

First Response Emergency Works Contract

General Conditions of Contract

May 2026

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General Conditions of Contract

1 Definitions

In the First Response Emergency Works Contract (the **Contract**), except where the context otherwise requires, terms have the meaning ascribed to them in **Schedule 1** (Definitions) of this document.

2 Additional clauses

- a) Additional clauses to these General Conditions of Contract (if any) are as set out in **Item 10 of Annexure A** and apply under the Contract as if they were included in these General Conditions of Contract.
- b) If an additional clause set out in **Item 11 of Annexure A** is inconsistent with these General Conditions of Contract, then the additional clause prevails to the extent of the inconsistency.

3 Representatives

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

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

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

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

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

4 Execution and completion of Works

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

given under this clause with which the Contractor must comply is not a variation of the Works and Clause 10 does not apply to that direction.

- g) The Administrator may from time to time (acting reasonably) request the Contractor to provide information in connection with the Works or a Site or the performance of obligations under the Contract and the Contractor must promptly provide the requested information.

5 Relationships and disputes

- a) Each party will, at all times, act in good faith and in a co-operative manner and do all things reasonably expected of it to implement the Contract and to ensure that the Works are completed in a safe, expeditious and cost-efficient manner.
- b) Where a dispute or difference emerges between the parties under or in connection with the Contract (**Dispute**):
- i. one party may serve upon the other a notice that a Dispute exists and that provides details of the Dispute
 - ii. within 5 Business Days after service of that notice, the Administrator and the Contractor's Representative must confer at least once and undertake genuine and good faith negotiations with a view to resolving the Dispute, and
 - iii. in the event that the Dispute cannot be so resolved, either party may by notice in writing delivered by hand or sent by registered post to the other party refer the Dispute to litigation.

6 Assignment

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

7 Time and progress

The Contractor must regularly and diligently progress the Works.

8 Contract price

- a) The Principal must pay the Contractor the Contract Price and such other amounts as expressly required under the Contract, subject to and in accordance with the Contract.
- b) The Contract Price is not subject to adjustment for any rise and fall in costs.

- c) The Contractor is only entitled to claim and be paid the following costs, expenses or charges, in respect of the Works:
 - i. for personnel, plant and equipment – in accordance with **Annexure B**, and
 - ii. for Reimbursable Costs – in accordance with paragraph (b) of the definition of Contract Price and the definition of Reimbursable Costs, and
 - iii. the Contractor's Margin.
- d) It is a precondition to the Contractor's entitlement to claim or be paid for Reimbursable Costs that the Contractor obtains the Administrator's prior written approval before the Contractor incurs such costs.
- e) Where in respect of any part of the Works:
 - i. the Administrator has directed the Contractor in writing that the Contractor must not incur an amount greater than a specified amount
 - ii. **Annexure B** provides that the Contractor must not incur an amount greater than a specified amount, or
 - iii. the Administrator has notified the Contractor in writing that the Principal accepts the matters in a Variation Response pursuant to Clause 10(f)(i) which includes a maximum amount,

the Contractor will not be entitled to be paid more than the specified or maximum amount.

9 Quality

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

10 Setting and varying the scope of Works

- a) The Contractor acknowledges and agrees that because of the nature of emergency repair work, the Scope of Works is therefore not fixed but subject to fluctuation and that from time to time there may be no Scope of Works under the Contract.

- b) Unless otherwise required by the Contract or agreed by the parties, the Scope of Works:
- i. will be of a character and extent contemplated by, and capable of being carried out under, a Contract for emergency work required to repair damaged road network and associated infrastructure or otherwise return that road network and associated infrastructure to operation and, unless the parties otherwise agree, consistent with the Types of Work, and
 - ii. must be set or varied only in accordance with this Clause 10.
- c) The Administrator may in its absolute discretion, request the Contractor to do any one or more of the following:
- i. undertake works or other activities that are to be comprised in the Works
 - ii. decrease or increase a part of the Works
 - iii. change the character or quality of material for the Works, or
 - iv. undertake additional or different Works,
- including for the purpose of setting or varying a Scope of Works (**Variation Request**). The Variation Request may direct the Contractor to immediately commence performing the Work the subject of the Variation Request.
- d) Upon receipt of a Variation Request in writing from the Administrator under Clause 10(c), the Contractor must advise the Administrator as soon as reasonably possible (but not longer than 2 Business Days after the Variation Request):
- i. whether the Works the subject of the Variation Request can be effected
 - ii. the time it will take to perform the Works the subject of the Variation Request, and
 - iii. the estimated cost (including any delay costs if any) to undertake the Works the subject of the Variation Request,
- (Variation Response).**
- e) As required by Clause 3(e), the Administrator and the Contractor's Representative are encouraged to discuss a proposed Variation Request or a proposed Variation Response. If the Administrator or the Contractor's Representative requests the other to discuss a Variation Request or a proposed Variation Response, such discussions must be held promptly and in accordance with the parties' obligations under Clause 5(a).

- f) Upon receipt of a Variation Response in writing from the Contractor under Clause 10(d):
 - i. the Administrator may notify the Contractor in writing that the Principal accepts the matters in the Variation Response, in which case:
 - A. the relevant Works the subject of the Variation Request (including the relevant Scope of Works) are set or varied accordingly, and
 - B. the Contractor must perform the Works the subject of the Variation Request, and the Principal must pay the Contractor for the relevant Works in accordance with Contract.
 - ii. the Administrator may notify the Contractor in writing that the Principal does not accept the matters in the Variation Response, in which case the Administrator may direct the Contractor to:
 - A. perform (or continue to perform) the Works the subject of the Variation Request, or
 - B. not perform (or cease to perform) the Works the subject of the Variation Request.
- g) For the avoidance of doubt, if the Principal directs the Contractor under Clause 10(f)(ii)(B) to not perform (or cease to perform) the Works the subject of the Variation Request but the Contractor has already commenced the relevant Works, then:
 - i. Clause 24.2 will apply to the Contractor's cessation of the relevant Works as though a reference in Clause 24.2 to the termination of the Contract was a reference to cessation of the relevant Works, and
 - ii. the Principal's election does not affect any other Works that were not the subject of that election and does not constitute a termination or repudiation of the Contract.
- h) If the Administrator:
 - i. directs the Contractor to immediately commence performing Work the subject of a Variation Request under Clause 10(c), or

- ii. notifies the Contractor that:
 - A. the Principal accepts the matters in a Variation Response pursuant to Clause 10(f)(i), or
 - B. the Principal does not accept the matters in the Variation Response, but notwithstanding, the Contractor is directed to perform (or continue to perform) the Works the subject of the Variation Request pursuant to Clause 10(f)(ii)(A),

and there is necessary rate or price information not included in **Annexure B**, or the Contractor has provided rate or price information that is inconsistent with the rate or price information included in **Annexure B**, then:

- iii. the Administrator and Contractor's Representative must, as soon as possible, try and agree the relevant rates or prices, or failing agreement within 7 Business Days of the Administrator's direction or notification the Administrator will price the relevant Works using:
 - A. rates or prices included in **Annexure B** to the extent that it is reasonable to use them, or
 - B. reasonable rates or prices (which shall include a reasonable amount for profit and overheads).
- i) Notwithstanding any other provision of the Contract, the Administrator may at any time direct the Contractor to remove from the Site any personnel, plant or equipment.

11 Data collection and reporting obligations

- a) The Contractor acknowledges that the Principal requires the collection of evidence, data and other information relating to the Works and that evidence, data and other information is of critical importance to the Principal in order to procure reimbursement of the costs of the Works.
- b) The Contractor must collect evidence, data and other information of the types referred to in the 'Natural Disaster Program (NDP) Evidence Capture and Review Guidelines', using the RADAR (Recording Asset Damage and Restoration) Application and otherwise in accordance with the Principal's requirements from time to time (acting reasonably) and promptly report that evidence, data and other information to the Principal.
- c) The Contractor must provide the Principal with photographic evidence in accordance with Clause 11(b) prior to undertaking any of the Works.

- d) The Principal must provide a copy of that Guideline to the Contractor and any other information collection requirements of the Principal from time to time relevant to the Works.

12 Compliance with law

12.1 Complying with laws generally

- a) The Contractor must comply with all laws, and requirements of bodies, authorities, officials or other organisations having jurisdiction in connection with the Contract and the Works.
- b) Subject to Clause 12.2, the Contractor must pay all statutory fees payable in connection with the Contract and the Works (whether payable by the Contractor or the Principal).
- c) The statutory fees payable by the Contractor will be treated as Reimbursable Costs for the purpose of the Contract Price (subject to the Contractor having obtained the Principal's prior written approval for such costs) and will be payable in accordance with the Contract.

12.2 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 the 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).

12.3 Not used.

12.4 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 notified by the Principal or Administrator to the Contractor.

12.5 The Queensland Code

- a) The Queensland Code of Practice for the Building and Construction Industry (**Queensland Code**) will apply to the Contract. The Contractor shall comply with, and meet any obligations imposed by the Queensland Code.
- b) Upon request by the Administrator, the Contractor must provide the Administrator with sufficient evidence of the Contractor's compliance with the Queensland Code.
- c) The Queensland Code is available at: <https://www.oir.qld.gov.au/industrial-relations/building-and-construction-code-practice-2000>.

12.6 The Queensland Charter for Local Content

- a) This Clause 12.6 applies if specified by **Item 6 of Annexure A** to apply.
- b) Where there is an obligation on the Contractor to comply with the principles of the Queensland Charter:
 - i. prior to the commencement of Works, the Contractor shall prepare and submit a statement of intent to the Administrator, indicating how the principles of the Charter shall be addressed, and
 - ii. upon reaching Practical Completion or the last of the Practical Completion if there is more than one separable portion, the Contractor shall complete and submit a form C7897.IC TMR Queensland Charter for Local Content – Project Outcome Report (template available from <https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Infrastructure-Contract/Transport-Infrastructure-Contract/TIC-Construct-Only>) to qclc@dcd.qld.gov.au and also submit a copy to:
 - A. the Administrator, and
 - B. the Principal via localcontentreports@tmr.qld.gov.au.
- c) No additional payment will be made for compliance requirements in accordance with the Queensland Charter for Local Content.

12.7 Compliance with the Queensland Procurement Policy (QPP)

- a) The Principal expects the Contractor to support local businesses by sourcing equipment, materials and services from suppliers based locally to the Works. The Contractor must give, and must ensure that its subcontractors give local workforces and local suppliers opportunity to supply labour, services, materials, plant, machinery, equipment and other items for the Works. 'Local workforces' and 'local suppliers' are defined by the QPP.
- b) The Contractor will support the Principal in its 'purposeful public procurement' (PPP) outcomes (as defined by the QPP) as advised by the Principal from time to time, and will maintain any tender commitments in respect of such PPP outcomes during the term of the Contract.
- c) In addition to the reporting requirements stipulated in Clause 12.6(b)(ii), the Contractor shall compile a monthly report to the Principal via email address localcontentreports@tmr.qld.gov.au, with a copy to the Administrator, using the Project Outcome Reporting template form C7897.IC TMR Queensland Charter for Local Content – Project Outcome Report (template available from <https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Infrastructure-Contract/Transport-Infrastructure-Contract/TIC-Construct-Only>, or other form of reporting template as advised by the Principal from time to time. This monthly report shall contain data relevant to the Works completed up to and including the month (cumulative) to which the Contractor's progress claim relates, identifying businesses meeting the local requirements of the QPP and the PPP outcomes, as required by the Principal.
- d) In addition to Clause 12.7(c), upon request by the Administrator, the Contractor must provide the Administrator with sufficient evidence of the Contractor's compliance with the QPP.

12.8 Cyber Security Risk Management

The Contractor must:

- a) maintain effective cyber security measures to protect all information from unauthorised access, use, copying or disclosure
- b) notify the Principal immediately in writing if the Contractor becomes aware of any possible or actual breach of this Clause 12.8 and take all reasonable steps required to prevent or stop that breach, at the Contractor's own expense, and
- c) reasonably assist the Principal in connection with any action or investigation regarding any possible or actual unauthorised disclosure or misuse of information.

12.9 Queensland Government Supplier Code of Conduct

- a) In this Clause 12.9:
- i. Government Department or Instrumentality means any government department responsible for compliance with government policy, including the QGP, the Department of Housing and Public Works, the Queensland Government Procurement Assurance Branch, the Queensland Government Procurement Committee, the Department of Trade, Employment and Training, the Department of State Development, Infrastructure and Planning, the Office of Industrial Relations and any governmental regulator, including Workplace Health and Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission and any entity which replaces these entities from time to time.
 - ii. Procurement Assurance Model is referred to in Part 3 of the QPP and includes any additional requirements relating to the Procurement Assurance Model as published from time to time.
 - iii. Queensland Government Procurement Assurance Portal means the portal maintained by QGP and any replacement portal, and
 - iv. Queensland Government Supplier Code of Conduct means the *Queensland Government Supplier Code of Conduct*, or any policy that replaces that policy.
- b) The Contractor warrants that it:
- i. will comply with the Queensland Government Supplier Code of Conduct, and
 - ii. is not suspended on the Queensland Government Procurement Assurance Portal.
- c) The Contractor must immediately notify the Principal upon any possible or actual breach of Clause 12.9(b).
- d) A breach of Clause 12.9(b)(i) is a breach of this Contract.
- e) The Contractor agrees to provide all information reasonably requested, and participate in any audit or investigation, by the Principal or any Government Department or Instrumentality relating to compliance by the Contractor or any of its subcontractors with Clause 12.9(b).

- f) The Contractor acknowledges that a failure to comply with government policies or legislation, including the *Queensland Government Supplier Code of Conduct*, and the Principal's policies that apply to the Works or the Contractor's obligations under the Contract can result in the imposition of adverse consequences for the Contractor under the Queensland Government Procurement Assurance Model, including suspension on the Procurement Assurance Portal, in addition to any other remedies available to the Principal against the Contractor for its breach of this Contract.

12.10 Information Privacy Act 2009 (Qld)

- a) If the Contractor collects or has access to Personal Information as part of or in connection with this Contract, the Contractor must comply with Parts 1 and 2 of Chapter 2 and Section 41 of the *Information Privacy Act 2009 (Qld)* in relation to the discharge of its obligations under the Contract as if the Contractor was the Principal.
- b) Further, the Contractor must:
- i. Not use the Personal Information other than in connection with carrying out the Works, unless required or authorised by law.
 - ii. Not disclose, or transfer outside of Australia, the Personal Information without the prior written consent of the Principal, unless required or authorised by law.
 - iii. Ensure that its officers, employees, agents and subcontractors do not access, use or disclose the Personal Information other than in connection with carrying out the Works.
 - iv. Ensure that its subcontractors who have access to the Personal Information comply with obligations the same as those imposed on the Contractor under this Clause.
 - v. Fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints.
 - vi. Comply with such other privacy and security measures as the Principal may reasonably require from time to time.
 - vii. Immediately notify the Principal upon becoming aware of:
 - A. any breach of this Clause 12.10
 - B. any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with the Contract

- C. any loss of Personal Information collected or accessed in connection with the Contract in circumstances where unauthorised access, use, modification, disclosure or other misuse of the Personal Information by a third party is likely to occur, or
 - D. anything that would constitute an eligible data breach (as defined in the *Information Privacy Act 2009* (Qld)) relating to the Personal Information collected or accessed in connection with the Contract.
- viii. Comply with the reasonable directions of the Principal in relation to any privacy breach referred to in Clause 12.10(b)(vii), and
- ix. Fully co-operate with the Principal to enable the Principal to take any action required of it under Chapter 3A (Mandatory notification of data breaches) of the *Information Privacy Act 2009* (Qld).
- c) On request by the Principal, the Contractor must obtain from its employees, officers, agents or subcontractors carrying out the Works, an executed deed of privacy in a form acceptable to the Principal.
- d) The Contractor acknowledges that, in accordance with the Contract, the Administrator, the Principal and the QGP:
- i. will collect information for the purposes of administering the Contract that may contain Personal Information (as that term is defined in the *Information Privacy Act 2009* (Qld)) which will be used in accordance with the Contract and may be disclosed to the Administrator, the Principal, the QGP and agents, consultants, or other contractors engaged by the Principal, but will not be disclosed to any other third party without the Contractor's consent unless authorised or required by law or the Contract, and
 - ii. may collect information containing Personal Information (as that term is defined in the *Information Privacy Act 2009* (Qld)) for the purposes of determining the Contractor's compliance with government policies and legislation, including the *Queensland Government Supplier Code of Conduct*, which may be disclosed to a Government Department or Instrumentality for compliance purposes but will not be disclosed to any other third party without the Contractor's consent unless authorised or required by law or in the Contract.
- e) Personal Information will be handled in accordance with the *Information Privacy Act 2009* (Qld). Nothing in this clause is intended to limit any obligation of the Contractor under the *Information Privacy Act 2009* (Qld) or *Privacy Act 1988* (Cth) (as applicable).

- f) Following the completion of the Works, the Contractor must 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 must destroy all such Personal Information in the Contractor's possession.
- g) This Clause 12.10 survives termination or expiry of the Contract.

13 Protection of people and property

13.1 Contractor's obligations

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

13.2 Protection of people and property

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

13.3 Work health and safety

13.3.1 Definitions

For the purposes of this Clause 13.3:

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

13.3.2 General

- a) The Contractor acknowledges and agrees that, as between the parties, in respect of each Workplace the Contractor is, for the purposes of the WHS Act:
 - i. the person conducting a business or undertaking that installs, constructs or commissions a construction project or construction work (including any structures) undertaken or to be undertaken at that Workplace and the design of that construction project (including any structure), and
 - ii. the person with management or control of that Workplace, and the person with management or control of fixtures, fittings and plant at that Workplace.
- b) Without limiting the remainder of this Clause 13.3, the Contractor must:
 - i. ensure that it complies with the Principal's work health and safety requirements when performing the Works
 - ii. ensure that it complies with its obligations under the WHS Act and WHS Regulations and ensure that it consults, cooperates and coordinates activities with all other persons who have a work health and safety duty in relation to the same matter
 - iii. comply with the requirements of the WHS Act, WHS Regulation and the Principal's workplace health and safety management plan
 - iv. ensure the health and safety of any Person affected by the Works including, but not limited to:
 - A. the Contractor's Agents

- B. the Principal's employees and agents
 - C. users of the road infrastructure
 - D. occupiers of land comprised in, adjacent to or adjoining the Site
 - E. while carrying out the Works, and
- v. use its best endeavours not to affect the Principal's ability to discharge its obligations under the WHS Act and WHS Regulations.

13.3.3 Specific obligations – management and control

The Contractor agrees that:

- a) the Works may include construction Work that is a 'construction project' for the purposes of the WHS Regulation
- b) if the Works are or include a construction project, the Contractor is the Principal Contractor for the construction project and, for the avoidance of doubt, the Principal engages the Contractor as the Principal Contractor for that construction project
- c) the Contractor is:
 - i. responsible for discharging its duties and obligations under the WHS Act and WHS Regulation as a person conducting a business or undertaking and as the Principal Contractor for the relevant construction project
 - ii. authorised to have management and control of the Workplace
 - iii. required to consult with the Principal in relation to matters of safety that the Contractor cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal to ensure any issues are resolved to the required standard, and
 - iv. to comply with the WHS Act and the WHS Regulation.

13.3.4 Responsibilities and liabilities

- a) The Contractor is responsible for, and assumes liability for, the duties and obligations under the WHS Act and the WHS Regulation for which the Contractor is responsible and liable as between the parties in accordance with this Clause 13.3.
- b) The Contractor must, and must ensure that the Contractor's Agents, take all steps necessary to prevent exposure of all persons to any risks to health and safety arising in connection with the performance of the Works including construction Work at a Workplace.

- c) Nothing contained in this Clause 13.3 limits or excludes any of the Contractor's obligations or liabilities under the Contract or limit the Contractor's obligations under any law.

13.3.5 Notifiable incidents

The Contractor must:

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

13.3.6 Indemnities

- a) To the extent permitted by law, the Contractor indemnifies, and will keep indemnified, the Principal from and against all loss which may be brought against or made on the Principal or which the Principal may incur, sustain or be put to arising by reason of or in connections with:
 - i. any breach of the WHS Act or the WHS Regulation at a Site or in connection with the Works caused, or contributed to, by the Contractor or the Contractor's Agents
 - ii. any breach by the Contractor of its obligations under this Clause 13.3 or its duties or obligations under the WHS Act or the WHS Regulation, or

- iii. the Principal being deemed under the WHS Act to be the person with management or control of a Workplace or the person with management or control of any fixtures, fittings and plant at a Workplace.
- b) It is not necessary for the Principal to incur expense or make a payment before enforcing any indemnity conferred by this Clause 13.3.6. This Clause 13.3.6 survives termination of the Contract.

13.4 Public notification

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

13.5 Other traffic management issues

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

14 Possession and care

- a) The Principal must on, or before, the date set out in the relevant Scope of Works give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence the relevant Works, 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 Requirements stated in **Item 10 of Annexure A**, and

- ii. the Contractor has not obtained all insurances required to be obtained under Clauses 19.5 to 19.7 and provided proof of those insurances to the Principle as referred to in Clause 19.8.
- b) If the Principal has not given the Contractor possession of the whole Site, the Principal must, from time to time give the Contractor possession of such further parts of the Site as may be necessary to enable the Contractor to execute the Works in accordance with the requirements of the Contract (subject to the Contractor having complied with the requirements under Clause 14(a) in respect of those further parts of the Site). The Principal must advise the Contractor in writing of the date upon which the Site or any part thereof will be available.
- c) Possession of the Site confers on the Contractor a right only to use and control the Site as is necessary to enable the Contractor to execute the Works.
- d) Except to the extent agreed in writing by the parties, the Contractor acknowledges and accepts that the public use of the Site must be fully maintained during the performance of the Works.
- e) For the avoidance of doubt, the Principal may limit the times during a day when the Contractor has possession of the Site. Without limiting the Scope of Works or the Contractor's safety obligations under the Contract or at law, the Contractor must leave the Site in a clean, safe and tidy condition at the end of each period of possession.
- f) Where the Contractor has completed the Works for all or part of a Site, the Contractor may hand back possession to the Principal by seeking and obtaining the Principal's acceptance that the relevant Works have been completed. Where the Principal does not accept that the relevant Works have been completed:
 - i. the Principal must provide reasons to the Contractor for that refusal, and
 - ii. the Contractor remains in possession of the Site.

15 Restrictions to working times

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

16 Supply of material and key personnel

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

17 Public Utility Plant

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

18 Consideration of others

18.1 Adjoining work

- a) The Contractor acknowledges that:
 - i. when it commences any Works, prior Contractors may not have completed their Works and may be doing so at the same time as the Contractor is executing its Works, and
 - ii. Contractors may be executing work on other Contracts which may interface with the Works.
- b) The Contractor agrees that it will be responsible for co-ordination of its Works with that of other Contractors so as not to disrupt, impede or adversely affect those other Contractors in the execution of their work.

18.2 Adjoining land

- a) In performing the Works, the Contractor must not (and must ensure the Contractor's Agents do not) enter or permit Constructional Plant and equipment to enter land adjoining or adjacent to the Site that is not owned by or otherwise under

the control of the Principal without first obtaining the written approval of the land occupier and the land owner (where these are not the same person).

- b) The Contractor must seek written direction from the Administrator in the event the Contractor is unable to obtain the written approval of the land occupier / owner prior to entering that land.

19 Risk and insurances

19.1 Indemnity by Contractor

- a) The Contractor must indemnify the Principal against:
 - i. loss of or damage to property of the Principal, including existing property in, or upon, which the Works are being carried out, and
 - ii. claims by any person (including claims by owner or occupiers of areas adjoining or adjacent to the Site) against the Principal in respect of personal injury or death or loss of or damage to any property,arising out or as a consequence of the carrying out by the Contractor of the Works, but the Contractor's liability to indemnify the Principal is reduced proportionally to the extent that the act or omission of the Principal or employees or agents of the Principal contributed to the loss, damage, death or injury.
- b) This Clause 19.1 does not:
 - i. apply to the extent that the liability of the Contractor is limited by another provision of the Contract, or
 - ii. exclude any other right of the Principal under the Contract to be indemnified.
- c) This Clause 19.1 survives termination of the Contract.

19.2 Release by Contractor

- a) The Contractor releases and discharges the Principal from any loss or claim which but for the provisions of this Clause 19.2 might be brought against or made upon the Principal by the Contractor except to the extent that such loss or claim arises out of or in connection with:
 - i. any negligent act, error or omission by the Principal (or its employees or agents) in relation to the Works, or
 - ii. any material and substantial default by the Principal under the Contract.
- b) This Clause 19.2 survives termination of the Contract.

19.3 Exclusion of Consequential Loss

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

19.4 Application of insurance requirements

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

19.5 Insurance of the Works

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

19.6 Public liability insurance

- a) The Contractor must effect a public liability policy of insurance in the joint names of the Principal and the Contractor which covers the Principal, the Contractor, the Administrator and all of the Contractor's Agents employed from time to time in relation to the Works for their respective rights and interests, and covers their liabilities to third parties. The policy must also cover the Contractor's liability to the Principal and the Principal's liability to the Contractor for loss of or damage to property (other than property required to be insured by Clause 19.5) and the death of or injury to any person (other than liability which is required by law to be insured under a worker's compensation policy of insurance). Insurance effected by the Contractor must be with an insurer and in terms both approved in writing by the Principal, which approvals must not be unreasonably withheld.

- b) The public liability policy of insurance must be for an amount in respect of any one occurrence not less than the amount stated in **Item 8 of Annexure A**. The policy must be maintained at all times when the Contractor has access to a Site or any Works have not achieved Practical Completion.

19.7 Insurance of employees

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

19.8 Proof of insurance

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

19.9 Notice from or to the insurer

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

20 Wet weather

- a) In the event that the Contractor is unable to progress Works due to wet weather (to be determined by the Principal), the Contractor will be entitled to payment in accordance with the hourly standby rates set out in **Annexure B** to a maximum of 8 hours on any calendar day.

- b) The amount to which the Contractor is entitled to under this Clause 20 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with any delay and disruption which the Contractor encounters in carrying out Works and any claim for payment in relation to that delay and disruption by the Contractor. The Contractor agrees that it is not entitled to claim for delay or disruption for wet weather where the Contractor has been paid under Clause 20.

21 Claims and certificates

21.1 Progress claims

At the times for progress claims stated in **Item 4 of Annexure A**, the Contractor will deliver to the Administrator claims for payment that specifies:

- a) the emergency event to which the Works relate
- b) the period within which those Works were completed, and
- c) the costs applicable to each road link as identified in the Scope of Works (and separated by each road link or as otherwise directed by the Administrator),

and that is supported by the following:

- d) evidence of the amount due to the Contractor, including a breakdown of the value of the Works executed (including a breakdown of the daily hours, rates, costs for plant, labour and materials)
- e) Conformance Reports in relation to the Works the subject of the progress claim
- f) evidence in the form of statutory declaration that all subcontractors have been paid
- g) photographic evidence in accordance with the 'Natural Disaster Program (NDP) Evidence Capture and Review Guidelines' pursuant to Clause 11(b)
- h) any other information as the Administrator may reasonably required
- i) a supporting statement in accordance with the Security of Payment Act (for guidance, the supporting statement template is available at: <https://www.qbcc.qld.gov.au/running-business/getting-paid/request-payment/supporting-statement>)
- j) itemised amounts on an Open Book Basis claimed for Reimbursable Costs, and
- k) a calculation of the total of the Reimbursable Costs pursuant to paragraph (j) above multiplied by the Contractor's Margin.

21.2 Progress claim requirements

Claims for payment will include that part of the Contract Sum equal to the value of Works carried out by the Contractor in accordance with the Contract to that time which is to be inclusive of all amounts then due to the Contractor arising out of or in connection with the Contract and GST.

21.3 Payment certificates

- a) Within 10 Business Days after receipt of a claim for payment, the Administrator will issue to the Principal and to the Contractor a payment certificate which:
 - i. identifies the payment claim to which it relates
 - ii. states the amount of the payment, if any, which is to be made by the Principal to the Contractor or by the Contractor to the Principal (**Scheduled Amount**), and
 - iii. if the Scheduled Amount is less than the claimed amount, states why the Scheduled Amount is less, and if it is less because the Principal is entitled to withhold payment for any reason, the Principal's reasons for withholding payment.
- b) The Administrator may allow in any payment certificate issued pursuant to this Clause 21 amounts otherwise due from the Principal to the Contractor and/or due from the Contractor to the Principal arising out of or in connection with the Contract, but the Administrator shall not be required to include in any such certificate and the Principal shall not be obliged to pay for any Works for which a Conformance Report is required but has not been provided to the Administrator, unless Indicative Conformance applies.
- c) Within 2 Business Days of the issue of the payment certificate by the Administrator, the Contractor must issue to the Principal, or the Principal shall issue to the Contractor, as the case may be, a Tax Invoice in respect of the relevant Supply.

21.4 Payment

- a) Subject to the provisions of the Contract, within 20 Business Days after receipt by the Administrator of a progress claim in accordance with Clause 21.1, 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 progress claim.

- b) Payment of moneys to the Contractor will not be evidence of the value of Works or an admission of liability or evidence that Works have been executed satisfactorily but will be a payment on account only.
- c) If any Works 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.

21.5 Security of Payment Act

For the purpose of the Security of Payment Act, the Administrator is authorised to receive progress claims and issue payment certificates on behalf of the Principal.

21.6 Audit

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

22 GST

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

cost or expense for which an Input Tax Credit may be claimed by the party entitled to be reimbursed or indemnified, or by its representative member.

23 Default or insolvency

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

24 Termination for convenience

24.1 Termination

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

24.2 Costs and survival

- a) If the Principal terminates the Contract under Clause 24.1:
 - i. the Contractor is entitled to payment of the following amounts as reasonably determined by the Administrator:
 - A. for Works carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for Works carried out to the date of termination
 - B. the cost of materials reasonably ordered by the Contractor for the Works, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment and the value of such materials is not included in the amount payable under Clause 24.2(a)(i)(A), and
 - C. the reasonable cost of removing from the Site all labour, Constructional Plant and other things used in connection with the Works, and
 - ii. the Contractor must immediately take all steps possible to mitigate the costs incurred or amounts payable by the Principal under this Clause 24.2(a).
- b) The amount to which the Contractor is entitled under this Clause 24.2 limits the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract under Clause 24.1 and the Contractor may not make any claim against the Principal arising out of, or in any way in connection with, that termination other than for the amount payable under this Clause 24.2. The Contractor agrees that it is not entitled to claim for any costs in relation to the Principal exercising its rights under this Clause 24.1 other than the costs payable under this Clause 24.2.
- c) This Clause 24 survives termination of the Contract.

25 Confidentiality

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

26 Public statements

Without limiting Clause 25, the Contractor must:

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

27 Service of notices

- a) To be valid, a notice or other document or communication (Notice) under the Contract must be delivered by:
 - i. hand delivery
 - ii. registered post, or
 - iii. email,

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

- b) A Notice is deemed to have been received:

By	Deemed to be received
Hand	at the time of delivery.
Registered post	on the 3 rd Business Day (or the 10 th Business Day if posted to or from a place outside Australia) after posting 'when signed for as received by the receiver'.
Email	on a Business Day, on dispatch of the transmission, or on a day other than a Business Day, on the next Business Day, unless the sender's server indicates a malfunction or error in transmission, or the recipient immediately notifies the sender of an incomplete transmission.

28 General clauses

- a) The Contract may only be amended or replaced by the written agreement of the parties.

- b) A single or partial exercise or waiver by a party of a right relating to the Contract does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- c) Except as expressly stated otherwise in the Contract, the rights of a party under the Contract are cumulative and are in addition to any other rights of that party.
- d) Each party must promptly do whatever any other party reasonably requires of it to give effect to the Contract and to perform its obligations under it.
- e) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- f) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- g) An obligation of 2 or more persons binds them separately and together.
- h) The Contract may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.
- i) The Contract contains the entire understanding between the parties as to the subject matter of the Contract. All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of the Contract are merged in and superseded by the Contract and are of no effect. No party is liable to any other party in respect of those matters.
- j) No oral explanation or information provided by any party to another affects the meaning or interpretation of the Contract or constitutes any collateral agreement, warranty or understanding between any of the parties.
- k) The Contract is not intended to create a partnership, joint venture or agency relationship between the parties.

29 Interpretation

- a) Unless expressed to the contrary, in the Contract:
 - i. words in the singular include the plural and vice versa
 - ii. any gender includes the other genders

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

Schedule 1 – Definitions

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

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

Business Day has the meaning given in the Security of Payment Act.

Conformance Report has the meaning given to that term in Clause 10.1.1 of the *MRTS50 Specific Quality System Requirements*.

Consequential Loss means:

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

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

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

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

Contractor's Margin means the percentage stated in **Item 7 of Annexure A** in respect of profit, off-site overheads that are not included in the Contractor's Scheduled Resources in **Annexure B** or Reimbursable Costs.

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

Contract Price means the sum of:

- a) the cost of carrying out or delivering the relevant Works in accordance with the Contract, as calculated by reference to the rates specified in **Annexure B**
- b) the value of Reimbursable Costs, and
- c) (a) and (b) above multiplied by the Contractor's Margin,

as verified and substantiated by the invoices, accounts and records submitted on an Open Book basis by the Contractor to the Administrator for the relevant Works.

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

Event of Insolvency occurs if:

- a) a receiver, a receiver and manager, an administrator or other controller is appointed in respect of the Contractor or the Contractor's estate or interest under the Contract
- b) any encumbrancer takes possession of any asset(s) of the Contractor
- c) any execution or other like process of law in respect of an amount exceeding \$10,000.00 is issued against or levied upon the Contractor's estate or interest which is not paid out, satisfied or withdrawn within 14 Business Days of the date of issue against or levy upon such estate or interest
- d) a liquidator or provisional liquidator is appointed, or an order is made or an effective resolution is passed for the liquidation of the Contractor
- e) the Contractor enters into an arrangement or composition with its creditors (or any one of them), or proposes to do so, or passes a resolution under Part 5.3A of the *Corporations Act 2001* (Cth) with the purpose of appointing a voluntary administrator
- f) the Contractor fails to satisfy a statutory demand under section 459C of the *Corporations Act 2001* (Cth), or
- g) where the Contractor is an individual person or partnership including an individual person, and if that person (or any person being a member of the partnership):
 - i. commits an act of bankruptcy
 - ii. has a bankruptcy petition presented against him or her or presents his or her own petition
 - iii. is made bankrupt
 - iv. makes a proposal for a scheme of arrangement or a composition
 - v. has a personal insolvency agreement accepted by creditors, appoints a controlling trustee for the purpose of entering into a personal insolvency agreement, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the Contract, or
 - vi. where a Related Entity as defined in the section 9 of the *Corporations Act 2001* (Cth) is the subject of an Insolvency Event.

First Response Emergency Works Contract comprises the Formal instrument of Agreement, Annexures A, B, C, D and E, General Conditions of Contract and Schedule 1 within those Conditions.

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

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

Government Department or Instrumentality has the meaning given in Clause 12.9(a)(i).

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

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

Indicative Conformance has the meaning given to that term in Clause 10.1.2 of the *MRTS50 Specific Quality System Requirements*.

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

Open Book means open and transparent disclosure on a basis which provides full disclosure of all information and documentation of financial costs so that only properly incurred Reimbursable Costs are sought to be recovered (and are in fact, recovered) by the Contractor.

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

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

Principal Supplied Material has the meaning given in Clause 16.

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

QGP means the Queensland Government Procurement Division within the Department of Housing and Public Works, or any division and/or department which replaces this division and/or department from time to time.

QPP means the Queensland Government's *Queensland Procurement Policy*, or any policy that replaces that policy.

Queensland Government Supplier Code of Conduct has the meaning given in Clause 12.9(a)(iv).

Reimbursable Costs mean the actual and necessary costs, expenses or charges incurred by the Contractor for the provision of materials (including the Contractor Supplied Key Materials) or subcontracts for the Works, provided such costs, expenses or charges are in accordance with the Administrator's prior written approval. Reimbursable Costs do not include any costs, expenses or charges that relate to the Contractor's personnel, plant or equipment included (or deemed to be included) in **Annexure B**.

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

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

Security of Payment Act means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

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

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

Tax Invoice means as defined in the GST Legislation.

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

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

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

