

General Conditions of Contract – C7830.MIC

Minor Infrastructure Contract

July 2021

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1 Construction of Contract

- a) The law governing the Contract, its interpretation, any agreement to arbitrate and the conduct of any arbitration or litigation, is the law of the State of Queensland.
- b) Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at the place stated in Item 1A.
- c) Any provision of the Contract which purports to, or has the effect of, limiting or excluding a liability of the Principal shall be construed as limiting or excluding that liability only to the extent permitted by law.

2 Defined terms and interpretation

2.1 Defined terms

In the Contract, except where the context otherwise requires, the following words and expressions shall have the meanings given to them below.

Term	Definition
Administrator	means the entity or individual specified in Item 5A of Annexure A, with the role as defined in the General Conditions of Contract
Administrator's Representative	means the individual stated in Item 5A as the Administrator's Representative or other person from time to time, appointed in writing by the Administrator, to be the Administrator's Representative and notified as such in writing to the Contractor and the Principal by the Administrator
Authority	means any Commonwealth, State or local government department, body or instrumentality or any other authority or body (statutory or otherwise) which has jurisdiction or authority over the Site, the execution of the Work Under the Contract, the use of the Works or with respect to any Public Utility Plant
Business Day	has the meaning given in the <i>Payments Act</i>
Certificate of Practical Completion	means a Certificate of Practical Completion issued by the Administrator under Clause 42.5
Commercial Framework	is attached as Annexure B to the General Conditions of Contract
Conformance Report	has the meaning given to that term in Clause 10.1.1 of <i>MRTS50 Specific Quality System Requirements</i>
Construction Program	for the purposes of Clause 33.4, means a statement in writing showing the dates by which, or the times within which, the various stages or parts of the Work Under the Contract are to be executed or completed
Construction Project	for the purposes of Clause 15.3, has the meaning given in the WHS Act and WHS Regulation
Contract	means the agreement between the Principal and the Contractor
Contractor	means the person stated in the Letter of Acceptance, who is bound to execute the Work Under the Contract
Contract Sum	means the amount set out in, or determined in accordance with, Annexure B (Commercial Framework)
Corporation	has the meaning given in the Corporations Law

Term	Definition
Corporations Law	means the <i>Corporations Act 2001</i> (Cth)
Date for Practical Completion	means: a) where Item 2A provides a Date for Practical Completion, that Date b) where Item 2A provides a period of time for Practical Completion, the last day of the period but if any extension of time for Practical Completion is granted by the Administrator or allowed in any arbitration or litigation, it means the date resulting therefrom
Date of Acceptance of Tender	means the date of the Letter of Acceptance issued by the Principal
Date of Practical Completion	means: a) the date certified by the Administrator in a Certificate of Practical Completion issued pursuant to Clause 42.5, to be the date upon which Practical Completion was reached, or b) where another date is determined in any arbitration or litigation as the date upon which Practical Completion was reached, that other date
Day	means calendar day
Daywork	means work which the Administrator directs to be carried out as Daywork under Clause 41
Daywork Rates	means the rates set out in the Schedule of Daywork Rates
Defects Liability Period	means the Defects Liability Period or Periods referred to in Clause 37 and any extended Defects Liability Period or Periods in accordance with Clause 37
Direction	includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction notice, order, permission, rejection, request or requirement
Environmental Management Plan	means the plan the Contractor is required to provide pursuant to Clause 15.7.2
Excepted Risks	has the meaning given in Clause 16.4
Final Certificate	means the Final Certificate issued by the Administrator under Clause 42.8
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 the <i>A New Tax System (Goods and Services Tax) Act 1999</i> , associated legislation and regulation and any additional or substituted legislation and regulation providing for a value added tax, consumption tax, retail tax or other goods and services tax
Industrial Matters	has the meaning given in the <i>Industrial Relations Act 2016</i> (Qld)
Item	means an item in Annexure A

Term	Definition
Latent Condition	<p>is a physical condition on the Site or its surroundings, including artificial things but excluding weather conditions, which differs materially and substantially</p> <p>a) from the physical conditions which should reasonably have been anticipated by the Contractor at the time of the Contractor's Tender if such a Contractor had:</p> <ul style="list-style-type: none"> i. examined all information made available in writing by the Principal to the Contractor for the purpose of making its Tender, and ii. examined all information relevant to the risks, contingencies and other circumstances having an effect on the Tender and obtainable by the making of reasonable enquiries, and iii. inspected and investigated the Site and its surroundings; or <p>b) any other conditions which the Contract specifies to be Latent Conditions</p>
Legislative Requirement	<p>means:</p> <p>a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where Work Under the Contract or the particular part thereof is being carried out, and</p> <p>b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of Work Under the Contract</p>
Letter of Acceptance	<p>means a letter of acceptance issued by the Principal to the Contractor accepting the Contractor's Tender in respect of the Works</p>
Notice of Claim	<p>means a notice which purports to be a notice of claim of charge pursuant to the <i>Payments Act</i> and which is given by a person who purports to be a Subcontractor</p>
Notices to Tenderers	<p>means notices to Tenderers issued by the Principal to clarify, revise, amend or modify any aspect of the Tender Documents before the time for submission of Tenders in respect of the Work Under the Contract</p>
Payments Act	<p>means the <i>Building Industry Fairness (Security of Payment) Act 2017 (Qld)</i> and any relevant regulations and includes any amendments to that Act and those regulations</p>
Performance Assessment Conferences	<p>has the meaning given in Clause 4.4</p>
Practical Completion	<p>is that stage in the execution of the Work Under the Contract when:</p> <p>a) the Works are complete except for minor omissions and minor defects:</p> <ul style="list-style-type: none"> i. which do not prevent the Works from being reasonably capable of being used for their intended purpose, and ii. which the Administrator determines the Contractor has reasonable grounds for not promptly rectifying iii. rectification of which will not prejudice the convenient use of the Works <p>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</p> <p>c) documents and other information required under the Contract which, in the opinion of the Administrator, are essential for the use, operation and maintenance of the Works have been supplied</p> <p>d) all certificates required by the Contract and all approvals, consents and permissions from all Authorities have been provided to the Administrator and</p> <p>e) the Contractor has done everything which it is required to do as a condition precedent to Practical Completion</p>

Term	Definition
Principal	means the Principal stated in Item 4A
Principal Contractor	for the purposes of Clause 15.3, has the meaning given in the WHS Act
Principal's Delegate	means the person or position delegated by the Principal with the authority to enter into the Contract. The Principal's Delegate shall be nominated in Item 4C
Principal's Representative	means the person or position delegated by the Principal's Delegate and shall represent the interests of the Principal when required under the Contract. The Principal's Representative shall have a good knowledge and understanding of the requirements of the Works. The Principal's Representative shall be nominated in Item 4E.
Principal Supplied Material	means the materials to be provided by the Principal as listed in any Principal supplied Item list (Form C7827) included or referred to in the Contract
Public Utility 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: a) on, in, over, under or adjacent to the Site, or b) affected by the Work Under the Contract but does not include Constructional Plant
Quality Plan	means the plan the Contractor is required to provide pursuant to Clause 30.3
Quality System	has the meaning given in Clause 30.2
Retention Moneys	means the retention moneys withheld by the Principal under Clause 42.3
Retention Security	means the security provided under Clause 5.2
Schedule of Prices	has the meaning given in Annexure B (Commercial Framework)
Schedule of Rates	has the meaning given in Annexure B (Commercial Framework)
Schedules of Daywork Rates	means the various completed schedules named 'Daywork Rates – Personnel' and 'Daywork Rates – Plant and Equipment'
Site	means the lands and other places described in Item 7A and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract
Subcontractor	means any Contractor, consultant or supplier (including their personnel), engaged by or on behalf of the Contractor with respect to the Work Under the Contract and includes the Contractor's Designers and any supplier or hirer of materials, plant or equipment
Supply	for the purposes of Clause 42.11, has the meaning given in the GST Legislation
Temporary Works	means works used in the execution of the Work Under the Contract, but not forming part of the Works

Term	Definition
WHS Legislation	means the <i>WHS Act</i> , the <i>Work Health and Safety Regulation 2011 (Qld)</i> , the <i>Electrical Safety Act 2002 (Qld)</i> , the <i>Electrical Safety Regulation 2013 (Qld)</i> , the <i>Safety in Recreational Water Activities Act 2011</i> , the <i>Mining and Quarrying Safety and Health Act 1999 (Qld)</i> , the <i>Mining and Quarrying Safety and Health Regulation 2017 (Qld)</i> and any other general law of the State or Commonwealth in respect of workplace health and safety and any State or Commonwealth Act, Regulation, Code of Practice or ministerial notice in respect of work health and safety, as amended from time to time
Working Days and Working Hours	have the meaning given in Clause 32
Works	means the whole of the work to be executed in accordance with the Contract, including variations provided for by the Contract, which by the Contract is to be handed over to the Principal
Work Under the Contract	means the work which the Contractor is or may be required to execute under the Contract and includes variations, remedial work, Constructional Plant and Temporary Works

In addition to the defined terms set out in Clause 2.1, some terms, specific to a clause, are defined in that clause.

2.2 Interpretation

- a) Reference to:
 - i. one gender includes the others
 - ii. the singular includes the plural and the plural includes the singular
 - iii. a person includes a body corporate
 - iv. money is to Australian dollars unless otherwise stated.
- b) Communications between the Principal, the Administrator and the Contractor shall be in the English language.
- c) Headings are for convenience only and do not form part of the Contract or affect its interpretation.
- d) If an act must be done on a specified Day which is not a Business Day, it shall be done instead on the next Business Day, except as otherwise expressly contemplated by this Contract.
- e) The word 'immediately' means to act promptly, with expedition, within a reasonable time and without unnecessary delay.

3 Nature of Contract

3.1 Performance and description

- a) The Contractor shall execute and complete the Work Under the Contract.
- b) The Principal shall pay the Contractor the Contract Sum in accordance with the Contract. The Contract Sum shall be set out in, or determined in accordance with, the relevant part of the Commercial Framework, as specified in Item 8A.

3.2 Commitment to relationship and collaboration

The parties acknowledge that a good working relationship between the Principal, the Administrator and the Contractor is a significant factor that contributes towards the successful completion of a project. The Contractor, the Principal and the Administrator jointly commit to establishing and maintaining a project team built on relationships and they agree to observe the following principles (Relationship and collaboration Principles):

- a) act as stated in this Contract and in the spirit of mutual trust, openness, respect and cooperation
- b) at all times deal with each other fairly, honestly and reasonably
- c) communicate and expeditiously reconcile any matter that may affect the proper execution and timely completion of the Work Under the Contract, and
- d) be dedicated to achieving 'best for project' outcomes.

4 Conferences

4.1 Not used

4.2 Prestart conference

- a) Prior to the commencement of Work Under the Contract, the Contractor shall contact the Administrator in order to arrange a conference (prestart conference).
- b) The prestart conference shall:
 - i. establish lines of communication and clarify all relevant responsibilities and delegations
 - ii. discuss and review those aspects of the Work Under the Contract raised by the Contractor or the Principal to assist in the efficient and harmonious progress of the Contract.

4.3 Site Conferences

- a) The Contractor shall arrange for conferences to be held at the Site (Site Conferences) to:
 - i. review progress of the Work Under the Contract
 - ii. review the Contract Plan documents and issues relating to progress of the Work Under the Contract
 - iii. review non-conformances and dispositions, and
 - iv. discuss any matters of concern related to the project with a view to their resolution as far as possible.
- b) The Administrator will chair each Site Conference and will arrange for the recording of minutes.

4.4 Contract Performance Assessment

The Administrator shall score on the Contractor's performance as set out in the Form C7902 at reaching Practical Completion and hand over to the Contractor for its comments and signature. The Contractor shall take all reasonable steps to provide its comments in a timely manner. The

Administrator shall take all reasonable steps to obtain the signature of all parties on the Form C7902 and submit a scanned copy (portable document format or PDF) via electronic mail to:

Department of Transport and Main Roads, Program Management & Delivery
Attention: Prequalification & Contracts Unit
Email address: contractorprequal@tmr.qld.gov.au

If required, by the Administrator's discretion, a monthly performance assessment can be completed using the Form C7901.

5 Retention Security and Retention Moneys

5.1 Purpose

The Retention Money or Retention Security, and any additional security are subject to the provisions of Clause 5, for the purpose of ensuring the due and proper performance of the Contract by the Contractor (including the satisfaction of any debts due from the Contractor to the Principal and any Claims which the Principal may have against the Contractor).

5.2 Provision of security

Security shall be provided in accordance with Item 11A of the Annexure A in a form acceptable to the Principal.

5.3 Substitution of security for Retention Moneys

- a) The Contractor may, at any time with the prior written consent of the Principal (which the Principal may give or withhold), lodge with the Administrator Retention Security in substitution for Retention Moneys (or the Principal's right to deduct Retention Moneys) as discussed under Clause 42.3.
- b) If the Contractor provides such security, the Principal shall, to the extent of that security:
 - i. not deduct Retention Moneys under Clause 42.3, and
 - ii. release any Retention Moneys previously deducted under Clause 42.3 immediately upon the provision of such security.

5.4 Form of security

- a) The security shall be any of the following:
 - i. an unconditional irrevocable bank guarantee from a bank as defined under s36 of the *Acts Interpretation Act 1954*, in the form included in the Tender Documents (Form C7841) and:
 - a. complies with the requirements of Part 2, Division 6 of the *Financial and Performance Management Standard 2009 (Qld)*, and
 - b. is approved by the Principal in its absolute discretion
 - ii. an unconditional irrevocable insurance bond from an insurance company, in the form included in the Tender Documents (Form C7844), that:
 - a. complies with the requirements of Part 2, Division 6 of the *Financial and Performance Management Standard 2009 (Qld)*, and
 - b. is approved by the Principal in its absolute discretion

- iii. if the provider has stopped being an approved security provider, the Contractor shall, immediately upon request by the Principal, substitute that bank guarantee or insurance bond submitted to the Principal
- b) The costs of and incidental to providing any security (including all stamp duty and other taxes payable in respect of the security) shall be borne by the Contractor.

5.5 Conversion of security

- a) The Principal may convert into money at any time, such part of the Retention Security and/or any additional security provided pursuant to Clause 42 that does not consist of money, whether or not it is entitled to exercise a right under the Contract in respect of the security
- b) The Principal shall not be liable in any way for any loss occasioned by the conversion of any security into money whether that conversion is done pursuant to this Clause 5.5 or any other clause.

5.6 Recourse to Retention security and Retention Moneys

The Principal may have recourse to the Security and/or the Retention Moneys if:

- a) the Principal has become entitled to exercise a right under the Contract in respect of any such security and/or Retention Moneys, and at least five Business Days have elapsed since the Principal has notified the Contractor of intention to have recourse, or
- b) the Principal has received a Notice of Claim.

5.7 Not used

5.8 Reduction of security and Retention Moneys

- a) Upon the issue of the Certificate of Practical Completion, the Principal's entitlement to:
 - i. the Security, and
 - ii. the Retention Moneysshall be reduced to the percentage stated in Item 11B.
- b) The Principal shall, within 10 Business Days of the Administrator making such a determination, release the Security and/or the Retention Moneys (as the case requires) in excess of the entitlement determined by the Administrator.

5.9 Release of security

Where the Final Certificate shows that there is no balance owing by the Contractor to the Principal, the Principal shall, subject to the provisions of Clause 5, within 10 Business Days of the issue of the Final Certificate, release to the Contractor any Security or Retention Moneys then held by the Principal.

5.10 Interest on security and Retention Moneys

- a) The Principal shall own any interest earned on:
 - i. any Security which is converted into money, and
 - ii. any Retention Moneys.

- b) The Principal does not hold any such security, converted moneys or Retention Moneys upon any trust for the Contractor or any other party.

6 Evidence of Contract

This Letter of Acceptance, including documents or parts of documents referred to in, or attached to, the Letter of Acceptance, shall evidence the Contract.

7 Service of notices

7.1 Notice requirements

- a) Subject to Clause 7.1(b), a notice, request, consent, approval, direction or other communication (notice) under or for the purposes of the Contract shall be:
 - i. in writing, in English and addressed to the receiving party, and
 - ii. either:
 - a. sent by registered post to or left at the address specified in Item 4B, 5B or 6B (as the case may be)
 - b. handed to the other party and/or the Administrator (as the case may be)
 - c. sent by email to the email address specified in Item 4D, 4F or 5C (as the case may be), or
 - d. sent via a proprietary document management system which the parties have agreed in writing may be used for the purpose of giving a notice under the Contract.
- b) Service of a notice under Clauses 44.2, 44.4, 44.7, 44.9 or 47.1 shall only be valid if effected in accordance with Clause 7.1(a)(ii)(a) or 7.1(a)(ii)(b).

7.2 Time of receipt

A notice is deemed to have been received:

- a) if sent by registered post, on the third Business Day (or the 10th Business Day if posted to or from a place outside Australia) after posting
- b) if delivered personally, upon delivery
- c) if sent by email:
 - i. on a Business Day, on dispatch of the transmission, or
 - ii. on a Day other than a Business Day, on the next Business Dayunless the sender's server indicates a malfunction or error in transmission or the recipient within four hours of sending notifies the sender of an incomplete transmission, or
- d) if sent via any proprietary document management system which the parties have agreed may be used for the purpose of giving a notice under the Contract, upon notification from that system to the recipient of the notice having been delivered on the proprietary document management system.

7.3 Notice details

A party may specify another address or email address for the purposes of this Clause 7, by notice to the other party.

7.4 Service of payment Claims

- a) Service of payment Claims under the Payments Act by the Contractor on the Principal shall be made by forwarding or serving such Claims on the same Day to both the Administrator and the Principal.
- b) The Contractor shall ensure that within 24 hours after any notice under the Payments Act (other than a payment Claim or payment schedule) is given or received by the Contractor or any Subcontractor, a copy of that notice is given to both the Principal and the Administrator.

8 Contract documents

8.1 Order of precedence of documents

- a) The Contract is comprised of the documents listed in the Letter of Acceptance (C7995).
- b) Unless otherwise expressly stated in the Letter of Acceptance (C7995), the following order of precedence shall apply where there is any ambiguity, discrepancy or inconsistency between the documents comprising the Contract, with the higher in the list having a higher priority:
 - i. Letter of Acceptance (C7995), including any post-Tender correspondences
 - ii. notices to Tenderers
 - iii. Special Conditions of Contract (Annexure D to these General Conditions of Contract) if any
 - iv. these General Conditions of Contract, including:
 - a) Annexure A (Contract Details)
 - b) Annexure B (Commercial Framework)
 - c) Annexure C (Certification Functions of the Administrator), and
 - d) Clause Bank (C7836.MIC)
 - v. Project Specific Specifications including MRTS Annexures
 - vi. Project Specific Drawings
 - vii. Standard Specifications
 - viii. Standard Drawings
 - ix. Conditions of Tendering and Conditions of Tendering Annexure
 - x. Completed Tender Form and Tender Schedules
 - xi. Other Contract Documents.

8.2 Discrepancies

- a) The several documents forming the Contract are to be taken as mutually explanatory of one another. If either party discovers any ambiguity or discrepancy in any document prepared for the purpose of executing the Work Under the Contract, that party shall notify the Administrator in writing of the ambiguity or discrepancy as soon as possible but not later than five Business Days of first becoming aware of the ambiguity or discrepancy. In the event of any such ambiguity or discrepancy, the Administrator shall within five Business Days of

receiving such advice or discovering the discrepancy, direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the work.

- b) If the direction from the Administrator under Clause 8.2(a) causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

8.3 Dimensions

Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.

8.4 Contractor's Warranties

- a) The Contractor warrants that it has and it shall be deemed to have:
- i. examined carefully and to have acquired actual knowledge of the contents of the Contract documents, the Principal's Requirements (if applicable), the Tender Documents and any other information made available in writing by the Principal or any other person on the Principal's behalf to the Contractor for the purpose of preparing and submitting the Contractor's Tender
 - ii. examined all information relevant to the risks, contingencies and other circumstances which could affect the Contractor's Tender and which was obtainable by the making of detailed enquiries
 - iii. informed itself of the nature of the work and materials necessary for the execution of the Work Under the Contract and the means of access to and facilities at the Site and transport facilities for deliveries to or from the Site
 - iv. informed itself as to the availability and cost of labour including the costs of complying with obligations imposed by any agreement between the relevant building industry unions and employers relating to the execution of construction and building work similar to the Work Under the Contract
 - v. satisfied itself as to the correctness and sufficiency of the Contract Sum and that the Contract Sum covers the cost of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Work Under the Contract
 - vi. informed itself of all requirements of the Authorities in relation to the Work Under the Contract generally, and without limiting the generality of the foregoing, in relation to measures necessary to protect the environment from any adverse effect or damage arising from execution of the Work Under the Contract
 - vii. obtained all appropriate professional and technical advice on all matters and circumstances with respect to the matters referred to in Clause 8.4(a)(i) to (vi) prior to submitting its Tender for the Work Under the Contract, and
 - viii. entered into this Contract based on its own investigations, interpretations, deductions, information and determinations and the Contractor acknowledges that it is aware that the Principal has entered into the Contract relying upon this acknowledgment and warranty.
- b) Failure by the Contractor to do all or any of the things it is deemed to have done under Clause 8.4(a) will not relieve the Contractor of any of its obligations or liabilities under the

Contract, including its obligation to perform and complete the Work Under the Contract in accordance with the Contract.

8.5 Not used

8.6 Not used

8.7 Not used

8.8 Not used

8.9 Not used

8.10 Information Privacy Act 2009

- a) The Contractor acknowledges that the Contractor is a Bound Contracted Service Provider and the Information Commissioner's (as defined under the Act) functions include conducting reviews into Personal Information handling practices of Bound Contracted Service Providers and conducting compliance audits to assess Bound Contracted Service Providers' compliance with the privacy principles.
- b) The Contractor shall promptly advise the Principal of any:
 - i. enforcement of the Contractor's obligations under the *Information Privacy Act 2009 (Qld)* in connection with the Contract, including enforcement through Compliance Notices given to the Contractor, and
 - ii. Privacy Complaints in connection with the Contractor's discharge of its obligations under the Contract, including any Privacy Complaints to which the Contractor is a respondent.
- c) The Contractor shall take any actions reasonably required by the Principal in connection with the matters referred to in Clause 8.10(b), including steps to comply with any Compliance Notice.
- d) The Contractor shall keep the Principal informed about actions of the Information Commissioner in connection with the Contract of which the Contractor becomes aware.
- e) The Contractor shall immediately notify the Principal if the Contractor becomes aware that disclosure of Personal Information held in relation to this Contract is, or may be, required or authorised by law.
- f) Where:
 - i. an individual makes an application to the Principal for access to, or amendment of, a Document containing the individual's Personal Information, whether the application is made under the *Information Privacy Act 2009 (Qld)* or otherwise, or
 - ii. a Privacy Complaint is made to the Principal, including any Privacy Complaints to which the Principal is a respondent, the Contractor shall, as soon as possible following the Principal's request, but no later than two Business Days after such request from the Principal:
 - a) submit to the Principal any Document specified by the Principal
 - b) amend or notate any Document specified by the Principal

- c) provide information to the Principal concerning the Contractor's discharge of its obligations under this Clause 8.10, and
- d) take other reasonable actions required by the Principal.
- g) The Principal may request the Contractor to comply with privacy and security measures under the *Information Privacy Act 2009 (Qld)* and the *Right to Information Act 2009 (Qld)*. Such request will be in writing.
- h) In relation to this Clause 8.10, the Administrator shall act as an agent of the Principal.
- i) Following the issuing of the Certificate of Practical Completion and prior to the issue of the Final Certificate, the Contractor shall forward any Personal Information on members of the community held by the Contractor to the Principal. Following confirmation of receipt by the Principal, the Contractor shall destroy all such information in the Contractor's possession.
- j) This Clause 8.10 survives termination or expiry of the Contract.

8.11 Media releases and communication material

The Contractor shall not issue any information, publication, document or article for external release or publication concerning the project to third parties or in any media (including social) without prior approval of the Principal. The Contractor shall refer to the Principal any enquiries concerning the project from any media.

9 Assignment and subcontracting

9.1 Assignment

- a) Neither party shall, without the prior written approval of the other, and except on such reasonable terms and conditions as are determined in writing by the other, assign the Contract or any payment or any other right or benefit or interest thereunder.
- b) The Contractor shall not without the written approval of the Administrator allow a Subcontractor to assign a subcontract or any payment or any other right, benefit or interest under a subcontract.
- c) The Contractor shall not subcontract the whole of the Work Under the Contract.

9.2 Not used

9.3 Registered suppliers

- a) The Contractor shall only use registered suppliers in respect of the Work Under the Contract which is covered by the Department's relevant registration categories.
- b) Where a registered supplier is removed from the register after the Administrator has granted approval of that Subcontractor, the Contractor shall continue to fulfil that registered supplier's obligations under the Contract.

9.4 Contractor's responsibility

The existence of a subcontract (with or without the approval of the Administrator) does not relieve the Contractor from any liability or obligation under the Contract. Except where the Contract otherwise provides, the Contractor is liable to the Principal for the acts and omissions of Subcontractors and employees and agents of Subcontractors as if they were acts or omissions of the Contractor.

10 Not used

11 Provisional Sums and Quantities

- a) Provisional Quantities may be used in payment schedules in accordance with the Principal's MRS01 *Introduction to Technical Specifications*.
- b) A Provisional Sum included in the Contract shall not itself be payable by the Principal, but where at the direction of the Administrator, the work or Item to which the Provisional Sum relates is performed by the Contractor, the work or Item shall be valued under Clause 40.5 of the General Conditions of Contract.

12 Site conditions

12.1 Not used

12.2 Notification

- a) If during the execution of the Work Under the Contract, the Contractor becomes aware of a Latent Condition, the Contractor shall within one Business Day and, where possible, before the Latent Condition is disturbed, give written notice to the Administrator of that Latent Condition endorsed 'Contractor's Notice Under Clause 12.2'.
- b) Following notification under Clause 12.2 a) and unless not required by the Administrator, the Contractor shall provide to the Administrator a statement in writing, specifying:
 - i. the Latent Condition encountered and in what respects it differs materially
 - ii. the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition
 - iii. the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion
 - iv. the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition, and
 - v. other details reasonably required by the Administrator.
- c) The written statement provided under Clause 12.2 b) shall be provided by the Contractor within a reasonable timeframe after the Latent Condition was first notified under Clause 12.2 a).

12.3 Extension of time and cost

Delay caused by a Latent Condition may justify an extension of time under Clause 35.5. If a Latent Condition causes the Contractor to:

- a) carry out additional work
- b) use additional Constructional Plant, or
- c) incur extra cost (including any disruption costs)

which a competent and experienced Contractor could not reasonably have anticipated at the time of tendering, a valuation shall be made under Clause 40.5.

12.4 Reduced Valuation

Where the Contractor has not provided the notification required under Clause 12.2, the Administrator may reduce the value of the Contractor's claim to the extent that there is a more cost-effective treatment to mitigate the Latent Condition which was not identified by the Contractor and could have been identified by the Principal and directed by the Administrator had the required notification been provided.

13 Not used

14 Statutory requirements

14.1 Complying with Legislative Requirements

- a) The Contractor shall satisfy all Legislative Requirements.
- b) The Contractor shall give the notices and pay any fees or charges necessary to comply with all Legislative Requirements.
- c) If a change in a Legislative Requirement is at variance with a provision of the Contract, as soon as the Contractor discovers the variance, the Contractor shall notify the Administrator in writing specifying the difference.

14.2 Changes in Legislative Requirements

If a change in a Legislative Requirement after the 10th Business Day prior to the closing of Tenders:

- a) necessitates a change in the Works or the Temporary Works or the Contractor's method of working, or
- b) is an increase or decrease in or is a new fee or charge in relation to the Works or Temporary Works,

and causes the Contractor to incur more or less cost than could reasonably have been anticipated by a competent and experienced Contractor at the time the Contractor submitted its Tender, the difference shall be valued under Clause 40.5.

14.3 Not used

14.4 Industrial matters

- a) The Contractor shall comply with, and ensure that its Subcontractors comply with, the provisions of the industrial awards and agreements that from time to time are applicable to the performance of the Work Under the Contract. Without limiting the generality of the foregoing, the Contractor shall ensure that its Subcontractors enter into an agreement to comply with the provisions of the said industrial awards and agreements prior to their employment on the Site.
- b) The Contractor warrants that the labour rates and conditions upon which the Contract Sum has been calculated are based on the provisions of the applicable industrial awards and/or agreements.
- c) The Contractor is not entitled to make any Claim in connection with its compliance with this Clause 14.4 or any increase in labour costs.

14.5 Specific Legislative Requirements

Without limiting Clause 14.1, the Contractor shall comply with the requirements set out in this Clause 14.5.

14.5.1 The Building Code

If specified in Item 16A, the *Code for the Tendering and Performance of Building Works 2016* (the Building Code) applies to this Contract. The Building Code can be viewed at the Australian Government website <https://www.abcc.gov.au/building-code>.

14.5.2 Haulage of plant and materials

- a) The Contractor shall ensure that vehicles carrying plant and material over state-controlled roads and local government-controlled roads shall comply with the vehicle weight limit requirements set out in the *Transport Operations (Road Use Management) Act 1995* (Qld), and with any other vehicle weight limit requirements imposed by duly constituted authorities on whose roads such vehicles operate.
- b) Access for Constructional Plant to and from surface streets on or off the Site shall be subject to any restrictions stated in Item 17A.

14.5.3 Portable Long Service Leave Levy

Where applicable:

- a) the Principal shall be responsible for the notification of any building and construction work required to be performed under this Contract in accordance with Section 67 of the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld), and
- b) the Principal shall be responsible for the payment of any levies due in accordance with Section 66 of the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld).

14.5.4 Not used

14.5.5 Not used

14.6 The Queensland Code

The Queensland Code of Practice for the Building and Construction Industry (the Queensland Code) will apply to this contract. The Contractor shall comply with, and meet any obligations imposed by the Queensland Code.

The Queensland Code is available at:

<https://www.oir.qld.gov.au/industrial-relations/building-and-construction-code-practice-2000>.

14.7 The Ethical Supplier Threshold and Ethical Supplier Mandate

- a) In this clause:
 - i. Ethical Supplier Mandate means the Queensland Government Policy titled '*Ethical Supplier Mandate*' or any policy that replaces that policy
 - ii. Ethical Supplier Threshold means the Ethical Supplier Threshold in paragraph 2.3 of the *Queensland Procurement Policy*

- iii. Government Department or Instrumentality means any governmental regulator, including Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission and the Australian Building and Construction Commission, and
 - iv. QPP Compliance Unit means the Queensland Procurement Policy (QPP) Compliance Unit, Office of the Chief Advisor – Procurement, Department of Housing and Public Works.
- b) The Contractor shall comply with the Ethical Supplier Threshold.
 - c) The Principal may obtain information about the Contractor relevant to the Contractor's compliance with Clause 14.7(b) that may be held by the QPP Compliance Unit or any Government Department or Instrumentality and take the information into account in assessing the offer.
 - d) The Contractor acknowledges that a failure to comply with the Principal's policies that apply to the work under the proposed contract or the Contractor's obligations under the proposed contract may result in the imposition of a demerit or sanction under the *Ethical Supplier Mandate*, in addition to any other remedies available to the Principal under this Contract.
 - e) Failing to comply with the requirements of this Clause (b) is a substantial breach of Contract for the purpose of Clause 44.2(a) and (b)(xiv) of the General Conditions of Contract.

15 Protection of people and property

15.1 Contractor's obligations

Nothing in Clause 15 shall in any way limit or exclude any of the Contractor's obligations or liabilities under the Contract.

15.2 Protection of people and property

- a) Insofar as compliance with the requirements of the Contract permits, the Contractor shall:
 - 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) If the Contractor or the employees or agents of the Contractor damage property, including Public Utilities Plant and services and/or property on or adjacent to the Site, the Contractor shall promptly make good the damage and pay any compensation which the law requires the Contractor to pay.
- c) If the Contractor fails to comply with an obligation under Clause 15 the Principal may, in addition to any other remedy, perform the obligation on the Contractor's behalf and the cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

15.3 Work health and safety

15.3.1 General

This Clause 15.3 survives the termination or expiry of the Contract.

15.3.2 Appointment of Principal Contractor

- a) Where the law permits, the Contractor is engaged by the Principal as the Principal Contractor for the Construction Project and the Contractor accepts that engagement.
- b) The Contractor is authorised to have management and control of the Workplace and to discharge its obligations as Principal Contractor under Chapter 6 of the WHS Regulation.
- c) The Contractor's engagement as Principal Contractor will continue until completion of the Works, unless earlier revoked by the Principal.
- d) The Contractor shall provide the Principal with copies of all notices and correspondence of whatsoever nature concerning the WHS Legislation within 24 hours of the dispatch and/or receipt by the Contractor of any such notice or correspondence.
- e) The Contractor shall, to the extent permitted by law, indemnify and keep indemnified the Principal and its officers, employees and agents against any action, Claim, demand, expense, loss, cost (including legal costs), penalty, fine or other liability (including in tort) arising from or in connection with:
 - i. any injury, accident or safety related incident on or adjacent to the Site, and
 - ii. the enforcement of, or any breach by the Contractor of, its obligations under this Clause 15.3.

The Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that the act or omission of the Principal, or employees or agents of the Principal, may have contributed to the loss.

- f) The Contractor shall consult, cooperate and coordinate with the Administrator in accordance with WHS Legislation.

15.3.3 Notifiable Incidents

The Contractor shall:

- a) ensure that the relevant regulator is notified immediately after becoming aware of a Notifiable Incident, arising out of or in connection with the conduct of the business or undertaking of the Contractor
- b) notify the Administrator of every Notifiable Incident in relation to or in connection with the Site immediately on becoming aware but not more than 12 hours after the occurrence
- c) keep the Administrator informed of the status of any safety or health-related incidents that have occurred in relation to or in connection with the Site
- d) do all that is necessary to assist the Administrator with any investigations into any safety or health related incident in relation to or in connection with the Site, including requiring, to the extent possible, the Contractor's agents and Subcontractors to assist the Administrator
- e) as soon as possible but no later than 12 hours of receiving a request from the Administrator to do so, provide the Administrator with a copy of any notification to the regulator for work health and safety of a safety or health-related incident.

15.3.4 Work Health and Safety Management Plan

- a) The Contractor shall prepare and submit, as part of the Contract Plan, its Work Health and Safety Management Plan (WHS Management Plan) to the Administrator in accordance with Clause 33.3.
- b) The Contractor shall not commence the Works until the Administrator has advised that the Contractor's WHS Management Plan is suitable pursuant to Clause 33.3(b).
- c) The Contractor's WHS Management Plan shall comply with all applicable WHS Legislation.
- d) The Contractor is not entitled to make any Claim in connection with any direction as to suitability, review, approval of, or modification to the WHS Management Plan as directed by the Administrator.

15.3.5 Safety audits

- a) The Administrator may audit the implementation of the WHS Management Plan (or any other plan required to be developed by the Contractor under the WHS Legislation) at any time. During any audit the Contractor shall provide the Administrator with all documents, access and assistance necessary for its completion.
- b) The Contractor shall suspend the Work Under the Contract (or the relevant portion) until the Contractor has addressed the safety issues identified during the audit and, in the meantime, continue to comply with all duties and obligations under WHS legislation and the Contract.
- c) If the Contractor fails to rectify a non-conformance that has been identified on three separate occasions in the auditing process, the Principal may give notice to the Contractor of a substantial breach of the Contract under Clauses 44.2 and 44.3.

15.4 Health and safety duties

15.4.1 General duty

The parties shall discharge all applicable duties under the WHS Act and (without limiting those duties) shall ensure, so far as is reasonably practicable, the health and safety of all persons associated with the Works, the Workplace, fixtures, fittings, plant and structures associated with any of them, and that persons are not exposed to risks to health and safety in relation to or connection with the Contract, the Works or the Workplace.

15.4.2 No separate payment for compliance with work health and safety requirements

The Contractor is not entitled to make any Claim in connection with complying with the WHS Act, WHS Regulation or the work health and safety requirements under this Contract. The Contractor acknowledges it has allowed for the cost of compliance in the Contract Sum.

15.5 Traffic management

15.5.1 General

- a) Without limiting Clause 15.1, the Contractor shall be responsible for the safe and orderly passage of all traffic on or within the road reserve including all vehicular and pedestrian traffic through and around the Site at all times from the date of possession of Site to the Date of Practical Completion.

- b) For the purposes of Clause 15.5, 'the Manual' means the department's *Manual of Uniform Traffic Control Devices* as amended from time to time and available at the Principal's website.
- c) If specified in Item 18A, the Contractor shall prepare, implement and maintain a Traffic Management Plan for the Work Under the Contract and the provisions of Clause 15.5.2 shall apply.

15.5.2 Traffic Management Plan

- a) The Contractor shall prepare and submit, as part of the Contract Plan, its Traffic Management Plan to the Administrator, in accordance with Clause 33.3.
- b) The Traffic Management Plan shall be consistent with the Manual, the Standard Specifications and any Traffic Management Plan outline submitted with the Contractor's Tender (except to the extent that any Traffic Management Plan outline is inconsistent with the Manual, the Standard Specifications or any of the Other Documents comprising the Contract, then the Traffic Management Plan shall be in accordance with the Manual, the Standard Specifications and the Other Documents comprising the Contract).
- c) The Contractor shall implement, monitor and update its Traffic Management Plan during the Contract and shall, within five Business Days of its amendment, submit a copy of the Traffic Management Plan to the Administrator.

15.6 Not used

15.7 Environmental management

15.7.1 General

If required by Item 35B, the Contractor shall at all times during the course of the Contract comply with the requirements of the *Environmental Protection Act 1994 (Qld) (EP Act)*. The Contractor shall implement and maintain measures to preserve and protect the natural environment on and adjacent to the Site.

15.7.2 Environmental Management Plan

- a) The Contractor shall prepare, submit, implement and monitor, as part of the Contract Plan, its Environmental Management Plan to the Administrator in accordance with Clause 33.3 and a time-based schedule for its implementation.

16 Care of the work and reinstatement of damage

16.1 Care of the Work Under the Contract

- a) From and including the earlier of the date of commencement of Works under the Contract and the date on which the Contractor is given possession of the Site to 4.00pm on the Date of Practical Completion of the Works, the Contractor shall be responsible for the care of the Work Under the Contract.
- b) After 4.00pm on the Date of Practical Completion the Contractor shall remain responsible for the care of outstanding work and items to be removed from the Site by the Contractor and shall be liable for damage occasioned by the Contractor in the course of completing outstanding work or complying with obligations under Clause 37.

16.2 Weather protection

Without affecting the Contractor's obligations under Clause 16.1, the Contractor shall take all reasonable precautions to protect the Work Under the Contract against the effects of inclement weather.

16.3 Reinstatement

- a) If loss or damage (except loss or damage which is a direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk) occurs to anything while the Contractor is responsible for its care, the Contractor shall promptly make good the loss or damage and any costs incurred by the Contractor in making good the loss or damage shall be borne by the Contractor.
- b) Where loss or damage occurs as a direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk, the Contractor shall, if and to the extent directed by the Administrator, rectify that loss or damage, which shall be deemed to be a variation under Clause 40. In the case of loss or damage being caused by a combination of Excepted Risks and other risks, any such direction and consequential valuation made under Clause 40.5 shall take into account the proportional responsibility of the Contractor and the Principal.

16.4 Excepted Risks

The Excepted Risks are:

- a) any negligent act or omission of the Principal, the Administrator or the employees, consultants or agents of the Principal
- b) any risk specifically excepted in the Contract
- c) war, invasion, act of foreign enemies, act of terrorism, 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 the Contractor's employees or agents
- e) use or occupation by the Principal or the employees or agents of the Principal or other Contractors to the Principal (not being employed by the Contractor), or
- f) defects in the design of the Work Under the Contract other than a design provided by the Contractor.

17 Damage to persons and property other than the Works

17.1 Indemnity by Contractor

- a) The Contractor shall indemnify the Principal against:
 - i. loss of or damage to property of the Principal, including existing property in, or upon, which the Work Under the Contract is being carried out, and
 - ii. Claims by any person (including Claims by owners or occupiers of areas adjacent to the Site) against the Principal in respect of personal injury or death or loss of or damage to any property

arising out of or as a consequence of the carrying out by the Contractor of the Work Under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that the act or omission of the Principal or employees or agents of the Principal may have contributed to the loss, damage, death or injury.

- b) Clause 17.1(a) shall not apply to:
- i. the extent that the liability of the Contractor is limited by another provision of the Contract
 - ii. exclude any other right of the Principal to be indemnified by the Contractor
 - iii. things for the care of which the Contractor is responsible under Clause 16.1, and
 - iv. Claims in respect of the right of the Principal to construct the Work Under the Contract on the Site.

17.2 Indemnity by the Principal

The Principal shall indemnify the Contractor in respect of Claims referred to in Clause 17.1(b)(iv).

18 Insurance of the Works

- a) Before the Contractor commences work, the Contractor shall take out an insurance policy covering all the things referred to in Clause 16.1 against loss or damage resulting from any cause whatsoever until the Contractor ceases to be responsible for their care.
- b) Without limiting the generality of the obligation to insure, the policy shall cover the Contractor's liabilities under Clause 16.3 and things in storage off Site and in transit to the Site.
- c) The insurance cover may exclude:
 - i. the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom
 - ii. the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom
 - iii. consequential loss of any kind, but shall not exclude loss of or damage to the Works
 - iv. damages for delay in completing or for the failure to complete the Works
 - v. 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
 - vi. loss or damage resulting from the Excepted Risks in Clause 16.4(b) and (c).
- d) The insurance cover shall be for an amount not less than the sum of:
 - i. the Contract Sum unless specified otherwise in Item 21A of Annexure A
 - ii. the amount stated in Item 21B to provide for costs of demolition and removal of debris
 - iii. the value stated in Item 21D of any materials or things to be supplied by the Principal for the purposes of the Work Under the Contract, and
 - iv. the additional amount or percentage stated in Item 21E of the total of the items referred to in Clause 18(d)(i) to (iii).

- e) The insurance policy shall be in the joint names of the Principal and the Contractor, and shall cover the Principal, the Contractor and all Subcontractors for their respective rights, interests and liabilities and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal, which may be given or withheld in its absolute discretion. The policy shall be maintained until the Contractor ceases to be responsible under Clause 16.1 for the care of anything.

19 Public liability insurance

Before the Contractor commences work, the Contractor shall take out a public liability policy of insurance in the joint names of the Principal and the Contractor, which covers the Principal, the Contractor, the Administrator and all Subcontractors for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Contractor's liability to the Principal and Principal's liability to the Contractor for loss of or damage to property (other than property required to be insured by Clause 18) and the death of or injury to any person (other than liability which is required by law to be insured under a workers compensation policy of insurance).

The public liability policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in Item 22B and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal, which may be given or withheld in its absolute discretion. The policy shall be maintained until the Final Certificate is issued under Clause 42.8.

20 Insurance of employees

- a) Before the Contractor commences work the Contractor shall 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 shall be maintained until all work including remedial work is completed.
- b) Where permitted by law, the insurance shall be extended to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor.
- c) The Contractor shall ensure that every Subcontractor is similarly insured.

21 Inspection and provisions of insurance policies

21.1 Proof of insurance

- a) Before the Contractor commences work and whenever requested in writing by the Principal, the Contractor shall produce evidence to the satisfaction and approval of the Principal of the insurance effected and maintained.
- b) The effecting of insurance shall not limit the liabilities or obligations of a party under other provisions of the Contract.

21.2 Failure to produce proof of insurance

If, after being requested in writing by the Principal, the Contractor fails to produce evidence of compliance with insurance obligations under Clauses 18, 19 or 20 to the satisfaction and approval of the Principal, the Principal may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the Contractor to the Principal. The Principal may refuse payment until evidence of compliance with insurance obligations under Clauses 18, 19 or 20 is produced by the

Contractor to the satisfaction and approval of the Principal. The rights given by Clause 21.2 are in addition to any other right.

21.3 Notices from or to the insurer

The Contractor shall ensure that each policy of insurance contains provisions acceptable to the Principal that will:

- a) require the insurer, whenever the insurer gives the Contractor or a Subcontractor a notice of cancellation or other notice concerning the policy at the same time to inform the Principal in writing that the notice has been given
- b) provide that a notice of Claim given to the insurer by the Principal, the Administrator, the Contractor or a Subcontractor shall be accepted by the insurer as a notice of Claim given by the Principal, the Administrator, the Contractor and the Subcontractor and that a failure by one insured to discharge its obligations of disclosure and good faith or to observe the terms of the policy will not prejudice the cover of the other insureds, and
- c) require the insurer, whenever the party fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the Principal and the Contractor and prior to the insurer giving any notice of cancellation.

21.4 Notices of potential Claims

- a) The Contractor shall, as soon as practicable, inform the Principal in writing of any occurrence that may give rise to a Claim under a policy of insurance required by Clause 18 or 19 and shall keep the Principal informed of subsequent developments concerning the Claim. The Contractor shall ensure that Subcontractors in respect of their operations similarly inform the Principal.
- b) The Contractor shall comply with the terms of the policies of insurance effected under Clauses 18, 19 or 20 (including the notification requirements under those policies).

21.5 Not used

21.6 Cross liability

Any insurance required to be effected by the Contractor in joint names in accordance with the Contract shall include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

21.7 Excess / deductible

The Contractor shall bear or pay any excess or deductible which is applicable to any Claim made under any of the policies of insurance effected under Clauses 18, 19 or 20 except to the extent the Claim is with respect to loss or damage which is the direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk defined in Clause 16.4.

22 Inspectors

The Administrator shall forthwith notify the Contractor in writing of the name of any inspector appointed by the Principal or the Administrator, including any appointed inspector's delegated function under the

contract (if any). This may include separate designated geographical areas performing the same delegated function.

23 Administrator

23.1 Administrator

- a) The Principal shall ensure that at all times there is an Administrator. The Administrator will be responsible for the overall administration of this Contract.
- b) The Principal shall ensure that in the exercise of the functions of the Administrator under the Contract listed in Annexure C to the General Conditions of Contract C7833.MIC.CO, the Administrator:
 - i. acts fairly and reasonably and honestly
 - ii. acts within the time prescribed under the Contract or where no time is prescribed, within a reasonable time, and
 - iii. arrives at a reasonable measure or value of work, quantities or time.
- c) In the exercise of all other functions of the Administrator under the Contract, the Administrator acts as the agent of the Principal (not as an independent certifier).
- d) If pursuant to a provision of the Contract enabling the Administrator to give Directions, the Administrator gives a Direction, the Contractor shall comply with the Direction.
- e) Except where the Contract otherwise provides, a Direction may be given orally, but the Administrator shall as soon as practicable confirm it in writing.
- f) If the Contractor in writing requests the Administrator to confirm an oral Direction, the Contractor shall not be bound to comply with the Direction until the Administrator confirms it in writing.

24 Administrator's Representative

- a) The Administrator may from time to time appoint individuals to exercise any functions of the Administrator under the Contract but not more than one Administrator's Representative shall be delegated the same function at the same time. The appointment of an Administrator's Representative shall not prevent the Administrator from exercising any function.
- b) The Administrator shall forthwith notify the Contractor in writing of:
 - i. the appointment and the name of any Administrator's Representative and the functions delegated to the Administrator's Representative
 - ii. the termination of the appointment of an Administrator's Representative.
- c) If the Contractor makes a reasonable objection to the appointment of a representative, the Administrator shall terminate the appointment.

25 Contractor's Representative

- a) The Contractor shall nominate a Contractor's Representative who shall personally superintend the execution of the Work Under the Contract and be present on the Site for at least the percentage of time nominated in Item 29A.

- b) The Contractor's Representative shall have a thorough and direct understanding of all aspects of the Work Under the Contract and shall have the authority to make decisions and agreements on behalf of the Contractor.
- c) If required by the Administrator, the Contractor shall have a competent employee present at other places at which activities relating to the execution of the Work Under the Contract are taking place to ensure that the Contractor's Representative is adequately informed.
- d) The Contractor's Representative shall comply with the requirements of Clause 29.2.
- e) The Contractor shall forthwith notify the Administrator in writing of the name of the representative and of any subsequent changes. Any direction defined in Clause 23 shall:
 - i. if it relates to the execution of work on the Site and is given to the Contractor's Representative on the Site, or
 - ii. if it relates to the execution of work at any other place and is given to the employee of the Contractor at the other place or the Contractor's Representativebe deemed to have been given to the Contractor.
- f) Matters within the knowledge of the Contractor's Representative or any other employee or representative of the Contractor shall be deemed to be within the knowledge of the Contractor.
- g) If the Administrator makes a reasonable objection to the appointment of a Contractor's Representative, the Contractor shall terminate the appointment and appoint another Contractor's Representative.

26 Control of Contractor's employees and Subcontractors

The Administrator may direct the Contractor to have removed from the Site or from any activity connected with the Work Under the Contract, within such time as the Administrator directs, any person employed in connection with the Work Under the Contract who, in the opinion of the Administrator, is guilty of misconduct or is incompetent or negligent. The person shall not thereafter be employed on the Site or on activities connected with the Work Under the Contract without the prior written approval of the Administrator.

27 Site

27.1 Possession of Site

- a) The Principal shall on, or before, the expiration of the time stated in Item 24A, give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence work, provided, however, that the Principal is not obliged to give possession of the Site if:
 - i. the Contractor has not supplied to the Administrator proof of the implementation of the requirements stated in Item 24B
 - ii. the Contractor has not complied with the requirements of Clause 5.2, 21.1 or 33.3.
- b) If the Principal has not given the Contractor possession of the whole Site, the Principal shall, from time to time, give the Contractor possession of such further parts of the Site as may be necessary to enable the Contractor to execute the Work Under the Contract in accordance

with the requirements of the Contract. The Principal shall advise the Contractor in writing of the date upon which the Site or any part thereof will be available.

- c) Possession of the Site shall confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to execute the Work Under the Contract.
- d) Except to the extent otherwise 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 Under the Contract.

27.2 Access for the Principal and others

27.2.1 General

- a) The Principal and the Principal's employees and agents may, at any time after reasonable notice to the Contractor, have access to any part of the Site for any purpose.
- b) The Contractor shall permit the execution of work on the Site by persons engaged by the Principal and shall cooperate with them and coordinate the Contractor's work with their work.
- c) If requested by the Contractor, the Principal shall provide to the Contractor the names of the persons so engaged.
- d) The Contractor shall, at all reasonable times, give the Principal, the Administrator and inspectors appointed under Clause 22, and other persons authorised in writing by the Principal or by the Administrator, access to the Work Under the Contract at any place where the work is being carried out or materials are being prepared or stored.
- e) The Principal shall ensure that the Contractor is not unreasonably impeded in the execution of the Contractor's work by any persons referred to in Clause 27.2.1(d) while exercising the right of access given by Clause 27.2.1(d).
- f) The Contractor shall have no right to any Claim in connection with work or performance of other activities carried out pursuant to this Clause 27.2.1.

27.2.2 Adjoining work

- a) The Contractor acknowledges that:
 - i. when it commences the Work Under the Contract, prior Contractors may not have completed their Works and may be doing so at the same time as the Contractor is executing the Work Under the Contract, and
 - ii. Contractors may be executing work on other Contracts which may interface with the Work Under the Contract.
- b) The Contractor agrees that it will be responsible for coordination 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 and the Contractor shall indemnify the Principal for any liability the Principal may incur to other Contractors as a result of the Contractor's failure to comply with this Clause 27.2.2.
- c) Notwithstanding any other provision of this Contract, the Contractor shall not be entitled to make any Claim against the Principal because of an act or omission of a separate Contractor unless the Contractor has fully complied with Clause 27.2.2.

27.2.3 Adjoining private land

- a) In performing the Work Under the Contract, the Contractor shall not enter or permit any Constructional Plant to enter private land adjoining the Site without first obtaining the written approval of the land occupier and the land owner (where these are not the same person). The Contractor shall submit a copy of this written approval to the Administrator upon request.
- b) Notwithstanding the granting of such approval of entry, the Contractor shall comply with the following conditions relating to private land adjoining the Site:
 - i. privacy of the land owner / occupier shall be paramount
 - ii. the land owner / occupier shall be notified in advance when entry onto private land is required for any purpose
 - iii. vehicles shall be driven at a maximum speed of 20 kilometres per hour when in close proximity to any dwellings, and
 - iv. where a permanent access structure to private land is to be constructed under this Contract, the Contractor shall maintain access for others across the Site at all times.
- c) The Contractor shall, by the action of the entering on to the private land, be deemed to have indemnified the Principal against any Claims which may arise from or in connection with such entry or subsequent operations on the land.

27.3 Not used

27.4 Not used

27.5 Finding of minerals, fossils and relics

- a) Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site shall as between the parties be and remain the property of the Principal. Immediately upon the discovery of these things, the Contractor shall take precautions to prevent their loss or removal or damage and shall notify the Administrator of the discovery.
- b) If compliance with obligations under Clause 27.5 causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

27.6 Not used

27.7 Public Utility Plant

27.7.1 Responsibilities

- a) As from the Date of Acceptance of Tender, the Contractor shall:
 - i. be responsible for arranging and coordinating all Work Under the Contract associated with the replacement or relocation of Public Utility Plant
 - ii. ensure that the specific relocation and/or replacement requirements of each responsible Authority are met
 - iii. establish and maintain, up to the Date of Practical Completion, reference markers identifying the type, size, alignment and depth of Public Utility Plant and emergency contact telephone number of the responsible Authority, and

- iv. execute all other work items associated with affected Public Utility Plants as described and detailed in the Project Specific Specifications, Standard Specifications and Drawings as part of the Contractor's scope of Works.
- b) If the Contractor incurs costs in respect of the coordination of the relocation and/or replacement of Public Utility Plant in excess of the costs that a competent and experienced Contractor could have reasonably anticipated at the time of tendering:
 - i. a valuation of the costs incurred by the Contractor shall be made under Clause 40.5, and
 - ii. notwithstanding the provisions in Clause 40.5 such valuation shall not include the cost of the Contractor's supervision or overheads.

27.7.2 Public Utility Plant identified during the Contract

- a) Where Public Utility Plant, additional to that stated in the Contractor's Tender, is identified during the Contract, the following procedure shall apply:
 - i. the Contractor shall within one Business Day advise the Administrator and the responsible Authority of the newly identified Public Utility Plant
 - ii. the Contractor shall request and obtain from the responsible Authority an estimate of cost to relocate the Public Utility Plant and a program for completion of the relocation
 - iii. the Principal will arrange for payment to the responsible Authority for the necessary relocation, and
 - iv. the Contractor shall revise its program of work to accommodate the program of the responsible Authority and shall coordinate completion of the relocation by the responsible Authority.
- b) If the Contractor's compliance with the procedure set out in Clause 27.7.2(a) causes the Contractor to more or less cost than a competent and experienced Contractor could have reasonably anticipated at the time of tendering, a valuation shall be made under Clause 40.5.
- c) Delay caused by the Contractor's compliance with the procedure set out in Clause 27.7.2(a) may justify an extension of time under Clause 35.5.

27.7.3 Damage and repair

- a) The Contractor shall immediately notify the Administrator of any damage to any Public Utility Plant.
- b) The Contractor shall be responsible for any damage to any Public Utility Plant caused by the Work Under the Contract, in which case the Contractor shall:
 - i. make good any such damage at its own cost
 - ii. make arrangements directly with the responsible Authority for any repairs which may be necessary to Public Utility Plant damaged by the Work Under the Contract, and
 - iii. have no Claim against the Principal for the damage to the Public Utility Plant or any associated delay to the completion of the Works.
- c) The Contractor shall be responsible for any damage caused to the Work Under the Contract by any fault that develops in any Public Utility Plant during the term of the Contract.

27.7.4 Disruption to public

The Contractor shall take all reasonable steps to minimise disruption to individual land owners and/or occupiers in disconnecting, relocating and reconnecting public utilities.

27.7.5 Not used

27.7.6 Contractor's obligations

Nothing contained in Clause 27.7 shall in any way limit or exclude any of the Contractor's obligations or liabilities under the Contract.

27.8 Not used

27.9 Not used

27.10 Cleaning up

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

28 Not used

29 Materials, labour and Constructional Plant

29.1 Provision of materials, labour and Constructional Plant

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

29.2 Contractor's staff

- a) The Contractor shall employ:
 - i. appropriately qualified, trained and experienced personnel to perform the Work Under the Contract. If labour hire is required, the Contractor shall only engage with labour hire providers licensed under the *Labour Hire Licensing Act (Qld)*.
 - ii. appropriately qualified, trained and experienced personnel to fill the positions stated in Item 29A and if no such positions are stated, the Contractor shall employ an adequate number of appropriately qualified, trained and experienced staff as determined by the Administrator to be necessary to carry out the requirements of the Contract.
- b) The personnel nominated by the Contractor to fill the positions stated in Item 29A shall be able to read, write and converse fluently in the English language.
- c) If the Principal reasonably considers at any time that personnel employed by the Contractor to perform the Work Under the Contract do not satisfy the requirements of Clause 29.2(a), it may, acting reasonably, request the Contractor remove such personnel and replace them with a suitably qualified replacement.

29.3 Not used

29.4 Not used

29.5 Not used

29.6 Not used

29.7 Material supplied by the Principal

- a) The Principal shall supply the Principal Supplied Material.
- b) The Contractor shall:
 - i. transport the Principal Supplied Material from the location stated in the Principal Supplied Material list to the Site
 - ii. appropriately store and care for the Principal Supplied Material at all times so that it is not contaminated and does not deteriorate.
- c) If, within five Business Days of receipt of the Principal Supplied Material, the Administrator has not received written notification from the Contractor of any deficiencies, then it shall be deemed that the specified quantity of Principal Supplied Material has been delivered to the Contractor in a condition which complies with the relevant Specifications.

30 Materials and work

30.1 Quality of materials and work

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

30.2 Quality assurance

The Contractor shall plan, establish, implement and maintain a quality system which conforms to the requirements of this Contract (Quality System) as per Item 31A of the Annexure A.

30.3 Quality Plan

- a) The Contractor shall prepare and submit, as part of the Contract Plan, a Quality Plan to the Administrator in accordance with Clause 33.3.
- b) The Contractor shall implement and maintain the Quality Plan while carrying out the Work Under the Contract.

30.4 Not used

30.5 Not used

30.6 Defective materials or work

- a) If the Administrator discovers material or work provided by the Contractor which is not in accordance with the Contract, the Administrator may direct the Contractor to:
 - i. remove the material from the Site
 - ii. demolish the work
 - iii. reconstruct, replace or correct the material or work, or
 - iv. not to deliver the material or work to the Site.

- b) The Administrator may direct the times within which the Contractor shall commence and complete the removal, demolition, reconstruction, replacement or correction.
- c) If the Contractor fails to comply with a Direction issued by the Administrator pursuant to Clause 30.6 within the time specified by the Administrator in the Direction and provided the Administrator has given the Contractor notice in writing that after the expiry of five Business Days from the date on which the Contractor receives the notice the Principal intends to have the work carried out by other persons, the Principal may have the work of removal, demolition, replacement or correction carried out by other persons and the cost incurred by the Principal in having the work so carried out shall be a debt due from the Contractor to the Principal.

30.7 Variations due to defective materials or work

Instead of a Direction under Clause 30.6, the Administrator may direct a variation pursuant to Clause 40. The variation shall be valued under Clause 40.5 and:

- a) if the variation causes an increase or decrease in the value to the Principal of the Works, regard shall also be had to the increase or decrease, and
- b) if the variation results in the Contractor incurring more or less cost than would reasonably have been incurred had the Contractor been given a Direction under Clause 30.6, regard shall also be had to the difference.

30.8 Acceptance of defective material or work

Instead of a Direction under Clauses 30.6 or 30.7, the Administrator may notify the Contractor that the Principal elects to accept the material or work notwithstanding that it is not in accordance with the Contract. In that event the resulting decrease in the value of the Works to the Principal, and any other loss suffered by the Principal, shall be valued in accordance with the applicable provisions of the Specification dealing with such valuations, and in the absence of such provisions, at a relevant value as determined by the Administrator.

30.9 Not used

30.10 Not used

31 Not used

32 Working Hours

32.1 General

- a) The Working Hours and Working Days shall be as stated in Item 33A and, if not so stated, as notified by the Contractor to the Administrator prior to commencement of work on Site and shall not be varied without the prior approval of the Administrator, except when in the interests of safety of the Work Under the Contract or to protect life or property, the Contractor finds it necessary to carry out work outside the Working Hours or on other than the Working Days stated in the Contract. In such cases, the Contractor shall notify the Administrator in writing of the circumstances as early as possible.
- b) Notwithstanding Item 33A, the following days are not Working Days:
 - i. all gazetted Queensland public holidays

- ii. local public holidays within the local government area in which the Site is located
- iii. the Day before Good Friday
- iv. the Days after the last Working Day prior to Christmas Day until New Year's Day inclusive
- v. any other Days listed in Item 33B.

No Work Under the Contract is permitted during these times without the prior written approval of the Administrator.

- c) The Contractor shall make due allowance for days that are not Working Days in its Construction Program and shall not be entitled to any Claim in respect of restrictions on carrying out the Work Under the Contract on these Days.

33 Progress and programming and planning of the Works

33.1 Rate of progress

- a) The Contractor shall proceed with the Work Under the Contract with due expedition and without delay.
- b) The Contractor shall not suspend the progress of the whole or any part of the Work Under the Contract except where the suspension is under Clause 44.9 or is directed or approved by the Administrator under Clause 34.

33.2 Not used

33.3 Contract Plan

- a) The Contractor shall, within the time stated in Item 35A, prepare and submit a plan, which documents all of the systems, procedures and plans required to be implemented by the Contractor under the Contract (Contract Plan), to the Administrator for a direction as to its suitability.
- b) The Contract Plan shall include the plans required in Item 35B, each of which shall comply with the relevant requirements in the Contract.
- c) The Contractor shall establish, review, maintain, update and implement the Contract Plan.

33.4 Construction Program

- a) The Contractor shall:
 - i. prepare, implement and maintain a Construction Program in accordance with this Clause 33.4
 - ii. within the time stated in Item 36A, prepare and submit its Construction Program to the Administrator for a direction as to its suitability.
- b) The Contractor shall not, without reasonable cause, depart from:
 - i. a Construction Program included in the Contract, or
 - ii. a Construction Program furnished to the Administrator.
- c) The Construction Program shall:
 - i. take one of the following forms as stated in Item 36B:

- a) a critical path network, or
- b) a bar chart, or
- c) any other form of program acceptable to the Administrator
- ii. be consistent with the program which was submitted with the Contractor's Tender
- iii. show the Contractor's bona fide planned work activities and sequences for bringing the Work Under the Contract to Practical Completion by the Date for Practical Completion, and
- iv. not affect the time for performance by the Principal or the Administrator of any of their obligations or oblige either of them to do anything earlier than is necessary to enable the Contractor to bring the Work Under the Contract to Practical Completion on the Date for Practical Completion.
- d) The Contractor may implement and revise, as necessary and directed by the Administrator, its Construction Program while carrying out Work Under the Contract.

34 Suspension of the Works

34.1 Suspension by Administrator

If the Administrator considers in its absolute discretion that the suspension of the whole or part of the Work Under the Contract is necessary:

- a) Because of an act or omission of:
 - i. the Principal, the Administrator or an employee, consultant or agent of the Principal, or
 - ii. the Contractor, a Subcontractor or an employee or agent of either.
- b) For the protection or safety of any person or property.
- c) To comply with an order of a Court,

the Administrator shall direct the Contractor to suspend the progress of the whole or part of the Work Under the Contract for such time as the Administrator thinks fit.

34.2 Suspension by Contractor

If the Contractor wishes to suspend the whole or part of the Work Under the Contract, otherwise than under Clause 44.9, the Contractor shall obtain the prior written approval of the Administrator. The Administrator may approve of the suspension and may impose conditions of approval or reject the suspension in the Principal's absolute discretion.

34.3 Not used

34.4 Cost of suspension

Any cost incurred by the Contractor by reason of a suspension under Clause 34.1 or Clause 34.2 shall be borne by the Contractor, but if the suspension is due to an act or omission of the Principal, the Administrator or an employee, consultant or agent of the Principal, and the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under Clause 40.5.

34.5 Effect of suspension

Suspension shall not affect the Date for Practical Completion, but the cause of suspension may be a ground for extension of time under Clause 35.5.

35 Times for commencement and Practical Completion

35.1 Time for commencement of work on the Site

The Contractor shall give the Administrator five Business Days' notice of the date upon which the Contractor proposes to commence work on the Site.

35.2 Date / time for Practical Completion

The Contractor shall execute the Work Under the Contract to Practical Completion by the Date for Practical Completion. Upon the Date of Practical Completion, the Contractor shall give possession of the Site and the Works to the Principal.

35.3 Separable Portions

- a) The interpretations of:
 - i. Date for Practical Completion
 - ii. Date of Practical Completion
 - iii. Practical Completion,and Clauses 5.8, 16, 35, 37, 38, 42.3 and 42.5 shall apply separately to each Separable Portion as identified in Item 37A and references therein to the Works and to Work Under the Contract shall mean so much of the Works and the Work Under the Contract as is comprised in the relevant Separable Portion.
- b) If the Contract does not make provision for the amount of security, Retention Moneys, liquidated damages or bonus applicable to a Separable Portion, the respective amounts applicable shall be such proportion of the security, Retention Moneys, liquidated damages or bonus applicable to the whole of the Work Under the Contract as the value of the Separable Portion bears to the value of the whole of the Work Under the Contract.

35.4 Not used

35.5 Extension of time for Practical Completion

- a) Within 10 Business Days of it becoming evident to the Contractor that anything, including an act or omission of the Principal, the Administrator or the Principal's employees, consultants, other Contractors or agents, may delay the Work Under the Contract, the Contractor shall notify the Administrator in writing with details of the possible delay and the cause. The notice shall be endorsed 'Contractor's Notice of Possible Delay Under Clause 35.5'.
- b) Within 10 Business Days of it becoming evident to the Principal that anything which the Principal is obliged to do or provide under the Contract may be delayed, the Principal shall give notice to the Administrator who shall within a further three Business Days notify the Contractor in writing of the extent of the likely delay.
- c) If the Contractor is, or will be, delayed in reaching Practical Completion by a cause described in Clause 35.5(d) and within 20 Business Days after the commencement of that cause the Contractor gives the Administrator a written Claim for an extension of time for Practical

Completion endorsed 'Contractor's Extension of Time Claim Under Clause 35.5' and setting out the facts on which the Claim is based supported by a compliant revised program submitted in accordance with the requirements of Clause 33.4, the Contractor shall be entitled to an extension of time for Practical Completion.

- d) The causes are:
- i. events occurring on or before the Date for Practical Completion which are beyond the reasonable control of the Contractor, including:
 - a) Industrial Matters
 - b) inclement weatherbut not including a delay, breach, act or omission by any Subcontractor or any of the Contractor's employees
 - ii. any of the following events whether occurring before, on or after the Date for Practical Completion:
 - a) delays caused by:
 - i. the Principal
 - ii. the Administrator
 - iii. the Principal's employees, consultants, other Contractors or agents and other Authorities
 - b) actual quantities of work in the Schedule of Rates being greater than the quantities determined by reference to the upper limit of accuracy stated in Item 44C (otherwise than by reason of a variation directed under Clause 40)
 - c) Latent Conditions
 - e) With any Claim for an extension of time for Practical Completion, or as soon as practicable thereafter but not more than 20 Business Days, the Contractor shall give the Administrator written notice of the number of days' extension claimed.
 - f) If the Contractor is entitled to an extension of time for Practical Completion the Administrator shall, within 20 Business Days after receipt of the notice of the number of days' extension claimed, grant a reasonable extension of time. If within the 20 Business Days, the Administrator does not grant the full extension of time claimed, the Administrator shall, before the expiration of the 20 Business Days, give the Contractor notice in writing of the reason.
 - g) The Contractor shall not be entitled to an extension of time for any delay in respect of which the Contractor has failed to comply strictly with the requirements of Clause 35.5(c).
 - h) Notwithstanding that the Contractor is not entitled to, or has not claimed an extension of time, the Administrator may, in its absolute discretion and without being under any obligation to do so, at any time and from time to time before the issue of the Final Certificate, by notice in writing to the Contractor, extend the time for Practical Completion for any reason.

35.6 Liquidated damages for delay in reaching Practical Completion

- a) If the Contractor fails to reach Practical Completion by the Date for Practical Completion, the Contractor shall be indebted to the Principal for liquidated damages at the rate stated in

Item 38A for every Day after the Date for Practical Completion to, and including, the Date of Practical Completion or the date that the Contract is terminated under Clause 44, whichever occurs first.

- b) If after the Contractor has paid, or the Principal has deducted liquidated damages, the time for Practical Completion is extended, the Principal shall forthwith repay to the Contractor any liquidated damages paid or deducted in respect of the period up to and including the new Date for Practical Completion.

36 Delay costs

- a) Where the Contractor has been granted an extension of time under Clause 35.5 for any delay caused by any of the events referred to in Clause 35.5(d)(ii)(a), the Principal shall pay to the Contractor such extra costs as are necessarily incurred by the Contractor by reason of the delay. The amount payable (if any) shall include the percentage margin for onsite and/or offsite overheads but shall not include profit or loss of profit.
- b) Nothing in Clause 36 shall:
 - i. oblige the Principal to pay extra costs for delay which have already been included in the value of a variation or any other payment under the Contract, or
 - ii. limit the Principal's liability for damages for breach of the Contract.

37 Defects liability

- a) The Defects Liability Period stated in Item 39A shall commence on the Date of Practical Completion. Where no period is stated in Item 39A, the Defects Liability Period shall be 90 days.
- b) As soon as possible after the Date of Practical Completion, the Contractor shall rectify any defects or omissions in the Work Under the Contract existing at Practical Completion.
- c) At any time prior to 10 Business Days after the expiration of the Defects Liability Period, the Administrator may direct the Contractor to rectify any omission or defect in the Work Under the Contract existing at the Date of Practical Completion or which becomes apparent prior to the expiration of the Defects Liability Period. The direction shall identify the omission or defect and state a date by which the Contractor shall complete the work of rectification and may state a date by which the work of rectification shall commence.
- d) If the work of rectification is not commenced or completed by the stated dates, the Principal may have the work of rectification carried out at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such omission or defect and the cost of the work of rectification incurred by the Principal shall be a debt due from the Contractor.
- e) If it is necessary for the Contractor to carry out work of rectification, the Contractor shall do so at times and in a manner, which cause as little inconvenience to the occupants or users of the Works as is reasonably possible.

38 Not used

39 Not used

40 Variations

40.1 Authority to vary the work

- a) The Administrator may, in its absolute discretion, direct the Contractor to:
 - i. increase, decrease or omit any part of the Work Under the Contract
 - ii. change the character or quality of any material or work
 - iii. change the levels, lines, positions or dimensions of any part of the Work Under the Contract
 - iv. execute additional work and/or
 - v. demolish or remove material or work no longer required by the Principal.
- b) The Contractor shall not vary the Work Under the Contract, except as directed by the Administrator or approved in writing by the Administrator under Clause 40.
- c) The Contractor is bound only to execute a variation which is within the general scope of the Contract.
- d) The Contractor shall not be bound to execute a variation directed after Practical Completion unless the variation is in respect of rectification work referred to in Clause 37.
- e) Despite any provision of this Contract to the contrary no variation shall invalidate or amount to a repudiation of this Contract.
- f) For the avoidance of doubt, the Principal shall be entitled to have any omitted work carried out by other contractors.

40.2 Not used

40.3 Direction to proceed with proposed variations

Unless the Administrator and the Contractor agree upon the price for a variation, the variation directed or approved by the Administrator under Clause 40.1 shall be valued under Clause 40.5.

40.4 Variations for the convenience of the Contractor

- a) If the Contractor requests the Administrator to approve a variation for the convenience of the Contractor, the Administrator may, in its absolute discretion, do so in writing. The approval may be conditional.
- b) Unless the Administrator otherwise directs in the notice approving the variation, the Contractor shall not be entitled to:
 - i. an extension of time for Practical Completion, or
 - ii. extra paymentin respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.

- c) The Administrator shall not be obliged to approve a variation for the convenience of the Contractor.

40.5 Valuation

- a) Where the Contract provides that a valuation shall be made under Clause 40.5, the Principal shall pay or allow the Contractor or the Contractor shall pay or allow the Principal, as the case may require, an amount ascertained by the Administrator as follows:
 - i. prior agreement between the Contractor and the Administrator
 - ii. if Clause 40.5(a)(i) does not apply and the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used
 - iii. if Clause 40.5(a)(i) and 40.5(a)(ii) do not apply, the rates or prices in a Schedule of Prices or Schedule of Rates shall be used to the extent that it is reasonable to use them
 - iv. to the extent that neither Clause 40.5(a)(i) to 40.5(a)(iii) applies, reasonable rates or prices which are exclusive of GST shall be used in any valuation made by the Administrator
 - v. any deduction shall include a reasonable amount for profit and overheads.

41 Daywork

- a) The Administrator may, in its absolute discretion, direct that quantities greater than those determined by reference to the upper limit of accuracy referred to in Item 44C or variations directed by the Administrator under Clause 40.1 shall be carried out as Daywork. The Contractor shall thereafter each day record particulars of all resources used by the Contractor for the execution of the Daywork and each day furnish to the Administrator the particulars and copies of time sheets, wages sheets, invoices, receipts and Other Documents evidencing the cost of the Daywork. The Administrator may direct the manner in which matters are to be recorded.
- b) In determining the value of Daywork, regard shall be to the rates and prices in the Daywork Schedules contained in the Tender. To the extent that the Daywork Schedules do not apply:
 - i. the amount of wages and allowances paid or payable by the Contractor at the rates obtaining on the Site at the time as established by the Contractor to the satisfaction of the Administrator or at such other rates as may be approved by the Administrator in its absolute discretion
 - ii. the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under Clause 41(b)(i)
 - iii. the amount of hire charges in respect of Constructional Plant approved by the Administrator for use on the work in accordance with such hiring rates and conditions as may be agreed between the Administrator and the Contractor or, in the absence of agreement, in accordance with such rates and conditions as may be determined by the Administrator in its absolute discretion
 - iv. the amounts paid for services, subcontracts and professional fees
 - v. the actual cost to the Contractor of all materials supplied and required for the work

- vi. a charge agreed between the Administrator and the Contractor to cover offsite overheads, administrative costs, establishment costs, attendance and profit, or, in the absence of agreement, a reasonable charge determined by the Administrator.
- c) Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

42 Certificates and payments

42.1 Payment Claims, certificates, calculations and time for payment

42.1.1 Payment Claims

- a) At the times for payment Claims stated in Item 41A, upon issue of a Certificate of Practical Completion and within the time prescribed by Clause 42.7, the Contractor may deliver to the Administrator a payment Claim. For the avoidance of doubt, a reference date under the Payments Act shall not arise during the period following the end of the month in which Practical Completion is reached until the time for making the Final Payment Claim under Clause 42.7.
- b) The payment Claim shall:
 - i. be supported by evidence of the amount due to the Contractor, including a breakdown of the value of Work Under the Contract executed
 - ii. include Conformance Report in relation to the Work Under the Contract the subject of the payment Claim
 - iii. provide a completed statutory declaration in accordance with Clause 43
 - iv. include a supporting statement in accordance with the *Payments Act* (for guidance, supporting statement template is available at <https://www.qbcc.qld.gov.au/protecting-your-payment-rights/supporting-statement>).
- c) A payment Claim shall include the value of work carried out by the Contractor in the performance of the Contract to that time together with all amounts then due to the Contractor arising out of or in connection with the Contract or for any alleged breach of the Contract. Each component of the Claim shall be assessed to determine if GST applies in accordance with Clause 42.11.
- d) If the time for any payment Claim under Clause 42.1.1(a) falls on a day which is not a Business Day, the Contractor shall submit the Claim on the next Business Day.

42.1.2 Payment certificate

- a) Within 10 Business Days after receipt of a payment Claim, the Administrator shall issue to the Principal and to the Contractor a payment certificate setting out:
 - i. the amount of the payment which, in the opinion of the Administrator, is to be made by the Principal to the Contractor or by the Contractor to the Principal
 - ii. the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference.
- b) If the Contractor fails to deliver a payment Claim under Clause 42.1, the Administrator may, nevertheless, issue a payment certificate.

- c) Within two Business Days of the issue of the payment certificate by the Administrator, the Contractor shall issue to the Principal or the Principal shall issue to the Contractor, as the case may be, a tax invoice complying with the GST Legislation in respect of the relevant Supply.

42.1.3 Payment

- a) Subject to the provisions of the Contract, within 20 Business Days after receipt by the Administrator of a payment Claim in accordance with Clause 42.1.1, provided that the requirements of Clause 42.1.2(b) have been met, the Principal shall pay to the Contractor or the Contractor shall pay to the Principal, as the case may be, an amount not less than the amount shown in the payment certificate as due to the Contractor or to the Principal as the case may be or if no payment certificate has been issued, the Principal shall pay the amount of the Contractor's Claim.
- b) Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided by Clause 42.8.
- c) Upon payment to the Contractor of the amount which includes the value of the Item, the Item shall be the property of the Principal free of any lien or charge.
- d) Except as provided in the Contract, the Principal shall not be obliged to pay for any Item of unfixed plant and materials which is not incorporated in the Works.
- e) If any work for which payment has been made is found not to be in accordance with the Contract, the Administrator may take this into account in valuing any future certificate.

42.2 Not used

42.3 Retention Moneys

The Principal may deduct Retention Moneys from moneys otherwise due to the Contractor as stated in Item 11A.

42.4 Not used

42.5 Certificate of Practical Completion

- a) When the Contractor is of the opinion that Practical Completion has been reached, the Contractor shall, in writing, request the Administrator to issue a Certificate of Practical Completion. Within 10 Business Days of the receipt of the request, the Administrator shall give to the Contractor and to the Principal a Certificate of Practical Completion certifying the Date of Practical Completion or give the Contractor in writing the reasons for not issuing the Certificate.
- b) When the Administrator is of the opinion that Practical Completion has been reached, the Administrator may issue a Certificate of Practical Completion whether or not the Contractor has made a request for its issue.

42.6 Effect of certificates

The issue of a payment certificate or a Certificate of Practical Completion shall not constitute approval of any work or other matter, nor shall it prejudice any Claim by the Principal or the Contractor.

42.7 Contractor's final payment Claim

- a) Within 20 Business Days after the expiration of the Defects Liability Period, the Contractor shall lodge with the Administrator a final payment Claim and endorse it 'final payment Claim'.
- b) The Contractor shall include in that Claim all moneys which the Contractor considers to be due from the Principal under or arising out of the Contract or any alleged breach thereof.
- c) After the expiration of the period for lodging a final payment Claim, any Claim which the Contractor could have made against the Principal and has not been made shall be barred.

42.8 Final Certificate

- a) Within 10 Business Days after receipt of the Contractor's final payment Claim or, where the Contractor fails to lodge such Claim, the expiration of the period specified in Clause 42.7 for the lodgement of the final payment Claim by the Contractor, the Administrator shall issue to the Contractor and to the Principal a final payment certificate endorsed 'Final Certificate', but the Administrator shall not be obliged to issue the Final Certificate until the Contractor has fulfilled all of its obligations under the Contract. In the final payment certificate, the Administrator shall certify the amount which, in the Administrator's opinion, is finally due from the Principal to the Contractor or from the Contractor to the Principal under or arising out of the Contract or any alleged breach thereof.
- b) Unless either party, either before the Final Certificate has been issued or not later than 10 Business Days after the issue thereof, serves a notice of dispute under Clause 47, the Final Certificate shall be evidence in any proceedings of whatsoever nature and whether under the Contract or otherwise between the parties arising out of the Contract, that the Works have been completed in accordance with the terms of the Contract and that any necessary effect has been given to all the terms of the Contract which require additions or deductions to be made to the Contract Sum, except in the case of:
 - i. fraud, dishonesty or fraudulent concealment relating to the Works or any part thereof or to any matter dealt with in the said Certificate
 - ii. any defect (including omission) in the Works or any part thereof which was not apparent at the end of the Defects Liability Period or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate, or
 - iii. any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation.

42.9 Interest on overdue payments

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid then interest shall be payable thereon from, but excluding the date upon which or the expiration of the period within which they should have been paid to, and including, the date upon which the moneys are paid. The rate of interest shall be the rate stated in Item 41E. Interest shall be compounded at six monthly intervals.

42.10 Set offs by the Principal

- a) Without limiting the Principal's rights under any other provision of the Contract and notwithstanding the provisions of Clauses 42.1 and 42.8 or the issue of any certificate by the Administrator under those Clauses, the Principal may deduct from any moneys due to the

Contractor any debt due from the Contractor to the Principal and any Claim which the Principal may have against the Contractor:

- i. whether or not the debt or Claim arises by way of damages, debt, restitution or otherwise, and
 - ii. whether or not the factual basis giving rise to the debt or Claim arises out of this Contract, any other Contract or is independent of any Contract.
- b) If the moneys payable to the Contractor are insufficient to discharge the debt or Claim, the Principal may have recourse to:
- i. Retention Moneys, and
 - ii. if Retention Moneys are insufficient, security provided under Clause 5.2, and
- c) Nothing in this Clause 42.10 shall affect the right of the Principal to recover from the Contractor the whole of the debt or Claim or any balance that remains owing. This Clause 42.10 shall survive the termination of the Contract.

42.11 Goods and Services Tax

42.11.1 Interpretation

Where applicable, terms used in this Clause 42.11 have the meaning given in the GST Legislation.

42.11.2 Consideration is Goods and Services Tax exclusive

- a) Unless otherwise stated, any consideration to be paid or provided under this Contract does not include an amount on account of GST.
- b) The Contractor shall be responsible (in the first instance) for determining if GST applies in accordance with the GST Legislation.
- c) The parties agree to exchange such information as is reasonably necessary to enable each party to accurately assess its rights and obligations under the GST Legislation.

42.11.3 Gross up of consideration

To the extent that a party (Supplier) makes a Supply under or in connection with this Contract on which GST is imposed (not being a Supply the consideration for which is specifically described in this Contract as GST inclusive):

- a) the consideration payable or to be provided for that Supply under this Contract, but for the application of this clause (GST exclusive consideration) is increased by, and the recipient of the Supply (Recipient) shall also pay to the Supplier, an amount equal to the GST payable on the Supply (GST amount)
- b) subject to Clause 42.11.3(c) the GST amount shall be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be paid, and
- c) the Recipient need not pay the GST amount in respect of a taxable Supply made under or in connection with this Contract until the Supplier has given the Recipient a tax invoice in respect of that taxable Supply.

42.11.4 Reimbursements and indemnity payments

If either 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 amount will be reduced by the amount of any input tax credit that can be claimed by the party entitled to be reimbursed or indemnified, or by its Representative member (as the case may be).

42.11.5 Adjustments

If, as a result of:

- a) an adjustment event
- b) any amendment to the GST Legislation
- c) the issue of a ruling or advice by the Commissioner of Taxation in relation to this Contract or a Supply made under or in connection with this Contract, or
- d) a decision of any tribunal or Court in relation to this Contract or a supply made under or in connection with this Contract,

the GST amount differs from the amount of GST paid or payable by the Supplier to the Commissioner of Taxation in respect of a Supply under this Contract, then:

- e) the Supplier shall issue an adjustment note to the Recipient that complies with the requirements of the GST Legislation within five Business Days of the relevant event occurring or, otherwise, as soon as it becomes aware of the relevant event, and
- f) any difference shall be paid by or refunded to the Recipient (as the case may be) within 10 Business Days of the adjustment note being issued by the Supplier.

43 Payment of workers and Subcontractors

- a) The Contractor shall deliver to the Administrator with each payment Claim, a statutory declaration, in the form of Form C7850, sworn by the Contractor, or where the Contractor is a Corporation, by a Representative of the Contractor who is in a position to know the facts attested to, stating that all Subcontractors have been paid in accordance with the requirements of the *Payment Act* to such Subcontractors up to the date of submission by the Contractor of a payment Claim in respect of the Work Under the Contract and that all its employees who at any time have been engaged on Work Under the Contract by the Contractor have been paid all moneys due and payable to them up to the date of submission by the Contractor of a payment Claim, in respect of their employment on the Work Under the Contract. The Administrator may also request reasonable supporting documentary evidence of those matters.
- b) Before the payment of any money to the Contractor by the Principal, the Administrator may also require the Contractor to deliver to the Administrator a statutory declaration, in the form of Form C7851, by any Subcontractor, or where the Subcontractor is a Corporation, by a representative of the Subcontractor who is in a position to know the facts attested to, stating that all Subcontractors of the Subcontractor have been paid in accordance with the requirements of the *Payments Act* up to the date of submission by the Contractor of a payment Claim in respect of the Work Under the Contract and that all employees who have been engaged by the Subcontractor have been paid all moneys due and payable to them up to the date of submission by the Contractor of a payment Claim in respect of their engagement

on the Work Under the Contract. The Administrator may also request reasonable supporting documentary evidence of those matters.

- c) If the Contractor provides to the Administrator satisfactory proof of the maximum amount due and payable to workers and Subcontractors by the Contractor, the Principal shall not be entitled to withhold any amount in excess of the maximum amount.
- d) At the written request of the Contractor and out of moneys payable to the Contractor, the Principal may, on behalf of the Contractor, make payments directly to any worker or Subcontractor.
- e) If any worker or Subcontractor obtains a court order in respect of moneys referred to in Clause 43 and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker or Subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

43A *Payments Act*

- a) For the purposes of the *Payments Act*, the Administrator is authorised to receive payment Claims and issue payment schedules on behalf of the Principal.
- b) If a Claim is a payment Claim under the *Payments Act*, the corresponding payment certificate will be deemed to be a payment schedule for the purposes of the *Payments Act*.
- c) If an adjudicator makes a decision under the *Payments Act* with respect to a payment Claim which differs from the payment certificate in respect of that payment Claim, the Administrator shall promptly issue an amended payment certificate to adopt the decision of the adjudicator. Either party may dispute the amended payment certificate.
- d) The Contractor shall ensure that within one Business Day after any notice (other than a payment Claim or payment schedule) under the *Payments Act* is given or received by the Contractor or any Subcontractor, a copy of that notice is given to both the Administrator and the Principal.

43B *Subcontractors' Charges*

- a) Notwithstanding any other provision of this Contract, the Contractor shall:
 - i. immediately give the Principal notice if the Contractor has been required to supply information to a Subcontractor under Section 119 of the *Payments Act*, together with a copy of the information provided, and
 - ii. immediately notify the Principal if it becomes aware that a Subcontractor has claimed or intends to Claim a statutory Charge under Section 112 of the *Payments Act*.
- b) The Contractor shall indemnify the Principal against any Claims against, or costs, losses or damages (including lawyers' fees and expenses on a solicitor / client basis) suffered or incurred by the Principal arising out of, or in any way in, connection with:
 - i. a Notice of Claim being served on the Principal under Section 112 of the *Payments Act*, and
 - ii. a failure by the Contractor to comply with its obligations under Clause 43B(a).

- c) If the Principal makes a payment into court or to a Subcontractor or other person as a result of receiving a Notice of Claim under the *Payments Act*, for the purposes of calculating the Contract Sum finally payable by the Principal to the Contractor, that payment will be treated as though it was a payment made by the Principal to the Contractor.

44 Default or insolvency

44.1 Preservation of other rights

If a party breaches or repudiates the Contract, nothing in this Clause 44 shall prejudice the right of the other party to recover damages or exercise any other right.

44.2 Default by the Contractor

- a) If the Contractor commits a substantial breach of Contract, and the Principal considers that damages may not be an adequate remedy, the Principal may, in its absolute discretion, give the Contractor a written notice to show cause.
- b) Substantial breaches include:
 - i. failing to lodge security in breach of Clause 5.2
 - ii. failing to comply with the requirements of Clause 14.5.2
 - iii. failing to comply with the requirements of Clause 14.6
 - iv. failing to rectify a non-conformance identified on three separate occasions in the safety auditing process under Clause 15.3
 - v. failing to provide evidence of insurance, in breach of Clause 21.1
 - vi. failing to comply with a direction of the Administrator under Clause 30.6 in breach of Clause 23
 - vii. failing to comply with the requirements of Clause 29.2(a)
 - viii. failing to use the materials or standards of workmanship required by the Contract in breach of Clause 30.1
 - ix. failing to either establish, implement or maintain a Quality System in accordance with Clause 30.2
 - x. suspension of work in breach of Clause 33.1
 - xi. failing to proceed with due expedition and without delay in breach of Clause 33.1
 - xii. failing to comply with the provisions of Clause 33.3
 - xiii. failing to deliver a statutory declaration or supporting documentary evidence in breach of Clause 43
 - xiv. failing to provide a supporting statement with a payment Claim required by the *Payments Act*
 - xv. providing a statutory declaration pursuant to Clause 43 which is false, misleading or deceptive in any respect
 - xvi. providing a supporting statement required by the *Payments Act* which is false or misleading, and/or

- xvii. any other breach identified by the Principal as a 'substantial breach'.

44.3 Requirements of a notice by the Principal to show cause

A notice under Clause 44.2 shall:

- a) state that it is a notice under Clause 44 of the General Conditions of Contract
- b) specify the alleged substantial breach
- c) require the Contractor to show cause, in writing, why the Principal should not exercise a right referred to in Clause 44.4
- d) specify the time and date by which the Contractor must show cause (which time shall not be less than five clear Business Days after the notice is given to the Contractor), and
- e) specify the place at which cause must be shown.

44.4 Rights of the Principal

- a) If the Contractor commits a substantial breach of Contract regardless of whether or not the Principal has served a notice under Clause 44.2 the Principal may, in its absolute discretion, by notice in writing to the Contractor:
 - i. take out of the hands of the Contractor the whole or part of the work remaining to be completed, or
 - ii. terminate the Contract.
- b) If the Contractor commits a substantial breach of Contract regardless of whether or not the Principal has served a notice under Clause 44.2 the Principal may, in its absolute discretion, suspend payments to the Contractor until:
 - i. the date upon which the Principal takes action under Clause 44.4(a)(i) or (ii).
- c) If the Principal exercises the right under Clause 44.4(a)(i), the Contractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under Clause 44.6.

44.5 Procedure when the Principal takes over work

- a) If the Principal takes work out of the hands of the Contractor under Clause 44.4(a)(i), the Principal shall complete that work and the Principal may, without payment of compensation, take possession of such of the Constructional Plant and other things on or in the vicinity of the Site as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work.
- b) If the Principal takes possession of Constructional Plant or other things, the Principal shall maintain the Constructional Plant and, subject to Clause 44.6, on completion of the work, the Principal shall return to the Contractor the Constructional Plant and any things taken under this Clause 44.5 which are surplus.

44.6 Adjustment on completion of the work taken out of the hands of the Contractor

- a) When work taken out of the hands of the Contractor under Clause 44.4(a)(i) is completed, the Administrator shall ascertain the cost incurred by the Principal in completing the work and shall issue a certificate to the Principal and the Contractor certifying the amount of that cost.

- b) If the cost incurred by the Principal is greater than the amount which would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due to the Contractor from the Principal. The Principal shall keep records of the cost in a similar manner to that prescribed in Clause 41.
- c) If the Contractor is indebted to the Principal, the Principal may, in its absolute discretion, retain Constructional Plant or other things taken under Clause 44.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Constructional Plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.

44.7 Default of the Principal

- a) If the Principal commits a substantial breach of Contract and the Contractor considers that damages may not be an adequate remedy, the Contractor may give the Principal a written notice to show cause.
- b) Substantial breaches include but are not limited to:
 - i. failing to make a payment in breach of Clause 42.1
 - ii. failure by the Administrator to either issue a Certificate of Practical Completion or give the Contractor, in writing, the reasons for not issuing the Certificate within 10 Business Days of receipt of a request by the Contractor to issue the Certificate in breach of Clause 42.5.

44.8 Requirements of a notice by the Contractor to show cause

A notice under Clause 44.7 shall:

- a) state that it is a notice under Clause 44 of the General Conditions of Contract
- b) specify the alleged substantial breach
- c) require the Principal to show cause in writing why the Contractor should not exercise a right referred to in Clause 44.9
- d) specify the time and date by which the Principal must show cause (which shall not be less than five clear Business Days after the notice is given to the Principal), and
- e) specify the place at which cause must be shown.

44.9 Rights of the Contractor

- a) If by the time specified in a notice under Clause 44.7, the Principal fails to show reasonable cause why the Contractor should not exercise a right referred to in Clause 44.9, the Contractor may, by notice in writing to the Principal, suspend the whole or any part of the Work Under the Contract.
- b) The Contractor shall lift the suspension if the Principal remedies the breach, but if within 20 Business Days after the date of suspension under Clause 44.9, the Principal fails to remedy the breach or, if the breach is not capable of remedy, fails to make other arrangements to the reasonable satisfaction of the Contractor, the Contractor may, by notice in writing to the Principal, terminate the Contract.

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

44.10 Rights of the parties on termination

If the Contract is terminated under Clause 44.4(a)(ii) or Clause 44.9, the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

44.11 Insolvency

- a) If:
- i. a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with the Contract
 - ii. execution is levied against a party by a creditor
 - iii. a party is an individual person or a partnership including an individual person and that person:
 - i. commits an act of bankruptcy
 - ii. has a bankruptcy petition presented against this person or presents 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
 - iv. 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. the party enters a deed of company arrangement with creditors
 - iii. a controller or Administrator is appointed
 - iv. an application is made to a court for the winding up of the party and not stayed within 10 Business Days
 - v. a winding up order is made in respect of the party
 - vi. it resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up)
 - vii. a mortgagee of any property of the party takes possession of that property, or
 - viii. a receiver or a receiver and manager is appointed in respect of any property or undertaking of the party,

then, where the other party is:

- v. the Principal — the Principal may, in its absolute discretion, without giving a notice to show cause, exercise the right under Clause 44.4(a)(i) or Clause 44.4(a)(ii), or

- vi. the Contractor — the Contractor may, without giving a notice to show cause, exercise the right under Clause 44.9.
- b) The rights given by this Clause 44.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of Contract.

45 Not used

46 Time for notification of Claims and disputing Administrator's directions

- a) Unless this Contract expressly states otherwise, the Principal shall not be liable upon any Claim by the Contractor arising out of or in connection with any alleged breach of the Contract, in tort, under any statute, for payment or compensation on the basis of restitution, or for payment or compensation on any other legal or equitable basis unless within 20 Business Days of the first day on which the Contractor could reasonably have been aware of the events or circumstances on which the Claim is, the Contractor has given notice to the Principal in writing including particulars of the event or circumstances on which the Claim is or will be based, the provision of the Contract or other basis for the Claim or proposed Claim, and (to the extent practicable) the quantum or likely quantum of the Claim.
- b) Nothing in this Clause 46 shall limit the operation or effect of any other notice provision, time-bar provision, condition precedent or limitation or exclusion clause in the Contract, nor waive the effect of any failure by the Contractor to comply with any such provision or requirement.

47 Dispute resolution

47.1 Notice of dispute

- a) If a dispute between the Contractor and the Principal arises out of, or in connection with, the Contract, including a dispute concerning a direction given by the Administrator, then either party shall deliver by hand or send by registered post to the other party and to the Administrator a notice of dispute in writing adequately identifying and providing details of the dispute (notice of dispute).
- b) Notwithstanding the existence of a dispute, the Principal and the Contractor shall continue to perform the Contract, and subject to Clause 44, the Contractor shall continue with the Work Under the Contract and the Principal and the Contractor shall continue to comply with Clause 42.1.
- c) A Claim in tort, under statute or for restitution based on unjust enrichment or for rectification or frustration, may be included in an arbitration.

47.2 Meeting of representatives

Within five Business Days after the service of a notice of dispute, the Administrator and Contractor's Representative shall confer at least once to attempt to resolve the dispute.

47.3 Further steps required before proceedings

47.3.1 Meeting of chief executive officers

If the Administrator and Contractor's Representative fail to resolve the dispute within 10 Business Days after the service of a notice of dispute:

- a) the chief executive officers of the parties, or
- b) delegates of the chief executive officers, who have not been directly involved in the management of the Contract and have the Authority to agree to a resolution of the dispute,

shall confer at least once to attempt to resolve the dispute.

47.3.2 Referral of dispute

- a) Either party may, by notice in writing delivered by hand or sent by registered post to the other party, refer such dispute to arbitration or litigation if:
 - i. either:
 - a. the dispute has not been resolved within 10 Business Days after the referral of the dispute to the chief executive officers of the parties under Clause 47.3.1, or
 - b. a party convenes a meeting under either Clause 47.2 or 47.3.1 and the other party fails to attend that meeting, provided that 10 Business Days after the referral of the dispute to the chief executive officers have passed, and
 - ii. that written notice is delivered within six months after an event in Clause 47.3.2(a)(i) occurs (or such longer period as agreed by the parties).
- b) If a notice is not given within the timeframe in Clause 47.3.2(a)(ii), then:
 - i. a party must not refer the relevant Dispute to arbitration or litigation
 - ii. a party's failure to comply with Clause 47.3.2(a)(ii) may be pleaded as a bar to the commencement of any arbitration or litigation proceedings in relation to that Dispute, and
 - iii. the subject of that Dispute must not be made the subject of further Dispute notice.

47.3.3 Privileged meetings

All aspects of any meetings held pursuant to Clauses 47.2 or 47.3.1 (or any other conferences between the parties for the purposes of resolving the dispute), except the fact of occurrence shall be privileged.

47.4 Arbitration

- a) Arbitration shall be effected by a single arbitrator who shall be nominated by the Chairperson for the time being of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia. Such arbitration shall be held in Queensland.
- b) Unless the parties agree in writing, any person agreed upon by the parties to resolve the dispute pursuant to Clause 47.3 shall not be appointed as an arbitrator, nor may that person be called as a witness by either party in any proceedings.
- c) Notwithstanding Clause 42.9, the arbitrator may award whatever interest the arbitrator considers reasonable.
- d) If one party has overpaid the other, whether pursuant to an Administrator's certificate or not and whether under a mistake of law or fact, the arbitrator may order repayment together with interest.

47.5 Summary or urgent relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under Clause 42 or to seek urgent injunctive or declaratory relief in respect of a dispute under Clause 47 or any matter arising under the Contract.

48 Waiver of conditions

Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior consent in writing of the Principal in each instance.

99 Additional clauses

99.1 Clause Bank (C7836)

Additional (if applicable) project-specific clauses to these General Conditions of Contract are specified in the Clause Bank (C7836), provided in Part 5 Additional Contract Requirements.

