

First Response Emergency Work Contract V3 Engagement of Contractors

- Comprised of:**
- **Formal Instrument of Agreement**
 - **General Conditions of Contract**
 - **Schedule 1**
 - **Annexures A, B and C**

January 2018

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FORMAL INSTRUMENT OF AGREEMENT

An Agreement made on the day of20.....

BETWEEN

Name	State of Queensland represented by the Department of Transport and Main Roads (the " Principal ")
ABN	39 407 690 291
Short form name	Principal
Notice details	
Facsimile	(07)
Email	
	Attention

AND

Name	(with its successors and permitted assigns the " Contractor ")
ACN/ABN	
Short form name	Contractor
Notice details	
Facsimile	(07)
Email	
	Attention

BACKGROUND

- A. In response to emergency occurrences within the State of Queensland from time to time, the Principal will engage prequalified contractors and consultants to provide a quick response to damaged or potentially damaged infrastructure by undertaking the following:
- i. identifying the scope of emergency response works required to repair the road network and other identified infrastructure to a safe condition. This includes developing a "needs analysis" to prioritise works; and
 - ii. upon approval from the Principal, undertake the required scope of works to agreed conditions.
- B. The Principal proposes to procure the Contractor to undertake emergency response works.

- C. The Principal and the Contractor enter into this Contract to record the terms of the engagement of the Contractor to undertake emergency response works required to return the road network and other identified infrastructure to a safe condition.

IT IS AGREED:**1 The Contract**

1.1 The following documents together comprise the Contract:

1.1.1 this Formal Instrument of Agreement;

1.1.2 First Response Emergency Works Contract V3 - General Conditions of Contract; and

1.1.3 all Schedules and Annexures to the First Response Emergency Works Contract V3 - General Conditions of Contract.

1.2 The several documents forming the Contract are to be taken as mutually explanatory of one another. If either party discovers any ambiguity, inconsistency or discrepancy in any document comprised in the Contract or prepared for the purpose of executing the work under the Contract, that party must notify the Project Manager in writing of the ambiguity, inconsistency or discrepancy, and the Project Manager must then direct the Contractor as to the interpretation to be applied and the parties will comply with that interpretation.

2 Acknowledgement of emergency nature of works

The parties acknowledge and agree that this Contract is only intended to apply in respect of emergency works being:

- works and other activities necessary during the course of a disaster event to protect relevant public assets or to restore essential services and maintain public safety; and
- immediate post-disaster repairs to relevant public assets to enable that asset to operate or be operated at a reasonable level of efficiency and effectiveness,

during a period ending 60 days after the date of the disaster event. This Contract is not intended to be used for the conduct of other works.

3 Commitment

The Contractor commits to complete the Work:

- in an expeditious and cost-efficient manner;
- to the required quality standard; and
- in the safest possible manner.

The parties commit to:

- working harmoniously in the performance of their obligations under the Contract;
and
- abiding by the terms and conditions of the Contract.

4 Works and Payment

In consideration of the due and proper performance of the Contract by the Contractor, the Principal agrees to pay the Contractor the Contract Price and such other amounts as may be payable in accordance with this Contract.

EXECUTED AS AN AGREEMENT

For the Principal

SIGNED by

Name

a duly authorised delegate of THE DIRECTOR-GENERAL, DEPARTMENT OF TRANSPORT AND MAIN ROADS for and on behalf of THE STATE OF QUEENSLAND.

Signature

Date

**Witnessed by
Signature**

Date

**For the
Contractor**

in accordance with section 127(1) of the Corporations Act 2001 (Cth) by

Name(s)

Director

Director / Secretary

who certifies his/her/their authorisation to sign this agreement.

Signature of Director

Date

Signature of Director / Secretary

Date

Contract Number

General Conditions of Contract

First Response Emergency Works Contract V3

January 2018

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General Conditions of Contract

1 DEFINITIONS

In this Contract, except where the context otherwise requires, terms have the meaning ascribed to them in Schedule 1 - Definitions to this Contract.

2 ADDITIONAL CLAUSES

- (a) Additional clauses to these General Conditions of Contract (if any) are as set out in Item 10 of Annexure A and apply under the Contract as if they were included in these General Conditions of Contract.
- (b) If an additional clause set out in Item 10 of Annexure A is inconsistent with the General Conditions of Contract, then the additional clause prevails to the extent of the inconsistency.

3 REPRESENTATIVES

- (a) The Principal:
 - (i) appoints the person nominated in Item 2 of Annexure A to act as the Project Manager under the Contract; and
 - (ii) may at any time replace the Project Manager, in which event the Principal will appoint another person as the Project Manager and notify the Contractor of that appointment.

However, the Principal must not appoint more than one person as Project Manager at the same time.

- (b) Any direction which is given by the Project Manager under the Contract may, unless the Contract expressly provides otherwise, be given either orally or in writing. The Project Manager must confirm in writing an oral direction as soon as practicable after it is given verbally.
- (c) The Contractor:
 - (i) appoints the person nominated in Item 3 of Annexure A as the Contractor's Representative; and
 - (ii) may at any time replace the Contractor's Representative, in which event the Contractor will appoint another person as the Contractor's Representative and notify the Principal of that appointment.

However, the Contractor must not appoint more than one person as the Contractor's Representative at the same time.

- (d) Any notice or other information delivered or communicated to the Contractor's Representative is deemed to have been delivered or communicated to the Contractor.
- (e) The Project Manager and the Contractor's Representative must meet and communicate as necessary to ensure the harmonious completion of the work under the Contract and delivery of the Work.
- (f) For the purpose of this Contract, the Contractor is responsible and liable for the acts or omissions of the Contractor's Agents as though those acts or omissions were the acts or omissions of the Contractor.

4 EXECUTION AND COMPLETION OF WORK

- (a) The Contractor must carry out and deliver the Work in accordance with the Contract.
- (b) Unless otherwise provided, the Contractor is responsible for all things, including items not expressly mentioned in the Contract, necessary for the satisfactory completion of the Work.
- (c) The parties acknowledge that the Work may include from time to time a Scope of Works for a single project or for various independent and standalone projects (each a "Project").
- (d) When the Contractor considers that all of the Work or the Work for a specific Project (as applicable) has been completed (including any remedial works) in accordance with the Contract, the Contractor may request the Principal to confirm whether the relevant Work have been completed to the satisfaction of the Principal. A request under this clause must be accompanied by such information and documentation as is required by the Principal including, if applicable, as-constructed plans.
- (e) The Principal must consider a request and the accompanying information from the Contractor under Clause 4(d) and notify the Contractor as to whether the Principal considers that the relevant Work has been completed to the Principal's satisfaction. If the Principal notifies the Contractor that the relevant Work have been satisfactorily completed, that notice will be evidence of Practical Completion of the relevant Work.
- (f) The Principal or the Project Manager may give the Contractor directions in relation to the Works from time to time and the Contractor must comply with those directions except to the extent that the direction is inconsistent with this Contract or would materially change the Works or the cost of the Works. For the avoidance of doubt, a direction given under this clause with which the Contractor must comply is not a variation of the Works and Clause 10 does not apply to that direction.
- (g) The Principal or the Project Manager may from time to time (acting reasonably) request the Contractor to provide information in connection with the Works or a Site or the performance of obligations under this Contract and the Contractor must promptly provide the requested information.

5 RELATIONSHIPS AND DISPUTES

- (a) Each party will, at all times, act in good faith and in a co-operative manner and do all things reasonably expected of it to implement the Contract and to ensure that the Work is completed in a safe, expeditious and cost-efficient manner.
- (b) Where a dispute or difference emerges between the parties under or in connection with this Contract ("**Dispute**"):
 - (i) one party may serve upon the other a notice of that a Dispute exists and that provides details of the Dispute;
 - (ii) within 14 days after service of that notice, the Project Manager and the Contractor's Representative must confer at least once and undertake genuine and good faith negotiations with a view to resolving the Dispute; and
 - (iii) in the event that the Dispute cannot be so resolved, either party may by notice in writing delivered by hand or sent by registered post to the other party refer the Dispute to litigation.

6 ASSIGNMENT

The Contractor must not, without the prior written approval of the Principal and except on such reasonable terms and conditions as may be determined in writing by the Principal, assign the Contract or any payment or any other right or benefit or interest thereunder.

7 TIME AND PROGRESS

The Contractor must regularly and diligently progress the Work.

8 COST

- (a) The Principal must pay the Contractor the Contract Price and such other amounts as expressly required under this Contract, subject to and in accordance with the Contract.
- (b) The Contract Price is not subject to adjustment for any rise and fall in costs.
- (c) The Contractor must not, in respect of the work under the Contract, attempt or seek to impose any costs, expenses or charges that:
 - (i) are calculated other than in accordance with Annexure B; or
 - (ii) would result in the estimate applicable to any relevant Works (as notified to the Principal under Clause 10(d) and accepted by the Principal under Clause 10(e)) being exceeded,

unless the Contractor has obtained the Project Manager's written approval to such costs, expenses or charges prior to the Contractor incurring such costs, expenses or charges.

9 QUALITY

- (a) The Contractor must perform its obligations under this Contract (including carrying out and delivering the Work) in a proper and tradesmanlike and to standards commensurate with Good Industry Practice.
- (b) In the absence of any requirement to the contrary, the Contractor must use suitable new materials for the Work.
- (c) The Contractor must comply with any direction by the Project Manager to remedy any Work not carried out in accordance with the Contract within the period of time stipulated by the Project Manager.

10 SETTING AND VARYING THE SCOPE OF WORKS

- (a) The Contractor acknowledges and agrees that because of the nature of emergency repair work, the Scope of Works is therefore not fixed but subject to fluctuation and that from time to time there may be no Scope of Works under the Contract.
- (b) Unless otherwise required by the Contract or agreed by the parties, the Scope of Works:
 - (i) will be of a character and extent contemplated by, and capable of being carried out under, a contract for emergency work required to repair damaged road network and associated infrastructure or otherwise return that road network and associated infrastructure to operation and, unless the parties otherwise agree, consistent with the Types of Work; and
 - (ii) must be set or varied only in accordance with this Clause 10.

- (c) The Project Manager may in its absolutely discretion, request the Contractor to do any one or more of the following:
 - (i) undertake works or other activities that are to be comprised in the Work;
 - (ii) decrease or increase part of the Work;
 - (iii) change the character or quality of material for Work; or
 - (iv) undertake additional or different Work,
 including for the purpose of setting or varying a Scope of Works.
- (d) Upon receipt of a notice in writing from the Project Manager of a request under Clause 10(c), the Contractor must advise the Project Manager:
 - (i) whether the proposed request can be effected;
 - (ii) the time it will take to perform the request; and
 - (iii) the estimated cost (including any delay costs if any) of the proposed request.
- (e) Upon receipt of a notice in writing from the Contractor under Clause 10(d), if the Principal notifies the Contractor that the Principal accepts the matters in that notice, then:
 - (i) the relevant Work (including the relevant Scope of Works) is set or varied accordingly; and
 - (ii) the Contractor must perform the relevant Work, and the Principal must pay the Contractor for that Work in accordance with Contract.
- (f) This Clause 10 neither prevents the parties from discussing a proposed request under Clause 10(c) or a proposed notice under Clause 10(d) nor limits Clause 3(e).
- (g) If either party requests the other party to discuss proposed Work (including a proposed Scope of Works) that is the subject of this Clause 10, the parties must participate in such discussions promptly and in accordance with their obligations under Clause 5(a). For the avoidance of doubt, the parties may elect to conduct discussions through the Project Manager and the Contractor's Representative pursuant to Clause 3(e).
- (h) Where the Principal has requested a variation to any Work (including any Scope of Works) but has not agreed with the Contractor's notice under Clause 10(d) in respect of that variation, the Principal may elect to continue with the relevant Work (including Scope of Works) without the variation or to notify the Contractor to cease the relevant Work.
- (i) For the avoidance of doubt, if the Principal elects, under Clause 10(h), for the Contractor to cease the relevant Work after the Contractor has already commenced that Work, then:
 - (i) Clause 24.2 will apply to the Contractor's cessation of the relevant Work as though a reference in Clause 24.2 to the termination of the Contract was a reference to that cessation of the relevant Work; and
 - (ii) the Principal's election does not affect any other Work that was not the subject of that election and does not constitute a termination or repudiation of the Contract.
- (j) If:
 - (i) the Principal has received a notice from the Contractor under Clause 10(d);

- (ii) the Principal has accepted that notice an agreed Scope of Work; and
- (iii) that notice includes cost or price information that is inconsistent with or not include in Annexure B,

then:

- (iv) the Principal may notify the Contractor that it requires the parties to agree amendments to Annexure B to reflect that information prior to the Contractor proceeding with the relevant Work; and
- (v) upon the parties signing and exchanging an amended Annexure B:
 - (A) this Contract is amended to replace Annexure B with that amended Annexure B; and
 - (B) subject to the terms of this Contract, the Contractor may proceed with the relevant Work.
- (k) For the avoidance of doubt, where the Principal has not elected under Clause 10(j) to require an amended Annexure B to be prepared and agreed, the parties may still proceed with the relevant Work in accordance with this Contract and the relevant Scope of Works.

11 DATA COLLECTION AND REPORTING OBLIGATIONS

- (a) The Contractor acknowledges that the Principal requires the collection of evidence, data and other information relating to the Works and that evidence, data and other information is of critical important to the Principal in order to procure reimbursement of the costs of the Works.
- (b) The Contractor must collect evidence, data and other information of the types referred to in the “NDRRA Events Evidence Capture and Review Guidelines” (NDRRA-PMD-GL-PM-008) and otherwise in accordance the Principal’s requirements from time to time (acting reasonably) and promptly report that evidence, data and other information to the Principal.
- (c) The Principal must provide a copy of that Guidelines to the Contractor and any other information collection requirements of the Principal from time to time relevant to the Works.

12 COMPLIANCE WITH LAW

- (a) The Contractor must comply with all laws, and requirements of bodies, authorities, officials or other organisations having jurisdiction in connection with the Contract and the Work.
- (b) The Contractor must pay all statutory fees payable in connection with the Contract and the Work (whether payable by the Contractor or the Principal), including, where applicable:
 - (i) the portable long service leave levy;
 - (ii) the construction industry training levy; and
 - (iii) the work health and safety levy,

payable under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld).

- (c) For the avoidance of doubt, the statutory fees payable by the Contractor will be treated as a reimbursable cost for the purpose of the Contract Price and, subject to the Contractor having obtained the Principal's prior approval of those reimbursable costs under Clause 8(c), will be payable in accordance with the Contract.

13 PROTECTION OF PEOPLE AND PROPERTY

13.1 Contractor's obligations

Nothing in Clause 13 limits or excludes any of the Contractor's obligations or liabilities under the Contract.

13.2 Protection of people and property

- (a) The Contractor must:
- (i) provide all things and take all measures necessary to protect people and property;
 - (ii) avoid unnecessary interference with the passage of people and vehicles, and
 - (iii) prevent nuisance and unreasonable noise and disturbance.
- (b) Without limiting the generality of the Contractor's obligations under Clause 13.2(a), those obligations include providing and managing barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, traffic flagging, safety helmets and clothing, the removal of obstructions and the protection of Services.
- (c) If the Contractor or the Contractor's Agents damage property, including any Public Utilities Plant, Services or property on or adjacent to the Site, the Contractor must promptly at the Contractor's cost make good the damage and pay any compensation the Contractor is required by law to pay.
- (d) If the Contractor fails to comply with an obligation under Clause 13.2 the Principal may, in addition to any other remedy, perform the obligation on the Contractor's behalf and the cost incurred by the Principal shall be a debt due and owing from the Contractor to the Principal.

13.3 Work health and safety

13.3.1 Definitions

For the purposes of this Clause 13.3:

- (a) the words "construction project", "construction work", "notifiable incident", "person conducting a business or undertaking", "person with management or control of the workplace", "person with management or control of fixtures, fittings or plant at the workplace", "principal contractor" and "serious injury or illness" have the meanings assigned to them by the *Work Health and Safety Act 2011* (Qld) (WHS Act) and the *Work Health and Safety Regulation 2011* (Qld) (WHS Regulation); and
- (b) "Workplace" means a "workplace" (as defined under the WHS Act) where Work (including construction work) is, or is to be, performed by, for, at the direction of, or on behalf of the Contractor and includes any Site.

13.3.2 General

- (a) The Contractor acknowledges and agrees that, as between the parties, in respect of each Workplace the Contractor is, for the purposes of the WH&S Act:
 - (i) the person conducting a business or undertaking that installs, constructs or commissions a construction project or construction work (including any structures) undertaken or to be undertaken at that Workplace and the design of that construction project (including any structure); and
 - (ii) the person with management or control of that Workplace, and the person with management or control of fixtures, fittings and plant at that Workplace.
- (b) Without limiting the remainder of this Clause 13.3, the Contractor must:
 - (i) ensure that it complies with the Principal's work health and safety requirements when performing the Work;
 - (ii) ensure that it complies with its obligations under the WHS Act and WHS Regulations and ensure that it consults, cooperates and coordinates activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (iii) comply with the requirements of the WHS Act, WHS Regulation and the Principal's workplace health and safety management plan;
 - (iv) ensure the health and safety of any Person affected by the Work including, but not limited to:
 - (A) the Contractor's Agents;
 - (B) the Principal's employees and agents;
 - (C) users of the road infrastructure; and
 - (D) occupiers of land comprised in, adjacent to or adjoining the Site, while carrying out the Work; and
 - (v) use its best endeavours not to affect the Principal's ability to discharge its obligations under the WHS Act and WHS Regulations.

13.3.3 Specific obligations – management and control

The Contractor agrees that:

- (a) the Work may include construction Work that is a 'construction project' for the purposes of the WHS Regulation;
- (b) if the Work is or includes a construction project, the Contractor is the principal contractor for the construction project and, for the avoidance of doubt, the Principal engages the Contractor as the principal contractor for that construction project;
- (c) the Contractor is:
 - (i) responsible for discharging its duties and obligations under the WHS Act and WHS Regulation as a person conducting a business or undertaking and as the principal contractor for the relevant construction project;
 - (ii) authorised to have management and control of the Workplace;

- (iii) required to consult with the Principal in relation to matters of safety that the Contractor cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal to ensure any issues are resolved to the required standard; and
- (iv) comply with the WHS Act and the WHS Regulation.

13.3.4 Responsibilities and liabilities

- (a) The Contractor is responsible for, and assumes liability for, the duties and obligations under the WHS Act and the WHS Regulation for which the Contractor is responsible and liable as between the parties in accordance with this Clause 13.3.
- (b) The Contractor must, and must ensure that the Contractor's Agents, take all steps necessary to prevent exposure of all persons to any risks to health and safety arising in connection with the performance of the Work including construction work at a Workplace
- (c) Nothing contained in this Clause 13.3 limits or excludes any of the Contractor's obligations or liabilities under the Contract or limit the Contractor's obligations under any law.

13.3.5 Notifiable incidents

The Contractor must:

- (a) comply with its obligations under the WHS Act in relation to any notifiable incident arising out of, or in connection with, the conduct of the business or undertaking of the Contractor or any Work or Site;
- (b) notify the Principal of every notifiable incident in relation to or in connection with any Work or Site within a time period that ensures the Principal can comply with its obligations under the WHS Act in relation to any notifiable incident;
- (c) keep the Principal informed of the status of any incidents related to safety or health that have occurred in relation to or in connection with any Work or Site;
- (d) do all that is necessary to assist the Principal with any investigations into any incident related to safety or health in relation to, or in connection with, any Work or Site, including requiring, to the extent possible, the Contractor's Agents to assist the Principal;
- (e) as soon as practicable, but no later than within 12 hours of receiving a request from the Principal to do so, provide the Principal with a copy of any notification to the regulator for work health and safety of an incident related to safety or health; and
- (f) consult, cooperate and coordinate with the Principal at progress meetings in relation to any health or safety matters arising out of, or in connection with, any Work or Site.

13.3.6 Indemnities

To the extent permitted by law, the Contractor indemnifies, and will keep indemnified, the Principal from and against all loss which may be brought against or made on the Principal or which the Principal may incur, sustain or be put to arising by reason of or in connections with:

- (a) any breach of the WHS Act or the WHS Regulation at a Site or in connection with the Work caused, or contributed to, by the Contractor or the Contractor's Agents;
- (b) any breach by the Contractor of its obligations under this Clause 13.3 or its duties or obligations under the WHS Act or the WHS Regulation; or

- (c) the Principal being deemed under the WHS Act to be the person with management or control of a Workplace or the person with management or control of any fixtures, fittings and plant at a Workplace.

It is not necessary for the Principal to incur expense or make a payment before enforcing any indemnity conferred by this Clause 13.3.6. This Clause 13.3.6 survives the termination of the Contract

13.4 Public notification

- (a) Where directed by the Principal, dissemination of information to the community regarding significant changes on the nature and effect of Work under the Contract to traffic must be provided by the Contractor to the public.
- (b) The Contractor must ensure:
 - (i) adequate information is advertised publicly to keep the community informed of significant changes to normal traffic movements, such as detours over other roads, and of any possible disruptions;
 - (ii) as much notice as possible of such changes must be given to the public, but it must not be less than 24 hours or as otherwise agreed; and
 - (iii) the agreement of the Principal to the extent and nature of all such publicity prior to implementation is obtained.
- (c) The cost of any dissemination of information ordered by the Contractor and agreed by the Principal shall be included as a variation under Clause 10(d).

13.5 Other traffic management issues

The Contractor will ensure that no motor vehicle traffic lane is left closed overnight without first obtaining the Principal's written approval of the closure and of the traffic arrangements that will apply.

14 POSSESSION AND CARE

- (a) The Principal must on, or before, the date set out in the relevant Scope of Works give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence the relevant Work, provided, however, that the Principal is not obliged to give possession of the Site if:
 - (i) the Contractor has not supplied to the Project Manager proof of the implementation of the requirements stated in Item 9 or Annexure A; and
 - (ii) the Contractor has not obtained all insurances required to be obtained under Clauses 19.5 to 19.7 and provided proof of those insurances to the Principle as referred to in Clause 19.8.
- (b) If the Principal has not given the Contractor possession of the whole Site, the Principal must, from time to time give the Contractor possession of such further parts of the Site as may be necessary to enable the Contractor to execute the Work in accordance with the requirements of the Contract (subject to the Contractor having complied with the requirements under Clause 14(a) in respect of those further parts of the Site). The Principal must advise the Contractor in writing of the date upon which the Site or any part thereof will be available.

- (c) Possession of the Site confers on the Contractor a right only to use and control the Site as is necessary to enable the Contractor to execute the Work.
- (d) Except to the extent agreed in writing by the parties, the Contractor acknowledges and accepts that the public use of the Site must be fully maintained during the performance of the Work.
- (e) For the avoidance of doubt, the Principal may limit the times during a day when the Contractor has possession of the Site. Without limiting the Scope of Works or the Contractor's safety obligations under this Contract or at law, the Contractor must leave the Site in a clean, safe and tidy condition at the end of each period of possession.
- (f) Where the Contractor has completed the Works for all or part of a Site, the Contractor may hand back possession to the Principal by seeking and obtaining the Principal's acceptance that the relevant Works have been completed. Where the Principal does not accept that the relevant Works have been completed:
 - (i) the Principal must provide reasons to the Contractor for that refusal; and
 - (ii) the Contractor remains in possession of the Site.

15 RESTRICTIONS TO WORKING TIMES

The Contractor agrees that work under the Contract which will require involving lane closures, stop/go arrangements or construction traffic entering, operating on or leaving any through traffic lanes must not be carried out during the periods notified by the Project Manager from time to time.

16 SUPPLY OF MATERIAL AND KEY PERSONNEL

- (a) Where the Principal intends to make available any materials under the Contract free of charge to the Contractor ("Principal Supplied Material"), such materials are listed on a Principal Supplied Material List included in Annexure C.
- (b) Unless otherwise specified in the Scope of Works for a Project and without limitation to clauses 4(b) and 10, the parties intend that the Contractor will procure or make available the materials listed on the Contractor Supplied Key Materials Lists included in Annexure D for the purpose of the Works.
- (c) Unless otherwise specified in the Scope of Works for a Project, the Contractor must make the Key Personnel available for any Works.

17 PUBLIC UTILITY PLANT

- (a) The Contractor must notify the Project Manager and the person or authority responsible for such Public Utility Plant ("responsible Authority") immediately of any damage to any Public Utility Plant caused by the Work.
- (b) If directed by the Project Manager, the Contractor must ensure that a Public Utility Plant affected by the Work is relocated as necessary in accordance with the requirements of the relevant responsible Authority.

18 CONSIDERATION OF OTHERS

18.1 Adjoining Work

The Contractor acknowledges that:

- (a) when it commences any Work, prior contractors may not have completed their works and may be doing so at the same time as the Contractor is executing that Work; and
- (b) contractors may be executing work on other contracts which may interface with the Work.

The Contractor agrees that it will be responsible for co-ordination of its Work with that of other contractors so as not to disrupt, impede or adversely affect those other contractors in the execution of their work.

18.2 Adjoining Land

- (a) In performing the Work the Contractor must not (and must ensure the Contractor's Agents do not) enter or permit Constructional Plant and equipment to enter land adjoining or adjacent to the Site that is not owned by or otherwise under the control of the Principal without first obtaining the written approval of the land occupier and the land owner (where these are not the same person).
- (b) The Contractor must seek written direction from the Project Manager in the event the Contractor is unable to obtain the written approval of the land occupier/owner prior to entering that land.

19 RISK AND INSURANCES

19.1 Indemnity by Contractor

The Contractor must indemnify the Principal against:

- (a) loss of or damage to property of the Principal, including existing property in, or upon, which the Work is being carried out, and;
- (b) claims by any person (including claims by owner or occupiers of areas adjoining or adjacent to the Site) against the Principal in respect of personal injury or death or loss of or damage to any property,

arising out or as a consequence of the carrying out by the Contractor of the Work, but the Contractor's liability to indemnify the Principal is reduced proportionally to the extent that the act or omission of the Principal or employees or agents of the Principal contributed to the loss, damage, death or injury. This Clause 19.1 does not:

- (i) apply to the extent that the liability of the Contractor is limited by another provision of the Contract; or
- (ii) exclude any other right of the Principal under the Contract to be indemnified.

This Clause 19.1 survives the termination of the Contract.

19.2 Release by Contractor

The Contractor releases and discharges the Principal from any loss or claim which but for the provisions this Clause 19.2 might be brought against or made upon the Principal by the Contractor

except to the extent that such loss or claim arises out of or in connection with:

- (a) any negligent act, error or omission by the Principal (or its employees or agents) in relation to the Work; or
- (b) any material and substantial default by the Principal under this Contract.

This Clause 19.2 survives the termination of the Contract.

19.3 Exclusion of Consequential Loss

Despite any other provision of this Contract, the Principal is not liable to the Contractor for any Consequential Loss suffered by or claimed against the Contractor howsoever arising (including arising in contract or negligence). This Clause 19.3 survives the termination of the Contract.

19.4 Application of insurance requirements

Clauses 19.5 to 19.9 apply unless the Principal (in its absolute discretion) has directed the Contractor in writing that those provisions do not apply, subject to and in accordance with the terms of that direction.

19.5 Insurance of the Work

- (a) The Contractor must effect and maintain an insurance policy covering all Work to be performed or provided under this Contract (from time to time) against loss or damage resulting from any cause whatsoever until those works (including all remedial works) have reached Practical Completion and the Contractor ceases to be responsible for their care. Insurance effected by the Contractor must be with an insurer and on terms both approved in writing by the Principal, which approvals must not be unreasonably withheld.
- (b) The insurance cover must be for an amount in respect of any one occurrence not less than the amount stated in Item 8 of Annexure A. The policy must be maintained until the Works (including all remedial works) have reached Practical Completion and the Contractor ceases to be responsible for the care of those Works (including remedial works).

19.6 Public Liability Insurance

- (a) The Contractor must effect a public liability policy of insurance in the joint names of the Principal and the Contractor which covers the Principal, the Contractor, the Project Manager and all of the Contractor's Agents employed from time to time in relation to the Work for their respective rights and interests, and covers their liabilities to third parties. The policy must also cover the Contractor's liability to the Principal and the Principal's liability to the Contractor for loss of or damage to property (other than property required to be insured by Clause 19.5) and the death of or injury to any person (other than liability which is required by law to be insured under a worker's compensation policy of insurance). Insurance effected by the Contractor must be with an insurer and in terms both approved in writing by the Principal, which approvals must not be unreasonably withheld.
- (b) The public liability policy of insurance must be for an amount in respect of any one occurrence not less than the amount stated in Item 7 of Annexure A. The policy must be maintained at all times when the Contractor has access to a Site or any Work has not achieved Practical Completion.

19.7 Insurance of Employees

- (a) The Contractor must insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law. The insurance cover will be maintained until all work including remedial work is completed.
- (b) Where permitted by law, the insurance will be extended to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor.
- (c) The Contractor will ensure that every subcontractor and consultant it engages in relation to the Contract is similarly insured.

19.8 Proof of Insurance

Before commencing to perform Work on the Site and otherwise when requested by the Principal from time to time, the Contractor must provide to the Principal a certificate of currency for each of the policies to be effected the Contract and such further proof of the currency and the extent of cover of such insurances as may be required by the Principal.

19.9 Notice from or to the Insurer

- (a) The Contractor must, in respect of the insurances it is responsible for arranging under the Contract, notify the Principal as soon as practicable whenever the insurer gives the Contractor a notice of cancellation or any other notice under or in relation to the policy.
- (b) The Contractor must, as soon as practicable, inform the Project Manager in writing of any occurrence relating to the Work or this Contract that may give rise to a claim under a policy of insurance and must keep the Principal informed of subsequent developments concerning the claim.

20 WET WEATHER

- (a) In the event that the Contractor is unable to progress work under the Contract due to wet weather (to be determined by the Principal), the Contractor will be entitled to payment in accordance with the hourly standby rates set out in Annexure B to a maximum of 8 hours on any calendar day.
- (b) The amount to which the Contractor is entitled to under this Clause 20 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with any delay and disruption which the Contractor encounters in carrying out work under the Contract and any claim for payment in relation to that delay and disruption by the Contractor. The Contractor agrees that it is not entitled to claim for delay or disruption for wet weather where the Contractor has been paid under Clause 20.

21 CLAIMS AND CERTIFICATES

21.1 Progress Claims

At the times for progress claims stated in Item 4 of Annexure A, the Contractor will deliver to the Project Manager claims for payment in the form of Tax Invoice supported by the following:

- (a) evidence of the amount due to the Contractor;
- (b) evidence in the form of statutory declaration that all subcontractors have been paid; and
- (c) such information as the Project Manager may reasonably require.

21.2 Progress Claim Requirements

Claims for payment will include the value of work carried out by the Contractor in the performance of the Contract to that time as calculated in accordance with Annexure B, together with all amounts then due to the Contractor arising out of or in connection with the Contract and GST. Where the Contractor is entitled to payment on a cost-reimbursable basis, progress claims will include the Margin, and also allow for GST.

21.3 Payment Certificates

Within 14 days after receipt of a valid claim for payment, the Project Manager will issue to the Principal and to the Contractor a payment certificate stating the amount of any payment to be made.

21.4 Miscellaneous

Payment of moneys to the Contractor will not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but will be a payment on account only.

21.5 Audit

- (a) The Principal or the Principals employees, agents or contractors may at any time and from time to time undertake an audit of all matters pertaining to any amount that the Principal has paid or is liable to pay the Contractor under the Contract.
- (b) The Contractor must comply in all respects with any request for information and documents and further information or documents which the Principal may make relating to this Clause 21.

22 GST

- (a) Unless otherwise defined in this Contract, a term used in this Clause 22 that is defined in the GST Legislation has the meaning given in the GST Legislation.
- (b) Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST.
- (c) To the extent that any supply made under or in connection with this Contract is a taxable supply, the consideration for that supply is increased by an additional amount equal to the Amount of Consideration multiplied by the applicable GST rate.
- (d) The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not to be paid until the supplier gives the recipient a Tax Invoice.
- (e) If the additional amount differs from the amount of the GST payable by the supplier, the parties must adjust the additional amount.
- (f) If a party is entitled under this Contract to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an Input Tax Credit may be claimed by the party entitled to be reimbursed or indemnified, or by its representative member.

23 DEFAULT OR INSOLVENCY

- (a) Without prejudice to any other rights it may have, the Principal may, to the extent permitted by law, terminate this Contract by immediate notice in writing to the Contractor, if:
 - (i) an Event of Insolvency occurs in relation to the Contractor;
 - (ii) the Contractor assigns or novates its rights and interests in this Contract other than where it has first obtained consent in accordance with Clause 6; or
 - (iii) the Contractor fails to remedy a breach of this Contract within 14 days after receipt of a written notice from the Principal specifying the breach and requiring its remedy.
- (b) Any termination of this Contract does not affect any accrued right or entitlement which either party already had under the provisions of this Contract as at the date of termination.
- (c) If the Principal terminates this Contract pursuant to this Clause 23, the rights of the Principal and liabilities of the Contractor shall be the same as they would have been at common law had the Contractor repudiated the Contract and the Principal had elected to treat the Contract as at an end and recover damages.
- (d) This Clause 23 survives the termination of the Contract.

24 TERMINATION FOR CONVENIENCE

24.1 Termination

- (a) Without prejudice to any of the Principal's other rights or entitlements or powers under the Contract, the Principal may:
 - (i) at any time for its sole convenience by written notice to the Contractor terminate the Contract from the date stated in the notice; and
 - (ii) thereafter either itself or by third parties, in the Principal's absolute discretion, complete any uncompleted part of the Work.
- (b) Upon receiving a notice of termination under this Clause 24.1, the Contractor must, subject to the overriding obligation to maintain a safe workplace and comply with all relevant laws, immediately cease all work under the Contract or take such other action as directed in the notice of termination or both.

24.2 Costs and survival

- (a) If the Principal terminates the Contract under Clause 24.1:
 - (i) the Contractor is entitled to payment of the following amounts as reasonably determined by the Project Manager:
 - (A) for work carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for work carried out to the date of termination;
 - (B) the cost of materials reasonably ordered by the Contractor for the Work, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment and the value of such materials is not included in the amount payable under Clause 24.2(a)(i)(A); and

- (C) the reasonable cost of removing from the Site all labour, Constructional Plant and other things used in connection with Work; and
 - (ii) the Contractor must immediately take all steps possible to mitigate the costs incurred or amounts payable by the Principal under this Clause 24.2(a).
- (b) The amount to which the Contractor is entitled under this Clause 24.2 limits the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract under Clause 24.1 and the Contractor may not make any claim against the Principal arising out of, or in any way in connection with, that termination other than for the amount payable under this Clause 24.2. The Contractor agrees that is it not entitled to claim for any costs in relation to the Principal exercising its rights under this Clause 24.1 other than the costs payable under this Clause 24.2.
- (c) This Clause 24 survives the termination of the Contract.

25 CONFIDENTIALITY

- (a) This Contract and any documents or information relating to Work are confidential and the Contractor must not disclose any of these without the prior written consent of the Principal except to the extent that the disclosure is required for the Contractor to carry out its obligations under the Contract or is required by law.
- (b) The Contractor acknowledges and agrees that the Principal may be required to make disclosure of any information identified as confidential (or which should reasonable be recognisable as confidential) in the business of government included to the Queensland Parliament or to the Auditor-General.

26 PUBLIC STATEMENTS

Without limiting Clause 25, the Contractor must:

- (a) not give any information or issue any document or other written or printed material concerning the Work to the media or for publication in the media without the prior written approval of the Project Manager;
- (b) refer any enquiries from the media concerning the Work to the Project Manager; and
- (c) not take, or permit to be taken, any photographs of the Work or any part thereof, the Site or anything in connection with the Work or the Site without the prior written approval of the Project Manager.

27 SERVICE OF NOTICES

To be valid, a notice or other document or communication (**Notice**) under this Contract must be delivered by:

- (a) hand delivery;
- (b) registered post;
- (c) email; or
- (d) facsimile transmission; and

addressed in accordance with the details given for each party in the Formal Instrument of Agreement or to such other address advised in writing by a party to the other party.

A Notice is deemed to have been received:

By	Deemed to be received
Hand	at the time of delivery
Registered post	on the third Business Day (or the 10th Business Day if posted to or from a place outside Australia) after posting "when signed for as received by the receiver"
Email	on a Business Day, on dispatch of the transmission, or on a day other than a Business Day, on the next Business Day, unless the sender's server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission
Facsimile	at the time recorded on the transmitting fax machine as substantiated by a fax transmission report, provided: <ul style="list-style-type: none"> (i) the transmission was sent to the correct number; and (ii) the time of transmission is not contradicted by the incoming fax report.

28 GENERAL CLAUSES

- (a) This Contract may only be amended or replaced by the written agreement of the parties.
- (b) A single or partial exercise or waiver by a party of a right relating to this Contract does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (c) Except as expressly stated otherwise in this Contract, the rights of a party under this Contract are cumulative and are in addition to any other rights of that party.
- (d) Each party must promptly do whatever any other party reasonably requires of it to give effect to this Contract and to perform its obligations under it.
- (e) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (f) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (g) An obligation of two or more persons binds them separately and together.
- (h) This Contract may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- (i) This Contract contains the entire understanding between the parties as to the subject matter of this Contract. All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Contract are merged in and superseded by this Contract and are of no effect. No party is liable to any other party in respect of those matters.

- (j) No oral explanation or information provided by any party to another affects the meaning or interpretation of this Contract or constitutes any collateral agreement, warranty or understanding between any of the parties.
- (k) This Contract is not intended to create a partnership, joint venture or agency relationship between the parties.

29 INTERPRETATION

- (a) Unless expressed to the contrary, in this Contract:
 - (i) words in the singular include the plural and vice versa;
 - (ii) any gender includes the other genders;
 - (iii) if a word or phrase is defined its other grammatical forms have corresponding meanings;
 - (iv) 'includes' means includes without limitation;
 - (v) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
 - (vi) a reference to:
 - (A) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (B) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (C) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (D) time is to local time in Brisbane;
 - (E) '\$' or 'dollars' is a reference to Australian currency;
 - (F) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (G) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (H) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Contract;
 - (vii) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
 - (viii) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.
- (b) Headings do not affect the interpretation of this Contract.

SCHEDULE 1 - DEFINITIONS

Amount of Consideration means the amount of any payment in connection with a supply and in relation to non-monetary consideration in connection with a supply the GST exclusive market value of that consideration as reasonably determined by the supplier.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Brisbane.

Consequential Loss means:

- (a) any special, indirect or consequential loss; and
- (b) any loss of profits, production, business, revenue, use, anticipated savings, contract, opportunity, reputation or goodwill, any wasted overheads or any damage to credit rating whatsoever.

Constructional Plant means appliances and things used in the execution of the work performed or to be performed under the Contract but not forming part of the Scope of Work.

Contractor means the person so named in the Formal Instrument of Agreement.

Contractor's Agents means the Contractor's employees, agents, officers, subcontractors, invitees and persons authorised or permitted by the Contractor to be on the Site.

Contractor's Representative means the person appointed as such by the Contractor from time to time under Clause 3(c).

Contract Price means the sum of:

- (a) the cost of carrying out or delivering the relevant Work, as calculated by reference to the rates specified in Annexure B and in accordance with the Contract; and
- (b) subject to the Contractor obtaining the approval required under Clause 8, the reimbursable costs necessarily incurred by the Contractor in carrying out or delivering the relevant Work,

as verified and substantiated by the invoices, accounts and records submitted on an Open Book basis by the Contractor to the Project Manager for the relevant work or item, plus the Margin.

Dispute has the meaning given in Clause 5(b).

Event of Insolvency occurs if:

- (a) a receiver, a receiver and manager, an administrator or other controller is appointed in respect of the Contractor or the Contractor's estate or interest under the Contract;
- (b) any encumbrancer takes possession of any asset(s) of the Contractor;
- (c) any execution or other like process of law in respect of an amount exceeding \$10,000.00 is issued against or levied upon the Contractor's estate or interest which is not paid out, satisfied or withdrawn within 14 days of the date of issue against or levy upon such estate or interest;
- (d) a liquidator or provisional liquidator is appointed or an order is made or an effective resolution is passed for the liquidation of the Contractor;
- (e) the Contractor enters into an arrangement or composition with its creditors (or any one of them), or proposes to do so, or passes a resolution under Part 5.3A of the Corporations Act 2001 with the purpose of appointing a voluntary administrator;
- (f) the Contractor fails to satisfy a statutory demand under section 459C of the Corporations Act 2001; or

- (g) where the Contractor is an individual person or partnership including an individual person, and if that person (or any person being a member of the partnership):
- (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;
 - (v) has a personal insolvency agreement accepted by creditors, appoints a controlling trustee for the purpose of entering into a personal insolvency agreement, 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
 - (vi) where a Related Entity as defined in the section 9 of the *Corporations Act 2001* (Cth) is the subject of an Insolvency Event.

Formal instrument of Agreement means the formal instrument to which these General Conditions of Contract are attached.

Good Industry Practice means the exercise of the standard of care, skill, diligence, prudence, foresight and attention which would be expected at the time of the relevant conduct in the State of Queensland on the part of a skilled, competent and experienced person engaged in work, duties and functions comparable with those of the Contractor in connection with the Work.

GST means the goods and services tax imposed under the GST Legislation. A reference to an amount of GST is reference to the GST liability in respect of the supply in question

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), associated legislation and any additional or substituted legislation providing for a value added tax, consumption tax, retail tax or other goods and services tax.

Key Personnel means the Contractor's employees listed in Annexure E.

Margin means the amount for corporate overheads and profit calculated by applying the percentage stated in item 6 of Annexure A to the costs referred to in paragraph (b) of the definition of Contract Price and includes any corporate overheads and profit payable by the Contractor to subcontractors (if any).

Open Book means is open and transparent disclosure on a basis which provides full disclosure of all information and documentation of financial costs so that only properly incurred reimbursable costs are sought to be recovered by the Contractor.

Practical Completion means the date of satisfactory completion of the Work as stated in writing by the Project Manager in accordance with Clause 4(e).

Principal means the party so named in the Formal Instrument of Agreement.

Principal Supplied Material has the meaning given in Clause 16.

Project Manager means the person appointed as such by the Principal from time to time under Clause 3(a).

Public Utilities Plant means any railway, monorail, tramway, viaduct, aqueduct, conduit, water channel, pipeline (water, stormwater, gas, sewerage or otherwise), fixed mechanical conveyor, tower, pole, cable (electrical, fibre optic, telecommunications or otherwise), electrical installation or telecommunications plant that is on, in, over, under or adjacent to the Site. However, the term does not include Constructional Plant.

Region means the region specified in Item 1 of Annexure A.

Scope of Works means emergency work required to repair damaged road network and associated infrastructure in the Region, as set or varied from time to time in accordance with the Contract (including under Clause 10).

Services includes electricity, gas, water sewerage, telecommunications, transport or other services delivered or provided through Public Utility Plant.

Site means the lands and other places to be made available to the Contractor for the purposes of the Contract.

Tax Invoice means as defined in the GST Legislation.

Temporary Works means works used in the execution of the work performed or to be performed under the Contract but not forming part of the Scope of Works.

Types of Work means the description set out in Item 1 of Annexure A.

Work means the Scope of Works and all other work which the Contractor is or may be required to perform in accordance with the Contract (together with all variations, remedial work, Constructional Plant and Temporary Works) including as set or varied in accordance with Clause 10 from time to time.

Annexure A – Contract Information

Contract Number

Clause numbers refer to clauses in the General Conditions of Contract.

Item 1	Region	
	Types of Work	

Item 2	Project Manager	
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Item 3	Contractor's Representative	
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Item 4 Date for submitting progress claims 25th day of each month

Item 5 Date for giving possession of Site to the Contractor Does Clause 14 apply? Yes No

[If nothing stated, 10 Business Days after the date of acceptance of Tender]

Item 6	Margin	
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Item 7	Public Liability Insurance		<i>[If nothing stated, the minimum public liability insurance required is \$20,000,000 per occurrence]</i>
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Item 8	Works Insurance		<i>[If nothing stated, the minimum works insurance required is \$20,000,000 per occurrence]</i>
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Item 9	Implementation Requirements	
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Item 10 Additional Clauses Yes No

[If 'Yes', insert additional clauses]

Annexure B – Price

Part 1: Schedule of Rates – Personnel

Position/Classification	Rate per hour (A\$)	Daily Rate (A\$)	Number	% Utilisation
On-site Overheads				
Other				

Notes to Schedule of Rates - Personnel:

1. All rates exclude Australian GST.
2. The rates provided must include and will be deemed to include all employment costs including, without limitation, all wages, salaries, leave allowances, bonuses, site mobilisation and disability allowances, workers' compensation insurance premiums, payroll tax, fringe benefit tax, superannuation costs, travelling and accommodation costs.
3. The daily rates must apply where the hours worked on any calendar day are equal to or more than 8 hours.
4. The hourly rates will apply where the hours worked on any calendar day are less than 8 hours.

Annexure C – Principal Supplied Material List

[insert Principal Supplied Material List]

No.	Description	Quantity	Unit Rate	Location
1				
2				
3				
4				
5				

Annexure D – Contractor Supplied Key Material List

[insert Contractor Supplied Key Material List]

No.	Description	Unit Rate	Name of Contractor's supplier
1			
2			
3			
4			
5			

Annexure E – Key Personnel

[List Contractor's key onsite personnel and include CVs for each of those key onsite personnel]

