

# First Response Emergency Works Contract Engagement of Contractors

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

February 2022



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**FORMAL INSTRUMENT OF AGREEMENT**

An Agreement made on the ..... day of .....20.....

**BETWEEN**

Name	State of Queensland represented by the Department of Transport and Main Roads
ABN	39 407 690 291
Short form name	<b>Principal</b>
Notice details	
Email	
	Attention

**AND**

Name	(including its successors and permitted assigns)
ACN/ABN	
Short form name	<b>Contractor</b>
Notice details	
Email	
	Attention

**BACKGROUND**

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

**IT IS AGREED:****1. The Contract**

(a) The following documents together comprise the Contract:

- (i) this Formal Instrument of Agreement;
- (ii) First Response Emergency Works Contract V4 - General Conditions of Contract; and
- (iii) all Schedules and Annexures to the First Response Emergency Works Contract V4 - General Conditions of Contract.

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

**2. Acknowledgement of emergency nature of Works**

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

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

for a term ending 3 Months after the date of the disaster event. This Contract is not intended to be used for the conduct of other works.

**3. Commitment**

(a) The Contractor commits to complete the Works:

- (i) in an expeditious and cost-efficient manner;
- (ii) to the required quality standard; and
- (iii) in the safest possible manner.

(b) The parties commit to:

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

**4. Works and payment**

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

**EXECUTED AS AN AGREEMENT**

**For the Principal**

**SIGNED by**

**Name**

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

**Signature**

**Date**

**Witnessed by  
Signature**

**Date**

**For the Contractor**

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

**Name(s)**

**Director**

**Director / Secretary**

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

**Signature of Director**

**Date**

**Signature of Director / Secretary**

**Date**

**Contract Number**

General Conditions of Contract

**First Response Emergency Works Contract V4**

February 2022





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# General Conditions of Contract

## 1. DEFINITIONS

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

## 2. ADDITIONAL CLAUSES

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

## 3. REPRESENTATIVES

- (a) The Principal:
  - (i) appoints the person nominated in **Item 2 of Annexure A** to act as the 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 this Contract, the Contractor is responsible and liable for the acts or omissions of the Contractor's Agents as though those acts or omissions were the acts or omissions of the Contractor.

## 4. EXECUTION AND COMPLETION OF 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 this Contract or would materially change the Works or the cost of the Works. For the avoidance of doubt, a direction given under this clause with which the Contractor must comply is not a variation of the Works and Clause 10 does not apply to that direction.
- (g) The 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 this Contract and the Contractor must promptly provide the requested information.

## **5. RELATIONSHIPS AND DISPUTES**

- (a) Each party will, at all times, act in good faith and in a co-operative manner and do all things reasonably expected of it to implement the Contract and to ensure that the 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 this Contract (**Dispute**):
  - (i) one party may serve upon the other a notice of that a Dispute exists and that provides details of the Dispute;
  - (ii) within 14 days after service of that notice, the 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 this Contract, subject to and in accordance with the Contract.
- (b) The Contract Price is not subject to adjustment for any rise and fall in costs.
- (c) The Contractor 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; plus
  - (iii) for any overheads or profit not otherwise included under Clause 8(c)(i) or Clause 8(c)(ii) – 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 this Contract (including carrying out and delivering the Works) in a proper and tradesmanlike and to standards commensurate with Good Industry Practice.
- (b) In the absence of any requirement to the contrary, the Contractor must use suitable new materials for the 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 absolutely discretion, request the Contractor to do any one or more of the following:
  - (i) undertake works or other activities that are to be comprised in the 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 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 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 this 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 & Restoration) Application and otherwise in accordance the Principal's requirements from time to time (acting reasonably) and promptly report that evidence, data and other information to the Principal.
- (c) The 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 Guidelines to the Contractor and any other information collection requirements of the Principal from time to time relevant to the Works.

## **12. COMPLIANCE WITH LAW**

### **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 this Contract in accordance with Section 67 if 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 The Building Code

If specified in **Item 5A of Annexure A**, the *Code for the Tendering and Performance of Building Works 2016* (Building Code) applies to this Contract. The Building Code can be viewed at the Australian Government website: <https://www.abcc.gov.au/building-code>.

### 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 for Practice for the Building and Construction Industry (**Queensland Code**) will apply to this 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 5B of Annexure A** to apply.
- (b) There is an obligation on the Contractor to comply with the principles of the Queensland Charter and:
  - (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 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@dsd.qld.gov.au](mailto:qclc@dsd.qld.gov.au) and also submit a copy to:
    - (A) the Administrator; and
    - (B) the Principal via [localcontentreports@tmr.qld.gov.au](mailto:localcontentreports@tmr.qld.gov.au).
- (c) No additional payment will be made for compliance requirements in accordance with the Queensland Charter.

### 12.7 Compliance with the Queensland Procurement Policy

- (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 shall give, and shall ensure that its subcontractors give local subcontractors, vendors and suppliers a full, fair and reasonable opportunity to supply labour, services, materials, plant, machinery, equipment and other items for the Works. 'Local' is defined by the *Queensland Procurement Policy (QPP)*.
- (b) In addition to the reporting requirements stipulated in Clause 12.6(b)(ii), the Contractor shall compile a report monthly to the Principal via email address [localcontentreports@tmr.qld.gov.au](mailto:localcontentreports@tmr.qld.gov.au), with a copy to the Administrator, using the Project Outcome Reporting template (template available at <https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Infrastructure-Contract/Transport-Infrastructure-Contract/TIC-Construct-Only>). 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.

- (c) In addition to Clause 12.7(b), upon request by the Administrator, the Contractor must provide the Administrator with sufficient evidence of the Contractor's compliance with the QPP.

## 12.8 Ethical Supplier Threshold and Ethical Supplier Mandate

- (a) In this Clause 12.8:

- (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) **Tripartite Procurement Advisory Panel** is a singular body established by government to provide objective advice and recommendations to the decision makers regarding non-compliance with the Ethical Supplier Mandate and Ethical Supplier Threshold.

- (b) The Contractor shall comply with the Ethical Supplier Threshold.

- (c) Upon request by the Administrator, the Contractor must provide the Administrator with sufficient evidence of the Contractor's compliance with the Ethical Supplier Threshold.

- (d) The Principal may obtain information about the Contractor relevant to the Contractor's compliance with Clause 12.6(b) that may be held by the Tripartite Procurement Advisory Panel, or any Government Department or Instrumentality and take the information into account in assessing the offer.

- (e) The Contractor acknowledges that a failure to comply with the Principal's policies that apply to the Works or the Contractor's obligations under the 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.

- (f) If the Contractor fails to comply with the requirements of this Clause 12.6(b), the Principal may terminate this Contract under Clause 23.

## 12.9 Training requirements

- (a) This Clause 12.9 applies if specified by **Item 5C of Annexure A** to apply.

- (b) For purposes of this Clause 12.9:

- (i) 'apprentice' and 'trainee' shall be a person who enters into a training contract that has been executed in the formation of an apprenticeship or traineeship as provided for in the *Further Education and Training Act 2014*;
- (ii) 'Compliance Plan' means the plan developed by the Contractor demonstrating how the Contractor will comply with its obligations under this clause and the Training Policy;
- (iii) 'DESBT' means Department of Employment, Small Business and Training;
- (iv) 'eligible project' means the Works if the Training Policy applies in accordance with Clause 12.9(a);
- (v) 'new entrant' shall be an apprentice or trainee who has not been continuously employed by the employer, detailed on the training contract, for more than three months full-time, or 12

months casual or part-time, or a combination of both, immediately prior to the commencement date of the training contract; this person shall remain a new entrant under the Training Policy until the person completes the apprenticeship or traineeship;

- (vi) 'Practical Completion report' means the report prepared by the Contractor at project completion demonstrating its compliance with the requirements of this Clause 12.9;
  - (vii) 'Training Policy' means the Queensland Government Building and Construction Training Policy, published by the DESBT and located at [www.training.qld.gov.au/trainingpolicy](http://www.training.qld.gov.au/trainingpolicy), as amended from time to time;
  - (viii) 'TPAS' means the Training Policy Administration System – it is an electronic reporting system to report compliance with the Training Policy and is available on the website at <https://tpa.csq.org.au>; and
  - (ix) 'upskill workers' means upskilling workers in training that is delivered by registered training organisations which leads to nationally-recognised building or civil construction qualifications and upskilling existing workers in industry recognised training, but does not include Site induction, toolbox talks or Site meetings.
- (c) The Contractor, in its execution of the Works, shall:
- (i) employ on the Site, either directly or indirectly through subcontractors, apprentices and trainees; or
  - (ii) employ on the Site, either directly or indirectly through subcontractors, apprentices and trainees and upskill workers employed on the Site.
- (d) In complying with this clause, not less than 60% of the required number of deemed hour shall be performed by new entrants.
- (e) The number of attributable deemed hours to upskill a worker shall be limited to the hours necessary to adequately present the educational material in a classroom delivery mode, for the worker to achieve an identified competency or qualification.
- (f) The Contractor shall:
- (i) within 10 Business Days of the date of acceptance of the Contractor's tender, submit to DESBT through TPAS, a completed Compliance Plan; and
  - (ii) within 15 Business Days of reaching Practical Completion, submit a Practical Completion report through TPAS.
- (g) The Contractor acknowledges that failure to comply in part or in whole with this Clause 12.9 will be a substantive factor that will be taken into account in the award of future Contracts by the Principal.

## **13. PROTECTION OF PEOPLE AND PROPERTY**

### **13.1 Contractor's obligations**

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

### **13.2 Protection of people and property**

- (a) The Contractor must:
- (i) provide all things and take all measures necessary to protect people and property;
  - (ii) avoid unnecessary interference with the passage of people and vehicles; and
  - (iii) prevent nuisance and unreasonable noise and disturbance.

- (b) Without limiting the generality of the Contractor's obligations under Clause 13.2(a), those obligations include providing and managing barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, traffic flagging, safety helmets and clothing, the removal of obstructions and the protection of Services.
- (c) If the Contractor or the Contractor's Agents damage property, including any Public Utilities Plant, Services or property on or adjacent to the Site, the Contractor must promptly at the Contractor's cost make good the damage and pay any compensation the Contractor is required by law to pay.
- (d) If the Contractor fails to comply with an obligation under Clause 13.2 the Principal may, in addition to any other remedy, perform the obligation on the Contractor's behalf and the cost incurred by the Principal shall be a debt due and owing from the Contractor to the Principal.

### **13.3 Work health and safety**

#### **13.3.1 Definitions**

For the purposes of this Clause 13.3:

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

- (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) 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 the termination of the Contract.

### **13.4 Public notification**

- (a) Where directed by the Principal, dissemination of information to the community regarding significant changes on the nature and effect of 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 of the requirements stated in **Item 9 or Annexure A**; and
  - (ii) the Contractor has not obtained all insurances required to be obtained under Clauses 19.5 to 19.7 and provided proof of those insurances to the Principle as referred to in Clause 19.8.

- (b) If the Principal has not given the Contractor possession of the whole Site, the Principal must, from time to time give the Contractor possession of such further parts of the Site as may be necessary to enable the Contractor to execute the 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 this Contract or at law, the Contractor must leave the Site in a clean, safe and tidy condition at the end of each period of possession.
- (f) Where the Contractor has completed the Works for all or part of a Site, the Contractor may hand back possession to the Principal by seeking and obtaining the Principal's acceptance that the relevant Works have been completed. Where the Principal does not accept that the relevant Works have been completed:
  - (i) the Principal must provide reasons to the Contractor for that refusal; and
  - (ii) the Contractor remains in possession of the Site.

## 15. RESTRICTIONS TO WORKING TIMES

The Contractor agrees that 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 the 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 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 this Contract.
- (b) This Clause 19.2 survives the termination of the Contract.

### 19.3 Exclusion of Consequential Loss

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

### 19.4 Application of insurance requirements

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

### 19.5 Insurance of the Works

- (a) The Contractor must effect and maintain an insurance policy covering all Works to be performed or provided under this 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 7 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 be effected the Contract and such further proof of the currency and the extent of cover of such insurances as may be required by the 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 this Contract that may give rise to a claim under a policy of insurance and must keep the Principal informed of subsequent developments concerning the claim.

## **20. WET WEATHER**

- (a) In the event that the Contractor is unable to progress 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 in the form of a Tax Invoice 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 require;
- (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/protecting-your-payment-rights/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 valid 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 two 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 this Contract, a term used in this Clause 22 that is defined in the GST Legislation has the meaning given in the GST Legislation.
- (b) Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST.

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

## **23. DEFAULT OR INSOLVENCY**

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

## **24. TERMINATION FOR CONVENIENCE**

### **24.1 Termination**

- (a) Without prejudice to any of the Principal's other rights or entitlements or powers under the Contract, the Principal may:
  - (i) at any time for its sole convenience by written notice to the Contractor terminate the Contract from the date stated in the notice; and
  - (ii) thereafter either itself or by third parties, in the Principal's absolute discretion, complete any uncompleted part of the 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 the termination of the Contract.

## 25. CONFIDENTIALITY

- (a) This 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 this 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:

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

## **28. GENERAL CLAUSES**

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

## **29. INTERPRETATION**

- (a) Unless expressed to the contrary, in this Contract:
  - (i) words in the singular include the plural and vice versa;
  - (ii) any gender includes the other genders;
  - (iii) if a word or phrase is defined its other grammatical forms have corresponding meanings;

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

## SCHEDULE 1 – DEFINITIONS

**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 6 of Annexure A** to be applied to the total of the Reimbursable Costs payable to the Contractor pursuant to paragraph (b) of the definition of Contract Price.

**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**; and
- (b) the value of Reimbursable Costs; and
- (c) the total of the Reimbursable Costs pursuant to paragraph (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 days of the date of issue against or levy upon such estate or interest;
- (d) a liquidator or provisional liquidator is appointed or an order is made or an effective resolution is passed for the liquidation of the Contractor;

- (e) the Contractor enters into an arrangement or composition with its creditors (or any one of them), or proposes to do so, or passes a resolution under Part 5.3A of the Corporations Act 2001 with the purpose of appointing a voluntary administrator;
- (f) the Contractor fails to satisfy a statutory demand under section 459C of the Corporations Act 2001; or
- (g) where the Contractor is an individual person or partnership including an individual person, and if that person (or any person being a member of the partnership):
  - (i) commits an act of bankruptcy;
  - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (iii) is made bankrupt;
  - (iv) makes a proposal for a scheme of arrangement or a composition;
  - (v) has a personal insolvency agreement accepted by creditors, appoints a controlling trustee for the purpose of entering into a personal insolvency agreement, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth) or like provision under the law governing the Contract; or
  - (vi) where a Related Entity as defined in the section 9 of the *Corporations Act 2001* (Cth) is the subject of an Insolvency Event.

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

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

**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 is open and transparent disclosure on a basis which provides full disclosure of all information and documentation of financial costs so that only properly incurred Reimbursable Costs are sought to be recovered (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.



**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.

# Annexure A – Contract Information

**Contract Number**

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

- |                |   |  |   |
|----------------|---|--|---|
| <b>Item 1</b>  | Region<br>Types of Work   |  |   |
| <b>Item 2</b>  | Administrator   |  |   |
| <b>Item 3</b>  | Contractor's Representative   |  |   |
| <b>Item 4</b>  | Date for submitting progress claims                                   | 25th day of each month   |   |
| <b>Item 5</b>  | Date for giving possession of Site to the Contractor                  | Does Clause 14 apply?  | <input type="checkbox"/> Yes <input type="checkbox"/> No<br><i>[If nothing stated, 10 Business Days after the date of acceptance of Tender]</i> |
| <b>Item 5A</b> | Does the Building Code apply to this Contract?                        | <input type="checkbox"/> Yes <input type="checkbox"/> No<br>(Applies for Commonwealth funded building work)  |   |
| <b>Item 5B</b> | Does the Queensland Charter for Local Content apply to this Contract? | <input type="checkbox"/> Yes <input type="checkbox"/> No<br>(Applies if Queensland Government contribution of greater than \$5 million (excl GST), or greater than \$2.5 million (excl GST) in regional Queensland)  |   |
| <b>Item 5C</b> | Does the Training Policy apply to this Contract?                      | <input type="checkbox"/> Yes <input type="checkbox"/> No<br>(Applies to Queensland Government building projects with a Contract Sum of \$500,000 or greater (including GST) and civil construction projects with a Contract Sum of \$3 million or greater (including GST)) |   |
| <b>Item 6</b>  | Contractor's Margin   |  |   |
| <b>Item 7</b>  | Public Liability Insurance  |  | <i>[If nothing stated, the minimum public liability insurance required is \$20,000,000 per occurrence]</i>                                      |
| <b>Item 8</b>  | Works Insurance   |  | <i>[If nothing stated, the minimum Works insurance required is \$20,000,000 per occurrence]</i>   |
| <b>Item 9</b>  | Implementation Requirements   |  |   |
| <b>Item 10</b> | Additional Clauses  | <input type="checkbox"/> Yes <input type="checkbox"/> No<br>[If 'Yes', insert additional clauses]  |   |

# Annexure B – Price

## Part 1: Schedule of Rates (Personnel)

Position/Classification	Hourly rate (\$)	Daily rate (\$)	Night Work Rate (if applies)		Number of	% Utilisation
			Hourly rate (\$)	Daily rate (\$)		
<b>On-site overheads</b>						
<b>Other</b>						

### Notes to Schedule of Rates (Personnel):

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



## Annexure C – Principal Supplied Materials

No.	Description	Quantity	Location
1			
2			
3			
4			
5			

### Notes to Annexure for Principal Supplied Materials:

1. Unless stated otherwise, all Principal Supplied Materials will be issued free of charge at the location specified.

## Annexure D – Contractor Supplied Key Materials

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

### Notes to Annexure for Contractor Supplied Key Materials:

1. All rates exclude Australian GST.

## Annexure E – Key Personnel

No.	Role / position	Name
1		
2		
3		
4		
5		