, the Contractor's estimate of the:

- (a) effect on the Construction Program (including the Date for Practical Completion);
- (b) cost (including all time-related costs, if any) of the proposed Variation; and
- (c) the impact (if any) on any warranties and representations given or required to be given under the Contract.

The Superintendent may direct the Contractor to give a detailed quotation for the proposed Variation supported by measurements or other evidence of cost. For clarity, if the Superintendent does not direct the Variation to be carried out, the Principal may itself perform or engage others to perform the Work the subject of the proposed Variation without payment of monetary compensation to the Contractor for doing so.

### **36.3 Variations for convenience of Contractor**

If the Contractor requests the Superintendent to direct a Variation for the convenience of the Contractor, the Superintendent may do so. The Direction shall be written and may be conditional. Unless the Direction provides otherwise, the Contractor shall be entitled to neither extra time nor extra money.

### **36.4 Pricing**

The Superintendent shall, as soon as possible, price each Variation using the following order of precedence:

- (a) prior agreement;
- (b) rates or prices in the Price Schedule to the extent that it is reasonable to use them;

- (c) Variation Rates (or where no applicable Variation Rates are included in the Contract, other applicable rates or prices in the Contract); and
- (d) reasonable rates or prices, which shall, except where the Contract provides otherwise, include the percentage stated in Item 27A for profit, and if the Superintendent considers it reasonable to do so, the percentage stated in Item 27A for overheads,

and any deductions shall include the full value of the deducted Work (including profit and overheads) unless the Superintendent considers it reasonable to exclude an amount for overheads, in which case the amount so excluded shall not exceed the percentage stated in Item 27A for overheads.

That price shall be added to or deducted from the Contract Sum, as the case may be.

For clarity, percentages for profit and overheads shall be calculated independently of each other, not cumulatively.

### **36.5 Time-bar**

Notwithstanding anything else in the Contract, the Principal shall not be liable upon any Claim in connection with an Informal Variation Direction unless the Contractor gives the Superintendent a written notice which:

- (a) identifies the Informal Variation Direction; and
- (b) states that the Contractor considers the Informal Variation Direction is a Direction for a Variation,

within 5 Business Days (and where possible, before complying with the Informal Variation Direction) after the Informal Variation Direction is first given to the Contractor.

## **37. Payment**

### **37.1 Progress claims**

The Contractor shall claim payment progressively in accordance with Item 28.

With each progress claim and the Contractor's Final Payment Claim under Subclause 37.4, the Contractor must submit a statutory declaration in the form included in Annexure Part I, and any other documentation which the Contract elsewhere requires to be submitted with a progress claim.

Each progress claim shall be given in writing to the Superintendent and shall include details of the value of WUC done and may include details of other moneys then due to the Contractor pursuant to provisions of the Contract.

The Contractor must provide any other documentary evidence reasonably requested by the Superintendent to enable the Superintendent to properly assess the claim or verify the information provided in the statutory declaration.

### **37.2 Certificates**

The balance remaining after all Required Deductions are deducted from the Claimable Amount shall be due from the Principal to the Contractor, or the Contractor to the Principal, as the case may be. The Superintendent shall, before the end of the Response Period, issue to the Principal

and to the Contractor a Progress Certificate evidencing the Superintendent's opinion of that balance and, if that balance is different to the amount claimed by the Contractor, the reason for that difference.

If the Contractor does not make a progress claim in accordance with Item 28, the Superintendent may nevertheless issue the Progress Certificate.

Unless the Principal itself issues a Payment Schedule which complies with the requirements of the Security of Payment Legislation within the timeframes permitted under that legislation, the Superintendent's Progress Certificate or Final Certificate (as the case may be) shall be deemed to be the Principal's Payment Schedule, and to the extent that it is necessary for the Principal to do so, the Principal authorises the Superintendent to receive progress claims and issue Payment Schedules on its behalf.

Subject to the following paragraph, if the Progress Certificate shows that an amount is due to the Contractor, then the Principal shall pay the amount of the Progress Certificate before the end of the Payment Period. If the Progress Certificate shows that an amount is due to the Principal, the Contractor shall pay the Principal the amount of the Progress Certificate within 15 Business Days after receiving the Progress Certificate.

To the extent permitted by law, if the Superintendent fails to include a Required Deduction in a Progress Certificate, then the Principal may nevertheless deduct that Required Deduction from the amount shown in the certificate and pay the balance (if any) to the Contractor.

The party entitled to receive payment must provide a tax invoice in the form required by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*. If the payment is a progress payment to be made by the Principal to the Contractor, then the tax invoice shall be in the amount of the Superintendent's Progress Certificate issued pursuant to this Subclause 37.2 and must be provided to the Principal within 5 Business Days of receipt of such Progress Certificate.

Unless otherwise expressly stated, all monetary amounts stated in this Contract are taken to be inclusive of GST.

Neither a Progress Certificate nor a payment of monies shall be evidence that the subject WUC has been carried out satisfactorily. Payment other than Final Payment shall be on account only.

### **37.3 Unfixed plant and materials**

Unless agreed in writing by the Principal, the Principal shall not be liable to pay for unfixed plant and materials unless they are listed in Item 29 and the Contractor:

- (a) provides the additional Security in Item 13(e); and
- (b) satisfies the Superintendent that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the Principal.

Upon payment to the Contractor and the release of any additional Security in paragraph (a), the subject plant and materials shall be the unencumbered property of the Principal, but the Contractor shall not be relieved of any other obligation under Contract in respect of such plant and materials.

### **37.4 Final Payment Claim and certificate**

Within 20 Business Days after the expiry of the last Defects Liability Period, the Contractor shall give the Superintendent a written Final Payment Claim endorsed "Final Payment Claim" being a

progress claim together with all other claims whatsoever in connection with the subject matter of the Contract.

Before the end of the Response Period, the Superintendent shall issue to both the Contractor and the Principal a Final Certificate evidencing the moneys finally due and payable between the Contractor and the Principal on any account whatsoever in connection with the subject matter of the Contract.

If the Contractor does not make a Final Payment Claim within the time required by Subclause 37.4, the Superintendent may nevertheless issue the Final Certificate.

If the Final Certificate shows that an amount is due to the Contractor, then the Principal shall pay the amount of the Final Certificate before the end of the Payment Period. Otherwise, the Contractor shall pay the Principal the amount of the Final Certificate within 15 Business Days after receiving the Final Certificate.

The Final Certificate shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the Contract except for:

- (a) fraud or dishonesty relating to WUC or any part thereof or to any matter dealt with in the Final Certificate;
- (b) any Defect or omission in The Works or any part thereof which was not apparent at the end of the last Defects Liability Period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate;
- (c) any accidental or erroneous inclusion or exclusion of any Work or figures in any computation or an arithmetical error in any computation;
- (d) any liability of the Principal to a third-party in connection with the Contract which was not known to the Principal at the end of the Defects Liability Period;
- (e) any obligation of a party that the Contract requires to be satisfied after the last Defects Liability Period has expired;
- (f) any matter the subject of a warranty provided by the Contractor (including a warranty obtained from a third-party for the benefit of the Principal) the term of which expires after the date on which the Final Certificate is issued; and
- (g) unresolved issues the subject of any notice of Dispute pursuant to Clause 42, served before the 7<sup>th</sup> day after the issue of the Final Certificate.

### **37.5 Interest**

Interest shall be due and payable after the date of default in payment at:

- (a) the rate stated in Item 30; or
- (b) if the Contract is a Building Contract, the rate determined in accordance with section 67P of the QBCC Act.

## 38. Payment of workers and Subcontractors

### 38.1 Workers and Subcontractors

The Contractor shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- (a) workers of the Contractor and of the Subcontractors; and
- (b) Subcontractors,

in respect of WUC the subject of that claim.

If the Contractor is unable to give such documentary evidence, the Contractor shall give other documentary evidence of the moneys so due and payable to workers and Subcontractors.

Documentary evidence, except where the Contract otherwise provides, shall be to the Superintendent's satisfaction.

This Subclause does not limit the requirements of Subclause 37.1.

### 38.2 Withholding payment

Subject to the next paragraph, the Principal may withhold moneys certified due and payable in respect of the progress claim until the Contractor complies with Subclause 38.1.

The Principal shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to Subclause 38.1 as due and payable to workers and Subcontractors.

### 38.3 Direct payment

Before Final Payment, the Principal, if not aware of a relevant relation-back day (as defined in the *Corporations Act 2001* (Cth)) may pay unpaid moneys the subject of Subclause 38.1 directly to a worker or a Subcontractor where:

- (a) permitted by law;
- (b) given a court order in favour of the worker or Subcontractor; or
- (c) requested in writing by the Contractor.

Such payment and a payment made to a worker or Subcontractor in compliance with a Legislative Requirement shall be deemed to be part-satisfaction of the Principal's obligation to pay pursuant to Subclause 37.2 or 37.4, as the case may be.

## 39. Default or insolvency

### 39.1 Preservation of other rights

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

## 39.2 Contractor's default

If the Contractor commits a substantial breach of the Contract, the Principal may, by hand or by registered post, give the Contractor a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (i) provide Security;
  - (ii) provide evidence of insurance;
  - (iii) comply with a Direction of the Superintendent pursuant to Subclause 29.3;
  - (iv) use the materials or standards of Work required by the Contract;
  - (v) where required, establish a Project Trust Account as required by the Security of Payment Legislation, in breach of Subclause 11.1 and Clause 11J;
  - (vi) where required, establish a Retention Trust Account as required by the Security of Payment Legislation, in breach of Subclause 11.1 and Clause 11J;
  - (vii) comply with an obligation of the Contractor set out in Part 2, Divisions 4 and 5 of Chapter 2 of the Security of Payment Legislation, in breach of Subclause 11.1;
  - (viii) comply with an obligation of the Contractor set out in Part 3, Divisions 4 and 5 of Chapter 2 of the Security of Payment Legislation, in breach of Subclause 11.1;
  - (ix) comply with any Legislative Requirement; or
  - (x) comply with any requirement of Clause 11F;
- (b) wrongful suspension of Work;
- (c) substantial departure from a Construction Program without reasonable cause or the Superintendent's approval;
- (d) where there is no Construction Program, failing to proceed with due expedition and without delay;
- (e) in respect of Subclause 9.2:
  - (i) subcontracting or allowing a Subcontractor to subcontract any Work described in Item 17; or
  - (ii) changing a Subcontractor which has previously been approved, without the Principal's prior written approval;
- (f) in respect of Subclauses 37.1 and 38.1, failing to provide a statutory declaration or documentary evidence or providing a statutory declaration or documentary evidence which is false, misleading or deceptive in any material respect;
- (g) failing to comply with an obligation under, warranty given or representation made in Clause 2A (including where a warranty given or representation made is found to be false);

- (h) in respect of Subclause 23.2, failing to provide Key Personnel (if any) or changing Key Personnel without the Principal's approval, except where the failure or change is necessitated solely because of:
  - (i) the illness or death of the Key Personnel; or
  - (ii) the cessation of the Key Personnel's employment with the Contractor; or
  - (iii) a change in a Legislative Requirement.

### 39.3 Principal's notice to show cause

A notice under Subclause 39.2 shall state:

- (a) that it is a notice under Clause 39 of these General Conditions of Contract;
- (b) the alleged substantial breach;
- (c) that the Contractor is required to show cause in writing why the Principal should not exercise a right referred to in Subclause 39.4;
- (d) the date and time by which the Contractor must show cause (which shall not be less than 5 clear Business Days after the notice is received by the Contractor); and
- (e) the place at which cause must be shown.

### 39.4 Principal's rights

If the Contractor fails to show reasonable cause by the stated date and time, the Principal may by written notice to the Contractor:

- (a) take out of the Contractor's hands the whole or part of the Work remaining to be completed and suspend payment until it becomes due and payable pursuant to Subclause 39.6; or
- (b) terminate the Contract.

### 39.5 Take out

The Principal shall complete Work taken out of the Contractor's hands and may:

- (a) use materials, equipment and other things intended for WUC; and
- (b) without payment of compensation to the Contractor:
  - (i) take possession of, and use such of the Construction Plant and other things on or in the vicinity of the Site as were used by the Contractor; and
  - (ii) contract with such of the Contractor's Subcontractors,

as are reasonably required by the Principal to facilitate completion of WUC.

If the Principal takes possession of Construction Plant or other things, the Principal shall maintain them and, subject to Subclause 39.6, on completion of the Work, shall return such of them as are surplus.

The Superintendent shall keep records of the cost of completing the Work taken out.

**39.6 Adjustment on completion of Work taken out**

When Work taken out of the Contractor's hands has been completed, the Superintendent shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the Contractor if the Work had been completed by the Contractor.

If the Contractor is indebted to the Principal, the Principal may retain Construction Plant or other things taken under Subclause 39.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction 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.

**39.7 Principal's default**

If the Principal commits a substantial breach of the Contract, the Contractor may, by hand or by registered post, give the Principal a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
  - (i) provide Security;
  - (ii) produce evidence of insurance;
  - (iii) rectify inadequate Contractor's possession of the Site if that failure continues for longer than the time stated in Item 31; or
  - (iv) make a payment due and payable pursuant to the Contract; and
- (b) the Superintendent not giving a Certificate of Practical Completion or reasons as referred to in Subclause 34.6.

**39.8 Contractor's notice to show cause**

A notice given under Subclause 39.7 shall state:

- (a) that it is a notice under Clause 39 of these General Conditions of Contract;
- (b) the alleged substantial breach;
- (c) that the Principal is required to show cause in writing why the Contractor should not exercise a right referred to in Subclause 39.9;
- (d) the date and time by which the Principal must show cause (which shall not be less than 5 clear Business Days after the notice is received by the Principal); and
- (e) the place at which cause must be shown.

**39.9 Contractor's rights**

If the Principal fails to show reasonable cause by the stated date and time, the Contractor may, by written notice to the Principal, suspend the whole or any part of WUC.

The Contractor shall remove the suspension if the Principal remedies the breach.

The Contractor may, by written notice to the Principal, terminate the Contract, if within 20 Business Days of the date of suspension under this Subclause, the Principal fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Contractor.

Damages suffered by the Contractor by reason of the suspension shall be assessed by the Superintendent, who shall certify them as moneys due and payable to the Contractor.

### 39.10 Termination

If the Contract is terminated pursuant to Subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the Contract had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

### 39.11 Insolvency

Subject to Legislative Requirements, if:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the Contract;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if 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) is made bankrupt;
  - (iv) makes a proposal for a scheme of arrangement or a composition; or
  - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the Contract; or
- (d) in relation to a party being a corporation:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (ii) it enters a deed of company arrangement with creditors;
  - (iii) a controller or administrator is appointed;
  - (iv) an application is made to a court for its winding up and not stayed within 14 days;
  - (v) a winding up order is made in respect of it;

- (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
- (vii) a mortgagee of any of its property takes possession of that property,

then, where the other party is:

- (A) the Principal, the Principal may, without giving a notice to show cause, exercise the right under Subclause 39.4; or
- (B) the Contractor, the Contractor may, without giving a notice to show cause, exercise the right under Subclause 39.9.

The rights and remedies given by this Subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of Contract.

## **39A. Termination for convenience**

### **39A.1 Right to terminate**

Without limiting any other right or remedy of the Principal, the Principal may at any time, and for any reason, in its absolute discretion, terminate this Contract by giving 20 Business Days written notice to the Contractor.

For clarity, the Principal may terminate the Contract pursuant to this Subclause 39A.1 notwithstanding the existence of an unresolved dispute the subject of a notice of Dispute or that a party may have given, or be entitled to give, a notice to show cause pursuant to subclause 39.3 or Subclause 39.8.

### **39A.2 Obligations and rights after termination**

If the Principal exercises its right under this Clause 39A, then:

- (a) the Contractor must comply with all reasonable Directions of the Principal in connection with the termination;
- (b) the Principal may complete the uncompleted part of WUC itself or have it completed by others;
- (c) the Principal may, without payment of compensation to the Contractor, take possession of and use documents and goods which have become the property of the Principal;

and the Principal shall have a right of access to any premises at which those things are held in order to recover possession of those things.

### **39A.3 Payment on Termination**

If the Contract is terminated by the Principal under this Clause 39A, then the Superintendent shall issue a certificate evidencing, and the Principal shall, pay the Contractor:

- (a) the same payments that would have been payable if the Contract was frustrated under Clause 40 with references to 'frustrated' and 'frustration' in Clause 40 being read as references to 'terminated' and 'termination' respectively; plus
- (b) an additional amount equal to 5% of the balance of the Contract Sum remaining after deducting all amounts paid or payable to the Contractor pursuant to the Contract (including under Subclause 39A.3(a)); less

- (c) any Required Deductions or other amounts the Principal may set off or deduct in accordance with the Contract,

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

Within 10 Business Days after the issue of the certificate by the Superintendent under this Subclause 39A.3, the Principal shall release and return the Security to the Contractor (subject to the rights of the Principal to have recourse to the Security under the Contract).

The Principal shall not be liable upon any other claim in connection with the termination.

### **39B. Principal's rights on failure of Contractor to carry out an obligation**

Without limiting the Principal's other rights, where the Contractor fails to carry out any obligation under the Contract (including the obligation to comply with a Direction of the Superintendent) within the time required by the Contract or reasonably directed by the Superintendent for performance of such an obligation, the Principal may, after giving 5 Business Days' notice (unless urgent action is required, in which case the Principal need not give notice) to the Contractor, carry out that obligation itself or have it carried out by others.

If the Principal incurs more cost in carrying out the obligation itself, or having it carried out by others than it would have incurred if the Contractor had carried out the obligation then those additional costs shall be a debt due and payable by the Contractor to the Principal and shall be certified as such by the Superintendent. The Principal shall be entitled to have access to the Site and any other place where an obligation under the Contract is to be carried out in order to exercise the rights provided by this Clause 39B.

## **40. Termination by frustration**

If the Contract is frustrated:

- (a) the Superintendent shall issue a Progress Certificate for WUC carried out to the date of frustration, evidencing the amount which would have been payable had the Contract not been frustrated and had the Contractor been entitled to and made a progress claim on the date of frustration;
- (b) the Principal shall pay the Contractor:
- (i) the amount due to the Contractor evidenced by all unpaid certificates;
  - (ii) the cost of materials and equipment reasonably ordered by the Contractor for WUC and which the Contractor is liable to accept, but only if they will become the Principal's property upon payment; and
  - (iii) the costs reasonably incurred:
    - (A) in removing Temporary Works and Construction Plant;
    - (B) in returning to their place of engagement the Contractor, Subcontractors and their respective employees engaged in WUC at the date of frustration; and
    - (C) by the Contractor in expectation of completing WUC and not included in any other payment; and

- (c) each party shall promptly release and return all Security provided by the other.

## **41. Notification of Claims**

### **41.1 Communication of Claims**

As soon as practicable after a party becomes aware of any Claim in connection with the subject matter of the Contract, that party shall give to the other party and to the Superintendent the Prescribed Notice or a notice of Dispute under Subclause 42.1.

This Subclause and Subclause 41.3 shall not apply to any Claim, including a Claim for payment (except for Claims which would, other than for this Subclause, have been included in the Final Payment Claim), the communication of which is required by another provision of the Contract.

### **41.2 Liability for failure to communicate**

The failure of the Principal to comply with the provisions of Subclause 41.1 or to communicate a Claim in accordance with the relevant provision of the Contract shall, *inter alia*, entitle the Contractor to damages for breach of contract but shall neither bar nor invalidate the Principal's Claim.

Notwithstanding any other provision of the Contract, the Principal shall not be liable upon any Claim by the Contractor:

- (a) which is required to be communicated in accordance with another provision of the Contract unless the Claim has been communicated strictly in accordance with that provision;
- (b) to which Subclause 41.1 applies unless the Contractor has given the Principal a Prescribed Notice within 45 Business Days after first becoming aware of the circumstances giving rise to the Claim.

### **41.3 Superintendent's decision**

If within 15 Business Days of giving the Prescribed Notice the party giving it does not notify the other party and the Superintendent of particulars of the Claim, the Prescribed Notice shall be deemed to be the Claim.

Within 30 Business Days of receipt of a Prescribed Notice, the party receiving a Prescribed Notice may give the Superintendent and the other party submissions in respect of the Claim and the Superintendent shall be entitled to consider those submissions in assessing the Claim.

Within 45 Business Days of receipt of the Prescribed Notice the Superintendent shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 20 Business Days of such notification gives a notice of Dispute under Subclause 42.1 which includes such decision, the Superintendent shall certify the amount of that assessment to be moneys then due and payable.

## 42. Dispute resolution

### 42.1 Notice of dispute

If a difference or dispute (together called a “Dispute”) between the parties arises in connection with the subject matter of the Contract, including a Dispute concerning:

- (a) a Superintendent’s Direction; or
- (b) a Claim,

then either party may give the other and the Superintendent a written notice of Dispute adequately identifying and providing details of the Dispute.

Notwithstanding the existence of a Dispute, the parties shall, subject to Clauses 39, 39A, 40 and Subclause 42.4, continue to perform the Contract.

### 42.2 Conference

Within 10 Business Days after receiving a notice of Dispute, the parties shall confer at least once to resolve the Dispute. At every such conference each party shall be represented by a person having authority to agree to such resolution. All aspects of every such conference except the fact of occurrence shall be privileged.

### 42.3 Expert Determination

If the Dispute has not been resolved within 20 Business Days of service of the notice of Dispute, then either party may refer the Dispute to expert determination which shall be conducted in accordance with the expert determination rules published by the Resolution Institute current as at the Date of Acceptance of Tender.

### 42.4 Summary relief

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

### 42.5 Disputing a Direction of the Superintendent

Notwithstanding anything else in this Clause or elsewhere in the Contract, unless a notice of Dispute disputing a Direction of the Superintendent is given in accordance with Subclause 42.1 within 25 Business Days after the Direction is given:

- (a) the Contractor will be deemed to have irrevocably accepted the Direction and shall be barred from disputing the Direction under this Contract or otherwise; and
- (b) the Principal shall not be liable upon any Claim that is inconsistent with the Direction.

## 43. Waiver of conditions

Except as provided at law or in equity or elsewhere in the Contract, none of the provisions of the Contract shall be varied, waived, discharged or released, except with the prior written consent of the parties.

# Annexure Part B — Deletions, amendments and additions

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Annexure to the Australian Standard General Conditions of Contract AS 4000—1997

1. The following Clauses have been deleted from the General Conditions in AS 4000—1997  
Refer to amended General Conditions of Contract
2. The following Clauses have been amended and differ from the corresponding Clauses in AS 4000—1997  
Refer to amended General Conditions of Contract
3. The following Clauses have been added to those of AS 4000—1997  
Refer to amended General Conditions of Contract

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# Annexure Part C — Approved form of unconditional undertaking

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Annexure to the Australian Standard General Conditions of Contract AS 4000—1997

This form may also be used where the Principal is required to provide an unconditional undertaking, by substituting Principal for Contractor and vice versa, wherever occurring.

## Approved form of unconditional undertaking (Clause 1 — security)

At the request of [Click or tap here to enter text.](#) (“the Contractor”) and in consideration of [Click or tap here to enter text.](#) (“the Principal”) accepting this undertaking in respect of the Contract for [Click or tap here to enter text.](#) (“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 sum of [Click or tap here to enter text.](#) (\$ [Click or tap here to enter text.](#)).

The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal or until this undertaking is returned to the financial institution or until payment to the Principal by the financial institution of the whole of the sum or such part as the Principal may require.

Should the financial institution be notified in writing, purporting to be signed by [Click or tap here to enter text.](#) for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the financial institution will make the 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 of [Click or tap here to enter text.](#) (\$ [Click or tap here to enter text.](#)) 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.

Dated at [Click or tap to enter a date.](#)

this [Click or tap here to enter text.](#) day of [Click or tap here to enter text.](#) 20[Click or tap here to enter text.](#)

# Annexure Part D – Scope

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Annexure Part E – Methodology

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# Annexure Part F – Price Schedule

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Annexure Part G – Variation Rates

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# Annexure Part H – Training Policy Privacy Statement

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## 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 projects 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 (DESBT) 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 2023* (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](mailto:TrainingPolicy@desbt.qld.gov.au).

Annexure Part I – Contractor’s Statutory Declaration

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**Oaths Act 1867  
STATUTORY DECLARATION**

QUEENSLAND  
TO WIT

I, [Click or tap here to enter text.](#) of [Click or tap here to enter text.](#) in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between [COUNCIL NAME] and [Click or tap here to enter text.](#) (**Contractor**), for the [Click or tap here to enter text.](#) (**Contract**):

1. I hold the position of [Click or tap here to enter text.](#). Having made all reasonable inquiries, I am in a position to know the facts contained herein and am duly authorised by the Contractor to make this declaration on its behalf.
2. All subcontractors, suppliers, and consultants ('subcontractors') of the Contractor have been paid all that:
  - (a) is due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted in respect of their part of the work under the Contract; and
  - (b) the subcontractors have claimed is due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted in respect of their part of the work under the Contract,

except as disclosed in paragraph 3.

3. The Contractor has not paid the following amounts which are due and payable to subcontractors or which subcontractors claim are due and payable to them:

Name of subcontractor	Date of claim	Date work the subject of the claim carried out	Amount claimed	Amount paid	Reason for not paying amount claimed

4. All the Contractor's employees who at any time have been engaged on work under the Contract by the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of the payment claim with which this declaration is submitted (including, without limitation building industry superannuation and long service leave levies), except as disclosed in paragraph 5.
5. The Contractor has not paid the following amounts which are due and payable to workers:

Name of worker	Amount unpaid	Basis of payment (e.g. wages)	Reason for not paying amount claimed

6. All subcontracts and employee agreements are in accordance with applicable law and any specific requirements in the Contract.
7. The Contractor is not aware of any current or potential legal action against it which it has not previously disclosed to the Principal.
8. The Contractor remains able to pay its debts as and when they become due and payable. None of the events described in subclause 39.11(a), (b), (c) or (d) of the AS4000-1997 General Conditions of Contract (or any analogous event) has occurred in relation to the Contractor since the date on which the Contractor submitted its tender for the Contract to the Principal.
9. No non-conforming building products or building products the subject of a warning statement issued by the Minister have been incorporated into The Works and all required information has been obtained and provided to the Principal or the Superintendent (where 'building product', 'Minister', 'non-conforming building product' and 'required information' each have the respective meanings given to those terms in the *Queensland Building*

