

**General Conditions of Contract – C7830.TIC**

**Transport Infrastructure Contract**

**November 2023**

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## 1 Construction of Contract

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

## 2 Defined terms and interpretation

### 2.1 Defined terms

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

| Term                                | Definition  |
|-------------------------------------|---|
| Accession                           | for the purposes of Clause 14.7, has the meaning given in the PPSA  |
| Administrator                       | means the entity or individual specified in Item 5A of Annexure A, with the role as defined in the General Conditions of Contract   |
| Administrator's Representative      | means the individual stated in Item 5A as the Administrator's Representative or other person from time to time, appointed in writing by the Administrator, to be the Administrator's Representative and notified as such in writing to the Contractor and the Principal by the Administrator                    |
| Annexure                            | means an annexure to these General Conditions of Contract   |
| Authority                           | means any Commonwealth, State or local government department, body or instrumentality or any other authority or body (statutory or otherwise) which has jurisdiction or authority over the Site, the execution of the Work Under the Contract, the use of the Works or with respect to any Public Utility Plant |
| Bound Contracted Service Provider   | for the purposes of Clause 8.10, has the meaning given in the <i>Information Privacy Act 2009</i> (Qld)   |
| Business Day                        | has the meaning given in the <i>Building Industry Fairness (Security of Payment) Act 2017</i> (Payments Act), Schedule 2.   |
| Certificate of Practical Completion | means a Certificate of Practical Completion issued by the Administrator under Clause 42.5   |

| Term                            | Definition  |
|---------------------------------|---|
| Claim                           | includes any claim, demand, action, proceeding or suit which the Contractor may make or bring against the Principal or any of its agents or employees or any Claim which the Principal may have against the Contractor relating to the construction of the Contract or as to any fact, matter or thing arising out of or in connection with the Contract or the Work Under the Contract including any claim, demand, action, proceeding or suit seeking the payment of money, an adjustment to the Contract Sum, an extension of the Date for Practical Completion or any costs, expenses, loss or damages on any ground whatsoever including pursuant to the Contract, on a quantum meruit basis, for unjust enrichment, in tort and insofar as is permitted by law pursuant to any other principle of law |
| Claim of Charge                 | means any claim which:<br>a) purports to be a claim of charge under the Payments Act<br>b) is made by any person who purports to be a Subcontractor, and<br>c) purports to be in connection with the performance by that person of any of the Work Under the Contract   |
| Commercial Framework            | is attached as Annexure B to the General Conditions of Contract   |
| Community Liaison Plan          | means any plan the Contractor is required to provide pursuant to Clause 15.6  |
| Compliance Notice               | for the purposes of Clause 8.10, has the meaning given in the <i>Information Privacy Act 2009</i> (Qld)   |
| Conformance Report              | has the meaning given to that term in Clause 10.1.1 of <i>MRTS50 Specific Quality System Requirements</i>   |
| Constructional Plant            | means appliances and things used in the execution of the Work Under the Contract, but not forming part of the Works   |
| Construction Program            | for the purposes of Clause 33.4, means a statement in writing showing the dates by which, or the times within which, the various stages or parts of the Work Under the Contract are to be executed or completed   |
| Construction Project            | for the purposes of Clause 15.3, has the meaning given in the WHS Act and WHS Regulation  |
| Construction Work               | for the purposes of Clause 15.4, has the meaning given in the WHS Act and WHS Regulation  |
| Contract                        | means the agreement between the Principal and the Contractor and comprising the documents set out or referred to in the completed Form C7871.TIC  |
| Contract Leadership Team or CLT | means the CLT established in accordance with Clause 4.1   |
| Contractor                      | means the person stated in Item 6A, who is bound to execute the Work Under the Contract   |
| Contractor's Delegate           | means the person or position delegated by the Contractor with the authority to enter into the Contract. The Contractor's Delegate shall be nominated in the Form C7805.TIC <i>Formal Instrument of Agreement</i> .  |
| Contractor's Representative     | means the person nominated under Clause 29.2.1  |
| Contract Plan                   | has the meaning in Clause 33.3.1  |

| Term                           | Definition   |
|--------------------------------|--|
| Contract Sum                   | means the amount set out in, or determined in accordance with, Annexure B (Commercial Framework)   |
| Corporation                    | has the meaning given in the Corporations Law  |
| Corporations Law               | means the <i>Corporations Act</i> 2001 (Cth)   |
| Current Program                | has the meaning given in Clause 33.4.4   |
| Date for Practical Completion  | means:<br>a) where Item 2A or Item 37A provides a Date for Practical Completion, that Date<br>b) where Item 2A or Item 37A provides a period of time for Practical Completion, the last day of the period<br>but if any extension of time for Practical Completion is granted by the Administrator or allowed in any arbitration or litigation, it means the date resulting therefrom  |
| Date of Acceptance of Tender   | means the date of the Letter of Acceptance issued by the Principal   |
| Date of Practical Completion   | means:<br>a) the date certified by the Administrator in a Certificate of Practical Completion issued pursuant to Clause 42.5, to be the date upon which Practical Completion was reached, or<br>b) where another date is determined in any arbitration or litigation as the date upon which Practical Completion was reached, that other date  |
| Day                            | means calendar day   |
| Daywork                        | means work which the Administrator directs to be carried out as Daywork under Clause 41  |
| Daywork Rates                  | means the rates set out in the Schedule of Daywork Rates   |
| Defects Liability Period       | means the Defects Liability Period or Periods referred to in Clause 37 and any extended Defects Liability Period or Periods in accordance with Clause 37   |
| Disclosure Statement           | for the purposes of Clause 48 or 49, means a statement provided by each proposed Dispute Resolution Board Member (DRB) or Issues Resolution Advisor (IRA) (as applicable), including a resume of experience together with a declaration:<br>a) describing all past, present, anticipated and planned future relationships, including indirect relationships through the nominated DRB Members' or IRA's (as applicable) primary or full-time employer, to the project and with all parties involved in the Contract, including Subcontractors, design professionals and consultants, and<br>b) close professional or personal relationships with all key members of all parties to the project shall be included |
| Dispute Resolution Board (DRB) | means the board established by Clause 48   |
| Document                       | for the purposes of Clause 8.10, has the meaning given in the <i>Information Privacy Act</i> 2009 (Qld)  |
| Drawings                       | means the Standard Drawings and the Project Specific Drawings  |
| DRB Agreement                  | is the agreement between the parties and the DRB Members based on the template which is available on the Principal's website   |

| Term                            | Definition   |
|---------------------------------|--|
| DRB Members                     | are the members selected for the DRB pursuant to Clauses 48.5 and 48.6   |
| Environmental Management Plan   | means the plan the Contractor is required to provide pursuant to Clause 15.7.2   |
| EP Act                          | means the <i>Environmental Protection Act 1994 (Qld)</i>   |
| Excepted Risks                  | has the meaning given in Clause 16.4   |
| Final Certificate               | means the Final Certificate issued by the Administrator under Clause 42.8  |
| Form                            | means the applicable form available on the Principal's website, or as provided as part of tendering and award documents, as amended from time to time  |
| Formal Instrument of Agreement  | means the Formal Instrument of Agreement generally in the form of Form C7805.TIC to be executed by the parties pursuant to Clause 6.2  |
| GST                             | means the goods and services tax imposed under the GST Legislation. A reference to an amount of GST is reference to the GST liability in respect of the supply in question   |
| GST Legislation                 | means the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> , associated legislation and regulation and any additional or substituted legislation and regulation providing for a value added tax, consumption tax, retail tax or other goods and services tax  |
| Indicative Conformance          | As per MRTS50 <i>Specific Quality System Requirements</i> Clause 10.1.2  |
| Industrial Matters              | has the meaning given in the <i>Industrial Relations Act 2016 (Qld)</i>  |
| Information Commissioner        | for the purposes of Clause 8.10, has the meaning given in the <i>Information Privacy Act 2009 (Qld)</i>  |
| IRA Agreement                   | is the agreement between the parties and the IRA based on the template which is available on the Principal's website   |
| Issues Resolution Advisor (IRA) | means the person appointed under Clause 49   |
| Item                            | means an item in Annexure A  |
| Latent Condition                | <p>is a physical condition on the Site or its surroundings, including artificial things but excluding weather conditions, which differs materially and substantially:</p> <ul style="list-style-type: none"> <li>a) from the physical conditions specified in the Reliance Information at a specific location at the Site, or</li> <li>b) from the physical conditions which should reasonably have been anticipated by a competent and experienced Contractor at the time of the Contractor's Tender if such a Contractor had: <ul style="list-style-type: none"> <li>i. examined all information made available in writing by the Principal to the Contractor for the purpose of tendering,</li> <li>ii. examined all information relevant to the risks, contingencies and other circumstances having an effect on the Tender and obtainable by the making of reasonable enquiries, and</li> <li>iii. inspected and investigated the Site and its surroundings</li> </ul> </li> </ul> <p>but Latent Conditions do not include any conditions described in Item 3A.</p> |

| Term                                 | Definition   |
|--------------------------------------|--|
| Legislative Requirement              | means:<br>a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where Work Under the Contract or the particular part thereof is being carried out, and<br>b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of Work Under the Contract |
| Letter of Acceptance                 | means a letter of acceptance issued by the Principal to the Contractor accepting the Contractor's Tender in respect of the Works   |
| Management and Control               | for the purposes of Clause 15.3, has the meaning given in the WHS Act and WHS Regulation   |
| NGER Legislation                     | means the <i>National Greenhouse and Energy Reporting Act 2007</i> (Cth)   |
| Nominated Subcontractor              | means:<br>a) a subcontractor to whom the Contractor is directed by the Administrator to subcontract Nominated Subcontract Work, or<br>b) a subcontractor named in Item 15C   |
| Nominated Subcontract Work           | means the work or supply of items specified in Item 15B  |
| Notice of Claim                      | means a notice which purports to be a notice of claim pursuant to the Payments Act and which is given by a person who purports to be a Subcontractor   |
| Notices to Tenderers                 | means notices to Tenderers issued by the Principal to clarify, revise, amend or modify any aspect of the Tender Documents before the time for submission of Tenders in respect of the Work Under the Contract  |
| Notifiable Incident                  | for the purposes of Clause 15.3, has the meaning given in the WHS Act and WHS Regulation, and also includes any incident which is notifiable under the WHS Legislation   |
| Other Contract Documents             | means the documents included or referred to in the part of this Contract titled 'Other Documents'  |
| Payments Act                         | means the <i>Building Industry Fairness (Security of Payment) Act 2017</i> (Qld) and any relevant regulations and includes any amendments to that Act and those regulations  |
| Perfect (or Perfection or Perfected) | for the purposes of Clause 14.7, has the meaning given in the PPSA   |
| Performance Assessment Conferences   | has the meaning given in Clause 4.4  |
| Personal Information                 | has the meaning given to it in the <i>Information Privacy Act 2009</i> (Qld)   |
| Personal Property                    | for the purposes of Clause 14.7, has the meaning given in the PPSA   |
| PPSA                                 | means the <i>Personal Property Securities Act 2009</i> (Cth)   |



| <b>Term</b>                                 | <b>Definition</b>   |
|---|---|
| Practical Completion                        | <p>is that stage in the execution of the Work Under the Contract when:</p> <ul style="list-style-type: none"> <li>a) the Works are complete except for minor omissions and minor defects: <ul style="list-style-type: none"> <li>i. which do not prevent the Works from being reasonably capable of being used for their intended purpose</li> <li>ii. which the Administrator determines the Contractor has reasonable grounds for not promptly rectifying</li> <li>iii. rectification of which will not prejudice the convenient use of the Works</li> </ul> </li> <li>b) those tests which are required by the Contract to be carried out and passed before the Works reach Practical Completion have been carried out and passed</li> <li>c) documents and other information required under the Contract which, in the opinion of the Administrator, are essential for the use, operation and maintenance of the Works have been supplied</li> <li>d) all certificates required by the Contract and all approvals, consents and permissions from all Authorities have been provided to the Administrator, and</li> <li>e) the Contractor has done everything which it is required to do as a condition precedent to Practical Completion</li> </ul> |
| Primary Security                            | means the security provided under Clause 5.2 and any further security provided under Clause 5.3 or as directed under Clause 5.8 and, in each case, includes any moneys resulting from the conversion into money of any part of that security which did not originally consist of money  |
| Principal                                   | means the Principal stated in Item 4A   |
| Principal Arranged Insurance Program (PAIP) | means the Contract Works and general and products liability insurance policies effected and maintained by the Principal   |
| Principal Contractor                        | for the purposes of Clause 15.3 and Clause 15.4, has the meaning given in the WHS Act   |
| Principal's Delegate                        | means the person or position delegated by the Principal with the authority to enter into the Contract. The Principal's Delegate shall be nominated in Item 4C.  |
| Principal's Representative                  | means the person or position delegated by the Principal's Delegate and shall represent the interests of the Principal when required under the Contract. The Principal's Representative shall have a good knowledge and understanding of the requirements of the Works. The Principal's Representative shall be nominated in Item 4E.  |
| Principal Supplied Material                 | means the materials to be provided by the Principal as listed in any Principal supplied Item list (Form C7827.IC) included or referred to in the Contract   |
| Privacy Complaint                           | for the purposes of Clause 8.10, has the meaning given in the <i>Information Privacy Act 2009</i> (Qld)   |
| Privacy Principles                          | for the purposes of Clause 8.10, has the meaning given in the <i>Information Privacy Act 2009</i> (Qld)   |

| <b>Term</b>                               | <b>Definition</b>   |
|---|---|
| Project Specific Drawings                 | means:<br>a) the drawings attached or referred to in the Contract.<br>b) any modification of such drawings notified to the Contractor by the Administrator, and<br>c) such other drawings as may from time to time be supplied to the Contractor by the Administrator, or the use of which has been permitted by the Administrator, for the purposes of the Contract<br>but do not include the Standard Drawings  |
| Project Specific Specifications           | means:<br>a) the specifications attached or referred to in the Contract<br>b) any modification of such specifications notified to the Contractor by the Administrator, and<br>c) such other specifications as may from time to time be supplied to the Contractor by the Administrator, or the use of which has been permitted by the Administrator, for the purposes of the Contract<br>but do not include the Technical Specifications                            |
| Provisional Sum                           | includes monetary sum, contingency sum and prime cost item, but does not include any amounts in a Schedule of Rates for items described or marked 'provisional', 'provisional quantity' or 'if ordered, provisional quantity' (or similar) or any amounts for numbered items in a Schedule of Rates which include the suffix 'P' or 'PS'.   |
| Public Utility Plant                      | means any railway, monorail, tramway, viaduct, aqueduct, conduit, water channel, pipeline (water, stormwater, gas, sewerage or otherwise), fixed mechanical conveyor, tower, pole, cable (electrical, fibre optic, telecommunications or otherwise), electrical installation or telecommunications plant that is:<br>a) on, in, over, under or adjacent to the Site, or<br>b) affected by the Work Under the Contract<br>but does not include Constructional Plant. |
| Purchase Money Security Interest          | for the purposes of Clause 14.7 has the meaning given in the PPSA.  |
| Quality Plan                              | means the plan the Contractor is required to provide pursuant to Clause 30.3  |
| Quality System                            | has the meaning given in Clause 30.2  |
| Relationship and Collaboration Principles | has the meaning given in Clause 3.2.1   |
| Reliance Information                      | means those documents and other information specified in Item 13B   |
| Resolution Institute                      | is the merger of the Institute of Arbitrators and Mediators Australia (IAMA) and Leaders Engaged in Alternative Dispute Resolutions (LEADR) and a reference to Resolution Institute is a reference to the Chairperson of the Queensland Chapter of Resolution Institute   |
| Retention Moneys                          | means the retention moneys withheld by the Principal under Clause 42.3  |
| Retention Security                        | means the security provided under Clause 5.3 and any further security provided as directed under Clause 5.7 and in each case includes any moneys resulting from the conversion into money of any part of that security which did not originally consist of money  |

| <b>Term</b>                    | <b>Definition</b>   |
|--------------------------------|---|
| Schedule of Deviations         | means the Schedule of Deviations (Form C7807.TIC), if any, developed jointly and agreed by the Principal and the Contractor during post-Tender negotiations and enclosed within the Letter of Acceptance  |
| Schedule of Prices             | has the meaning given in Annexure B (Commercial Framework)  |
| Schedule of Rates              | has the meaning given in Annexure B (Commercial Framework)  |
| Schedules of Daywork Rates     | means the various completed schedules named 'Daywork Rates – Personnel' and 'Daywork Rates – Plant and Equipment'   |
| Security Interest              | for the purposes of Clause 14.7, has the meaning given in the PPSA  |
| Selected Subcontractor         | means a subcontractor identified in the Contractor's Tender from a list of one or more subcontractors provided by the Principal in the Tender Documents for Selected Subcontract Work   |
| Selected Subcontract Work      | means the work or supply of Items specified in Item 15D   |
| Separable Portion              | means a portion of the Work Under the Contract described in Item 37A as a Separable Portion or which the Administrator has determined pursuant to Clause 35.4 shall be a Separable Portion  |
| Site                           | means the lands and other places described in Item 7A and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract  |
| Site Conferences               | has the meaning given in Clause 4.3   |
| Site Information               | means any document, information, data, report, material, core or sample, whatever its form, regarding the Site or its surroundings or regarding the subsurface conditions (including topographical, geological and hydrological conditions) or subsurface services at the Site or its surroundings, but does not include the Reliance Information |
| Specifications                 | means the Technical Specifications and the Project Specific Specifications  |
| Standard Drawings              | means the Principal's standard drawings attached or referred to in the Contract, as amended or updated from time to time by the Principal   |
| Technical Specifications       | means the Principal's Technical Specifications attached or referred to in the Contract, as amended or updated from time to time by the Principal  |
| Subcontractor                  | means any Contractor, consultant or supplier (including their personnel), engaged by or on behalf of the Contractor with respect to the Work Under the Contract and includes the Contractor's Designers and any supplier or hirer of materials, plant or equipment  |
| Subcontractor Payment Security | means the security provided under Item 11A and any further security provided as directed under Clause 5 and in each case includes any moneys resulting from the conversion into money of any part of that security which did not originally consist of money  |
| Subsidiary                     | has the meaning given in the Corporations Law   |
| Supply                         | for the purposes of Clause 42.11, has the meaning given in the GST Legislation  |
| Temporary Works                | means works used in the execution of the Work Under the Contract, but not forming part of the Works   |

| Term                                   | Definition  |
|--|---|
| Traffic Management Plan                | means any plan the Contractor is required to provide pursuant to Clause 15.5.2  |
| Warranty Items                         | has the meaning in Clause 30.10   |
| WHS Act                                | means the <i>Work Health and Safety Act</i> 2011 (Qld) as amended from time to time   |
| WHS Legislation                        | means the <i>WHS Act</i> , the <i>Work Health and Safety Regulation</i> 2011 (Qld), the <i>Electrical Safety Act</i> 2002 (Qld), the <i>Electrical Safety Regulation</i> 2013 (Qld), the <i>Safety in Recreational Water Activities Act</i> 2011 (Qld), the <i>Mining and Quarrying Safety and Health Act</i> 1999 (Qld), the <i>Mining and Quarrying Safety and Health Regulation</i> 2017 (Qld), the <i>Heavy Vehicle National Law</i> (Queensland), the <i>Rail Safety National Law</i> (Queensland) and any other general law of the State or Commonwealth in respect of workplace health and safety and any State or Commonwealth Act, Regulation, Code of Practice or ministerial notice in respect of work health and safety, as amended from time to time |
| WHS Regulation                         | means the <i>Work Health and Safety Regulation</i> 2011 (Qld), or any other applicable regulation made under the WHS Legislation, as amended from time to time  |
| Work Health and Safety Management Plan | means any plan the Contractor is required to provide pursuant to Clause 15.3.4  |
| Working Days and Working Hours         | have the meaning given in Clause 32   |
| Workplace                              | for the purposes of Clause 15.3 means the Site  |
| Works                                  | means the whole of the work to be executed in accordance with the Contract, including variations provided for by the Contract, which by the Contract is to be handed over to the Principal  |
| Work Under the Contract                | means the work which the Contractor is or may be required to execute under the Contract and includes variations, remedial work, Constructional Plant and Temporary Works  |

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

## 2.2 Interpretation

### a) Reference to:

- i. one gender includes the others
- ii. the singular includes the plural and the plural includes the singular
- iii. a person includes a body corporate
- iv. a party includes the party's executors, Administrators, successors and permitted assigns
- v. a Legislative Requirement includes:
  - a) that Legislative Requirement as amended or re-enacted from time to time, and
  - b) a Legislative Requirement enacted in replacement of that legislative requirement

- vi. money is to Australian dollars unless otherwise stated.
- b) Measurements of physical quantities shall be in legal units of measurement of Australia within the meaning of the *National Measurement Act 1960* (Cth).
- c) Communications between the Principal, the Administrator and the Contractor shall be in the English language.
- d) 'Including' and similar expressions are not words of limitation.
- e) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- f) Headings are for convenience only and do not form part of the Contract or affect its interpretation.
- g) A provision of the Contract shall not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract.
- h) If an act must be done on a specified Day which is not a Business Day, it shall be done instead on the next Business Day, except as otherwise expressly contemplated by this Contract.
- i) No comment, review, representation, vetting, inspection, testing or approval by the Principal or the Administrator in respect of the Contractor's obligations under this Contract will lessen or otherwise affect the Contractor's obligations under this Contract.
- j) The Contractor acknowledges that:
  - i. an absolute discretion in the Principal or the Administrator under the Contract is not required to be exercised for the benefit of the Contractor
  - ii. neither the Principal nor the Administrator is bound to exercise any such absolute discretion in any particular manner or having regard to any particular consideration notwithstanding that such considerations might be stated in the Contract
  - iii. no provision of the Contract conferring such an absolute discretion gives the Contractor any rights (including any right to make any Claim arising out of the exercise or failure to exercise the discretion), and
  - iv. the exercise or failure to exercise such an absolute discretion is not capable of being the subject of a dispute or difference for the purpose of Clause 47 and is not otherwise subject to review.
- k) Whenever the Principal or Administrator is required to act reasonably, what is reasonable under the circumstances is to be judged having regard to the terms of this Contract.
- l) All indemnities and warranties given by the Contractor in this Contract survive the termination or otherwise merging of this Contract.
- m) Without limiting Clause 2.2(l), the provisions of this Contract which, by their nature, are intended to survive the termination, cancellation, completion or expiration of this Contract shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completing or expiration.

- n) Unless otherwise expressed as a sole remedy, the rights and remedies provided in this Contract are in addition to other rights and remedies given by law independently of this Contract.
- o) Unless otherwise expressly set out in this Contract, and to the extent permitted by law, all implied terms (whether implied by statute or operation of law) are excluded from this Contract.
- p) The word 'immediately' means to act promptly, with expedition, within a reasonable time and without unnecessary delay.

### **3 Nature of Contract**

#### **3.1 Performance and description**

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

#### **3.2 Commitment to relationship and collaboration**

##### **3.2.1 Relationship and Collaboration Principles**

- a) The parties acknowledge that a good working relationship between the Principal, the Administrator and the Contractor is a significant factor that contributes towards the successful completion of a project. The Contractor, the Principal and the Administrator jointly commit to establishing and maintaining a project team built on relationships and they agree to observe the following principles (Relationship and Collaboration Principles):
  - i. act as stated in this Contract and in the spirit of mutual trust, openness, respect and cooperation
  - ii. at all times deal with each other fairly, honestly and reasonably
  - iii. communicate and expeditiously reconcile any matter that may affect the proper execution and timely completion of the Work Under the Contract, and
  - iv. be dedicated to achieving 'best for project' outcomes.
- b) The Principal and the Contractor shall jointly commit to the principles specified in the '*TMR Industry Engagement Charter*' (charter) while performing their obligations under the Contract. The parties shall constantly review the commitment of each party and their staff to the charter. The Contractor shall also ensure its Subcontractors observe the charter.

The charter can be found here:

[\*TMR–Infrastructure Industry Engagement Charter \(Department of Transport and Main Roads\)\*](#)

- c) The parties agree and acknowledge that the Relationship and Collaboration Principles do not apply where the Contract expressly provides that the Principal or the Administrator may act in its absolute or sole discretion.

### **3.2.2 Relationship and collaboration workshop**

As specified in Item 8B, the Administrator will convene, within two months of the Date of Acceptance of Tender, a relationship management workshop to facilitate the understanding of, and commitment to, the Relationship Principles. The Administrator may appoint an external facilitator to run the workshop. This workshop is to be attended by representatives of the Contractor, the Principal, the Administrator (the Team) and the CLT (if any).

All costs associated with the relationship and collaboration workshop shall be borne by the Contractor.

### **3.2.3 Relationship management and collaboration protocol**

At the workshop held under Clause 3.2.2, the Team and the CLT (if any) shall develop and agree a relationship management and collaboration protocol to be signed by all participants of the workshop that:

- a) includes a relationship charter or mission
- b) sets the relationship and collaboration goals and objectives, core values and guiding principles
- c) includes a mechanism for determining a rating of the parties' achievement of the agreed objectives (including by reference to Performance Assessment Conferences required under Clause 4.4)
- d) includes a mechanism for the resolution of personality-related issues
- e) documents the lines of communication, levels of responsibility and reporting systems
- f) includes an issues resolution matrix that includes an action plan for addressing factors that may prevent them from meeting the relationship objectives, and
- g) specifies the times for the workshops and meetings referred to in Clause 3.2.4.

### **3.2.4 Monitoring the relationship**

Unless the parties agree otherwise, the Team shall meet at least monthly to review the Team's performance against the Relationship and Collaboration Principles and the relationship management and collaboration protocol (if any).

## **4 Contract Leadership Team and conferences**

### **4.1 Contract Leadership Team**

This Clause 4.1 only applies if 'Yes' is selected in Item 9A.

#### **4.1.1 Representation and tenure**

- a) A Contract Leadership Team (CLT) shall be established prior to the commencement of the Work Under the Contract.
- b) The CLT will consist of two senior representatives from the Principal and two senior representatives from the Contractor (CLT Members).
- c) A party may replace its CLT Member(s) at any time by giving notice in writing to the other party at least 24 hours prior to the change in representation.
- d) Unless otherwise agreed by the Principal and the Contractor, the CLT will remain established until 10 Business Days after the date of the Final Certificate.

#### **4.1.2 Duties and accountabilities for the Contract Leadership Team**

- a) The CLT shall, unless otherwise agreed by the parties in writing:
  - i. provide overall guidance and leadership with respect to the Work Under the Contract and to provide a forum for regular and formal interaction between senior executives of the Principal and the Contractor
  - ii. set policy and give philosophical and strategic direction for the Work Under the Contract within the boundaries set out in the Contract, including by establishment of a relationship charter (Relationship Charter)
  - iii. provide leadership and set a visible example of senior management's commitment to the Relationship Charter and the Relationship Management Protocol
  - iv. provide guidance to the Contractor in its development and implementation of a transparent governance framework across the Work Under the Contract
  - v. provide leadership and guidance to the Contractor in ensuring timely, accurate and comprehensive reports are given to the Principal
  - vi. oversee the Contractor in initiating or approving the commitment of resources to the Work Under the Contract and provide corporate support as necessary
  - vii. provide leadership in the implementation of a culture necessary to achieve any key performance indicators and ensure they are created and sustained
  - viii. provide encouragement to the Contractor to implement directions from the Principal or the Administrator
  - ix. monitor the performance of the Contract and implement appropriate measures to correct undesirable trends
  - x. issue decisions as required by the Contract (if any)
  - xi. attempt to resolve any differences or issues that are referred to it under Clause 47.3, and
  - xii. any other duties agreed between the parties from time to time.
- b) The parties acknowledge and agree that, except as expressly provided for in the Contract:
  - i. The CLT will have no legal responsibility.
  - ii. no comment, direction, review, representation, vetting, inspection, testing or approval by the CLT or members of the CLT will be binding on a party or be construed as a direction from the Principal or the Administrator to do or not to do something, and
  - iii. nothing that occurs at a meeting of the CLT will relieve either party, or alter or affect their liabilities or responsibilities under this Contract, including a requirement for the Contractor to provide formal notification to the Principal or the Administrator under any other provision of this Contract.
- c) Prior to each meeting of the CLT, the Administrator and the Contractor's Representative shall provide a joint report on the following matters for the consideration of the CLT:
  - i. the progress of the Works
  - ii. delays to the Works, including planned mitigation



- iii. the adequacy of resourcing levels, and
- iv. all issues and disputes which have arisen and have not yet been resolved.

#### **4.1.3 Meetings**

- a) Unless the parties agree otherwise, the CLT will meet at least once every month until Practical Completion.
- b) At least one CLT Member from each party shall be present to enable the CLT to hold a meeting or make a decision. Attendance may be by telephone or video link.
- c) The CLT will arrange for a secretary (CLT Secretary) to record minutes of all resolutions of the CLT and all actions arising out of each CLT meeting. A copy of the minutes will be forwarded by the CLT Secretary to each CLT Member as soon as practicable but not later than five Business Days after each CLT meeting.
- d) Decisions of the CLT must be unanimous.

#### **4.2 Prestart conference**

- a) Prior to the commencement of Work Under the Contract, the Contractor shall contact the Administrator in order to arrange a conference (prestart conference).
- b) The prestart conference shall:
  - i. be attended by representatives of the Contractor, the Principal, the Administrator and the CLT (if any)
  - ii. establish lines of communication and clarify all relevant responsibilities and delegations
  - iii. discuss arrangements for submission and review of the Construction Program, Quality Plan, Environmental Management, Work Health and Safety Management Plan, Traffic Management Plan (where required), Severe Weather Management Plan (where required), Community Liaison Plan (where required) and the Indigenous Economic Opportunities Plan (where required)
  - iv. discuss arrangements for project records, including access by the Administrator, submission of test results and other reports, and disposition of records upon completion of the Contract
  - v. discuss setting out of the Works, Site accommodation, camp and delivery of materials and plant to the Site
  - vi. determine arrangements for Site inspections and Site Conferences
  - vii. define arrangements for management of:
    - a) payment Claims
    - b) variations, and
    - c) non-conformances
  - viii. discuss arrangements for all administrative requirements, including the date for a relationship workshop (if required under Clause 3.2.2) and information and documents which the Contractor is obliged to submit to the Administrator
  - ix. deal with any other matters nominated by the Contractor or the Administrator, and

- x. deal with requirements for a post-construction review.
- c) The Administrator shall, within five Business Days of the Prestart Conference, issue to the Contractor a copy of the minutes. Within two Business Days of receipt of the copy of the minutes, the Contractor shall notify the Administrator in writing of any Item from the minutes which, in its opinion, has not been correctly recorded. Within a further two Business Days, the Administrator shall arrange to amend the minutes where necessary and will return two copies to the Contractor for confirmation of the minutes. The Contractor shall confirm the minutes by returning a signed copy to the Administrator within two Business Days of receipt. The CLT (if any) may review and provide guidance to the parties in relation to the content of those minutes.

#### **4.3 Site Conferences**

- a) The Contractor shall arrange for conferences to be held at the Site (Site Conferences) to:
  - i. review progress of the Work Under the Contract
  - ii. review the Contract Plan documents and issues relating to progress of the Work Under the Contract
  - iii. review non-conformances and dispositions, and
  - iv. discuss any matters of concern related to the project with a view to their resolution as far as possible.
- b) Site Conferences shall be held until Practical Completion at the intervals stated in Item 10A or at such other intervals as are otherwise mutually agreed between the Principal, the Contractor and the Administrator (such interval not exceed a period of one month).
- c) Site Conferences shall be attended by the Contractor, the Principal and the Administrator, and/or their senior representatives. Subject to the prior approval of the Administrator, which may be given or withheld in its absolute discretion, other persons may attend all or part of any Site Conference, but:
  - i. at no time more than four persons from either the Contractor or the Administrator, and
  - ii. members of the CLT (if any) may attend any Site Conference without the approval of the Administrator, which may be given or withheld in its absolute discretion.
- d) The Administrator will chair each Site Conference and will arrange for the recording of minutes. The Administrator shall, within five Business Days of each Site Conference, issue to the Contractor, a copy of the minutes. Within two Business Days of receipt of the copy of the minutes, the Contractor shall notify the Administrator in writing of any Item from the minutes which, in its opinion, has not been correctly recorded. Minutes of a Site Conference will be confirmed at the next Site Conference. The CLT (if any) may provide guidance to the parties in relation to the content of those minutes.

#### **4.4 Contract Performance Assessment**

- a) The Administrator shall score on the Contractor's performance as set out in the Form C7901 on a monthly basis and hand over to the Contractor for any comments. The Contractor shall take all reasonable steps to provide additional comments in a timely manner.

- b) Upon reaching Practical Completion and issuance of Final Certificate, the Administrator and the Contractor shall prepare detailed performance reports using Form C7902. The same Form C7902 shall be used for performance assessment at reaching milestones in the Contract or as directed by the Principal.
- c) If required, a separate meeting may be arranged to discuss the performance report, prepared by the Administrator, or this topic can be accommodated as part of monthly Site Conferences. If a separate meeting is arranged then it should be attended by the Administrator and the Contractor and/or their senior representatives. Subject to the prior approval of the Administrator, which may be given or withheld in its absolute discretion, other persons may attend all or part of any performance assessment meeting, but members of the CLT (if any) may attend without the approval of the Administrator.
- d) The Administrator shall take all reasonable steps in a timely manner to obtain the signature of the Contractor on the Form C7901 or C7902 and submit to the department's project manager or the Principal's Representative for comments and submission to the Prequalification and Contracts Unit.
- e) The department's project manager or Principal's Representative, within reasonable time, shall include any comments and send a signed copy (portable document format or PDF) via electronic mail to:  
  
Department of Transport and Main Roads, Program Management and Delivery  
Attention: Prequalification and Contracts Unit  
Email address: [contractorprequal@tmr.qld.gov.au](mailto:contractorprequal@tmr.qld.gov.au)
- f) If the Administrator and department's project manager roles are shared by a same person, then the performance reports shall be reviewed by the Manager (Delivery) or Principal's Representative and any additional comments to be added prior to submission to the Prequalification and Contracts Unit.
- g) The department's prequalification committee members or its nominees may attend any performance meetings including Site Conferences to discuss the contract performance without prior invitation and if necessary, moderate the scorings on behalf of the Principal.

## **5 Security and Retention Moneys**

### **5.1 Purpose**

- a) The Primary Security, Retention Moneys, Retention Security, and any additional security are, subject to the provisions of Clause 5, for the purpose of (in order of priority):
  - i. ensuring the due and proper performance of the Contract by the Contractor (including the satisfaction of any debts due from the Contractor to the Principal and any Claims which the Principal may have against the Contractor), and
  - ii. satisfying Claims of Charge as provided in Clause 5.7.
- b) The Subcontractor Payment Security is, subject to the provisions of Clause 5, for the purpose of (in order of priority):
  - i. satisfying Claims of Charge as provided in Clause 5.7, and

- ii. ensuring the due and proper performance of the Contract by the Contractor (including the satisfaction of any debts due from the Contractor to the Principal and any Claims which the Principal may have against the Contractor).

## **5.2 Provision of security**

Within 10 Business Days of the Date of Acceptance of Tender, the Contractor shall lodge with the Principal security in accordance with Item 11A.

## **5.3 Substitution of security for Retention Moneys**

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

## **5.4 Form of security**

- a) The Primary Security, the Retention Security and the Subcontractor Payment Security shall, in each case, be any of the following:
  - i. an unconditional irrevocable bank guarantee from a bank as defined under s36 of the *Acts Interpretation Act* 1954 (Qld) in the forms included in the Tender Documents (Forms C7840.TIC, C7841.IC, C7842.TIC, C7855.TIC) that:
    - a) complies with the requirements of Part 2, Division 6 of the *Financial and Performance Management Standard* 2009 (Qld), and
    - b) is approved by the Principal in its absolute discretion
  - ii. an unconditional irrevocable insurance bond from an insurance company, in the forms included in the Tender Documents (Forms C7843.TIC, C7844.IC, C7845.TIC, C7856.TIC), that:
    - a) complies with the requirements of Part 2, Division 6 of the *Financial and Performance Management Standards* 2009 (Qld), and
    - b) is approved by the Principal in its absolute discretion
  - iii. If the security provider has stopped being an approved security provider, the Contractor shall, immediately upon request by the Principal, substitute that bank guarantee or insurance bond submitted to the Principal.
- b) The costs of and incidental to providing any security (including all stamp duty and other taxes payable in respect of the security) shall be borne by the Contractor.

### **5.5 Conversion of security**

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

### **5.6 Recourse to security and Retention Moneys**

- a) The Principal may have recourse to the Primary Security, the Retention Security and/or the Retention Moneys if:
  - i. the Principal has become entitled to exercise a right under the Contract in respect of any such security and/or Retention Moneys, and/or
  - ii. the Principal has received a Notice of Claim.
- b) The Principal may have recourse to the Subcontractor Payment Security if:
  - i. the Principal has received a Notice of Claim, and/or
  - ii. the Principal has otherwise become entitled to exercise a right under the Contract in respect of that security (and notwithstanding any other provision of the Contract, the Principal shall not be so entitled until three months after the date of issue of the Final Certificate, and, even then, the Principal shall only be so entitled if it has exercised its powers under Clause 5.7(a)(ii) in respect of any Notices of Claim which it has received).
- c) Nothing in any other part of Clause 5 shall limit the Principal's rights under Clause 5.5 or oblige the Principal to have recourse to any security and/or Retention Moneys where the Principal has received a Notice of Claim.

### **5.7 Notice of Claim received**

- a) Where the Principal has received a Notice of Claim, the moneys mentioned in Clauses 5.7(b)(i) to (b)(vi):
  - i. shall, for the purposes of Section 109(1) of the Payments Act, be deemed to be moneys payable to the Contractor by the Principal under the Contract, and
  - ii. may, in respect of any Notice of Claim, be retained by the Principal in accordance with Section 126(2) of the Payments Act or be used by the Principal to make a payment into court under Section 126(4) of the Payments Act.
- b) The moneys mentioned in Clause 5.7(a) are:
  - i. the moneys resulting from the conversion into money of any part of the Subcontractor Payment Security that did not consist of money
  - ii. the moneys resulting from the conversion into money of any part of the Primary Security that did not consist of money (but only the balance remaining after the Principal has exercised all of its rights against such moneys)

- iii. the balance of the Retention Moneys after the Principal has exercised all of its rights against such moneys, and
  - iv. the moneys resulting from the conversion into money of any part of the Retention Security that did not consist of money (but only the balance thereof remaining after the Principal has exercised all of its rights against such moneys).
- c) If any part of the Primary Security, the Retention Security, the Subcontractor Payment Security, the moneys resulting from the conversion into money of any of those securities or the Retention Moneys is retained by the Principal or paid into court as provided in Clause 5.7(a)(ii), the Contractor shall within 10 Business Days of being directed to do so by the Principal, lodge further security for an amount equal to the amount retained or paid into court. If the Contractor fails to provide such further security within the stated time, the Principal may deduct from any moneys otherwise due to the Contractor, an amount equal to the amount of the further security required by this Clause 5.7 and such deduction shall become part of the Primary Security, the Retention Security or the Subcontractor Payment Security (as the case requires).

#### **5.8 Reduction of security and Retention Moneys**

- a) Upon the issue of the Certificate of Practical Completion, the Principal's entitlement to:
- i. the Primary Security
  - ii. the Retention Moneys, and
  - iii. the Retention Security
- shall be reduced to the percentage stated in Item 11B.
- b) Subject to Clause 5.8(a), if, in the opinion of the Administrator, it is reasonable to further reduce the Principal's entitlement to the Primary Security, the Retention Security and/or the Retention Moneys, that entitlement shall be reduced to the amount which the Administrator determines to be reasonable.
- c) The Principal shall, within 10 Business Days of the Administrator making such a determination, release the Primary Security, the Retention Security and/or the Retention Moneys (as the case requires) in excess of the entitlement determined by the Administrator.

#### **5.9 Release of security**

- a) If the Contractor has provided additional security pursuant to Clause 42.4, the Principal shall, at the request of the Contractor, release that additional security within 10 Business Days of the incorporation into the Works of the unfixed plant or materials in respect of which the additional security was provided.
- b) On achieving Practical Completion, any additional securities requested by the Principal from the Contractor at award stage, shall be released by the Principal within 10 Business Days of being notified by the Administrator to release such securities.

- c) Where the Final Certificate shows that there is no balance owing by the Contractor to the Principal, the Principal shall, subject to the provisions of Clause 5:
  - i. within 10 Business Days of the issue of the Final Certificate, release to the Contractor any Primary Security, Retention Security or Retention Moneys then held by the Principal, and
  - ii. within four months after the issue of the Final Certificate, release to the Contractor any Subcontractor Payment Security then held by the Principal.

#### **5.10 Interest on security and Retention Moneys**

- a) The Principal shall own any interest earned on:
  - i. any Primary Security, Retention Security, Subcontractor Payment Security and/or additional security provided under Clause 42.4, which is converted into money, and
  - ii. any Retention Moneys.
- b) The Principal does not hold any such security, converted moneys or Retention Moneys upon any trust for the Contractor or any other party.

#### **5.11 Deed of guarantee, undertaking and substitution**

Where:

- a) the Contractor is a Corporation that is related to, or is a Subsidiary of, another Corporation, and
- b) the Principal has included in the Tender Documents a Form of deed of guarantee, undertaking and substitution

the Contractor shall, if requested by the Principal in writing, lodge with the Principal within 10 Business Days after that request having been made a deed of guarantee, undertaking and substitution in the form of Form C7848.TIC duly executed by the Contractor and that other Corporation for the performance of the obligations and the discharge of the liabilities of the Contractor under or arising out of the Contract.

#### **5.12 Composite securities**

- a) In this Clause 5.12, a reference to a Security is a reference to a Primary Security, a Retention Security, a Subcontractor Payment Security, an additional security provided under Clause 42.4 or any other bank guarantee or insurance bond provided as a security in relation to this Contract, as applicable.
- b) If the Contractor provides a Security to the Principal in accordance with this Contract that is comprised of two or more bank guarantees or insurance bonds, the Principal:
  - i. by accepting the provision of that Security in that form, does not limit or restrict the Principal's absolute discretion in deciding which of those bank guarantees or insurance bonds to have recourse to; and
  - ii. in having recourse to that Security, is not obliged to do so in a proportional or prorated manner as between the bank guarantees or insurance bonds comprising that Security.

- c) Where:
  - i. the Contractor is comprised of two or more entities, and
  - ii. those entities elect to satisfy the Contractor's obligation to provide Security to the Principal by each entity providing part of that Security to the Principal,

Clause 5.12(b) will apply as though each entity's bank guarantee or insurance bond is a separate bank guarantee or insurance bond provided by the Contractor which together comprise the Security provided by the Contractor.
- d) Where the Contractor is comprised of two or more entities, Clause 50.1 is not amended, waived or otherwise affected by the Principal accepting the provision of Security in the manner described in Clauses 5.12(b) or (c) (as applicable).

## **6 Evidence of Contract**

### **6.1 Contract in absence of Formal Instrument of Agreement**

Unless and until a Formal Instrument of Agreement is executed by the parties, the Letter of Acceptance, including documents or parts of documents referred to in, or attached to, the Letter of Acceptance, shall evidence the Contract.

### **6.2 Formal Instrument of Agreement**

- a) Item 12A specifies that a Formal Instrument of Agreement is required. The Principal shall prepare a Formal Instrument of Agreement and shall, within 20 Business Days after the Date of Acceptance of Tender, forward it to the Contractor with a request that it be executed.
- b) Within 10 Business Days after being requested in writing by the Principal so to do, the Contractor shall execute a Formal Instrument of Agreement in the manner directed in writing by the Principal and return them to the Principal.
- c) Within 10 Business Days after receipt of a duly executed Formal Instrument of Agreement by the Contractor, the Principal shall execute a copy and forward to the Contractor.
- d) The Administrator may extend the periods under Clause 6.2 by notice in writing to the parties.
- e) The Principal shall bear the cost of any stamp duty payable on the Contract.
- f) Notwithstanding any other provision of the Contract, and without prejudice to any other right or remedy which the Principal may have, if the Contractor has failed to comply with this Clause 6.2, the Principal may withhold payment until the Contractor complies with this Clause 6.2.

### **6.3 Collusive arrangements**

The Contractor warrants and represents to the Principal that:

- a) it had no knowledge of the Tender Price of any other Tenderer for the Work Under the Contract at the time of submission of its Tender



- b) except as disclosed in its Tender, it has not entered into any Contract, arrangement or understanding to pay or allow to be paid any money directly or indirectly to a trade or industry association (above the published standard membership fee) or to or on behalf of any other Tenderer in relation to its Tender or this Contract, nor paid or allowed to be paid any money on that account
- c) except by prior agreement with the Principal, it has not paid or allowed to be paid or entered into any Contract, arrangement or understanding to pay or allow to be paid any money directly or indirectly to or on behalf of any other Tenderer nor received any money or allowance from or on behalf of any other Tenderer in relation to its Tender or this Contract, nor will it pay or allow or receive any money, and
- d) if, without the Principal's prior agreement, it receives or has received any money or allowance from any other Tenderer in relation to its Tender, the other Tenderer's Tender or this Contract, then without prejudice to any other right or remedy of the Principal, such money or allowance shall be deemed to be held by the Contractor on trust for the Principal and shall be paid to the Principal within five Business Days.

## **7 Service of notices**

### **7.1 Notice requirements**

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

### **7.2 Time of receipt**

A notice is deemed to have been received:

- a) if sent by registered post, on the third Business Day (or the 10<sup>th</sup> Business Day if posted to or from a place outside Australia) after posting
  - b) if delivered personally, upon delivery
  - c) if sent by email:
    - i. on a Business Day, on dispatch of the transmission, or
    - ii. on a Day other than a Business Day, on the next Business Day
- unless the sender's server indicates a malfunction or error in transmission or the recipient within four hours of sending notifies the sender of an incomplete transmission, or

- d) if sent via any proprietary document management system which the parties have agreed may be used for the purpose of giving a notice under the Contract, upon notification from that system to the recipient of the notice having been delivered on the proprietary document management system.

### **7.3 Notice details**

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

### **7.4 Service of payment Claims**

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

## **8 Contract documents**

### **8.1 Order of precedence of documents**

- a) The Contract is comprised of the documents listed in the Formal Instrument of Agreement (or the Letter of Acceptance, unless and until a Formal Instrument of Agreement is executed by the parties).
- b) Unless otherwise expressly stated in the Formal Instrument of Agreement or the Letter of Acceptance (as the case may be) or in a version of Form C7871.TIC attached to the Formal Instrument of Agreement or Letter of Acceptance, the following order of precedence shall apply where there is any ambiguity, discrepancy or inconsistency between the documents comprising the Contract, with the higher in the list having a higher priority:
  - i. Formal Instrument of Agreement
  - ii. Letter of Acceptance, including any post-Tender correspondences and the Schedule of Deviations (if applicable) listed or referred to in the Letter of Acceptance
  - iii. notices to Tenderers
  - iv. Special Conditions of Contract (Annexure D to these General Conditions of Contract) if any
  - v. these General Conditions of Contract, including:
    - a) Annexure A (Contract Details)
    - b) Annexure B (Commercial Framework)
    - c) Annexure C (Certification Functions of the Administrator), and
    - d) Clause Bank (C7836.TIC)
  - vi. Project Specific Specifications including MRTS Annexures
  - vii. Project Specific Drawings

- viii. Technical Specifications
- ix. Standard Drawings
- x. Conditions of Tendering and Conditions of Tendering Annexure
- xi. Completed Tender Form and Tender Schedules
- xii. Other Contract Documents.

## **8.2 Discrepancies**

- a) The several documents forming the Contract are to be taken as mutually explanatory of one another. If either party discovers any ambiguity or discrepancy in any document prepared for the purpose of executing the Work Under the Contract, that party shall notify the Administrator in writing of the ambiguity or discrepancy as soon as possible but not later than five Business Days of first becoming aware of the ambiguity or discrepancy. In the event of any such ambiguity or discrepancy, the Administrator shall within five Business Days of receiving such advice or discovering the discrepancy, direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the work.
- b) If the direction from the Administrator under Clause 8.2(a) causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

## **8.3 Dimensions**

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

## **8.4 Supply of documents and information by Principal**

- a) The Principal shall supply to the Contractor the number of copies stated in Item 13A of the Drawings, Specifications and Other Documents required by the Contract to be supplied to the Contractor by the Principal. Documents supplied to the Contractor by the Principal shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing. The documents shall not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Work Under the Contract.
- b) The Contractor warrants that it has and it shall be deemed to have:
  - i. examined carefully and to have acquired actual knowledge of the contents of the Contract documents, the Principal's Requirements (if applicable), the Tender Documents and any other information made available in writing by the Principal or any other person on the Principal's behalf to the Contractor for the purpose of preparing and submitting the Contractor's Tender
  - ii. examined all information relevant to the risks, contingencies and other circumstances which could affect the Contractor's Tender and which was obtainable by the making of detailed enquiries
  - iii. informed itself of the nature of the work and materials necessary for the execution of the Work Under the Contract and the means of access to and facilities at the Site and transport facilities for deliveries to or from the Site

- iv. informed itself as to the availability and cost of labour including the costs of complying with obligations imposed by any agreement between the relevant building industry unions and employers relating to the execution of construction and building work similar to the Work Under the Contract
  - v. satisfied itself as to the correctness and sufficiency of the Contract Sum and that the Contract Sum covers the cost of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Work Under the Contract
  - vi. informed itself of all requirements of the Authorities in relation to the Work Under the Contract generally, and without limiting the generality of the foregoing, in relation to measures necessary to protect the environment from any adverse effect or damage arising from execution of the Work Under the Contract
  - vii. obtained all appropriate professional and technical advice on all matters and circumstances with respect to the matters referred to in Clause 8.4(b)(i) to (vi) prior to submitting its Tender for the Work Under the Contract, and
  - viii. entered into this Contract based on its own investigations, interpretations, deductions, information and determinations and the Contractor acknowledges that it is aware that the Principal has entered into the Contract relying upon this acknowledgment and warranty.
- c) Failure by the Contractor to do all or any of the things it is deemed to have done under Clause 8.4(b) will not relieve the Contractor of any of its obligations or liabilities under the Contract, including its obligation to perform and complete the Work Under the Contract in accordance with the Contract.

#### **8.5 Supply of documents by Contractor**

- a) If the Contract requires the Contractor to supply documents, the Contractor shall supply the number of copies stated in Item 13C.
- b) If the Contractor submits documents to the Administrator, then:
  - i. the Administrator shall not be bound to check the documents for errors, omissions or compliance with the requirements of the Contract
  - ii. notwithstanding the provisions of Clauses 3.2.1 or 23, the Administrator's approval or direction as to suitability shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or compliance with the requirements of the Contract
  - iii. if the Contract provides that the Contractor must obtain the Administrator's direction whether documents are suitable or are not suitable then within the time stated in Item 13D after receipt of the documents, the Administrator shall notify the Contractor that the documents are suitable or are not suitable
  - iv. if the Administrator notifies the Contractor that the documents are not suitable, the Administrator shall give reasons why the documents are not suitable and the Contractor shall submit new or amended documents for the Administrator direction under this Clause 8.5 within five Business Days after receipt of the Administrator's notice
  - v. the Administrator shall not reject documents which are in accordance with the requirements of the Contract.

- c) Copies of documents supplied by the Contractor shall be the property of the Principal but shall not be used or copied otherwise than for the use, maintenance or alteration of the Works.

## **8.6 Design by Contractor**

### **8.6.1 Definitions**

- a) This Clause 8.6 only applies where Item 14A specifies the Contractor is required to design a Defined Part or where the Contractor has proposed an Alternative Tender that the Principal has accepted at the time of tendering and the Alternative Tender involved Contractor-supplied design.
- b) The parties agree that the Principal or the Administrator (as the case may be) may act in its absolute discretion when exercising any of its rights under Clause 8.6.
- c) Unless the context requires otherwise, in this Clause 8.6 and any other part of the Contract relating to work to be designed by the Contractor:
  - i. 'Contractor's Construction Drawings' means the drawings prepared by, or on behalf of, the Contractor which are necessary for the construction and/or installation of the Defined Part.
  - ii. 'Contractor's Construction Specifications' means the specifications prepared by, or on behalf of, the Contractor which are necessary for the construction and/or installation of the Defined Part.
  - iii. 'Contractor's Design' means the design for the Defined Part which has been accepted pursuant to Clause 8.6.9(c)(i) or is deemed to have been accepted pursuant to Clause 8.6.11 and includes:
    - a) the Contractor's Construction Drawings, the Contractor's Construction Specifications and all other Drawings, Specifications, manuals, designs (including systems designs) and other information, calculations, samples, models, patterns and the like, and
    - b) any new software and any customised, modified or extended parts of any existing software (including associated data and documentation)required for the construction and/or installation of the Works or which the Contract requires the Contractor to create or cause to be created or to provide (in all forms, including electronic) and which has become the Contractor's Design in accordance with Clause 8.6.8.
  - iv. 'Contractor's Designer' means the consultants and/or employees stated in the Contractor's Tender or any replacement Designer approved by the Administrator under Clause 8.6.4, being the Designers engaged by the Contractor for the purpose of preparing the Contractor's Design and providing required Certificates.
  - v. 'Defined Part' means that part of the Work Under the Contract specified in Item 14B which is to be designed and constructed by the Contractor, including all necessary interfaces with the remainder of the Work Under the Contract.
  - vi. 'Designer's Certificate' means a certificate in the form of Form C7859.TIC.
  - vii. 'Designer's Deed of Covenant' means the deed between the Principal, the Contractor and the Contractor's Designer referred to in Clause 8.6.4, in the form of Form C7854.TIC.

- viii. 'Principal's Requirements' means the written summary or outline of the Principal's requirements for the Defined Part described in the documents stated in Item 14C or in any relevant design provided by the Principal.

#### **8.6.2 Contractor's warranties**

The Contractor warrants that:

- a) it shall at all times be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the design of the Defined Part
- b) the design of the Defined Part will be carried out and completed in accordance with the requirements of the Contract, and:
  - i. such design will satisfy the Principal's Requirements and be fit and adequate for the purposes stated in, or that can be reasonably implied from the Contract, and suitable and adequate for the Site, and
  - ii. construction in accordance with such design will comply with the standards and other requirements specified by this Contract
- c) it will construct the Defined Part in accordance with the Contractor's Design:
  - i. in a proper and workmanlike manner
  - ii. using material of the nature described in the Contract which is of merchantable quality fit and adequate for its intended purpose, or failing any specific description, then using material of the best quality available which is of merchantable quality and fit and adequate for its intended purpose
- d) the Defined Part will, when constructed:
  - i. satisfy the Principal's Requirements and be fit and adequate for the purposes stated in, or that can be reasonably implied from, the Contract and be suitable and adequate for the Site, and
  - ii. comply with all the requirements of the Contract, including all Legislative Requirements and the requirements of all Authorities, and
- e) it will apply for, and obtain (or cause to be applied for and obtained) and will maintain, all certificates, licenses, consents, permits and other approvals of any Authority necessary for:
  - i. the execution of the Defined Part, and
  - ii. the occupation and use of the Defined Part.

#### **8.6.3 Contractor's liabilities, obligations and warranties unaffected**

The warranties in Clause 8.6.2 shall remain unaffected, notwithstanding:

- a) any design work in respect of the Defined Part may have been carried out by, or on behalf of, the Principal
- b) any comment upon, response to, review or acceptance of, giving or withholding of permission to use, approval to proceed with, direction or query in relation to or request to vary any Contractor's Construction Drawing or Contractor's Construction Specification or any part of the quality assurance system (in so far as it relates to the Defined Part), by the Principal, the Administrator or any agent, employee or consultant of the Principal

- c) any acceptance of a Drawing or Specification pursuant to Clause 8.6.9(c)(i) or deemed acceptance pursuant to Clause 8.6.11
- d) any variation directed or approved by the Principal in accordance with Clause 40, or
- e) the provision of any warranty under Clause 30.10.

#### **8.6.4 The Contractor's Designer and Designer's Deed of Covenant**

- a) The Contractor shall engage the Contractor's Designer to assist the Contractor to carry out and complete the Contractor's Design and to assist the Contractor to discharge its other obligations under Clause 8.6. The Contractor shall not terminate the engagement of the Contractor's Designer without the prior written consent of the Administrator.
- b) Before commencing any Work Under the Contract in respect of the Defined Part, the Contractor shall ensure that the Contractor's Designer takes out a professional indemnity insurance policy:
  - i. for a total aggregate of not less than the sum stated in Item 14D covering, among other things, Claims by the Principal, its employees and agents and third parties against the Contractor or the Contractor's Designer or by any other person arising out of or incidental to any negligent act, error or omission by the Contractor or the Contractor's Designer in connection with the professional activities and duties of the Contractor or the Contractor's Designer, and
  - ii. which is maintained until the Final Certificate is issued under Clause 42.8 and, after that, time for the period stated in Item 14E.
- c) The Contractor shall, if requested by the Principal, within five Business Days of the later of:
  - i. the Date of Acceptance of Tender, or
  - ii. the date the Contractor's Designer is engaged by the Contractorcomplete and execute, and procure the Contractor's Designer to complete and execute, a Designer's Deed of Covenant and deliver it to the Administrator.
- d) If having been requested by the Contractor to execute a Designer's Deed of Covenant, the Contractor's Designer fails to do so in the required Form and within the time period prescribed by this Clause 8.6.4, the Contractor shall, provided it has obtained the prior written approval of the Administrator, terminate the engagement of the Contractor's Designer and the Contractor shall nominate a further Designer for the approval of the Administrator. If the Administrator approves the replacement Designer, the provisions of this Clause 8.6.4 shall apply with respect to that Designer.

#### **8.6.5 The Contractor's Design**

The Contractor shall ensure the Design of the Defined Part is carried out and completed in accordance with the Contract and such that the Contractor's Design, the Contractor's Construction Drawings, the Contractor's Construction Specifications and the Defined Part:

- a) are in accordance with the Principal's Requirements

- b) are consistent with the Contractor's Tender for the Defined Part (except to the extent that the Contractor's Tender is inconsistent with the Principal's Requirements or the Other Contract Documents or provides for standards of finish, workmanship or materials of a lesser standard than that required by the Principal's Requirements or the Other Contract Documents, in which case the Contractor's Design shall be in accordance with the Principal's Requirements and the Other Contract Documents), and
- c) are sufficient to enable the Contractor to construct and complete the Defined Part.

#### **8.6.6 Submission of Contractor's Construction Drawings, Specifications and certificate**

The Contractor shall, in accordance with the documentation program required under Clause 8.6.13, submit to the Administrator:

- a) five copies of the Drawings and Specifications for the Defined Part or as otherwise specified in Item 13C, and
- b) with the copies of the Drawings and Specifications for the Defined Part submitted under Clause 8.6.6(a), five copies of a Designer's Certificate from the Contractor's Designer (signed by a Principal of the Contractor's Designer).

#### **8.6.7 No obligations to review or check Drawings and Specifications**

- a) Neither the Principal nor the Administrator is required to review or check any Drawings or Specifications submitted by the Contractor under Clause 8.6.6 or 8.6.10(a) or any reasons or supporting information submitted by the Contractor under Clause 8.6.10(b):
  - i. for errors, omissions or compliance with the Contract (including the Principal's Requirements), or
  - ii. for any other purpose whatsoever.
- b) The Contractor acknowledges that in considering and responding to any Drawings or Specifications submitted by the Contractor (if any such consideration occurs or response is given), the Principal and the Administrator will be relying upon:
  - i. the advice, skill and judgment of the Contractor and the Contractor's Designer
  - ii. the Designer's Certificate provided under Clauses 8.6.6 and 8.6.10(a)
  - iii. any reasons and supporting information given by the Contractor under Clause 8.6.10(b), and
  - iv. the warranties given by the Contractor under the Contract.
- c) No review of, comments upon, rejection of, or failure to review or comment upon or reject, any Drawings or Specifications submitted by the Contractor or any other direction by the Principal or Administrator about such Drawings or Specifications forming part of the Contractor's Design will:
  - i. relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to law, or
  - ii. prejudice the Principal's rights against the Contractor whether under the Contract or otherwise according to law.



#### **8.6.8 Permission to use required before construction**

The Contractor shall not commence construction of any part of the Defined Part unless and until Drawings and Specifications for that part of the Defined Part have been submitted under Clause 8.6.6 or 8.6.10(a) and either:

- a) the Administrator has accepted the Contractor may use those Drawings and Specifications for the construction of the Defined Part in accordance with Clause 8.6.9(c)(i), or
- b) the Administrator is deemed to have accepted those Drawings or Specifications may be used by the Contractor for the construction of the Defined Part as provided in Clause 8.6.11.

#### **8.6.9 Giving and withholding permission to use**

Within 10 Business Days after the submission by the Contractor to the Administrator of:

- a) Drawings and Specifications and the accompanying Designer's Certificate in accordance with Clause 8.6.6
- b) resubmitted Drawings and Specifications and the accompanying Designer's Certificate in accordance with Clause 8.6.10(a), or
- c) reasons and supporting information in accordance with Clause 8.6.10(b) concerning Drawings and Specifications for which the Administrator has previously withheld permission to use

as the case may be, the Administrator may either:

- i. give the Contractor notice in writing that it accepts use of the relevant Drawings and Specifications by the Contractor for the construction of the Defined Part, or
- ii. advise the Contractor in writing that it does not accept such Drawings or Specifications and give the Contractor brief reasons for withholding permission.

#### **8.6.10 Where permission to use is withheld**

If the Administrator advises the Contractor under Clause 8.6.9(c)(ii) that it does not accept the Drawing or Specification, the Contractor shall either:

- a) amend the Drawing or Specification and resubmit it to the Administrator together with an accompanying Designer's Certificate in accordance with Clause 8.6.6, or
- b) submit written reasons and supporting information to the Administrator stating why use of the Drawing or Specification should be accepted.

#### **8.6.11 Deemed permission to use**

If within 10 Business Days after submission by the Contractor to the Administrator of:

- a) a Drawing or Specification and the accompanying Designer's Certificate in accordance with Clause 8.6.6
- b) a resubmitted Drawing or Specification and the accompanying Designer's Certificate in accordance with Clause 8.6.10(a), or

c) reasons and supporting information in accordance with Clause 8.6.10(b) concerning a Drawing or Specification for which the Administrator has previously withheld permission to use as the case may be, the Administrator has not responded to the Contractor as provided in Clause 8.6.9(c)(i) or 8.6.9(c)(ii), then upon the expiration of the relevant 10 Business Day period, the Administrator shall be deemed to have accepted the use of the relevant Drawing or Specification by the Contractor for the construction of the Defined Part to the extent that the document complies with the requirements of the Contract.

#### **8.6.12 Documents become part of the Contractor's Design**

A Drawing or Specification submitted under Clause 8.6.6 or resubmitted in accordance with Clause 8.6.10(a) shall become part of the Contractor's Design:

- a) when the Administrator has accepted that Drawing or Specification may be used by the Contractor for the construction of the Defined Part pursuant to Clause 8.6.9(c)(i), or
- b) where such acceptance is deemed to have occurred pursuant to Clause 8.6.11.

#### **8.6.13 Documentation program**

- a) The Contractor shall, as part of the program which it is obliged to provide pursuant to Clause 33, submit a documentation program to the Administrator setting out the order in which and times by which Drawings and Specifications for the construction of the Defined Part are to be completed and submitted to the Administrator.
- b) The Contractor shall ensure that the documentation program provides for, and makes due allowance for, those Drawings and Specifications to be prepared and supplied to the Administrator within the time required by and at a rate consistent with the maintenance of progress of the Defined Part in accordance with the Current Program (provided that no more than a reasonable number of Drawings or Specifications are to be submitted to the Administrator on any one Day).

#### **8.6.14 No departure from Contractor's Design**

- a) The Contractor shall carry out and complete the Defined Part strictly in accordance with the Contractor's Design.
- b) The Contractor shall not depart from, or change, the Contractor's Design unless the departure or change (including a departure or change required by a variation directed by the Administrator under Clause 40.1):
  - i. is not inconsistent with the Principal's Requirements or any other Contract requirements, and
  - ii. will not materially affect the design and construction of the Defined Part.
- c) Where there is any departure or change to the Contractor's Design pursuant to Clause 8.6.14(b), the Contractor shall prepare Drawings and Specifications in relation to the departure or change in accordance with Clause 8.6.5 and submit them, together with relevant Designer's Certificates, in accordance with Clause 8.6.6 and the Administrator shall be deemed to have accepted those Drawings and Specifications in accordance with Clause 8.6.11.

- d) If any departure or change to the Contractor's Design is inconsistent with the Principal's Requirements or any other Contract requirements or will materially affect the Defined Part, the Contractor shall resubmit Drawings and Specifications in relation to the departure or change in accordance with Clause 8.6.6 and Clauses 8.6.6 to 8.6.12 shall apply in respect of those resubmitted Drawings and Specifications.
- e) No acceptance or deemed acceptance by the Administrator in connection with a departure from or change to a Contractor's Design as contemplated by this Clause 8.6.14 shall:
  - i. constitute, or be treated as, a variation direction by the Administrator under Clause 40.1
  - ii. entitle the Contractor to any additional payment or any extension of the Date of Practical Completion, or
  - iii. affect the warranties or obligations of the Contractor under Clause 8.6.2.

#### **8.6.15 Copyright in design**

- a) The Contractor warrants that:
  - i. it and/or the Contractor's Designer owns the copyright in all of the Drawings and Specifications prepared by them for the purposes of the construction of the Defined Part, and
  - ii. it has the right and the Authority to grant the licence mentioned in Clause 8.6.15(b).
- b) The Contractor hereby grants to the Principal an irrevocable royalty-free licence to use the documents mentioned in Clause 8.6.15(a)(i) for the Work Under the Contract, for any subsequent operation, maintenance, repairs, additions or alterations of or to the Defined Part and for any other purpose including other non-related projects. This licence will survive the breach, repudiation, rescission, frustration, cancellation, termination, completion or any other discharge of the Contract and any takeover of the whole or any part of the Work Under the Contract.
- c) Where the Principal uses any of the documents mentioned in Clause 8.6.15(a)(i) other than for the purposes of this Contract or in connection with the Work Under the Contract, it does so at its own risk.

#### **8.6.16 Conditions precedent to issue of Certificate of Practical Completion**

The Contractor shall, as a condition precedent to the issue of the Certificate of Practical Completion, hand over the following to the Administrator:

- a) three sets of as-constructed Contractor's Construction Drawings and Contractor's Construction Specifications in a Form and containing such details as may be required by the Administrator
- b) a Designer's Certificate certifying that the as-constructed Contractor's Construction Drawings and Contractor's Construction Specifications comply with the requirements of the Contract and the Contractor's Design, and
- c) records and reporting relevant to Work Under the Contract required by legislation, government policy or specific contractual conditions, provided in electronic form unless otherwise agreed by the Administrator.

#### **8.6.17 Ambiguities and discrepancies in the Contractor's Design**

Clause 8.2(b) shall apply to a Defined Part only where the ambiguity or discrepancy is in the Principal's Requirements. Where the ambiguity or discrepancy is:

- a) in the Contractor's Design or any Drawing or Specification produced by the Contractor in respect of a Defined Part (including in or between any of the Contractor's Construction Drawings or the Contractor's Construction Specifications), or
- b) between the Contractor's Design or any Drawing or Specification produced by the Contractor in respect of a Defined Part (including any Contractor's Construction Drawings or the Contractor's Construction Specifications) and the Principal's Requirements

such ambiguity or discrepancy shall be at the Contractor's risk and the direction shall not entitle the Contractor to any extra payment or an extension of time.

#### **8.7 Workshop drawings**

The Contractor shall prepare all fabrication, erection and construction drawings (workshop drawings), required to supplement any information supplied by the Principal and these shall be submitted to the Administrator for a direction as to their suitability, in accordance with Clause 8.5, where specified, at the time specified or, if not specified, 15 Business Days before any work shown in such workshop drawings is commenced.

#### **8.8 Availability of documents**

- a) While Work Under the Contract is being performed, one complete set of Drawings, Specifications and other written information supplied by the Principal, the Administrator and the Contractor shall be kept by the Contractor at the Site or other location approved in writing by the Principal and shall be available at all times for reference by the Principal, the Administrator and any persons nominated in writing by either of them.
- b) During the manufacture or assembly of any significant part of the Work Under the Contract away from the part of the Site where the Works are to be constructed, a set of the Drawings and written information relevant to that part of the work shall be kept by the Contractor at the place of manufacture or assembly and shall be available for reference by the Principal, the Administrator and any person nominated in writing by either of them.

#### **8.9 Confidential information**

- a) Drawings, Specifications and other information, samples, models, patterns and the like, supplied by either the Contractor or the Principal and marked or otherwise identified as confidential, shall be regarded as confidential and shall not be disclosed to a third party except with the prior agreement of the other party to the Contract.
- b) If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after the issue of the Final Certificate pursuant to Clause 42.8 or the earlier termination of the Contract.

#### **8.10 Information Privacy Act 2009**

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

- i) Following the issuing of the Certificate of Practical Completion and prior to the issue of the Final Certificate, the Contractor shall forward any Personal Information on members of the community held by the Contractor to the Principal. Following confirmation of receipt by the Principal, the Contractor shall destroy all such information in the Contractor's possession.
- j) This Clause 8.10 survives termination or expiry of the Contract.

#### **8.11 Media releases and communication material**

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

### **9 Assignment and subcontracting**

#### **9.1 Assignment**

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

#### **9.2 Subcontracting**

##### **9.2.1 Prior consent required**

The Contractor shall not:

- a) subcontract the whole of the Work Under the Contract
- b) subcontract or allow a Subcontractor to subcontract any Work Under the Contract, if:
  - i. the value of the Work Under the Contract to be subcontracted exceeds the amount specified in Item 15A, or
  - ii. the Work Under the Contract to be subcontracted is subject to the requirements in Clause 9.3 in relation to registered suppliers

without the written approval of the Administrator, which may be given or withheld in the Administrator's absolute discretion.

##### **9.2.2 Details of proposed Subcontractors**

- a) In seeking approval to subcontract any part of the Work Under the Contract, the Contractor shall provide to the Administrator:
  - i. particulars in writing of the work to be subcontracted and the name and the address of the proposed Subcontractor, and
  - ii. any other information which the Administrator reasonably requests, including the proposed subcontract documents (without prices).

- b) Within 10 Business Days of receiving the information required to be provided by the Contractor pursuant to Clause 9.2.2(a), the Administrator shall consider the request for approval and advise the Contractor of its approval or provide reasons why approval is not given.
- c) In considering a request for approval to subcontract under this Clause 9.2.2, the Administrator may consider the proposed Subcontractor's:
  - i. management capability in quality, work health and safety and environmental management, and
  - ii. technical experience and capability.
- d) The Administrator's approval to subcontract under this Clause 9.2.2 may be conditional upon the subcontract, including:
  - i. provision that the Subcontractor shall not assign or subcontract without the consent in writing of the Contractor, and
  - ii. provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal.

### **9.3 Registered suppliers**

- a) Without limiting the Contractor's obligations under Clause 9.2, the Contractor shall only use registered suppliers in respect of the Work Under the Contract which is covered by the Department's relevant registration categories.
- b) The registered suppliers and registration categories may be amended at any time and from time to time by the Principal and are available at the Principal's website.
- c) Where a registered supplier is removed from the register after the Administrator has granted approval of that Subcontractor, the Contractor shall select another registered supplier (unless approved otherwise by the Administrator). Any difference in cost shall be valued under Clause 40.5
- d) The Contractor shall ensure that any special conditions imposed on the Registered Suppliers as part of registration be complied.

### **9.4 Contractor's responsibility**

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

## **10 Selected and Nominated Subcontractors**

### **10.1 Selected Subcontract**

The Contractor shall subcontract the Selected Subcontract Work to a Selected Subcontractor. If the Tender Documents specify the terms and conditions upon which the subcontract is to be entered into, the subcontract shall include those terms and conditions.

## **10.2 Nominated Subcontract**

- a) At such time as is necessary to avoid delay to the Contractor, the Contractor shall subcontract the Nominated Subcontract Work to a Nominated Subcontractor.
- b) If the Contract provides that the Principal may assign to the Contractor the benefit of a prior Contract made between the Principal and a Nominated Subcontractor, the Contractor shall, when directed by the Administrator, accept the assignment of that prior Contract. If the Contract provides that the Principal may novate to the Contractor a prior Contract made between the Principal and a Nominated Subcontractor in respect of Nominated Subcontract Work, the Contractor shall, when directed by the Administrator, execute a deed of novation of that prior Contract in the Form included in the Tender Documents (Form C7849.TIC.CO) and unless the Contract otherwise provides, the Contractor shall give the Principal credit for payment made by the Principal to the Nominated Subcontractor in respect of the Nominated Subcontract Work.
- c) The Contractor shall ensure that the provisions of the subcontract with a Nominated Subcontractor provides:
  - i. that in respect of the Nominated Subcontract Work, the Nominated Subcontractor will undertake the Contractor obligations and liabilities to enable the Contractor to discharge the Contractor's obligations and liabilities to the Principal under the terms of the Contract
  - ii. that the Nominated Subcontractor will indemnify the Contractor against loss resulting from any failure by the Nominated Subcontractor to perform such obligations or fulfil such liabilities
  - iii. that the Nominated Subcontractor will indemnify the Contractor against loss resulting from any negligence by the Nominated Subcontractor and the Nominated Subcontractor's servants and agents and against any misuse by them of any Constructional Plant or Temporary Works provided by the Contractor for the purposes of the Contract
  - iv. that the Nominated Subcontractor will lodge security in a Form provided by Clause 5.4 and that security and Retention Moneys shall be calculated on the same scale and on the same basis respectively as apply in the Contract, and
  - v. rights and obligations equivalent to those in Clause 44.

## **10.3 Provisions applying generally to Selected and Nominated Subcontract Work**

- a) The Contractor shall be fully responsible to the Principal for the Selected or Nominated Subcontract Work, including design, suitability, quality and workmanship.
- b) Except as specified in this Clause 10, and subject to any reasonable objection made by the Contractor pursuant to this Clause 10:
  - i. the Principal shall have no liability to a Selected or Nominated Subcontractor arising from the subcontract between the Contractor and the Selected or Nominated Subcontractor, and
  - ii. the Principal shall not be liable to the Contractor for any act, default or omission or breach of Contract by a Selected or Nominated Subcontractor, arising from the subcontract between the Contractor and the Selected or Nominated Subcontractor.



#### **10.4 Direct payment of Nominated Subcontractor**

- a) In respect of Nominated Subcontract Work performed by a Nominated Subcontractor, the Principal shall make payment directly to the Nominated Subcontractor. Except where the Contractor has accepted an assignment of the benefit of a prior Contract made between the Principal and a Nominated Subcontractor:
  - i. such payment shall be made on behalf of the Contractor, and
  - ii. if the Contractor reasonably requests the Principal in writing not to make a payment to the Nominated Subcontractor, the Principal shall withhold payment, but under no circumstances, including bankruptcy or winding up of the Contractor, shall payment be made to the Contractor.
- b) The Principal as stakeholder shall hold Retention Moneys and security provided by a Nominated Subcontractor and shall disburse or apply the Retention Moneys or security as jointly requested by the Contractor and the Nominated Subcontractor or in accordance with the decision of an arbitrator or Court.

#### **10.5 Termination of Nominated Subcontractor**

- a) The Contractor shall not unreasonably terminate a subcontract for Nominated Subcontract Work and as early as possible the Contractor shall notify the Administrator of the Contractor's intention to terminate and the reasons.
- b) If a Nominated Subcontractor repudiates or abandons a subcontract or the Nominated Subcontractor is terminated, the Contractor shall within one Business Day notify the Administrator in writing and within three Business Days the Administrator shall nominate an alternative Nominated Subcontractor to complete the subcontract work.
- c) The Contractor shall not be obliged to enter into a subcontract with an alternative Nominated Subcontractor referred to in Clause 10.5(b) against whom the Contractor raises reasonable objection.
- d) The Contractor shall, as soon as practicable, enter into a subcontract with the alternative Nominated Subcontractor referred to in Clause 10.5(b) and notify the Administrator accordingly.
- e) If compliance with such a direction causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference shall be valued under Clause 40.5, except where a Provisional Sum for the Nominated Subcontract Work has been included in the Contract, in which case the provisions of Clause 11 shall apply.

### **11 Provisional Sums**

- a) A Provisional Sum included in the Contract shall not itself be payable by the Principal, but where at the direction of the Administrator, the work or Item to which the Provisional Sum relates is performed by:
  - i. the Contractor, the work or Item shall be valued under Clause 40.5 of the General Conditions of Contract

- ii. a Subcontractor, the Principal shall pay the Contractor the amount payable by the Contractor to the Subcontractor for the work or Item, disregarding any damages payable by the Contractor to the Subcontractor or vice versa, plus the amount or percentage thereon for profit and attendance stated in Item 15E or, where not so stated, as stated elsewhere in the Contract and (unless incorporated within the amounts payable under this paragraph) GST, and
  - iii. a Nominated Subcontractor pursuant to a prior Contract made between the Principal and a Nominated Subcontractor, the benefit of which has been assigned to the Contractor, the Principal shall pay the Contractor the amount stated in Item 15F or the percentage for profit and attendance stated in Item 15F of the amount payable by the Principal to the Nominated Subcontractor for the work or Item or, where no amount or percentage is stated, as stated elsewhere in the Contract, disregarding any damages payable by the Principal to the Nominated Subcontractor or vice versa and (unless incorporated within the amounts payable under this paragraph) GST.
- b) The amount payable to a Subcontractor for materials or goods is to be taken to be the nett cost to the Contractor (disregarding any deduction of cash discount for prompt payment).

## **12 Site conditions**

### **12.1 Contractor investigations**

- a) The Principal does not warrant or make any representation with respect to:
- i. the completeness, accuracy, adequacy or content of any Site Information provided to the Contractor by, or on behalf of, the Principal
  - ii. the completeness or adequacy of any Reliance Information, or
  - iii. any interpretations, deductions, opinions or conclusions set out in any such Site Information or Reliance Information.
- b) The Contractor warrants that it has, and shall be deemed to have, visited and examined the Site and its surroundings and done everything a competent and experienced Contractor would have done to inform itself fully as to the physical conditions or obstructions upon and below the surface of the Site, and the local conditions, including climatic and hydrologic conditions at, near or relevant to the Site, or any other condition or characteristic of the Site affecting or which may affect its performance of the Contract and obtained all necessary information as to risks, contingencies and other circumstances which could have an effect on the performance and cost of executing the Work Under the Contract.
- c) Any Site Information provided to the Contractor by, or on behalf of, the Principal is provided for information only.
- d) Subject to Clause 12.2:
- i. the Principal shall not be liable to the Contractor for any Claim arising out of, or in relation to, Site Information provided to the Contractor by, or on behalf of, the Principal
  - ii. the Contractor shall not be relieved of any of its obligations or liabilities, if the Contractor encounters conditions, including subsurface conditions and subsurface services, which differ from the conditions shown in or indicated by any Site Information provided to the Contractor by or on behalf of the Principal, and

- iii. the Contractor accepts all risk arising out of its use of or reliance upon any Site Information provided to the Contractor by or on behalf of the Principal.

## **12.2 Notification**

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

## **12.3 Extension of time and cost**

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

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

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

## **12.4 Reduced Valuation**

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

## **13 Patents, copyright and other intellectual property rights**

- a) The Principal warrants that unless otherwise provided in the Contract:
  - i. design

- ii. materials
- iii. documents, and
- iv. methods of working

specified in the Contract or provided or directed by the Principal or the Administrator will not infringe any patent, registered design, trademark or name, copyright or other protected right.

- b) The Contractor warrants that any other design, materials, documents and methods of working provided by the Contractor will not infringe any patent, registered design, trademark or name, copyright or other protected right and the Contractor shall indemnify the Principal against any design, materials, documents or methods of working provided by the Contractor infringing any patent, registered design, trademark or name, copyright or other protected right.

## **14 Statutory requirements**

### **14.1 *Complying with Legislative Requirements***

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

### **14.2 *Changes in Legislative Requirements***

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

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

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

### **14.3 *Licences, registrations, permits, approvals and certificates***

- a) The Contractor shall obtain and hold, and ensure that its Subcontractors, agents and employees obtain and hold, all of the licences, registrations, permits, approvals and certificates that they are required under all Legislative Requirements in order to carry out the Work Under the Contract and in respect of the use and occupation of the Works.
- b) The Contractor shall give the Principal copies of documents issued to the Contractor by any Authority in respect of the Work Under the Contract and, in particular, any approvals of work.

#### **14.4 Industrial matters**

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

#### **14.5 Specific Legislative Requirements**

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

##### **14.5.1 Not used**

##### **14.5.2 Haulage of plant and materials**

- a) The Contractor shall ensure that vehicles carrying plant and material over state-controlled roads and local government-controlled roads shall comply with the vehicle weight limit requirements set out in the *Transport Operations (Road Use Management) Act 1995 (Qld)*, and with any other vehicle weight limit requirements imposed by duly constituted authorities on whose roads such vehicles operate.
- b) The Contractor shall, prior to commencement of work on the Site, submit evidence to the Administrator that the approvals of the relevant Authorities have been obtained for the haulage of plant and materials over surface streets along nominated routes.
- c) The Contractor shall be responsible for the rectification of any damage to surface streets attributable to the Work Under the Contract. If the Contractor fails to rectify the damage, the Administrator may, after giving reasonable notice, arrange for the necessary rectification work to be carried out and the cost incurred shall be a debt due from the Contractor to the Principal.
- d) Access for Constructional Plant to and from surface streets on or off the Site shall be subject to any restrictions stated in Item 17A.
- e) Failure of the Contractor to comply with the requirements of this Clause 14.5.2 will be a substantial breach of Contract for the purposes of Clause 44.2.

##### **14.5.3 Portable Long Service Leave Levy**

Where applicable:

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

#### **14.5.4 National Greenhouse and Energy Reporting Act**

- a) A party will provide the other party with all information and documentation reasonably requested by the other party in respect of greenhouse gas emissions and energy production and consumption referable to any activities that comprise Work Under the Contract which is reasonably necessary to enable compliance by the other party with its obligations under the *National Greenhouse and Energy Reporting Act 2007* (Cth) (NGER Legislation) in relation to any Work Under the Contract.
- b) The Contractor acknowledges that it is not entitled to any additional payment from the Principal for complying with any obligations the Contractor may have under the NGER Legislation.

#### **14.5.5 Work health and safety accreditation**

If applicable, as indicated in Item 11A of the Conditions of Tendering Annexure (or in the case of a TIC-Sole Invitation, if requested by the Principal):

The Contractor shall be accredited under the Australian Government Building and Construction WHS Accreditation Scheme (the Scheme) while building work is carried out and shall maintain accreditation under the Scheme while the Works are being carried out and for the duration of the Contract, and the Contractor shall comply with all conditions of the Scheme accreditation.

#### **14.6 The Queensland Code**

##### **14.6.1 Definitions**

If applicable, in addition to terms defined in this document, terms used in this Clause 14.6 have the same meaning as is attributed to them in the Queensland Government's *Queensland Code of Practice for the Building and Construction Industry* (the Queensland Code). The Queensland Code is available at <https://www.oir.qld.gov.au/industrial-relations/building-and-construction-code-practice-2000>.

##### **14.6.2 Primary obligation**

- a) The Contractor shall comply with, and meet any obligations imposed by, the Queensland Code.
- b) The Contractor shall notify the Principal of any alleged breaches of the Queensland Code and voluntary remedial action taken within 24 hours of becoming aware of the alleged breach.
- c) Where the Contractor is authorised to engage a Subcontractor and it does so, the Contractor shall ensure that any secondary Contract imposes on the Subcontractor equivalent obligations to those in this Clause 14.6, including that the Subcontractor shall comply with, and meet any obligations imposed by, the Queensland Code.
- d) The Contractor shall not appoint or engage another party in relation to the Work Under the Contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code.

##### **14.6.3 Access and information**

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

- b) The Contractor shall allow, and take reasonable steps to facilitate, Queensland Government authorised personnel to:
  - i. enter and have access to Sites and premises controlled by the Contractor, including any Site at which the Work Under the Contract is being carried out
  - ii. inspect any work, material, machinery, appliance, article or facility
  - iii. access information and documents
  - iv. inspect and copy any record relevant to the Work Under the Contract
  - v. have access to personnel, and
  - vi. interview any person.
- c) As is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code by the Contractor, its Subcontractors and related entities.
- d) The Contractor, and its related entities, shall agree to, and comply with, a request from Queensland Government authorised personnel for the production of specified documents by a certain date, whether in person, by post or electronic means.

#### **14.6.4 Sanctions**

- a) The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code that would have precluded it from tendering for work to which the Queensland Code applies.
- b) If the Contractor does not comply with, or fails to meet any obligation imposed by, the Queensland Code, a sanction may be imposed against it in connection with the Queensland Code.
- c) Where a sanction is imposed:
  - i. it is without prejudice to any rights that would otherwise accrue to the parties,
  - ii. the State of Queensland (through its agencies and Ministers) is entitled to:
    - a) record and disclose details of non-compliance with the Queensland Code and the sanction, and
    - b) take them into account in the evaluation of future expressions of interest or Tender responses that may be lodged by the Contractor, or its related entities, in respect of work to which the Queensland Code applies.

#### **14.6.5 Compliance**

- a) The cost of ensuring the Contractor's compliance with the Queensland Code shall be borne by the Contractor. The Contractor is not entitled to make a Claim for reimbursement or an extension of time from the Principal or the State of Queensland for such costs.
- b) Compliance with the Queensland Code does not relieve the Contractor from responsibility to perform the Work Under the Contract and any other obligation under the Contract, or from liability for any defect in the Works or from any other legal liability, whether or not arising from its compliance with the Queensland Code.

- c) Where a change in the Contract or the Work Under the Contract is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code, the Contractor shall immediately notify the Principal (or nominee) of the change, or likely change and specify:
  - i. the circumstances of the proposed change
  - ii. the extent to which compliance with the Queensland Code will, or is likely to be, affected by the change, and
  - iii. what steps the Contractor proposes to take to mitigate any adverse impact of the change.and the Principal will direct the Contractor as to the course it must adopt within five Business Days of receiving notice.

#### **14.7 Personal Property Securities Act**

##### **14.7.1 Confidentiality under the Act**

If this Contract contains a Security Interest, then each party agrees for the purposes of section 275(6) of the *Personal Property Securities Act* 2009 (Cth) (the PPSA) that it will not disclose information of the type referred to in Section 275(1) of the PPSA where a request is made under section 275(1) of the PPSA in relation to this Contract or any part of it, except in circumstances where the party is compelled by law (other than section 275(1) of the PPSA) to make that disclosure.

##### **14.7.2 Security Interests under the Act**

If the Principal determines that any clause of this Contract, or a transaction contemplated by this Contract or in connection with the performance of the Work Under the Contract constitutes, or is likely to give rise to a Security Interest in respect of which the Principal is the security holder, then:

- a) the Contractor agrees to promptly provide all assistance and cooperation requested by the Principal that the Principal determines is reasonably required to:
  - i. register and maintain the registration of its Security Interest on the personal property securities register within any applicable time limits relevant to the effectiveness of the Security Interest
  - ii. ensure that the Principal's Security Interest is enforceable against third parties, Perfected or otherwise effective
  - iii. ensure that the Security Interest has the appropriate priority required by the Principal (including where applicable as a Purchase Money Security Interest)
  - iv. ensure that any Security Interest granted temporary Perfection under the PPSA is Perfected by registration or other appropriate means prior to any applicable expiry of that temporary Perfection, and
  - v. enable the Principal to register financing statements or financing change statements under the PPSA with respect to any such Security Interest
- b) the Contractor waives the right to receive notice of a verification statement in relation to the registration of that Security Interest
- c) the Contractor shall not register or permit to be registered any other Security Interest in respect of the Personal Property that comprises the collateral in respect of that Security Interest other than one that has been consented to or granted by the Principal



- d) the Contractor shall not cause or allow any of the Contractor's Personal Property to become an Accession to the Principal's Personal Property or cause or allow the Principal's Personal Property to become an Accession to the Contractor's Personal Property without the prior consent of the Principal, and
- e) immediately notify the Principal if any other person Claims or attempts to enforce a Security Interest:
  - i. in the Principal's Personal Property, or
  - ii. in the Contractor's Personal Property to the extent that that purported enforcement affects or has the potential to affect the Contractor's ability to carry out the Works in accordance with the terms of the Contract.

#### **14.8 The Queensland Charter for Local Content**

The Contractor is advised that the Queensland Charter for Local Content (the Charter) applies when the project meets one of the following requirements:

- a) Queensland Government contribution is \$5.5 million and above (including GST) for south-east Queensland and \$2.75 million and above (including GST) for regional Queensland
- b) Queensland Government grants greater than \$2.75 million (inclusive of GST), and
- c) Large infrastructure projects where funding of over \$20 million is provided by the Commonwealth through the Queensland Government

There is an obligation on the Contractor to comply with the principles of the Queensland Charter and:

- i. within 28 days of the Letter of Acceptance, the Contractor shall prepare and submit a statement of intent, 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@dssd.qld.gov.au](mailto:qclc@dssd.qld.gov.au) and also submit a copy to the Principal via [localcontentreports@tmr.qld.gov.au](mailto:localcontentreports@tmr.qld.gov.au).

No additional payment will be made for compliance requirements in accordance with the Queensland Charter.

For more information, please refer to:

<https://www.statedevelopment.qld.gov.au/industry/industry-support/qld-charter-for-local-content>

#### **14.9 Compliance with the Queensland Procurement Policy (QPP)**

Local Business Participation.

The Principal expects the Contractor to support local businesses by sourcing equipment, materials and services from suppliers based locally to the Project. 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).

In addition to the reporting requirements stipulated in Clause 14.8(ii) of the General Conditions of Contract, the Contractor shall compile and submit 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 work 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.

#### **14.10 Best Practice Principles**

For eligible projects with a project value of \$100 million or greater, the Contractor shall fulfil the commitments made in its offer / tender in respect of the best practice principles as part of the *Queensland Procurement Policy*. For further information, refer to the following link.

[Best practice principles: Quality, safe workplaces \(forgov.qld.gov.au\)](https://www.forgov.qld.gov.au/best-practice-principles-quality-safe-workplaces)

#### **14.11 The Ethical Supplier Threshold and Ethical Supplier Mandate**

- a) In this Clause 14.11,
  - 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. The 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 Mandate and Threshold.
- b) The Contractor shall comply with the Ethical Supplier Threshold and Ethical Supplier Mandate.
- c) The Principal may obtain information about the Contractor relevant to the Contractor's compliance with the Ethical Supplier Threshold and Ethical Supplier Mandate 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. The Contractor agrees to provide all information requested during an audit or investigation, including the information of any subcontractors.
- d) The Contractor acknowledges that a failure to comply with the Principal's policies that apply to the work under the proposed contract or the Contractor's obligations under the proposed contract may result in the imposition of a demerit or sanction under the *Ethical Supplier Mandate*, in addition to any other remedies available to the Principal under this Contract.
- e) Failing to comply with the requirements of this Clause 14.11(b) is a substantial breach of Contract for the purpose of Clause 44.2(a) and (b)(xxi) of the General Conditions of Contract.

## **15 Protection of people and property**

### **15.1 Contractor's obligations**

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

### **15.2 Protection of people and property**

- a) Insofar as compliance with the requirements of the Contract permits, the Contractor shall:
  - i. provide all things and take all measures necessary to protect people and property
  - ii. avoid unnecessary interference with the passage of people and vehicles, and
  - iii. prevent nuisance and unreasonable noise and disturbance.
- b) Without limiting the generality of the Contractor's obligations, they include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.
- c) If the Contractor or the employees or agents of the Contractor damage property, including Public Utilities Plant and services and/or property on or adjacent to the Site, the Contractor shall promptly make good the damage and pay any compensation which the law requires the Contractor to pay.
- d) Where the Contractor or the employees or agents of the Contractor enter on or uses the Principal's premises or facilities, it shall comply with all reasonable directions and procedures, and all applicable policies, codes of conduct and guidelines, relating to security and to workplace health and safety, which are in effect at those premises or in regard to those facilities, as notified by the Principal.
- e) If the Contractor fails to comply with an obligation under Clause 15 the Principal may, in addition to any other remedy, perform the obligation on the Contractor's behalf and the cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

### **15.3 Work health and safety**

#### **15.3.1 General**

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

#### **15.3.2 Appointment of Principal Contractor**

- a) The Contractor is engaged by the Principal as the Principal Contractor for the Construction Project and the Contractor accepts that engagement.
- b) The Contractor is authorised to have Management and Control of the Workplace and to discharge its obligations as Principal Contractor under Chapter 6 of the WHS Regulation.
- c) The Contractor's engagement as Principal Contractor will continue until completion of the Works, unless earlier revoked by the Principal.
- d) The Contractor shall comply with (and ensure that its employees, agents, Subcontractors and representatives also comply with) all WHS Legislation.

- e) The Contractor shall provide the Principal with copies of all notices and correspondence of whatsoever nature concerning the WHS Legislation within 24 hours of the dispatch and/or receipt by the Contractor of any such notice or correspondence.
- f) The Contractor shall, to the extent permitted by law, indemnify and keep indemnified the Principal and its officers, employees and agents against any action, Claim, demand, expense, loss, cost (including legal costs), penalty, fine or other liability (including in tort) arising from or in connection with:
  - i. any injury, accident or safety related incident on or adjacent to the Site, and
  - ii. the enforcement of, or any breach by the Contractor of, its obligations under this Clause 15.3.
- g) The Contractor shall consult, cooperate and coordinate with the Administrator in accordance with WHS Legislation.

#### **15.3.3 Notifiable Incidents**

The Contractor shall:

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

#### **15.3.4 Work Health and Safety Management Plan**

- a) The Contractor shall prepare and submit, as part of the Contract Plan, its Work Health and Safety Management Plan (WHS Management Plan) to the Administrator in accordance with Clause 33.3.
- b) The Contractor shall not commence the Works until the Administrator has advised that the Contractor's WHS Management Plan is suitable pursuant to Clause 33.3.1 or 33.3.2 (as applicable).
- c) The Contractor's WHS Management Plan shall comply with all applicable WHS Legislation.
- d) The Contractor is not entitled to make any Claim in connection with any direction as to suitability, review, approval of, or modification to the WHS Management Plan as directed by the Administrator.

### **15.3.5 Safety audits**

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

## **15.4 Health and safety duties**

### **15.4.1 General duty**

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

### **15.4.2 Principal's obligations**

The Principal will:

- a) comply with its obligations under the WHS Act
- b) as soon as reasonably possible, give the Contractor any information the Principal has in relation to hazards and risks at or in the vicinity of the Workplace where any Construction Work is to be carried out
- c) provide the Contractor with copies of any Drawings and Specifications created for the Principal by its designer of any Works to be constructed under this Contract, and
- d) consult, cooperate and coordinate with the Contractor in relation to any health or safety matters arising out of or in connection with the Workplace, the Works or the Contract.

### **15.4.3 Contractor's obligations**

The Contractor shall discharge its duties and comply with all relevant obligations under the WHS Act, including the following:

- a) the duties of a Principal Contractor
- b) the duties of a person conducting a business or undertaking
- c) the duties in relation to health and safety matters in relation to or connected with the Management and Control of the Workplace
- d) the duty to ensure all risks to health and safety are eliminated, minimised or managed, and
- e) any other duties, obligations, standards and requirements under the WHS Act which may be or become applicable in relation to or in connection with the Contract or the Works.

#### **15.4.4 Additional Contractor obligations**

Without limiting the obligations in Clauses 15.4.1 and 15.4.3, the Contractor shall ensure the Contractor, and its officers, employees, agents and Subcontractors:

- a) are familiar with and comply with all their obligations and exercise due diligence in discharging all their duties under the WHS Act
- b) as a minimum, comply with the Principal's reasonable directions in relation to health and safety
- c) are suitable and competent, and shall retain evidence of that verification, and provide that evidence to the Principal promptly upon written or verbal request, and
- d) where the Contractor provides or commissions any design for the Works, the Contractor shall:
  - i. ensure that it and any designer discharge all duties as required under Part 6.2 of the WHS Regulation
  - ii. obtain a design safety report from any designer in accordance with the WHS Regulation and provide a copy to the Principal's Representative, and
  - iii. ensure it obtains full details of all hazards and risks from any designer and incorporates corresponding methods of controlling these in the WHS Management Plan.

#### **15.4.5 Primary responsibility**

- a) As between the Principal and the Contractor, where a duty is held by both parties, and without limiting the Principal's rights under the Contract, the Contractor has the primary responsibility for ensuring that duty is discharged and any investigations are undertaken.
- b) If the Contractor cannot discharge its work health and safety duties and obligations under the WHS Act or the Contract to the standard imposed by the WHS Act or the Contract, the Contractor shall:
  - i. ensure work health and safety is preserved including, if necessary, stopping the relevant part of the Work Under the Contract
  - ii. immediately notify the Principal and consult, cooperate and coordinate with the Principal to ensure any duties are discharged or issues resolved to the standard required, and
  - iii. if the Contractor in its capacity as Principal Contractor or otherwise in relation to the Contract, the Workplace or the Works, creates, sends or receives any document, notice or report under the WHS Act, forward a copy to the Principal.

#### **15.4.6 Communication, consultation and coordination**

The Contractor shall, before commencing the Works and then on an ongoing basis, consult, cooperate and coordinate with:

- a) the Principal
- b) all other duty holders in relation to any duty held by the Contractor
- c) workers (whether or not directly employed by the Contractor) who are or are likely to be directly affected, and

- d) relevant suppliers, Contractors and other third parties,

in relation to any health or safety matters arising out of or in connection with the Workplace, the Works or the Contract.

#### **15.4.7 No separate payment for compliance with work health and safety requirements**

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

### **15.5 Traffic management**

#### **15.5.1 General**

- a) Without limiting Clause 15.1, the Contractor shall be responsible for the safe and orderly passage of all traffic on or within the road reserve including all vehicular and pedestrian traffic through and around the Site at all times from the date of possession of the Site to the Date of Practical Completion.
- b) For the purposes of Clause 15.5, the 'QGTTM' means *Queensland Guide to Temporary Traffic Management* and 'the Manual' means the department's *Queensland Manual of Uniform Traffic Control Devices* as amended from time to time and available at the Principal's website.
- c) If specified in Item 18A, the Contractor shall prepare, implement and maintain a Traffic Management Plan for the Work Under the Contract and the provisions of Clause 15.5.2 shall apply.

#### **15.5.2 Traffic Management Plan**

- a) The Contractor shall prepare and submit, as part of the Contract Plan, its Traffic Management Plan to the Administrator, in accordance with Clause 33.3.
- b) The Traffic Management Plan shall be consistent with the QGTTM, the Manual, and the Technical Specifications and any Traffic Management Plan outline submitted with the Contractor's Tender (except to the extent that any Traffic Management Plan outline is inconsistent with the QGTTM and the Manual, the Technical Specifications or any of the Other Documents comprising the Contract, then the Traffic Management Plan shall be in accordance with the QGTTM and the Manual, the Technical Specifications and the Other Documents comprising the Contract).
- c) The Traffic Management Plan shall include procedures to comply with any minimum traffic restrictions stated in Clause 15.5.3 and shall be accompanied by a duly completed Form M994.
- d) The Traffic Management Plan shall include details of all proposed road closures, detours, staged construction, necessary signing, the relevant Authorities whose approval is required to be obtained and all other relevant information.
- e) The Contractor shall implement, monitor and update its Traffic Management Plan during the Contract and shall, within five Business Days of its amendment, submit a copy of the Traffic Management Plan to the Administrator.

### **15.5.3 Restrictions to traffic**

Unless otherwise agreed in writing with the Administrator, the Contractor shall comply with any restrictions to the passage of vehicular traffic through the Site set out in the Technical Specifications.

## **15.6 Community liaison**

### **15.6.1 General**

If specified in Item 19A, the Contractor shall prepare, implement and maintain a Community Liaison Plan for the Work Under the Contract and Clause 15.6.2 applies.

### **15.6.2 Community Liaison Plan**

- a) The Contractor shall prepare and submit, as part of the Contract Plan its Community Liaison Plan to the Administrator in accordance with Clause 33.3.
- b) The Community Liaison Plan shall be formatted under at least the following headings:
  - i. Overview
  - ii. Objectives
  - iii. Target audiences
  - iv. Potential issues and opportunities
  - v. Strategy
  - vi. Tactics
  - vii. Evaluation, and
  - viii. Timeframes.
- c) The Community Liaison Plan shall include procedures and timetables to:
  - i. make contact with any local businesses, schools, hospitals, community groups and residents adjacent to the Site and/or affected by the Work Under the Contract and the office of the relevant local government, to establish an effective communication network to be maintained during construction
  - ii. anticipate the impacts of construction on the above groups and the broader community, and be proactive (subject to the requirements of Clause 15.6.4) in keeping all parties informed via direct contact, through newsletters, leaflets, advertisements in newspapers, radio and other appropriate means, particularly in regard to changed traffic arrangements during construction and local access issues
  - iii. maintain a complaints register and respond to all registered complaints within 48 hours
  - iv. prepare regular fact sheets for the information of visitors and the public
  - v. develop procedures for the management of emergency situations and ensure that staff are trained in the appropriate response necessary to deal with such emergency situations, and
  - vi. implement the following minimum reporting requirements:
    - a) immediately report any emergency issue and a copy of any public inquiry



- b) on a weekly basis report on:
  - i. key activities achieved from previous week
  - ii. key activities planned for coming week
  - iii. summary of responses to complaints and inquiries, and
  - iv. summary of outstanding responses
- c) on a monthly basis report on:
  - i. anticipated issues for coming month
  - ii. proposed actions in response to issues, and
- d) on a quarterly basis report on key actions and achievements.

#### **15.6.3 Meetings and reporting**

- a) An initial meeting with members of the local community that will be affected by the Work Under the Contract shall be convened by the Contractor within 20 Business Days after the Date of Acceptance of Tender at which the Contractor shall undertake a brief presentation of the work to be undertaken under the Contract and the expected issues.
- b) The Contractor shall report to the Administrator at weekly meetings to be held between the Contractor's Community Liaison Officer, the Administrator and a representative of the Principal.

#### **15.6.4 Restrictions and prior permissions**

- a) All newsletters, leaflets and other public statements shall be submitted for approval to the Administrator prior to publication.
- b) The Contractor shall:
  - i. not have direct contact or liaise with members of the press, and
  - ii. assist in formulating responses to questions raised by the press as required from the Contractor's Community Liaison Officer.

### **15.7 Environmental management**

#### **15.7.1 General**

The Contractor shall, at all times during the course of the Contract, comply with legislative requirements including the *Environmental Protection Act 1994* (Qld) (EP Act) and the *Waste Reduction and Recycling Act 2011* (Qld). The Contractor shall implement and maintain measures to preserve and protect the natural environment on and adjacent to the Site.

#### **15.7.2 Environmental Management Plan**

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

- b) The Environmental Management Plan shall be consistent with legislative requirements including the EP Act and the *Waste Reduction and Recycling Act 2011* (Qld), the Technical Specifications and any Environmental Management Plan outline submitted with the Contractor's Tender (except that if any Environmental Management Plan outline is inconsistent with legislative requirements, the Technical Specifications or any of the Other Documents comprising the Contract, then the Environmental Management Plan shall be in accordance with legislative requirements, the Technical Specifications and the Other Documents comprising the Contract).
- c) The Contractor shall:
  - i. implement the Environmental Management Plan in accordance with the schedule included in the Environmental Management Plan, and
  - ii. monitor, update and control its Environmental Management Plan while carrying out Work Under the Contract.
- d) Nothing contained in Clause 15.7 shall in any way limit or exclude any of the Contractor's obligations or liabilities under the Contract.

## **16 Care of the work and reinstatement of damage**

### **16.1 Care of the Work Under the Contract**

- a) From and including the earlier of the date of commencement of Works under the Contract and the date on which the Contractor is given possession of the Site to 4.00 pm on the Date of Practical Completion of the Works, the Contractor shall be responsible for the care of the Work Under the Contract.
- b) Without limiting the generality of the Contractor's obligations, the Contractor shall be responsible for the care of unfixed items the value of which has been included in a payment certificate under Clause 42.1, things entrusted to the Contractor by the Principal for the purpose of carrying out the Work Under the Contract, things brought on the Site by the Contractor or any Subcontractor for that purpose, the Works, the Temporary Works and Constructional Plant, and the Contractor shall provide the storage and protection necessary to preserve these items and things, and the Works, the Temporary Works and Constructional Plant.
- c) After 4.00 pm on the Date of Practical Completion the Contractor shall remain responsible for the care of outstanding work and items to be removed from the Site by the Contractor and shall be liable for damage occasioned by the Contractor in the course of completing outstanding work or complying with obligations under Clauses 30.9, 31.1 and 37.

### **16.2 Weather protection**

#### **16.2.1 General obligations**

- a) Without affecting the Contractor's obligations under Clause 16.1, the Contractor shall:
  - i. take all reasonable precautions to protect the Work Under the Contract against the effects of inclement weather, including by ensuring that:
    - a) the Work Under the Contract is carried out and designed so as to obviate ponding of rain water on or within the Site

- b) all excavations are adequately drained or, if practicable, protected to minimise water entry and where a suitable outlet cannot be constructed to excavations, taking such other measures as are necessary to remove water from the excavation
- c) all excavations are backfilled as soon as practicable after the work for which the excavation was made is completed
- d) it takes all reasonable steps to prevent otherwise suitable materials from becoming unsuitable as a result of moisture entry during construction, and
- e) that at the completion of each Day's operations, and at such other times when rainfall is imminent, the surface of relevant areas of the Site are graded so as to provide adequate falls transversely and, where practicable, longitudinally to permit shedding of surface water without ponding or scouring and ensuring the graded area is rolled to provide a smooth dense surface in this regard, and
- ii. reinstate any part of the Work Under the Contract affected by inclement weather in a timely manner after the event.
- b) Nothing in Clause 16.2 shall in any way limit or exclude the Contractor's obligations or liabilities under the Contract.

#### **16.2.2 Severe weather management plan**

- a) If specified in Item 20A, the Contractor shall prepare, implement and maintain a Severe Weather Management Plan (SWMP).
- b) The Contractor shall prepare and submit its SWMP to the Administrator in accordance with Clause 33.3.
- c) The SWMP shall:
  - i. comply with and fully satisfy the requirements of the Principal's Engineering Policy EP146 *Severe Weather Management Plans (SWMP)*
  - ii. include a time-based schedule for its implementation
  - iii. as a minimum, detail what measures will be undertaken by the Contractor to mitigate or minimise the impact of damage to the following elements (as applicable to the Work Under the Contract) as a result of inclement weather:
    - a) pavement
    - b) earthworks formation and batters (cuttings and embankments)
    - c) culvert construction
    - d) drainage
    - e) environmental protection, and
    - f) major excavations
  - iv. include the following components:
    - a) severe weather identification (means and methods)
    - b) risk evaluation (procedures)

- c) weather treatments (short-, mid- and long-term)
  - d) rectification and recovery (means and methods), and
  - e) contact personnel.
- d) The Contractor shall monitor, update and control its SWMP while carrying out Work Under the Contract.

### **16.3 Reinstatement**

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

### **16.4 Excepted Risks**

The Excepted Risks are:

- a) any negligent act or omission of the Principal, the Administrator or the employees, consultants or agents of the Principal
- b) any risk specifically excepted in the Contract
- c) war, invasion, act of foreign enemies, act of terrorism, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any government or public Authority
- d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents
- e) use or occupation by the Principal or the employees or agents of the Principal or other Contractors to the Principal (not being employed by the Contractor) or a Nominated Subcontractor engaged by the Principal (pursuant to a prior Contract the benefit of which has been assigned to the Contractor pursuant to the Contract) of any part of the Works or the Temporary Works, or
- f) defects in the design of the Work Under the Contract other than a design provided by the Contractor.

## **17 Damage to persons and property other than the Works**

### **17.1 Indemnity by Contractor**

- a) The Contractor shall indemnify the Principal against:

- i. loss of or damage to property of the Principal, including existing property in, or upon, which the Work Under the Contract is being carried out, and
  - ii. Claims by any person (including Claims by owners or occupiers of areas adjacent to the Site) against the Principal in respect of personal injury or death or loss of or damage to any property arising out of or as a consequence of the carrying out by the Contractor of the Work Under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that the act or omission of the Principal or employees or agents of the Principal may have contributed to the loss, damage, death or injury.
- b) Clause 17.1(a) shall not apply to:
- i. the extent that the liability of the Contractor is limited by another provision of the Contract
  - ii. exclude any other right of the Principal to be indemnified by the Contractor
  - iii. things for the care of which the Contractor is responsible under Clause 16.1, and
  - iv. Claims in respect of the right of the Principal to construct the Work Under the Contract on the Site.

### **17.2 Indemnity by the Principal**

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

## **18 Insurance of the Works**

The alternative applying for Insurance of the Works for this Contract is given in Item 21A.

### **Alternative 1 – Principal arranged insurance**

- a) On or before the Date of Acceptance of Tender, the Principal shall effect a policy of insurance in relation to the Work Under the Contract in the terms of the Principal Arranged Insurance Program as set out at the website <https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Infrastructure-Contract> maintained by the Principal. The Principal shall maintain the policy while ever the Contractor has an interest in it and the Principal shall pay all premiums.
- b) The policy will include the Principal, the Contractor and Subcontractors as insured parties.
- c) The Contractor is responsible for the payment of deductibles under the policy to the extent that the Claim under the policy is not a direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk defined in Clause 16.4.
- d) As an Insured under the PAI program all insured parties have an obligation to notify insurers (via Transport and Main Roads Insurance office or Marsh its broker) of incidents that may give rise to a claim. Once notified the Insured has an ongoing obligation to assist insurers in managing any claim until that claims finality.

### **Alternative 2 – Contractor arranged insurance**

- a) Before the Contractor commences work, the Contractor shall take out an insurance policy covering all the things referred to in Clause 16.1 against loss or damage resulting from any cause whatsoever until the Contractor ceases to be responsible for their care.

- b) Without limiting the generality of the obligation to insure, the policy shall cover the Contractor's liabilities under Clause 16.3 and things in storage off Site and in transit to the Site.
- c) The insurance cover may exclude:
  - i. the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom
  - ii. the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom
  - iii. consequential loss of any kind, but shall not exclude loss of or damage to the Works
  - iv. damages for delay in completing or for the failure to complete the Works
  - v. loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause
  - vi. loss or damage resulting from the Excepted Risks in Clause 16.4(b) and (c).
- d) The insurance cover shall be for an amount not less than the sum of:
  - i. the Contract Sum
  - ii. the amount stated in Item 21B to provide for costs of demolition and removal of debris
  - iii. the amount stated in Item 21C to cover fees of consultants
  - iv. the value stated in Item 21D of any materials or things to be supplied by the Principal for the purposes of the Work Under the Contract, and
  - v. the additional amount or percentage stated in Item 21E of the total of the items referred to in Clause 18(d)(i) to (iv).
- e) The insurance policy shall be in the joint names of the Principal and the Contractor, and shall cover the Principal, the Contractor and all Subcontractors for their respective rights, interests and liabilities and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal, which may be given or withheld in its absolute discretion. The policy shall be maintained until the Contractor ceases to be responsible under Clause 16.1 for the care of anything.

## **19 Public liability insurance**

The alternative applying for public liability insurance for this Contract is given in Item 22A.

### ***Alternative 1***

- a) On or before the Date of Acceptance of Tender, the Principal shall effect in relation to the Work Under the Contract a policy of insurance in the terms of the Principal Arranged Insurance (PAI) Program as set out at the website <https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Infrastructure-Contract> maintained by the Principal. The Principal shall maintain the policy while ever the Contractor has an interest in it and the Principal shall pay all premiums.
- b) The policy will include the Principal, the Contractor and Subcontractors as insured parties.

- c) The Contractor is responsible for the payment of deductibles under the policy to the extent that the Claim under the policy is not a direct consequence, without fault or omission on the part of the Contractor, of an Excepted Risk defined in Clause 16.4.

### **Alternative 2**

- a) Before the Contractor commences work, the Contractor shall take out a public liability policy of insurance in the joint names of the Principal and the Contractor, which covers the Principal, the Contractor, the Administrator and all Subcontractors for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Contractor's liability to the Principal and Principal's liability to the Contractor for loss of or damage to property (other than property required to be insured by Clause 18) and the death of or injury to any person (other than liability which is required by law to be insured under a workers compensation policy of insurance).
- b) The public liability policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in Item 22B and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal, which may be given or withheld in its absolute discretion. The policy shall be maintained until the Final Certificate is issued under Clause 42.8.

## **20 Insurance of employees**

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

## **21 Inspection and provisions of insurance policies**

### **21.1 Proof of insurance**

- a) Before the Contractor commences work and whenever requested in writing by the other party, a party liable to effect or maintain insurance shall produce evidence to the satisfaction and approval of the other party of the insurance effected and maintained.
- b) The effecting of insurance shall not limit the liabilities or obligations of a party under other provisions of the Contract.
- c) The Contractor shall be deemed to have examined, assessed and understood the Principal's insurance policies at the Date of Acceptance of Tender.

**21.2 Failure to produce proof of insurance**

If, after being requested in writing by the other party so to do, a party fails to produce evidence of compliance with insurance obligations under Clauses 18, 19 or 20 to the satisfaction and approval of the other party, the other party may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the party in default to the other party. Where the defaulting party is the Contractor, the Principal may refuse payment until evidence of compliance with insurance obligations under Clauses 18, 19 or 20 is produced by the Contractor to the satisfaction and approval of the Principal. The rights given by Clause 21.2 are in addition to any other right.

**21.3 Notices from or to the insurer**

The party effecting insurance under Clause 18 or 19 shall ensure that each policy of insurance contains provisions acceptable to the other party that will:

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

**21.4 Notices of potential Claims**

- a) The Contractor shall, as soon as practicable, inform the Principal in writing of any occurrence that may give rise to a Claim under a policy of insurance required by Clause 18 or 19 and shall keep the Principal informed of subsequent developments concerning the Claim. The Contractor shall ensure that Subcontractors in respect of their operations similarly inform the Principal.
- b) Where the occurrence may give rise to a Claim or potential Claim under a policy of insurance effected under the PAI Program regardless of whether the likely value of such Claim or potential Claim is less than the applicable deductible, the Contractor shall, despite any clause to the contrary, comply in all respects with the procedures for notifying a Claim as set out at the website <https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Infrastructure-Contract> maintained by the Principal. Failure to do so may result in indemnity not being granted under the PAI Program.
- c) Where a policy of insurance required by the Contract has been effected by the Principal, the Principal shall similarly inform the Contractor.
- d) The Contractor shall comply with the terms of the policies of insurance effected under Clauses 18, 19 or 20 (including the notification requirements under those policies).



## **21.5 Settlement of Claims**

- a) Upon settlement of a Claim under the insurance specified by Clause 18:
  - i. to the extent that the Work Under the Contract needing reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed reinstatement of that work, moneys received shall, if requested by either party, be paid into a bank agreed upon by the parties in an account in the joint names of the Contractor and the Principal. As the Contractor proceeds to reinstate the loss or damage, the Administrator shall certify against the joint account for the cost of reinstatement, and
  - ii. to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from moneys received, the amount of money so paid in relation to any loss suffered by the Contractor relating to that Work Under the Contract (including the supply of goods and materials on Site whether or not incorporated into the Works).
- b) Settlement of Claims under the PAI Program will be dealt with in accordance with the procedures set out at the website <https://www.tmr.qld.gov.au/business-industry/Technical-standards-publications/Infrastructure-Contract> maintained by the Principal.

## **21.6 Cross liability**

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

## **21.7 Excess / deductible**

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

## **22 Inspectors**

The Administrator shall forthwith notify the Contractor in writing of the name of any inspector appointed by the Principal or the Administrator, including any appointed inspector's delegated function under the contract (if any). This may include separate designated geographical areas performing the same delegated functions.

## **23 Administrator**

### **23.1 Administrator**

- a) The Principal shall ensure that at all times there is an Administrator. The Administrator will be responsible for the overall administration of this Contract.

- b) The Principal shall ensure that in the exercise of the functions of the Administrator under the Contract listed in Annexure C, the Administrator:
  - i. acts fairly, reasonably, and honestly
  - ii. acts within the time prescribed under the Contract or where no time is prescribed, within a reasonable time, and
  - iii. arrives at a reasonable measure or value of work, quantities or time.
- c) In the exercise of all other functions of the Administrator under the Contract, the Administrator acts as the agent of the Principal (not as an independent certifier).
- d) If pursuant to a provision of the Contract enabling the Administrator to give directions, the Administrator gives a direction, the Contractor shall comply with the direction.
- e) In this Clause 23 'direction' includes agreement, approval, Authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.
- f) Except where the Contract otherwise provides, a direction may be given orally, but the Administrator shall as soon as practicable confirm it in writing.
- g) If the Contractor in writing requests the Administrator to confirm an oral direction, the Contractor shall not be bound to comply with the direction until the Administrator confirms it in writing.

## **24 Administrator's Representative**

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

## **25 Contractor's Representative**

- a) The Contractor shall nominate a Contractor's Representative who shall personally superintend the execution of the Work Under the Contract and be present on the Site for at least the percentage of time nominated in Annexure Item 29A.
- b) The Contractor's Representative shall have a thorough and direct understanding of all aspects of the Work Under the Contract and shall have the authority to make decisions and agreements on behalf of the Contractor.

- c) If required by the Administrator, the Contractor shall have a competent employee present at other places at which activities relating to the execution of the Work Under the Contract are taking place to ensure that the Contractor's Representative is adequately informed.
- d) The Contractor's Representative shall comply with the requirements of Clause 29.2.1.
- e) The Contractor shall forthwith notify the Administrator in writing of the name of the representative and of any subsequent changes. Any direction defined in Clause 23 shall:
  - i. if it relates to the execution of work on the Site and is given to the Contractor's Representative on the Site, or
  - ii. if it relates to the execution of work at any other place and is given to the employee of the Contractor at the other place or the Contractor's Representativebe deemed to have been given to the Contractor.
- f) Matters within the knowledge of the Contractor's Representative or any other employee or representative of the Contractor shall be deemed to be within the knowledge of the Contractor.
- g) If the Administrator makes a reasonable objection to the appointment of a Contractor's Representative, the Contractor shall terminate the appointment and appoint another Contractor's Representative.

## **26 Control of Contractor's employees and Subcontractors**

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

## **27 Site**

### **27.1 Possession of Site**

- a) The Principal shall on, or before, the expiration of the time stated in Item 24A, give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence work, provided, however, that the Principal is not obliged to give possession of the Site if:
  - i. the Contractor has not supplied to the Administrator proof of the implementation of the requirements stated in Item 24B.
  - ii. the Contractor has not complied with the requirements of Clause 5.2, 21.1 or 33.3.
- b) If the Principal has not given the Contractor possession of the whole Site, the Principal shall, from time to time, give the Contractor possession of such further parts of the Site as may be necessary to enable the Contractor to execute the Work Under the Contract in accordance with the requirements of the Contract. The Principal shall advise the Contractor in writing of the date upon which the Site or any part thereof will be available.
- c) Possession of the Site shall confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to execute the Work Under the Contract.

- d) Except to the extent otherwise agreed in writing by the parties, the Contractor acknowledges and accepts that the public use of the Site must be fully maintained during the performance of the Work Under the Contract.

## **27.2 Access for the Principal and others**

### **27.2.1 General**

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

### **27.2.2 Adjoining work**

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

### **27.2.3 Adjoining private land**

- a) In performing the Work Under the Contract, the Contractor shall not enter or permit any Constructional Plant to enter private land adjoining the Site without first obtaining the written approval of the land occupier and the land owner (where these are not the same person). The Contractor shall submit a copy of this written approval to the Administrator upon request.

- b) Notwithstanding the granting of such approval of entry, the Contractor shall comply with the following conditions relating to private land adjoining the Site:
  - i. privacy of the land owner / occupier shall be paramount
  - ii. the land owner / occupier shall be notified in advance when entry onto private land is required for any purpose
  - iii. vehicles shall be driven at a maximum speed of 20 kilometres per hour when in close proximity to any dwellings, and
  - iv. where a permanent access structure to private land is to be constructed under this Contract, the Contractor shall maintain access for others across the Site at all times.
- c) The Contractor shall, by the action of the entering on to the private land, be deemed to have indemnified the Principal against any Claims which may arise from or in connection with such entry or subsequent operations on the land.
- d) Upon completion of work on private land, the Contractor shall forward to the Administrator a statement signed by the land owner / occupier to the effect that the land owner and occupier are satisfied that any damage to the land which may have arisen from or in connection with the Contractor's operations has been adequately repaired or otherwise compensated by the Contractor. All costs associated with work on private land shall be borne by the Contractor.
- e) The Contractor shall develop and maintain a schedule of planned dates for temporary access and occupation of private land adjoining the Site. This schedule, and any subsequent updates, shall be reflected in any Construction Program submitted to the Principal.
- f) The schedule of planned dates for temporary access and occupation of private land adjoining the Site shall be presented to and reviewed with the Administrator and the Principal during the Site Conferences.
- g) The Contractor's obligations with respect to the safe performance of the Work Under the Contract shall apply to the Contractor's activities on the adjoining private land during the period of temporary access and occupation.

#### **27.2.4 Notice of entry**

- a) For purposes of this Clause 27.2.4, the term 'notice of entry' means the Notice of Entry Form (Department of Transport and Main Roads Form M727 CFD), a copy of which is available on the Principal's website.
- b) In the event that the Contractor fails to obtain written approval from the land occupier and land owner in accordance with Clause 27.2.3, then the Contractor shall issue a written notification to the Administrator specifying:
  - i. the details of the land and the land occupier and land owner (as the case may be)
  - ii. any potential adverse impacts on the performance of the Work Under the Contract, and
  - iii. the alternative measures it proposes to take to mitigate the failure to obtain written approval from the land occupier or land owner (as the case may be) or confirming that no alternative measures have been identified and requesting the Principal issue a Notice of Entry to the land occupier and land owner in relation to the Contractor's proposed temporary access and occupation of a private land adjoining the Site.

- c) The Contractor shall submit a written request to the Administrator under this Clause 27.2.4 for the Principal to issue a Notice of Entry at least 15 Business Days prior to the date the Contractor proposes to temporarily access and occupy private land adjoining the Site. The written notification shall include all necessary information and supporting documentation that address:
  - i. the purpose of entry
  - ii. details of proposed use of the land
  - iii. the estimated commencement date
  - iv. the period of occupation
  - v. proposed safety measures for temporary access and occupation, and
  - vi. any other proposed measures to guarantee the privacy of the land occupier.
- d) The Contractor shall provide any other additional information or documentation that may be requested by the Administrator in considering the Contractor's request to issue a notice of entry.
- e) The Contractor acknowledges and agrees that:
  - i. the Principal may give or refuse to give a notice of entry in its absolute discretion, and
  - ii. the issuance or non-issuance of a notice of entry by the Principal to any land occupier or land owner of private land adjoining the Site shall not relieve the Contractor of any obligations under the Contract, including the obligation to execute the Work Under the Contract by the Date for Practical Completion.

### **27.3 Delivery of materials to and work on Site before possession**

Until possession of the Site or part of the Site is given to the Contractor under Clause 27.1, the Contractor shall not deliver materials to or perform work on the Site or part of the Site, as the case may be, unless approval in writing is given by the Administrator.

### **27.4 Use of Site by Contractor**

Unless the Contract otherwise provides, or the Administrator gives prior written approval, the Contractor shall not use the Site or allow it to be used for:

- a) camping
- b) residential purposes, or
- c) any purpose not connected with the Work Under the Contract.

### **27.5 Finding of minerals, fossils and relics**

- a) Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site shall as between the parties be and remain the property of the Principal. Immediately upon the discovery of these things, the Contractor shall take precautions to prevent their loss or removal or damage and shall notify the Administrator of the discovery.

- b) If compliance with obligations under Clause 27.5 causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

#### **27.6 Lane rentals and lane closures**

- a) Where any Work Under the Contract necessitates lane or shoulder closures, other than those at the locations and times specifically described in the Contract, the Contractor shall pay to the Principal the lane rental charges listed in Item 25A, for every hour or part thereof that the lane or shoulder remains closed.
- b) Notwithstanding the application of lane rental charges by the Principal, the Contractor shall make every endeavour to ensure that traffic lanes and shoulders remain open to the safe passage of traffic at the posted speed at all times in accordance with the provisions of the Contract.

#### **27.7 Public Utility Plant**

##### **27.7.1 Responsibilities**

- a) As from the Date of Acceptance of Tender, the Contractor shall:
  - i. be responsible for arranging and coordinating all Work Under the Contract associated with the replacement or relocation of Public Utility Plant
  - ii. ensure that the specific relocation and/or replacement requirements of each responsible Authority are met
  - iii. establish and maintain, up to the Date of Practical Completion, reference markers identifying the type, size, alignment and depth of Public Utility Plant and emergency contact telephone number of the responsible Authority, and
  - iv. execute all other work items associated with affected Public Utility Plants as described and detailed in the Project Specific Specifications, Technical Specifications and Drawings as part of the Contractor's scope of Works.
- b) If the Contractor incurs costs in respect of the coordination of the relocation and/or replacement of Public Utility Plant in excess of the costs that a competent and experienced Contractor could have reasonably anticipated at the time of tendering:
  - i. a valuation of the costs incurred by the Contractor shall be made under Clause 40.5, and
  - ii. notwithstanding the provisions in Clause 40.5 such valuation shall not include the cost of the Contractor's supervision or overheads.

##### **27.7.2 Public Utility Plant identified during the Contract**

- a) Where Public Utility Plant, additional to that stated in the Contractor's Tender, is identified during the Contract, the following procedure shall apply:
  - i. the Contractor shall within one Business Day advise the Administrator and the responsible Authority of the newly identified Public Utility Plant
  - ii. the Contractor shall request and obtain from the responsible Authority an estimate of cost to relocate the Public Utility Plant and a program for completion of the relocation

- iii. the Principal will arrange for payment to the responsible Authority for the necessary relocation, and
- iv. the Contractor shall revise its program of work to accommodate the program of the responsible Authority and shall coordinate completion of the relocation by the responsible Authority.
- b) If the Contractor's compliance with the procedure set out in Clause 27.7.2(a) causes the Contractor to more or less cost than a competent and experienced Contractor could have reasonably anticipated at the time of tendering, a valuation shall be made under Clause 40.5.
- c) Delay caused by the Contractor's compliance with the procedure set out in Clause 27.7.2(a) may justify an extension of time under Clause 35.5.

#### **27.7.3 Damage and repair**

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

#### **27.7.4 Disruption to public**

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

- a) consulting with all affected land owners and/or occupiers to arrange for a mutually acceptable time for the carrying out of such Works, at least five Business Days before the anticipated event, and
- b) identifying and consulting with any land owner and/or occupier with special requirements regarding continuity of supply of any public utility and taking all measures necessary to satisfy such requirements.

#### **27.7.5 Contractor's negotiations**

All negotiations between the Contractor and the responsible Authority shall be confirmed in writing by the Contractor and copies of all such correspondence to and from the responsible Authority shall be promptly forwarded to the Administrator by the Contractor.

#### **27.7.6 Contractor's obligations**

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



## **27.8 Advertising on Site**

### **27.8.1 Project signs**

- a) Within 20 Business Days after the Date of Acceptance of Tender, the Contractor shall supply and erect the number of project signs stated in Item 26A. The signs shall be of a size and/or type as stated in Item 26B, contain the words and graphics as shown on the Drawings or as directed by the Administrator and be located as directed by the Administrator.
- b) Unless directed otherwise by the Administrator, the Contractor shall remove the project signs within 10 Business Days of the Date of Practical Completion and transport them to the location stated in Item 26C.

### **27.8.2 Contractor's advertising**

- a) If the Contractor wishes to erect a sign describing the names of the project and the Contractor, the Contractor shall submit details of the sign (size, wording, graphics and location) to the Administrator for consideration. The size of any such sign shall not be greater than 3 m x 2 m.
- b) Any such sign approved by the Administrator shall be removed from the Site within 10 Business Days after the Date of Practical Completion or at such other time as directed by the Administrator.
- c) All expenses incurred in the provision, erection, relocation (if necessary) and removal of such signs shall be borne by the Contractor.

### **27.8.3 Other advertising**

Except as permitted under Clauses 27.8.1 and 27.8.2, no other advertising shall be permitted on the Site, other than the names of the manufacturer and/or owner painted on items of Constructional Plant.

## **27.9 Temporary filling of waterways**

- a) Unless otherwise stated in Item 27A, the Contractor shall not construct any temporary filling of any waterway during the carrying out of the Work Under the Contract.
- b) Where Item 27A permits temporary filling of a waterway, the Contractor shall:
  - i. immediately after work has been completed in the area, restore any disturbance (not associated with the Works) of the banks of any waterway to a condition equivalent to that at the date the Contractor was granted possession of the Site, and
  - ii. prior to the Date of Practical Completion, remove from the waterway all materials used in the construction of any Temporary Works.

### **27.10 Cleaning up**

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

**28 Not used****29 Materials, labour and Constructional Plant****29.1 Provision of materials, labour and Constructional Plant**

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

**29.2 Contractor's staff****29.2.1 General**

- a) The Contractor shall employ:
  - i. appropriately qualified, trained and experienced personnel to perform the Work Under the Contract. If labour hire is required, the Contractor shall only engage with labour hire providers licensed under the *Labour Hire Licensing Act 2017* (Qld).
  - ii. appropriately qualified, trained and experienced personnel to fill the positions stated in Item 29A and if no such positions are stated, the Contractor shall employ an adequate number of appropriately qualified, trained and experienced staff as determined by the Administrator to be necessary to carry out the requirements of the Contract.
- b) The personnel nominated by the Contractor to fill the positions stated in Item 29A shall be able to read, write and converse fluently in the English language.
- c) If the Principal reasonably considers at any time that personnel employed by the Contractor to perform the Work Under the Contract (including the Contractor's key personnel under Clause 29.2.2) do not satisfy the requirements of Clause 29.2.1(a), it may, acting reasonably, request the Contractor remove such personnel and replace them with a suitably qualified replacement.

**29.2.2 Key personnel**

- a) Those personnel specified in Item 29B shall be the Contractor's key personnel for the Contract.
- b) The Contractor shall maintain its key personnel in the roles specified in Item 29B on the Work Under the Contract and shall not replace them unless the Administrator approves a substitute.
- c) Any vacancy of key personnel shall be promptly filled by the Contractor with a person of at least equivalent ability, experience and expertise and who is approved by the Administrator. The Administrator shall notify Prequalification and Contracts Unit (PCU) of any changes to Contractor's key personnel prior to approving the change and record them in the monthly contract performance reporting.
- d) When a key personnel is replaced in accordance with this Clause 29.2.2, the Contractor shall ensure that there is a proper 'handover' which will require the person and his replacement working together for at least 10 Business Days.
- e) A failure by the Contractor to comply with the requirements of this Clause 29.2.2 shall constitute a substantial breach for the purposes of Clause 44.2.

### 29.3 Training requirements

- a) The *Queensland Government Building and Construction Training Policy* (the Training Policy) 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) as identified in Item 30A.
- b) For purposes of this Clause 29.3:
  - 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* (Qld)
  - 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. 'DYJESBT' means [Department of Youth Justice, Employment, Small Business and Training](#)
  - iv. 'eligible project' means the work under this Contract if the Training Policy applies in accordance with Clause 29.3(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 Clause 29.3
  - vii. 'Training Policy' means the *Queensland Government Building and Construction Training Policy*, published by the Department of Youth Justice, Employment, Small Business and Training 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 existing 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 Work Under the Contract, 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

for eligible projects up to \$100 million in Contract Sum, the deemed hours for the training policy will be determined by the Contract Sum multiplied by 0.03 per cent for civil construction projects.

- d) In complying with this Clause, not less than 60 per cent of the required number of deemed hours 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) On eligible projects over \$100 million, there are additional requirements that have to be fulfilled relating to development and implementation of a skills development plan, training delivery linked to occupational outcomes and a training coordinator appointed to ensure implementation of the skills development plan.
- g) The Contractor shall:
  - i. within 10 Business Days of the Date of Acceptance of Tender, submit to DYJESBT through TPAS, a completed Compliance Plan, and
  - ii. within 15 Business Days of the Date of Practical Completion, submit a Practical Completion report through TPAS.
- h) The Contractor acknowledges that failure to comply in part or in whole with this Clause 29.3 will be a substantive factor that will be taken into account in the award of future Contracts by the Principal.

#### **29.4 Removal of materials and Constructional Plant**

From time to time, the Administrator may, by written notice to the Contractor, direct the Contractor not to remove from the Site Constructional Plant or materials. Thereafter, the Contractor shall not remove the materials or the Constructional Plant without the prior written approval of the Administrator.

#### **29.5 Manufacture and supply of materials**

The Administrator may direct the Contractor to supply particulars of:

- a) the mode and place of manufacture
- b) the source of supply
- c) the performance capacities, and
- d) other information,

in respect of any materials, machinery or equipment to be supplied by the Contractor under, or used in connection with, the Contract.

#### **29.6 Use of proprietary, trade or brand names**

The description in the Contract of any materials, plant, equipment, work or other items by a proprietary, trade or brand name, supplier's or manufacturer's name, model number or other specific means does not in any way relieve, limit or exclude any of the Contractor's obligations or liabilities under the Contract with respect to the materials, plant, equipment, work or any other items (including

obligations and liabilities under any warranties, performance guarantees or defects liability provisions of the Contract).

**29.7 Material supplied by the Principal**

- a) The Principal shall supply the Principal Supplied Material.
- b) The Contractor's Construction Program shall show the date(s) on which any Principal Supplied Material is required, together with the quantity of such Material. The Contractor shall provide the Administrator with at least 15 Business Days prior written notice of the exact date of the Principal Supplied Material is required and the quantity required on that date.
- c) The Contractor shall:
  - i. transport the Principal Supplied Material from the location stated in the Principal Supplied Material list to the Site
  - ii. assume the risk in Principal Supplied Material
  - iii. appropriately store and care for the Principal Supplied Material at all times so that it is not contaminated and does not deteriorate
  - iv. take all necessary measures to reduce potential harm to the environment which might arise from the transport and storage of Principal Supplied Material
  - v. comply with any relevant requirements in the Contract and all Legislative Requirements, Australian Standards and/or manufacturer's instructions in relation to the proper handling and care of any Principal Supplied Material
  - vi. pay all costs associated with the inspection, storage, transportation and care of the Principal Supplied Material
  - vii. allow the Principal reasonable access to and use of the Principal Supplied Material to the extent reasonably necessary for the conduct of the Principal's operations at the Site, including any inspection, maintenance and repair the Principal may wish to carry out in relation to the Principal Supplied Material
  - viii. use and store the Principal Supplied Material in accordance with industry best practice and so as not to invalidate the terms of any warranty in respect of the Principal Supplied Material.
- d) Upon the receipt of any Principal Supplied Material, the Contractor shall within three Business Days inspect the material and ensure that the specified quantity has been delivered and that the material is in a condition which complies with the relevant Specifications. Within one Business Day upon inspection, notify the Administrator of any damage to, or loss of, the Principal Supplied Material.
- e) If, within five Business Days of receipt of the Principal Supplied Material, the Administrator has not received written notification of any deficiencies, then it shall be deemed that the specified quantity of Principal Supplied Material has been delivered to the Contractor in a condition which complies with the relevant Specifications.

- f) Any Principal Supplied Material which, after delivery to the Contractor, is lost, destroyed, contaminated or altered in any way such that the material no longer complies with the relevant Specifications, shall be within three Business Days or as agreed with the Administrator replaced by the Contractor with material which complies with the relevant Specifications. The Contractor shall notify the Administrator in writing of any lost, destroyed, contaminated or altered material within five Business Days of the Contractor becoming aware of such events.
- g) Any Principal Supplied Material which is excess to the reasonable requirements of the Contract shall be returned to the point of return nominated in the Principal Supplied Material list. Any empty containers shall also be returned to the nominated location.
- h) Nothing in this Clause 29.7 shall in any way limit or exclude in any way the Contractor's obligations or liabilities under Clause 16.

## **30 Materials and work**

### **30.1 Quality of materials and work**

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

### **30.2 Quality assurance**

- a) The Contractor shall:
  - i. plan, establish, implement and maintain a quality system which conforms to the requirements of this Contract (Quality System) as per Item 31A of the Annexure A
  - ii. provide the Administrator with access to the Quality System of the Contractor and each of the Subcontractors to enable monitoring and quality auditing.
- b) Failure by the Contractor to either establish, implement or maintain a Quality System in accordance with this Clause 30.2 shall constitute a substantial breach for the purposes of the operation of Clause 44.2.
- c) The Contractor shall provide all records (including all test results and test report data) forming part of the Quality System (Quality Records) to the Administrator prior to the issue of the Final Certificate. Such records shall be provided in native electronic form or as directed by the Administrator.
- d) The Contractor hereby grants to the Principal a non-exclusive, irrevocable, unconditional, worldwide, perpetual, royalty-free, transferable and sublicensable licence to exercise all intellectual property rights in all Quality Records (including all information contained within the Quality Records) provided by the Contractor to the Administrator under Clause 30.2(c) for any purpose including, but not limited to:
  - i. informing best practice, safe, sustainable, value for money construction, maintenance and operation of other non-related projects, and
  - ii. informing the Principal's supplier and product registration systems, asset management and technical policy improvements.

- e) The Contractor represents and warrants that it has the right and authority to grant the licence under Clause 30.2(d), and that such licence grant and the use of the Quality Records by the Principal as contemplated by Clause 30.2(d) will not infringe the intellectual property rights of any third party.
- f) The Contractor releases, discharges and indemnifies the Principal and its personnel from and against any loss, damage, liability, cost or expense (including legal expenses) suffered or incurred by any of them, whether in contract, tort (including negligence), or otherwise in connection with any claim by a third party that the Quality Records or the use of the Quality Records by the Principal as contemplated by Clause 30.2(d) infringes the intellectual property rights of that third party.
- g) The Contractor acknowledges that the licence referred to in Clause 30.2(d) will survive the breach, repudiation, rescission, frustration, cancellation, termination, completion or any other discharge of the Contract and any takeover of the whole or any part of the Work Under the Contract.

### **30.3 Quality Plan**

- a) The Contractor shall prepare and submit, as part of the Contract Plan, a Quality Plan to the Administrator in accordance with Clause 33.3.
- b) The Quality Plan shall be consistent with the Technical Specifications and any Quality Plan outline submitted with the Contractor's Tender (except to the extent that if any Quality Plan outline is inconsistent with the Technical Specifications or any of the Other Documents comprising the Contract, then the Quality Plan shall be in accordance with the Technical Specifications and the Other Documents comprising the Contract).
- c) The Contractor shall implement and maintain the Quality Plan while carrying out the Work Under the Contract.
- d) The Contractor shall submit inspection and test procedures to the Administrator, for a direction as to their suitability in accordance with Clause 8.5, not later than five Business Days prior to the commencement of the applicable work.

### **30.4 Suspension of Works by the Administrator due to serious non-conformance**

If, in the opinion of the Administrator, any process, procedure, test method, calculation, analysis and/or report has resulted or will result in a serious non-conformance, then the Administrator may, in its absolute discretion, in accordance with Clause 34, direct the Contractor in writing, to suspend the whole or part of the Work Under the Contract and the Contractor shall immediately carry out any corrective and/or remedial action.

### **30.5 Contractor's obligations unaffected**

The Quality System (including the Quality Plan):

- a) shall be used only as an aid to achieving compliance with the Contract and to document such compliance, and
- b) will not relieve the Contractor of any responsibilities or obligations in respect of the Work Under the Contract and the Contractor will remain solely responsible despite:
  - i. the obligation of the Contractor to implement and maintain a Quality System in accordance with this Contract, or

- ii. any comment or direction upon, review or acceptance of, approval to proceed with, or request to vary any part of the quality assurance system by the Administrator.

### **30.6 Defective materials or work**

- a) If the Administrator discovers material or work provided by the Contractor which is not in accordance with the Contract, the Administrator may direct the Contractor to:
  - i. remove the material from the Site
  - ii. demolish the work
  - iii. reconstruct, replace or correct the material or work, or
  - iv. not to deliver the material or work to the Site.
- b) The Administrator may direct the times within which the Contractor shall commence and complete the removal, demolition, reconstruction, replacement or correction.
- c) If the Contractor fails to comply with a direction issued by the Administrator pursuant to Clause 30.6 within the time specified by the Administrator in the direction and provided the Administrator has given the Contractor notice in writing that after the expiry of five Business Days from the date on which the Contractor receives the notice the Principal intends to have the work carried out by other persons, the Principal may have the work of removal, demolition, replacement or correction carried out by other persons and the cost incurred by the Principal in having the work so carried out shall be a debt due from the Contractor to the Principal.

### **30.7 Variations due to defective materials or work**

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

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

### **30.8 Acceptance of defective material or work**

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

### **30.9 Generally**

- a) The Administrator shall give either a direction under Clause 30.6 or 30.7 or a notice under Clause 30.8 as soon as practicable after the Administrator becomes aware that material or work is not in accordance with the Contract. The Administrator may give the direction or notice at any time before the issue of the Final Certificate under Clause 42.8.



- b) Except to the extent that to do so would be inconsistent with a direction under Clause 30.7 or a notice under Clause 30.8, and notwithstanding that the Administrator has not given a direction under Clause 30.6, the Contractor shall promptly remove, demolish, reconstruct, replace or correct material or work that is not in accordance with the Contract.
- c) A payment, or a test or a failure by the Administrator or anyone else, to disapprove any material or work shall not prejudice the power of the Administrator to subsequently give a direction under Clauses 30.6 or 30.7 or a notice under Clause 30.8.
- d) Nothing in Clause 30 shall prejudice any other right which the Principal may have against the Contractor arising out of the failure of the Contractor to provide material or work in accordance with the Contract.
- e) The Administrator shall not be obliged to give a direction under Clause 30.7 or a notice under Clause 30.8 to assist the Contractor.

### **30.10 Suppliers' and manufacturers' warranties**

- a) The Contractor shall:
  - i. in respect of each Item specified in Item 32A (Warranty Item), procure and deliver to the Principal, prior to the end of the Defects Liability Period, a completed and executed warranty in the form of Form C7858 from the supplier or manufacturer of the materials or goods
  - ii. in respect of any other goods or materials incorporated into the Works, assign to the Principal the benefit of any warranty which applies after the end of the Defects Liability Period
- b) The provision of an executed warranty pursuant to Clause 30.10 shall not:
  - i. affect the warranties given by the Contractor under the Contract
  - ii. relieve, limit or exclude any of the Contractor's liabilities or obligations under the Contract
  - iii. modify, limit or exclude any of the Principal's rights or remedies against the Contractor whether under the Contract or otherwise.

## **31 Examination and testing**

### **31.1 Administrator may order tests**

- a) In Clause 31, 'test' includes examination and measurement, and may include laboratory or field based tests.
- b) At any time prior to the issue of the Final Certificate, the Administrator may direct that any material or Work Under the Contract be tested. The Contractor shall provide such assistance and samples and make accessible such parts of the Work Under the Contract as may be required by the Administrator. On completion of the tests, the Contractor shall make good the Work Under the Contract so that it fully complies with the Contract.

### **31.2 Covering up of work**

The Administrator may direct that any part of the Work Under the Contract shall not be covered up or made inaccessible without the Administrator's prior approval.

### **31.3 Who conducts tests**

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

### **31.4 Notice of tests**

Before conducting a test under the Contract, the party conducting the test, being the Administrator or the Contractor, shall give reasonable notice in writing to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

### **31.5 Procedure if tests delayed**

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

### **31.6 Results of tests**

Results of tests shall be promptly made available by each party to the other and to the Administrator.

### **31.7 Costs of testing**

- a) Costs of, and incidental to, testing shall be valued under Clause 40.5 and shall be borne by the Principal or paid by the Principal to the Contractor unless:
  - i. the Contract provides that the Contractor shall bear the costs or the test is one which the Contractor was required to conduct other than pursuant to a direction under Clause 31.1
  - ii. the test shows that the material or work is not in accordance with the Contract
  - iii. the test is in respect of Work Under the Contract covered up or made inaccessible without the Administrator's prior approval where such was required
  - iv. the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract.
- b) Where such costs are not to be borne by the Principal, they shall be borne by the Contractor or paid by the Contractor to the Principal.

### **31.8 Access for testing**

If, during the Defects Liability Period:

- a) the Principal or the Administrator asserts that material or work is not in accordance with the Contract, and
- b) the Contractor requests permission to test the material or work,

the Principal shall not unreasonably refuse the Contractor access to test the material or work.

## **32 Working Hours**

### **32.1 General**

- a) The Working Hours and Working Days shall be as stated in Item 33A and, if not so stated, as notified by the Contractor to the Administrator prior to commencement of work on Site and shall not be varied without the prior approval of the Administrator, except when in the interests of safety of the Work Under the Contract or to protect life or property, the Contractor finds it necessary to carry out work outside the Working Hours or on other than the Working Days

stated in the Contract. In such cases, the Contractor shall notify the Administrator in writing of the circumstances as early as possible.

- b) Notwithstanding Item 33A, the following days are not Working Days. No Work Under the Contract is permitted during these times without the prior written approval of the Administrator:
  - i. all gazetted Queensland public holidays
  - ii. local public holidays within the local government area in which the Site is located
  - iii. the Day before Good Friday
  - iv. the Days after the last Working Day prior to Christmas Day until New Year's Day inclusive
  - v. any other Days listed in Item 33B.
- c) The Contractor shall make due allowance for days that are not Working Days in its Construction Program and shall not be entitled to any Claim in respect of restrictions on carrying out the Work Under the Contract on these Days.

### **33 Progress and programming and planning of the Works**

#### **33.1 Rate of progress**

- a) The Contractor shall proceed with the Work Under the Contract with due expedition and without delay.
- b) The Contractor shall not suspend the progress of the whole or any part of the Work Under the Contract except where the suspension is under Clause 44.9 or is directed or approved by the Administrator under Clause 34.
- c) Without limiting the Contractor's obligations under Clause 29.7, the Contractor shall give the Administrator reasonable advance notice of when the Contractor requires any information, materials, documents or instructions from the Administrator or the Principal.
- d) The Principal and the Administrator shall not be obliged to furnish any information, materials, documents or instructions earlier than the Principal or the Administrator, as the case may be, should reasonably have anticipated at the Date of Acceptance of Tender.
- e) The Administrator may direct in what order, and at what time, the various stages or parts of the Work Under the Contract shall be performed. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall notify the Administrator in writing, giving reasons. No direction by the Administrator shall constitute, or be regarded as, a direction under this Clause 33.1(e) unless the direction is in writing and expressly states that it is a direction under this Clause 33.1(e).
- f) If the Contractor considers that compliance with the direction will cause the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the Contractor shall within 10 Business Days of the receipt of the direction notify the Administrator that it considers the direction is a variation to the Work Under the Contract and details of why the Contractor considers it to be a variation. If the Administrator considers that the direction is a variation to the Work Under the Contract, it will within 10 Business Days of receiving the Contractor's notice confirm this in writing, in which event it will be valued under Clause 40.5.

- g) Unless the Contractor has given notice strictly in compliance with Clause 33.1(f), the Contractor shall be barred from making any Claim against the Principal in respect of the work the subject of the direction.

### **33.2 Contractor's reports**

#### **33.2.1 Daily reports**

- a) If specified in Item 34A, the Contractor shall provide to the Administrator daily reports.
- b) The daily report shall be an accurate written record of all Site activities and events. Daily reports shall include:
  - i. a workforce report listing staff and labour personnel and the Current Program activities on which labour was used
  - ii. a subcontract report listing subcontract staff and labour personnel and the Current Program activities on which labour was used
  - iii. a plant and equipment report listing all Constructional Plant and equipment utilised, the Current Program activities on which the Constructional Plant and equipment was used, and a listing of all idle Constructional Plant and equipment and reasons for it being idle
  - iv. deliveries and quantities of materials delivered
  - v. significant and unusual events.
- c) Daily reports shall be submitted to the Administrator by 11.00 am on the following Business Day.

#### **33.2.2 Weekly reports**

- a) If specified in Item 34A, the Contractor shall provide to the Administrator weekly reports.
- b) The weekly report shall include summary of the Daily reports specified in Clause 33.2.1(b), or if the Daily Reports are not required, all of the content that would normally be included in the Daily Reports as specified in Clause 33.2.1(b) shall be included and summarised in the Weekly Report.
- c) Weekly reports shall be submitted to the Administrator by 12 pm on Tuesday of the week following the period to which the report refers.

### **33.3 Contract Plan**

#### **33.3.1 General**

- a) The Contractor shall, within the time stated in Item 35A, prepare and submit a plan, which documents all of the systems, procedures and plans required to be implemented by the Contractor under the Contract (Contract Plan), to the Administrator for a direction as to its suitability in accordance with Clause 8.5.
- b) The Contract Plan shall include the following plans, each of which shall comply with the relevant requirements in the Contract:
  - i. Construction Program
  - ii. Quality Plan
  - iii. Environmental Management Plan

- iv. Work Health and Safety Management Plan
- v. Traffic Management Plan (where required)
- vi. Community Liaison Plan (where required)
- vii. Severe Weather Management Plan (where required)
- viii. Utility Relocation Management Plan (where required)
- c) The Contractor shall establish, review, maintain, update and implement the Contract Plan.
- d) If the Contractor fails to comply strictly with the provisions of this Clause 33.3.1:
  - i. such failure will be a substantial breach of Contract for the purposes of Clause 44.2
  - ii. the Principal may, pursuant to Clause 27.1, refuse to give access to the Site until the Contractor has strictly complied with this Clause 33.3.1.

### **33.3.2 Interim plans**

- a) The Administrator may in its absolute discretion, as a condition of granting the Contractor access to the Site prior to a direction from the Administrator that the Contract Plan is suitable, require the Contractor to submit interim versions of the following plans to the Administrator for a direction as to suitability in accordance with Clause 8.5:
  - i. Environmental Management Plan
  - ii. Work Health and Safety Management Plan
  - iii. Traffic Management Plan (where required)
  - iv. Community Liaison Plan (where required)
  - v. Severe Weather Management Plan (where required).
- b) The interim plans to be submitted by the Contractor under Clause 33.3.2(a) shall:
  - i. be submitted 10 Business Days before the Contractor proposes to commence work on the Site
  - ii. comply with the requirements set out in the Contract or the relevant Technical Specifications as appropriate
  - iii. contain sufficient particulars to demonstrate the Contractor's commitment to its obligations and the management of the environmental, safety, traffic and community liaison issues for the first two months of the term of the Contract.

### **33.3.3 Updating Contract Plans**

If requested by the Administrator, which may be made at any time, and from time to time in its absolute discretion, or where an issue or deficiency arises in respect of any part of the Contract Plan, the Contractor shall submit an updated version of the relevant part of the Contract Plan to the Administrator for a direction as to its suitability in accordance with Clause 8.5.

### **33.3.4 Permission and compliance**

- a) The Contractor shall implement, and at all times comply with, all plans and procedures that form part of the Contract Plan.

- b) Compliance with the Contract Plan does not relieve the Contractor from its general obligation to comply with this Contract and all Legislative Requirements.
- c) Any direction as to the suitability or comment from the Administrator in respect of the Contract Plan does not relieve the Contractor of its responsibilities under this Contract or under the Contract Plan.

### **33.3.5 Audit of Contract Plan**

The Principal may carry out audits of the Contract Plan and its implementation at any time and from time to time. During any audit, the Contractor shall provide the Principal and its Representatives with all documentation, access and assistance necessary for the audit. The Contractor is not entitled to any additional payment for providing any assistance during any audit of the Contract Plan.

## **33.4 Construction Program**

### **33.4.1 General Program matters**

- a) The Contractor shall:
  - i. prepare, implement and maintain a Construction Program in accordance with this Clause 33.4
  - ii. within the time stated in Item 36A, prepare and submit its Construction Program to the Administrator for a direction as to its suitability in accordance with Clause 8.5
  - iii. be fully responsible for maintaining the progress of all Work Under the Contract in accordance with its Construction Program, including works carried out by the Contractor and by its Subcontractors.
- b) The Contractor shall not, without reasonable cause, depart from:
  - i. a Construction Program included in the Contract, or
  - ii. a Construction Program furnished to the Administrator.
- c) The content of, or furnishing of a Construction Program, or of a further Construction Program, shall not affect the rights and obligations under Clause 33.1, nor relieve the Contractor of any obligations under the Contract, including the obligation to not, without reasonable cause, depart from an earlier Construction Program.
- d) The Construction Program shall:
  - i. take one of the following forms as stated in Item 36B:
    - a) a critical path network, in accordance with Clause 33.4.2, or
    - b) a bar chart in accordance with the requirements of Clause 33.4.3
  - ii. be consistent with the program which was submitted with the Contractor's Tender
  - iii. show the Contractor's bona fide planned work activities and sequences for bringing the Work Under the Contract to Practical Completion by the Date for Practical Completion, and

- iv. not affect the time for performance by the Principal or the Administrator of any of their obligations or oblige either of them to do anything earlier than is necessary to enable the Contractor to bring the Work Under the Contract to Practical Completion on the Date for Practical Completion.
- e) The Contractor may implement and revise, as necessary, its Construction Program while carrying out Work Under the Contract.
- f) All activity durations will be no longer than 15 Working Days.

#### **33.4.2 Critical path network program**

- a) Any critical path network program required to be prepared by the Contractor under the Contract shall be prepared on a computerised project management system approved by the Administrator. The Contractor's software shall be capable of exporting data in an electronic format which can be readily loaded into the Administrator's project management software nominated in Item 36C.
- b) The critical path network program shall include:
  - i. all significant key dates and milestones, including dates by which the Principal is required to supply information or materials, or is required to have done anything
  - ii. an appropriate number of activities, not less than the number stated in Item 36D
  - iii. activities identified by whole numbers, with sufficient gaps in the logical sequence to allow later insertion of additional activities should that be required
  - iv. the total float for each activity
  - v. a separate detailed activity listing showing coding, estimated durations and full logic links between activities
  - vi. one start activity (award of the Contract) and one end activity (Practical Completion), or if there are Separable Portions, one end activity for each Separable Portion
  - vii. one or more continuous paths of zero float from the start activity to the end activity or end activities
  - viii. all external constraints, including constraints on Working Days, Working Hours and traffic lane access
  - ix. any resource and/or logic restraints (non-zero lags shall only be shown where an engineering or resource requirement can be demonstrated)
  - x. at least two calendars, one for calendar days and one for Working Days
  - xi. activity weightings expressed as a percentage of the total cost of the Work Under the Contract
  - xii. projected progress of the Work Under the Contract, capable of being presented graphically
  - xiii. the estimated value of work programmed in each month throughout the Contract.

- c) The Contractor shall provide the necessary input such that its computerised project management system is capable of providing reports showing personnel, plant and machinery resources for each activity in man hours, machine hours or by crews. The format and content of the report(s) shall be as agreed with the Administrator.

#### **33.4.3 Bar chart program**

- a) A bar chart program shall be prepared in the Form of a bar chart, which shall comply with the requirements of Clause 33.4.2(b)(i), (ii), (iii), (v), (vii), (viii) and (xi).
- b) Notwithstanding the provisions of this Clause 33.4.3, the Contractor may elect to provide a Construction Program in the Form of a critical path network in accordance with Clause 33.4.2.

#### **33.4.4 Current Program**

- a) Once the Administrator gives a direction that a Construction Program is suitable, the Construction Program shall be designated the Current Program. No changes shall be made to the Current Program without the Administrator's prior written agreement.
- b) Until such time as the Administrator gives direction that a Construction Program is suitable, the Administrator may have regard, as necessary, to the program submitted with the Contractor's Tender.
- c) Where a critical path network program is specified, with each program submitted under Clause 33.4, any revised program submitted under Clause 33.4.7 and any rolling program submitted under Clause 33.4.9, the Contractor shall submit appropriate information in the electronic format stated in Clause 33.4.2.

#### **33.4.5 Contractor's liabilities and obligations not relieved**

No direction as to use of nor any other comment or direction by the Administrator regarding the suitability of or any change to any Construction Program submitted under Clause 33.4, any revised program submitted under Clause 33.4.7 or any rolling program submitted under Clause 33.4.9 shall:

- a) relieve, limit or exclude any of the Contractor's liabilities or obligations under the Contract, including its obligation to ensure the Work Under the Contract reaches Practical Completion by the Date for Practical Completion and its responsibility for all planning, scheduling, sequences, methods and techniques necessary for the due performance of its obligations under the Contract
- b) constitute a direction to accelerate, disrupt, prolong or vary any, or all, of the Contractor's activities or the Work Under the Contract or any part of the Work Under the Contract
- c) constitute a direction under Clause 33.1(e)
- d) constitute the granting of an extension of time or a determination in relation to any application of an extension of time to the Date for Practical Completion, or
- e) affect the time for performance by the Principal or the Administrator of any of their obligations or oblige either of them to do anything earlier than is necessary to enable the Contractor to bring the Work Under the Contract to Practical Completion by the Date for Practical Completion.



#### **33.4.6 Current Program not part of Contract**

- a) Under no circumstances does a direction by the Administrator regarding the suitability of, or any change to, any Construction Program submitted under Clause 33.4, nor any revised program submitted under Clause 33.4.7, or any rolling program submitted under Clause 33.4.9, confer any ownership whatsoever regarding any Construction Program, to the Principal.
- b) The Current Program may be used by the Administrator to monitor the progress of the Work Under the Contract and assess Claims for extension of time.

#### **33.4.7 Contractor's revisions of Current Program**

- a) If the actual progress of the Work Under the Contract varies significantly from that shown in the Current Program, the Contractor shall submit a revised program which shall (where possible) indicate how the Contractor proposes to accelerate the work in order to meet the Date for Practical Completion. A revised program shall comply with the provisions of Clause 33.4
- b) Once the Administrator gives a direction that a revised program is suitable, that program shall be the Current Program.

#### **33.4.8 Review of Current Program**

At each Site Conference held in accordance with Clause 4.3, the Contractor shall provide to the Administrator a printed report which reviews the Current Program and highlights any significant impacts on the project for the period up to the next Site Conference.

#### **33.4.9 Short-term rolling program**

Where a critical path network program is specified, the Contractor shall each month prepare and submit to the Administrator a detailed short-term rolling program for the Work Under the Contract (the rolling program). The rolling program shall:

- a) be drawn on a horizontal time scale
- b) show all activities scheduled for the next two months
- c) be statused at a date within five Business Days of the date of submission
- d) be in sufficient detail to monitor the day-to-day progress of the Work Under the Contract
- e) be accompanied by an updated projection of the estimated value of work programmed in each month for the remainder of the Contract.

#### **33.4.10 Data for preparation of factual network**

The Contractor shall maintain adequate records of its progress in a format agreed with the Administrator. The records may be examined by the Administrator at any time and, if the records are agreed to be accurate, signed by both the Contractor and the Administrator as a true record of the Contractor's performance.

#### **33.5 Acceleration**

- a) Where the Contractor is entitled to an extension of time to the Date for Practical Completion under Clause 35.5, the Administrator may, instead of granting a reasonable extension of time under Clause 35.5, direct the Contractor in writing to accelerate the performance of the

Work Under the Contract so as to overcome the whole or part of the delay which gave rise to the entitlement to an extension of time and the Contractor shall comply with that direction.

- b) If the Administrator directs the Contractor under this Clause 33.5 to accelerate the performance of the Work Under the Contract so as to overcome the whole of the delay in question, the Contractor shall no longer be entitled to any extension of time for that delay.
- c) If the Administrator directs the Contractor under this Clause 33.5 to accelerate the performance of the Work Under the Contract so as to overcome part only of the delay in question, the Contractor shall no longer be entitled to any extension of time for that part of the delay, but the Administrator shall grant a reasonable extension of time under Clause 35.5 for the balance of the delay.
- d) No direction by the Administrator shall constitute, or be regarded as, a direction under this Clause 33.5 unless it is in writing and expressly states that it is a direction under Clause 33.5.
- e) If compliance with a direction to accelerate given under Clause 33.5 causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference shall be valued under Clause 40.5.
- f) The Principal may prior to giving a direction under this Clause 33.5, provide a written notice of a proposed variation and in that case:
  - i. the Contractor shall advise the Administrator whether the proposed variation can be effected and if the variation can be effected, the Contractor shall:
    - a) advise the Administrator of the effect which the Contractor anticipates that the variation will have on the Construction Program and time for Practical Completion
    - b) provide an estimate of the cost (including delay costs, if any) of the proposed variation
  - ii. if the Contractor incurs additional costs in complying with the requirements of Clause 33.5(f), a valuation shall be made under Clause 40.5.

## **34 Suspension of the Works**

### **34.1 Suspension by Administrator**

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

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

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

### **34.2 Suspension by Contractor**

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

### **34.3 Recommencement of work**

- a) As soon as the Administrator becomes aware that the reason for any suspension no longer exists, the Administrator shall direct the Contractor to recommence work on the whole or on the relevant part of the Work Under the Contract.
- b) If work is suspended pursuant to Clause 34.2 or 44.9, the Contractor may recommence work at any time after reasonable advance notice to the Administrator.

### **34.4 Cost of suspension**

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

### **34.5 Effect of suspension**

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

## **35 Times for commencement and Practical Completion**

### **35.1 Time for commencement of work on the Site**

- a) The Contractor shall give the Administrator five Business Days' notice of the date upon which the Contractor proposes to commence work on the Site.
- b) The Administrator may reduce the period of notice required.
- c) The Contractor shall commence work on the Site within 10 Business Days after the Principal has given the Contractor possession of sufficient of the Site to enable the Contractor to commence work.
- d) The Administrator may extend the time for commencement of work on the Site.

### **35.2 Date / time for Practical Completion**

- a) The Contractor shall execute the Work Under the Contract to Practical Completion by the Date for Practical Completion.
- b) Upon the Date of Practical Completion, the Contractor shall give possession of the Site and the Works to the Principal.
- c) The Contractor may, if it chooses, accelerate progress at its own cost and reach Practical Completion before the Date for Practical Completion, but if it does choose to accelerate, then:

- i. neither the Principal, the Administrator, nor any other person for whom the Principal is responsible, will be obliged to do or refrain from doing anything to enable the Contractor to reach Practical Completion before the Date for Practical Completion
- ii. the time for performance of the Principal's and the Administrator's obligations shall not be affected by the Contractor's decision to accelerate.

### **35.3 Separable Portions**

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

### **35.4 Use of partly completed Works**

- a) If a part of the Works has reached a stage equivalent to that of Practical Completion, but another part of the Works has not reached such a stage and the parties cannot agree upon the creation of Separable Portions, the Administrator may, in its absolute discretion, determine that the respective parts shall be Separable Portions.
- b) In using the Separable Portion that has reached Practical Completion, the Principal shall not hinder the Contractor in the performance of the Work Under the Contract.

### **35.5 Extension of time for Practical Completion**

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

out the facts on which the Claim is based supported by a compliant Current Program submitted in accordance with the requirements of Clause 33.4, the Contractor shall be entitled to an extension of time for Practical Completion.

- d) The causes are:
- i. events occurring on or before the Date for Practical Completion which are beyond the reasonable control of the Contractor, including:
    - a) Industrial Matters
    - b) inclement weather,but not including a delay, breach, act or omission by any Subcontractor or any of the Contractor's employees
  - ii. any of the following events whether occurring before, on or after the Date for Practical Completion:
    - a) delays caused by:
      - i. the Principal
      - ii. the Administrator
      - iii. the Principal's employees, consultants, other Contractors or agents
    - b) actual quantities of work in the Schedule of Rates being greater than the quantities determined by reference to the upper limit of accuracy stated in Item 44C (otherwise than by reason of a variation directed under Clause 40)
    - c) Latent Conditions
    - d) variations directed under Clause 40
    - e) repudiation or abandonment by a Nominated Subcontractor
    - f) changes in a Legislative Requirement (which occurs after the Date of Acceptance of Tender and could not have been anticipated by an experienced and competent Contractor)
    - g) directions by any Authority, but not where the direction arose from the failure of the Contractor to comply with a legislative requirement
    - h) delays by any Authority not caused by the Contractor
    - i) delays arising as a result of the Contractor's compliance with Clause 27.7.2
    - j) Claims referred to in Clause 17.1(b)(iv)
    - k) any breach of the Contract by the Principal
    - l) any other cause which is expressly stated in the Contract to be a cause for extension of time for Practical Completion.
- e) Where more than one event causes overlapping delays and the cause of at least one of those events, but not all of them, is not a cause referred to in Clause 35.5(d), then to the extent that the delays overlap, the Contractor shall not be entitled to an extension of time for Practical Completion.

- f) In determining whether the Contractor is, or will be, delayed in reaching Practical Completion regard shall not be had to:
  - i. whether the Contractor can reach Practical Completion by the Date for Practical Completion without an extension of time
  - ii. whether the Contractor can, by committing extra resources or incurring extra expenditure, make up the time lost.
- g) With any Claim for an extension of time for Practical Completion, or as soon as practicable thereafter but not more than 20 Business Days, the Contractor shall give the Administrator written notice of the number of days' extension claimed.
- h) The Contractor shall not be entitled to an extension of time for any delay in respect of which the Contractor has failed to comply strictly with the requirements of Clause 35.5(c).
- i) If the Contractor is entitled to an extension of time for Practical Completion the Administrator shall, within 20 Business Days after receipt of the notice of the number of days' extension claimed, grant a reasonable extension of time. If within the 20 Business Days, the Administrator does not grant the full extension of time claimed, the Administrator shall, before the expiration of the 20 Business Days, give the Contractor notice in writing of the reason.
- j) In determining a reasonable extension of time for an event causing delay, the Administrator shall have regard to whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.
- k) Notwithstanding that the Contractor is not entitled to, or has not claimed an extension of time, the Administrator may, in its absolute discretion and without being under any obligation to do so, at any time and from time to time before the issue of the Final Certificate, by notice in writing to the Contractor, extend the time for Practical Completion for any reason.
- l) Neither a delay caused by any one or more of the causes mentioned in Clauses 35.5(d)(ii)(a), 35.5(d)(ii)(d) or 35.5(d)(ii)(k), nor a failure by the Administrator to grant an extension of time or a reasonable extension of time under this Clause 35.5, or to do so within the time stated in this Clause 35.5, nor the giving of a direction to accelerate under Clause 35.5, shall:
  - i. set the Date for Practical Completion at large, or
  - ii. render Clause 35.6 unenforceable,and the legal principle known as the 'prevention principle' shall not apply where there has been such a delay or failure, but nothing in this Clause 35.5(l) shall prejudice any right of the Contractor to damages for breach of Contract.

**35.6 Liquidated damages for delay in reaching Practical Completion**

- a) If the Contractor fails to reach Practical Completion by the Date for Practical Completion, the Contractor shall be indebted to the Principal for liquidated damages at the rate stated in Item 38A for every Day after the Date for Practical Completion to, and including, the Date of Practical Completion or the date that the Contract is terminated under Clause 44, whichever occurs first.

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

### **36 Delay costs**

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

### **37 Defects liability**

- a) The Defects Liability Period stated in Item 37A or 39A shall commence on the Date of Practical Completion. Where no period is stated in Item 37A or 39A, the Defects Liability Period shall be 90 days.
- b) As soon as possible after the Date of Practical Completion, the Contractor shall rectify any defects or omissions in the Work Under the Contract existing at Practical Completion.
- c) At any time prior to 10 Business Days after the expiration of the Defects Liability Period, the Administrator may direct the Contractor to rectify any omission or defect in the Work Under the Contract existing at the Date of Practical Completion or which becomes apparent prior to the expiration of the Defects Liability Period. The direction shall identify the omission or defect and state a date by which the Contractor shall complete the work of rectification and may state a date by which the work of rectification shall commence. The direction may provide that in respect of the work of rectification there shall be a separate Defects Liability Period of a stated duration not exceeding the period stated in Item 37A or 39A. The separate Defects Liability Period shall commence on the date the Contractor completes the work of rectification. Clause 37 shall apply in respect of the work of rectification and the Defects Liability Period for that work of rectification work.
- d) If the work of rectification is not commenced or completed by the stated dates, the Principal may have the work of rectification carried out at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such omission or defect and the cost of the work of rectification incurred by the Principal shall be a debt due from the Contractor.
- e) If it is necessary for the Contractor to carry out work of rectification, the Contractor shall do so at times and in a manner which cause as little inconvenience to the occupants or users of the Works as is reasonably possible.

### **38 Cleaning up**

- a) The Contractor shall keep the Site and the work clean and tidy. The Contractor shall regularly remove rubbish and surplus material.
- b) Within 10 Business Days after the Date of Practical Completion, the Contractor shall remove Temporary Works and Constructional Plant.
- c) The Administrator may extend the time for removal of Temporary Works or Constructional Plant necessary to enable the Contractor to perform remaining obligations.
- d) Notwithstanding the provisions of Clause 44, if the Contractor fails to comply with any obligation imposed on the Contractor by Clause 38, the Administrator may, after the Administrator has given reasonable notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the reasonable cost incurred by the Principal in having the work so carried out may be recovered by the Principal as a debt due from the Contractor to the Principal. The rights given by this Clause 38(d) are in addition to any other right.

### **39 Urgent protection**

- a) If urgent action is necessary to protect the Work Under the Contract, other property or people and the Contractor fails to take the action, the Principal may, in its absolute discretion, take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the cost incurred by the Principal shall be a debt due from the Contractor.
- b) If time permits, the Administrator shall give the Contractor prior written notice of the Principal's intention to take action under Clause 39.

### **40 Variations**

#### **40.1 Authority to vary the work**

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



- f) For the avoidance of doubt, the Principal shall be entitled to have any omitted work carried out by other contractors.

#### **40.2 Contractor's obligations concerning proposed variations**

- a) Upon receipt of a notice in writing from the Administrator advising the Contractor of a proposed variation under Clause 40, the Contractor shall advise the Administrator whether the proposed variation can be effected. If the variation can be effected, the Contractor shall within a reasonable timeframe but not more than five Business Days:
  - i. advise the Administrator of the effect which the Contractor anticipates that the variation will have on the Construction Program and time for Practical Completion, and
  - ii. provide a realistic estimate of the cost (including delay costs, if any) of the proposed variation.
  - iii. provide supporting document to substantiate the estimated cost and time impacts including an updated Current Program clearly showing the time impacts of the proposed variations, supplier quotations, measurements and any other relevant evidence of costs.
- b) If the Contractor incurs additional costs in complying with the requirements of Clause 40.2, a valuation shall be made under Clause 40.5.

#### **40.3 Direction to proceed with proposed variations**

- a) The Contractor and the Administrator shall make reasonable endeavours to agree on the cost and time impacts before the Administrator gives a direction to proceed with the variation.
- b) If the Administrator and the Contractor fail to agree upon the price for a variation, the variation directed or approved by the Administrator under Clause 40.1 shall be valued under Clause 40.5 (a)(ii) to (iv).
- c) The Administrator shall give a direction to the Contractor on whether to proceed with the variation within 5 Business Days of providing a realistic estimate of the cost. The direction shall include details of the agreed cost and time impacts, or failing agreement, the Administrator's valuation and assessment of the time impacts.
- d) The Contractor shall proceed with the variation as directed even if agreement on the time and cost impacts has not been reached or the Contractor does not agree with the Administrator's valuation or assessment.
- e) If the Contractor does not agree with the Administrator's valuation or assessment, the Contractor may issue a Notice of Dispute under Clause 47.1 while continuing to proceed with the directed variation.

#### **40.4 Variations for the convenience of the Contractor**

- a) If the Contractor requests the Administrator to approve a variation for the convenience of the Contractor, the Administrator may, in its absolute discretion, do so in writing. The approval may be conditional.
- b) Unless the Administrator otherwise directs in the notice approving the variation, the Contractor shall not be entitled to:
  - i. an extension of time for Practical Completion, or

ii. extra payment,

in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.

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

#### **40.5 Valuation**

a) Where the Contract provides that a valuation shall be made under Clause 40.5, the Principal shall pay or allow the Contractor or the Contractor shall pay or allow the Principal as the case may require, an amount ascertained by the Administrator as follows:

- i. prior agreement between the Contractor and the Administrator
- ii. if Clause 40.5(a)(i) does not apply and the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used
- iii. if Clause 40.5(a)(i) or 40.5(a)(ii) do not apply, the rates or prices in a Schedule of Prices or Schedule of Rates shall be used to the extent that it is reasonable to use them
- iv. to the extent that neither Clause 40.5(a)(i) to 40.5(a)(iii) applies, reasonable rates or prices which are exclusive of GST shall be used in any valuation made by the Administrator.

b) Notwithstanding Clause 40.5(a), the following principles apply to the valuation of variations:

- i. in determining the deduction to be made for work which is taken out of the Contract, the deducted amount shall comprise the direct job costs, overheads and profit associated with the deducted component of the work, the amount of overheads to be deducted may be adjusted in favour of the Contractor if the Contractor can demonstrate that notwithstanding the deduction of the work, it has still incurred some or all of the overheads. In the case of a Schedule of Rates, Clause 3.6 of the Commercial Framework shall be taken into consideration with the limit of accuracy. In all cases, the Contractor shall not be entitled to any profit if the whole Item of work has been deducted.

The percentages used for assessing the overheads and profit deductions shall be ascertained as follows:

- 1 by agreement between the Contractor and the Administrator
- 2 failing agreement under Clause 40.5(b)(i)(1) the percentages for profit, onsite overheads and offsite overheads stated in Item 40A may be used in determining the reasonable amount of such profit and overheads to be allowed or disallowed, as the case may be, in the cost of a variation or value of reduced quantities treated as a variation
- ii. if the valuation is of an increase or decrease in a fee or charge or is a new fee or charge by an Authority under Clause 14.2(b), the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit

- iii. if the valuation relates to extra costs incurred by the Contractor for disruption, the valuation of the extra costs shall include the percentage margin for onsite and/or offsite overheads stated in Item 40A, as the case may be, but shall not include profit or loss of profit
  - iv. if Clause 11 applies, the percentage referred to in Clause 11 shall be used for valuing the Contractor's profit and attendance
  - v. Daywork shall be valued in accordance with Clause 41
  - vi. in respect of Clauses 40.5(b)(i) to (v), the percentages for profit, onsite overheads and/or offsite overheads stated in Item 40A, as the case may be, may be utilised in determining the reasonable amount of such profit and overheads to be allowed or disallowed, as the case may be, in the cost of a variation
  - vii. where applicable, the amount of GST in respect of the relevant supply or part being valued shall be added in accordance with Clause 42.11.
- c) When under Clause 40.3, the Administrator directs the Contractor to support a variation with measurements and other evidence of cost, the Administrator shall allow the Contractor the reasonable cost of preparing the measurements or other evidence of cost that has been incurred over and above the reasonable overhead cost.

#### **41 Daywork**

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

- v. the actual cost to the Contractor of all materials supplied and required for the work
  - vi. the charge stated in Item 40A or, if no charge is stated, a charge agreed between the Administrator and the Contractor to cover offsite overheads, administrative costs, establishment costs, attendance and profit, or, in the absence of agreement, a reasonable charge determined by the Administrator.
- c) Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

## **42 Certificates and payments**

### **42.1 *Payment Claims, certificates, calculations and time for payment***

#### **42.1.1 Payment Claims**

- a) At the times for payment Claims stated in Item 41A, upon issue of a Certificate of Practical Completion and within the time prescribed by Clause 42.7, the Contractor may deliver to the Administrator a payment Claim. For the avoidance of doubt, a reference date under the Payments Act shall not arise during the period following the end of the month in which Practical Completion is reached until the time for making the Final Payment Claim under Clause 42.7
- b) The payment Claim shall:
  - i. be supported by evidence of the amount due to the Contractor, including a breakdown of the value of Work Under the Contract executed:
    - a) since the commencement of the Contract
    - b) since the previous payment Claim was made
  - ii. include Conformance Report in relation to the Work Under the Contract the subject of the payment Claim
  - iii. enclose a copy of a completed Form C7901 or Form C7902 to evidence compliance to the provisions of Clause 4.4, as if a Form C7901 or Form C7902 has not been completed pursuant to Clause 4.4, evidence that the Contractor has taken all reasonable steps to comply with Clause 4.4
  - iv. enclose evidence of compliance with Clause 33.2 (if applicable), Clause 33.3 and Clause 33.4
  - v. enclose a completed statutory declaration in accordance with Clause 43, and
  - vi. include a supporting statement in accordance with the Payments Act (for guidance, supporting statement template is available at <https://www.qbcc.qld.gov.au/protecting-your-payment-rights/supporting-statement>).
- c) A payment Claim shall include the value of work carried out by the Contractor in the performance of the Contract to that time together with all amounts then due to the Contractor arising out of or in connection with the Contract or for any alleged breach of the Contract. Each component of the Claim shall be assessed to determine if GST applies in accordance with Clause 42.11.

- d) If the time for any payment Claim under Clause 42.1.1(a) falls on a day which is not a Business Day, the Contractor shall submit the Claim on the next Business Day.

#### **42.1.2 Payment certificate**

- a) Within 10 Business Days after receipt of a payment Claim, the Administrator shall issue to the Principal and to the Contractor a payment certificate setting out:
  - i. the amount of the payment which, in the opinion of the Administrator, is to be made by the Principal to the Contractor or by the Contractor to the Principal
  - ii. the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference.
- b) The Administrator may allow in any payment certificate issued pursuant to this Clause 42.1 or any Final Certificate issued pursuant to Clause 42.8 or a Certificate issued pursuant to Clause 44.6, amounts paid under the Contract and 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, including any amount due or to be credited under any provision of 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 work for which a Conformance Report has not been provided to the Administrator unless Indicative Conformance applies.
- c) In instances where Indicative Conformance applies, where the Conformance Report has not been submitted due only to the normal delays involved in processing, testing, analysis and reporting, the Contractor may include that completed work for the Conformance Report will be submitted in the following month. In this case, the Contractor shall submit with its payment Claim, a statement which lists the relevant completed work and certifies that the Conformance Report will be presented to the Administrator no later than the end of the calendar month following the month of the relevant payment Claim.
- d) If the Contractor fails to deliver a payment Claim under Clause 42.1, the Administrator may, nevertheless, issue a payment certificate.
- e) Within two Business Days of the issue of the payment certificate by the Administrator, the Contractor shall issue to the Principal or the Principal shall issue to the Contractor, as the case may be, a tax invoice complying with the GST Legislation in respect of the relevant Supply.

#### **42.1.3 Payment**

- a) Subject to the provisions of the Contract, within 20 Business Days after receipt by the Administrator of a payment Claim in accordance with Clause 42.1.1, provided that the requirements of Clause 42.1.2(e) have been met, the Principal shall pay to the Contractor or the Contractor shall pay to the Principal, as the case may be, an amount not less than the amount shown in the payment certificate as due to the Contractor or to the Principal as the case may be or if no payment certificate has been issued, the Principal shall pay the amount of the Contractor's Claim.
- b) A payment made pursuant to this Clause 42.1.3 shall not prejudice the right of either party to dispute under Clause 47 whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 47 or as otherwise agreed) of the amount so properly due and payable, the Principal or Contractor, as the case may be, shall be liable to

pay the difference between the amount of such payment and the amount so properly due and payable.

- c) Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided by Clause 42.8.
- d) Upon payment to the Contractor of the amount which includes the value of the Item, the Item shall be the property of the Principal free of any lien or charge.
- e) Except as provided in the Contract, the Principal shall not be obliged to pay for any Item of unfixed plant and materials which is not incorporated in the Works.
- f) If any work for which payment has been made is found not to be in accordance with the Contract, the Administrator may take this into account in valuing any future certificate.

#### **42.2 Correction of payment certificates**

- a) At any time and from time to time, the Administrator may by a further certificate correct any error which has been discovered in any previous certificate other than a Certificate of Practical Completion or Final Certificate.
- b) Any correction must also correct the amount of GST in accordance with the GST Legislation.

#### **42.3 Retention Moneys**

The Principal may deduct Retention Moneys from moneys otherwise due to the Contractor as stated in Item 41B.

#### **42.4 Unfixed materials, plant and equipment**

The alternative applying for unfixed plant and materials is given in Item 41C.

##### **Alternative 1**

- a) Notwithstanding Clause 42.1, the Contractor may not claim payment for, and the Principal is not obliged to pay for, any unfixed materials, plant or equipment that have not been incorporated in the Works unless:
  - i. the materials, plant or equipment:
    - a) have been manufactured solely for the purpose of incorporation in the Works and have not been manufactured before the date required by the Contract, and
    - b) are of the type stated in Item 41D(a), and
    - c) are properly stored either on the Site or at a suitable location off Site (as determined by the Administrator), clearly marked the property of the Department of Transport and Main Roads and adequately protected and insured, and
    - d) have been paid for in full by the Contractor and are the unencumbered property of the Contractor and proof of such payment and ownership is provided to the satisfaction of the Administrator, and
    - e) the Contractor provides additional security in one of the forms provided by Clause 5.4 in an amount equal to the payment claimed for the materials, plant or equipment.

- b) If pursuant to a payment certificate issued under Clause 42.1, the Principal pays the Contractor an amount which includes the value of any unfixed materials, plant or equipment that have not been incorporated in the Works, the materials, plant or equipment will become the property of the Principal, free of any lien, charge or any other encumbrance, at the time the payment is made.

### ***Alternative 2***

The Contractor shall not be entitled to payment for materials, plant or equipment not incorporated in the Works.

#### **42.5 Certificate of Practical Completion**

- a) The Contractor shall give the Administrator at least 10 Business Days' notice of the date upon which the Contractor anticipates that Practical Completion will be reached.
- b) When the Contractor is of the opinion that Practical Completion has been reached, the Contractor shall, in writing, request the Administrator to issue a Certificate of Practical Completion. Within 10 Business Days of the receipt of the request, the Administrator shall give to the Contractor and to the Principal a Certificate of Practical Completion certifying the Date of Practical Completion or give the Contractor in writing the reasons for not issuing the Certificate.
- c) When the Administrator is of the opinion that Practical Completion has been reached, the Administrator may issue a Certificate of Practical Completion whether or not the Contractor has made a request for its issue.
- d) Within two months of Practical Completion, the Contractor shall hand over to the Administrator copies of all investigation reports undertaken by the Contractor or its agents, in connection with the Contract.

#### **42.6 Effect of certificates**

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

#### **42.7 Contractor's final payment Claim**

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

#### **42.8 Final Certificate**

- a) Within 10 Business Days after receipt of the Contractor's final payment Claim or, where the Contractor fails to lodge such Claim, the expiration of the period specified in Clause 42.7 for the lodgement of the final payment Claim by the Contractor, the Administrator shall issue to the Contractor and to the Principal a final payment certificate endorsed 'Final Certificate', but the Administrator shall not be obliged to issue the Final Certificate until the Contractor has

fulfilled all of its obligations under the Contract. In the final payment certificate, the Administrator shall certify the amount which in the Administrator's opinion is finally due from the Principal to the Contractor or from the Contractor to the Principal under or arising out of the Contract or any alleged breach thereof.

- b) Unless either party, either before the Final Certificate has been issued or not later than 10 Business Days after the issue thereof, serves a notice of dispute under Clause 47, the Final Certificate shall be evidence in any proceedings of whatsoever nature and whether under the Contract or otherwise between the parties arising out of the Contract, that the Works have been completed in accordance with the terms of the Contract and that any necessary effect has been given to all the terms of the Contract which require additions or deductions to be made to the Contract Sum, except in the case of:
  - i. fraud, dishonesty or fraudulent concealment relating to the Works or any part thereof or to any matter dealt with in the said Certificate
  - ii. any defect (including omission) in the Works or any part thereof which was not apparent at the end of the Defects Liability Period or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate, or
  - iii. any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation.

#### **42.9 Interest on overdue payments**

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

#### **42.10 Set offs by the Principal**

- a) Without limiting the Principal's rights under any other provision of the Contract and notwithstanding the provisions of Clauses 42.1 and 42.8 or the issue of any certificate by the Administrator under those Clauses, the Principal may deduct from any moneys due to the Contractor any debt due from the Contractor to the Principal and any Claim which the Principal may have against the Contractor:
  - i. whether or not the debt or Claim arises by way of damages, debt, restitution or otherwise, and
  - ii. whether or not the factual basis giving rise to the debt or Claim arises out of this Contract, any other Contract or is independent of any Contract.
- b) If the moneys payable to the Contractor are insufficient to discharge the debt or Claim, the Principal may have recourse to:
  - i. Retention Moneys, and
  - ii. if Retention Moneys are insufficient, security provided under Clause 5.2, and
  - iii. subject to Clause 5.1, if the Primary Security provided under Clause 5.2 is insufficient to the Subcontractor Payment Security provided under Clause 5.2.



- c) Nothing in this Clause 42.10 shall affect the right of the Principal to recover from the Contractor the whole of the debt or Claim or any balance that remains owing. This Clause 42.10 shall survive the termination of the Contract.

#### **42.11 Goods and Services Tax**

##### **42.11.1 Interpretation**

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

##### **42.11.2 Consideration is Goods and Services Tax exclusive**

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

##### **42.11.3 Gross up of consideration**

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

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

##### **42.11.4 Reimbursements and indemnity payments**

If either party is entitled under this Contract to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity amount will be reduced by the amount of any input tax credit that can be claimed by the party entitled to be reimbursed or indemnified, or by its Representative member (as the case may be).

##### **42.11.5 Adjustments**

If, as a result of:

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

- d) a decision of any tribunal or Court in relation to this Contract or a supply made under or in connection with this Contract,

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

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

#### **43 Payment of workers and Subcontractors**

- a) Upon entry into a subcontract the Contractor shall, in respect of that subcontract, establish a payment recording system for that Subcontractor set out in a format approved by the Principal.
- b) The recording system shall record all details of transactions with a Subcontractor including, at least, details of Claims for payment, payments made, retention and securities held in unconditional undertakings or any other form.
- c) The record of payment system shall be:
  - i. kept by the Contractor until the Final Certificate is issued by the Administrator
  - ii. provided to the Administrator for inspection and copying upon reasonable notice in writing.
- d) The Contractor shall submit to the Administrator a statutory declaration, in the form of Form C7850.TIC, with each payment claim:
  - declaring that all monies owed to Subcontractors, due and payable to them, have been paid, or
  - where the Contractor has identified that a Subcontractor is not entitled to be paid the full amount of what they have claimed, the Contractor is to provide details of this in a supporting statement as per Clause 42.1.1(b)(vi)

The Administrator may request further documentary evidence of those matters.

- e) Before the payment of any money to the Contractor, the Administrator may also require the Contractor to submit a Subcontractor's statutory declaration, in the form of Form C7851.TIC, by any Subcontractor:
  - declaring that all monies owed by Subcontractors of the Subcontractor, due and payable to them, have been paid, or
  - where the Subcontractor has identified that a Subcontractor of the Subcontractor is not entitled to be paid the full amount of what they have claimed, the Subcontractor is to provide details of this in a supporting statement as per Clause 42.1.1(b)(vi)

The Administrator may request further documentary evidence of those matters.

- f) At the written request of the Contractor and out of moneys payable to the Contractor, the Principal may, on behalf of the Contractor, make payments directly to any worker or Subcontractor.

- g) If any worker or Subcontractor obtains a court order in respect of moneys referred to in Clause 43 and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker or Subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.
- h) After the making of a sequestration order or a winding up order in respect of the Contractor, the Principal shall not make any payment to a worker or Subcontractor without the concurrence of the official receiver or trustee of the estate of the bankrupt or the liquidator as the case may be.

#### **43A Payments Act**

- a) Subject to Clause 43A(b) and without affecting the Principal's right to issue a payment schedule itself, for the purposes of the Payments Act, the Administrator is authorised to receive payment Claims and issue payment schedules on behalf of the Principal.
- b) If a Claim is a payment Claim under the Payments Act and the Principal does not, within the time allowed by the Payments Act for the service of a payment schedule:
  - i. issue the payment schedule itself, or
  - ii. notify the Contractor that the Administrator does not have authority from the Principal to issue the payment schedule on its behalf,then the corresponding payment certificate issued by the Administrator, will be deemed to be the payment schedule for the purposes of the Payments Act.
- c) If an adjudicator makes a decision under the Payments Act with respect to a payment Claim which differs from the payment certificate in respect of that payment Claim, the Administrator shall promptly issue an amended payment certificate to adopt the decision of the adjudicator. Either party may dispute the amended payment certificate.
- d) The Contractor shall ensure that within one Business Day after any notice (other than a payment Claim or payment schedule) under the Payments Act is given or received by the Contractor or any Subcontractor, a copy of that notice is given to both the Administrator and the Principal.

#### **43B Subcontractors' Charges**

- a) Notwithstanding any other provision of this Contract, the Contractor shall:
  - i. immediately give the Principal notice if the Contractor has been required to supply information to a Subcontractor under Section 119 of the Payments Act, together with a copy of the information provided, and
  - ii. immediately notify the Principal if it becomes aware that a Subcontractor has claimed or intends to Claim a statutory Charge under Section 122 of the Payments Act.
- b) The Contractor shall indemnify the Principal against any Claims against, or costs, losses or damages (including lawyers' fees and expenses on a solicitor / client basis) suffered or incurred by the Principal arising out of, or in any way in, connection with:
  - i. a Notice of Claim being served on the Principal under Section 122 of the Payments Act, and

- ii. a failure by the Contractor to comply with its obligations under Clause 43B(a).
- c) If the Principal makes a payment into court or to a Subcontractor or other person as a result of receiving a Notice of Claim under the Payments Act, for the purposes of calculating the Contract Sum finally payable by the Principal to the Contractor, that payment will be treated as though it was a payment made by the Principal to the Contractor.

## **44 Default or insolvency**

### **44.1 Preservation of other rights**

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

### **44.2 Default by the Contractor**

- a) If the Contractor commits a substantial breach of Contract, and the Principal considers that damages may not be an adequate remedy, the Principal may, in its absolute discretion, give the Contractor a written notice to show cause.
- b) Substantial breaches include:
  - i. failing to lodge security in breach of Clause 5.2
  - ii. failing to lodge a deed of guarantee, undertaking and substitution, in breach of Clause 5.11
  - iii. failing to comply with requirements of Clause 8.6
  - iv. failing to comply in any respect with Clause 9.2
  - v. failing to comply with the requirements of Clause 14.5.2
  - vi. failing to comply with the requirements of Clause 14.6
  - vii. failing to rectify a non-conformance identified on three separate occasions in the safety auditing process under Clause 15.3
  - viii. failing to provide evidence of insurance, in breach of Clause 21.1
  - ix. failing to comply with a direction of the Administrator under Clause 30.6 in breach of Clause 23
  - x. repeatedly failing to ensure the Contractor or the Contractor's Representative is present on the Site in accordance with Clause 25
  - xi. failing to comply with the requirements of Clause 29.2.2
  - xii. failing to use the materials or standards of workmanship required by the Contract in breach of Clause 30.1
  - xiii. failing to either establish, implement or maintain a Quality System in accordance with Clause 30.2
  - xiv. suspension of work in breach of Clause 33.1
  - xv. failing to proceed with due expedition and without delay in breach of Clause 33.1
  - xvi. failing to comply with the provisions of Clause 33.3.1

- xvii. failing to deliver a statutory declaration or supporting documentary evidence in breach of Clause 43
- xviii. failing to provide a supporting statement with a payment Claim required by the Payments Act
- xix. providing a statutory declaration pursuant to Clause 43 which is false, misleading or deceptive in any respect
- xx. providing a supporting statement required by the Payments Act which is false or misleading, and/or
- xxi. failing to comply with the requirements of Clause 14.11(b), and/or
- xxii. any other breach identified by the Principal as a 'substantial breach'.

#### **44.3 Requirements of a notice by the Principal to show cause**

A notice under Clause 44.2 shall:

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

#### **44.4 Rights of the Principal**

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

#### **44.5 Procedure when the Principal takes over work**

- a) If the Principal takes work out of the hands of the Contractor under Clause 44.4(a)(i), the Principal shall complete that work and the Principal may, without payment of compensation, take possession of such of the Constructional Plant and other things on or in the vicinity of the

Site as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work.

- b) If the Principal takes possession of Constructional Plant or other things, the Principal shall maintain the Constructional Plant and, subject to Clause 44.6, on completion of the work, the Principal shall return to the Contractor the Constructional Plant and any things taken under this Clause 44.5 which are surplus.

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

- a) When work taken out of the hands of the Contractor under Clause 44.4(a)(i) is completed, the Administrator shall ascertain the cost incurred by the Principal in completing the work and shall issue a certificate to the Principal and the Contractor certifying the amount of that cost.
- b) If the cost incurred by the Principal is greater than the amount which would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due to the Contractor from the Principal. The Principal shall keep records of the cost in a similar manner to that prescribed in Clause 41.
- c) If the Contractor is indebted to the Principal, the Principal may, in its absolute discretion, retain Constructional Plant or other things taken under Clause 44.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Constructional Plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.

#### **44.7 Default of the Principal**

- a) If the Principal commits a substantial breach of Contract and the Contractor considers that damages may not be an adequate remedy, the Contractor may give the Principal a written notice to show cause.
- b) Substantial breaches include:
  - i. failing to make a payment in breach of Clause 42.1
  - ii. failure by the Administrator to either issue a Certificate of Practical Completion or give the Contractor, in writing, the reasons for not issuing the Certificate within 10 Business Days of receipt of a request by the Contractor to issue the Certificate in breach of Clause 42.5
  - iii. failing to produce evidence of insurance in breach of Clause 21.1, and/or
  - iv. failing to give the Contractor possession of sufficient of the Site, in breach of Clause 27.1, but only if the failure continues for longer than the period stated in Item 42A.

#### **44.8 Requirements of a notice by the Contractor to show cause**

A notice under Clause 44.7 shall:

- a) state that it is a notice under Clause 44 of the General Conditions of Contract
- b) specify the alleged substantial breach
- c) require the Principal to show cause in writing why the Contractor should not exercise a right referred to in Clause 44.9

- d) specify the time and date by which the Principal must show cause (which shall not be less than five clear Business Days after the notice is given to the Principal), and
- e) specify the place at which cause must be shown.

#### **44.9 Rights of the Contractor**

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

#### **44.10 Rights of the parties on termination**

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

#### **44.11 Insolvency**

- a) If:
  - i. a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with the Contract
  - ii. execution is levied against a party by a creditor
  - iii. a party is an individual person or a partnership including an individual person and that person:
    - a) commits an act of bankruptcy
    - b) has a bankruptcy petition presented against the person or presents own petition
    - c) is made bankrupt
    - d) makes a proposal for a scheme of arrangement or a composition, or
    - e) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act* 1966 (Cth), or
  - iv. in relation to a party being a Corporation:
    - a) notice is given of a meeting of creditors with a view to the Corporation entering a deed of company arrangement
    - b) the party enters a deed of company arrangement with creditors
    - c) a controller or Administrator is appointed

- d) an application is made to a court for the winding up of the party and not stayed within 10 Business Days
- e) a winding up order is made in respect of the party
- f) it resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up)
- g) a mortgagee of any property of the party takes possession of that property, or
- h) a receiver or a receiver and manager is appointed in respect of any property or undertaking of the party,

then, where the other party is:

- v. the Principal — the Principal may, in its absolute discretion, without giving a notice to show cause, exercise the right under Clause 44.4(a)(i) or Clause 44.4(a)(ii), or
  - vi. the Contractor — the Contractor may, without giving a notice to show cause, exercise the right under Clause 44.9.
- b) The rights given by this Clause 44.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of Contract.

## **45 Termination by frustration**

If, under the law governing the Contract, the Contract is frustrated, the Principal shall pay the Contractor:

- a) for work executed prior to the date of frustration, the amount which would have been payable if the Contract had not been frustrated and the Contractor had delivered a payment Claim on the date of frustration
- b) the cost of materials reasonably ordered by the Contractor for the Work Under the Contract, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment
- c) costs reasonably incurred by the Contractor in the expectation of completing the whole of the Work Under the Contract and not included in any payment by the Principal
- d) all retention moneys and security
- e) the reasonable cost of removal of Constructional Plant, and
- f) the reasonable cost of return to their place of recruitment of the Contractor's employees engaged in the Work Under the Contract at the date of frustration.

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

### **46.1 Contractor's prescribed notice**

- a) In respect of any Claim by the Contractor, arising out of, a breach of the Contract, the Contractor shall provide a prescribed notice to the Administrator within 20 Business Days after the first day upon which the Contractor could reasonably have been aware of the breach.
- b) The Contractor shall provide the Administrator with a prescribed notice:



- i. in respect of or arising out of any direction or approval by the Administrator (including a direction or approval which the Administrator did not expressly acknowledge to be a variation under Clause 40, but which the Contractor claims is a variation under that Clause 40)
- ii. under any provision of the Contract (including Clauses 34.4, 36 and 40.5)
- iii. in respect of, or arising out of, the subject matter of the Contract
- iv. in tort or under any statute
- v. upon a quantum meruit or for restitution based on unjust enrichment, or
- vi. for additional payment or compensation on any other legal basis,

within 20 Business Days after the first day upon which the Contractor could reasonably have been aware of the act, omission, direction, approval or other event, fact, matter or circumstance on which the Claim is, or will be, based.

If the Contractor fails to provide the prescribed notice required under Clauses 46.1 a) or b) within 20 Business Days, the Principal's liability may be reduced to the extent that the Principal or Administrator have been denied an opportunity to mitigate the liability.

- c) A 'prescribed notice' is a notice in writing which shall be endorsed 'Prescribed Notice Under Clause 46.1' and includes particulars of all of the following:
  - i. the breach, act, omission, direction, approval or circumstances on which the Claim is, or will be, based
  - ii. the provision of the Contract or other basis for the Claim or proposed Claim, and
  - iii. the quantum or likely quantum of the Claim.
- d) This Clause 46.1 shall not have any application to:
  - i. any Claim for payment to the Contractor of an amount or amounts forming part of the original Contract Sum
  - ii. any Claim for payment for a variation directed by the Administrator in writing and expressly acknowledged by the Administrator to be a variation under Clause 40
  - iii. any Claim for payment for a valuation made pursuant to Clause 12.3, or
  - iv. any Claim for an extension of time for Practical Completion.
- e) Nothing in this Clause 46.1 shall limit the operation or effect of any other notice provision, time-bar provision, condition precedent or limitation or exclusion clause in the Contract, nor waive the effect of any failure by the Contractor to comply with any such provision or requirement.

#### **46.2 Time for disputing Administrator's directions**

- a) Where the Administrator has given:
  - i. a certificate or valuation under the Contract, or
  - ii. a determination with respect to a Claim by the Contractor, including a Claim:
    - a) for breach of the Contract by the Principal

- b) of the type referred to in Clause 46.1(b)(i) to (vi)
- c) for payment for a variation directed or approved under Clause 40, and
- d) for an extension of time to the Date for Practical Completion

the Administrator may also give a notice under Clause 46.2 with respect to the certificate, valuation or determination.

- b) The notice under Clause 46.2(a) may be given at the same time or after that the certificate, valuation or determination is given but must:
  - i. be in writing and endorsed 'Administrator's Notice under Clause 46.2'
  - ii. be given to the Principal and the Contractor
  - iii. identify the certificate, valuation or determination to which it relates, and
  - iv. state that the certificate, valuation or determination will be final and binding upon the parties and not subject to dispute unless either party, within 20 Business Days after receiving the Administrator's notice, gives a notice of dispute in accordance with Clause 47.1 disputing the certificate, valuation or determination.
- c) If neither the Principal nor the Contractor gives a notice of dispute in accordance with Clause 47.1 within 20 Business Days after receipt of an Administrator's notice under this Clause 46.2, then the certificate, valuation or determination to which the Administrator's notice relates shall be final and binding upon the parties and not subject to dispute notwithstanding Clause 47.
- d) Nothing in this Clause 46.2, nor the giving of an Administrator's notice under this Clause 46.2, shall limit the operation or effect of Clause 46.1 or any other notice provision, time-bar provision, condition precedent or limitation or exclusion clause in the Contract, nor waive the effect of any failure by the Contractor to comply with Clause 46.1 or with such other provision or requirement.

## **47 Dispute resolution**

### **47.1 Notice of dispute**

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

#### **47.2 Meeting of representatives**

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

#### **47.3 Further steps required before proceedings**

The alternative applying for dispute resolution is given in Item 43A.

#### **Alternative 1A – issues resolution advisor (when required) (refer to 47.3.1 to 47.3.4)**

##### **47.3.1 Issues resolution advisor**

Under this alternative, the Issues Resolution Advisor (IRA) shall be engaged when required only after notice of dispute is issued and to resolve specific and discrete disputes.

If the Principal's Representative, Administrator and Contractor's Representative fail to resolve the dispute within 10 Business Days after the service of a notice of dispute, either the Principal or the Contractor may, by notice in writing to the other party, request that an IRA be engaged under Clause 49 and the dispute referred to the IRA. The dispute shall be referred to the IRA as a condition precedent to the dispute being referred to the delegates of the Chief Executive Officers (CEO).

##### **47.3.2 Meeting of chief executive officers**

If the IRA has not made a binding recommendation under Clause 49.9:

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

shall confer at least once to attempt to resolve the dispute. If a Contract Leadership Team has been established as nominated in Item 9A of Annexure A, the Contract Leadership Team may fulfil the obligations of the chief executive officers of the parties under this clause.

##### **47.3.3 Referral of dispute**

- a) Either party may, by notice in writing delivered by hand or sent by registered post to the other party, refer such dispute to arbitration or litigation if:
  - i. either:
    - a) the dispute has not been resolved within 10 Business Days after the referral of the dispute to the chief executive officers of the parties under Clause 47.3.2, or
    - b) a party convenes a meeting under either Clause 47.2, or 47.3.2 and the other party fails to attend that meeting, provided that 10 Business Days after the referral of the dispute to the chief executive officers have passed, and
  - ii. that written notice is delivered within six months after an event in Clause 47.3.3(a)(i) occurs (or such longer period as agreed by the parties).
- b) If a notice is not given within the timeframe in Clause 47.3.3(a)(ii), then:
  - i. a party must not refer the relevant Dispute to arbitration or litigation

- ii. a party's failure to comply with Clause 47.3.3(a)(ii) may be pleaded as a bar to the commencement of any arbitration or litigation proceedings in relation to that Dispute, and
- iii. the subject of that Dispute must not be made the subject of further Dispute notice.

#### **47.3.4 Privileged meetings**

All aspects of any meetings held pursuant to Clause 47.2, 47.3.8 or 47.3.9 (or any other conferences between the parties for the purposes of resolving the dispute), except the fact of occurrence, shall be privileged.

#### ***Alternative 1B – issues resolution advisor full contract duration (refer to 47.3.5 to 47.3.8)***

#### **47.3.5 Issues resolution advisor**

Under this alternative, the Issues Resolution Advisor (IRA) shall be engaged upon commencement of the Contract.

If the Principal's Representative, Administrator and Contractor's Representative fail to resolve the dispute within 10 Business Days after the service of a notice of dispute, either the Principal or the Contractor may, by notice in writing to the other party, refer such dispute to the IRA appointed under Clause 49. The dispute shall be referred to the IRA as a condition precedent to the dispute being referred to the delegates of the CEOs.

#### **47.3.6 Meeting of chief executive officers**

If the IRA has not made a binding recommendation under Clause 49.9:

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

shall confer at least once to attempt to resolve the dispute. If a Contract Leadership Team has been established as nominated in Item 9A of Annexure A, the Contract Leadership Team may fulfil the obligations of the chief executive officers of the parties under this Clause.

#### **47.3.7 Referral of dispute**

Either party may, by notice in writing delivered by hand or sent by registered post to the other party, refer such dispute to arbitration or litigation if:

- i. either
  - a) the dispute has not been resolved within 10 Business Days after the referral of the dispute to the chief executive officers of the parties under Clause 47.3.5, or
  - b) a party convenes a meeting under either Clause 47.2, 47.3.5 or 47.3.6 and the other party fails to attend that meeting, provided that 10 Business Days after the referral of the dispute to the chief executive officers have passed, and
- ii. that written notice is delivered within six months after an event in Clause 47.3.7(a)(i) occurs (or such longer period as agreed by the parties).

#### **47.3.8 Privileged meetings**

All aspects of any meetings held pursuant to Clause 47.2, 47.3.5 or 47.3.6 (or any other conferences between the parties for the purposes of resolving the dispute), except the fact of occurrence, shall be privileged.

#### ***Alternative 2 – dispute resolution board (refer to 47.3.9 to 47.3.12)***

#### **47.3.9 Dispute resolution board**

If the Principal's Representative, Administrator and Contractor's Representative fail to resolve the dispute within 10 Business Days after the service of a notice of dispute, either the Principal or the Contractor may, by notice in writing to the other party, refer such dispute to the dispute resolution board (DRB) constituted under Clause 48. The dispute shall be referred to the DRB as a condition precedent to the dispute being referred to the delegates of the CEOs.

#### **47.3.10 Meeting of chief executive officers**

If the DRB has not made a binding recommendation under Clause 48.10:

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

shall confer at least once to attempt to resolve the dispute. If a Contract Leadership Team has been established as nominated in Item 9a of Annexure A, in the alternative, the Contract Leadership Team may fulfil the obligations of the chief executive officers of the parties under this Clause.

#### **47.3.11 Referral of dispute**

Either party may, by notice in writing delivered by hand or sent by registered post to the other party, refer such dispute to arbitration or litigation if:

- i. either
  - a) the dispute has not been resolved within 10 Business Days after the referral of the dispute to the chief executive officers of the parties under Clause 47.3.9, or
  - b) a party convenes a meeting under either Clause 47.2, 47.3.9 or 47.3.10 and the other party fails to attend that meeting, provided that 10 Business Days after the referral of the dispute to the chief executive officers have passed and
- ii. that written notice is delivered within six months after an event in Clause 47.3.11(i) occurs (or such longer period as agreed by the parties).

#### **47.3.12 Privileged meetings**

All aspects of any meetings held pursuant to Clause 47.2, 47.3.9 or 47.3.10 (or any other conferences between the parties for the purposes of resolving the dispute), except the fact of occurrence, shall be privileged.

#### **47.4 Arbitration**

- a) Arbitration shall be effected by a single arbitrator who shall be nominated by the Chairperson for the time being of the Queensland Chapter of the Resolution Institute. Such arbitration shall be held in Queensland.

- b) Unless the parties agree in writing, any person agreed upon by the parties to resolve the dispute pursuant to Clause 47.3 shall not be appointed as an arbitrator, nor may that person be called as a witness by either party in any proceedings.
- c) Notwithstanding Clause 42.9, the arbitrator may award whatever interest the arbitrator considers reasonable.
- d) If one party has overpaid the other, whether pursuant to an Administrator's certificate or not and whether under a mistake of law or fact, the arbitrator may order repayment together with interest.

#### **47.5 Summary or urgent relief**

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

### **48 Dispute Resolution Board**

#### **48.1 Dispute Resolution Board**

This Clause 48 only applies if 'Alternative 2' is selected in Item 43A as the alternative applying for dispute resolution pursuant to Clause 47.

#### **48.2 Establishment and tenure of the Dispute Resolution Board**

- a) Within 10 Business Days after the appointment of the DRB Members in accordance with Clauses 48.5 and 48.6, the Principal and the Contractor shall procure the execution of the DRB Agreement.
- b) The DRB will be established as of the date all the parties to the DRB Agreement execute the DRB Agreement and will continue until the later of:
  - i. 10 Business Days after the date of the Final Certificate under Clause 42.8, or
  - ii. resolution of a dispute the subject of a notice of dispute under Clause 42.8,

subject to the earlier termination of the Contract by either party or termination of the DRB Agreement by the Principal and the Contractor.

#### **48.3 Membership of the Dispute Resolution Board**

The DRB Members will be:

- a) one DRB Member nominated by the Principal
- b) one DRB Member nominated by the Contractor, and
- c) a third DRB Member appointed in accordance with Clause 48.6.

#### **48.4 Dispute Resolution Board Members' criteria and Disclosure Statements**

- a) Unless otherwise agreed in writing by the Principal and the Contractor, all DRB Members shall be experienced in works similar to the Works, interpretation of Contract documents and resolution of construction disputes.

- b) DRB Members shall be neutral, act impartially and be free of any conflict of interest. For the purposes of this Clause 48.4, the term 'DRB Member' also includes that DRB Member's current primary full-time employer and 'involved' means having a contractual relationship with either party to the Contract or any other entity, such as a Subcontractor, design professional or consultant, having a role in relation to the Works.
- c) A person is prohibited from being a DRB Member if the person or DRB Member:
  - i. has an ownership interest in any entity involved in the Contract or a financial interest in the Work Under the Contract, except for payment for services on the DRB
  - ii. was previously employed by, or had financial ties to, any party involved in the Work Under the Contract within a period of two years prior to award of the Contract, except for fee-based consulting services on other projects
  - iii. has had a professional or personal relationship with any key member of any entity involved in the Work Under the Contract which, in the opinion of either party, could suggest partiality, or
  - iv. has had prior involvement in the Work Under the Contract of a nature which, in the opinion of either party, could suggest partiality.
- d) DRB Members shall be replaced if the person:
  - i. is employed or engaged by any entity involved directly in the Work Under the Contract unless the written approval of both parties is given, or
  - ii. discusses during the term of the Contract being employed or engaged by any entity involved in the Work Under the Contract after the Work Under the Contract is completed.

#### **48.5 *Nomination and approval of first two Dispute Resolution Board Members***

- a) The Principal and Contractor shall each nominate a proposed DRB Member and give the nominee's name and Disclosure Statement to the other party within five Business Days after the Date of Acceptance of Tender.
- b) If the nominee is not rejected within seven Business Days after the Date of Acceptance of the Contractor's Tender the nominee is approved.
- c) If a nominee is rejected, the nominating party shall request the Chairperson for the time being of Resolution Institute to nominate a person for appointment to the DRB. The party for whom Resolution Institute nominated the person shall procure and give to the other party a Disclosure Statement for the nominee. The person nominated by Resolution Institute is appointed to the DRB if the person satisfies the criteria in Clause 48.4 and the person's Disclosure Statement has been given to the party other than the party for whom Resolution Institute nominated him or her.

#### **48.6 *Nomination and approval of third Dispute Resolution Board Member***

- a) Within five Business Days after the appointment of the first two DRB Member, the parties shall request the first two DRB Members to nominate a third DRB Member by giving to the Principal and the Contractor the third nominee's name and Disclosure Statement.
- b) If the Principal or the Contractor do not notify the other party and the appointed DRB Members within five Business Days of receiving the name and Disclosure Statement of why the person

nominated does not satisfy the criteria in Clause 48.4 the person nominated is deemed to be appointed a DRB Member.

- c) If the first two appointed DRB Members cannot agree on the third DRB Member, or either or both of the Principal or Contractor reject the nominee of the DRB Members, the first DRB Member appointed by the Principal under Clause 48.5 shall request Resolution Institute to nominate a person for appointment to the DRB. The DRB Members shall procure and give to the parties a Disclosure Statement for the nominee. If that person satisfies the criteria in Clause 48.4 and the person's Disclosure Statement has been given to the parties the person nominated by Resolution Institute is deemed to be appointed a DRB Member.

#### **48.7 Replacement**

If a DRB Member becomes incapable of performing its functions on the DRB or does not continue to satisfy all of the criteria in Clause 48.4, or engages in any prohibited activity the party on whose behalf the DRB Member was appointed, or if the DRB Member was nominated by the DRB Members under Clause 48.6, the remaining DRB Members shall nominate a replacement DRB Member in accordance with the Contract acceptable to the remaining DRB Members and the parties.

The parties shall request the remaining DRB Members to procure the execution of a further DRB Agreement by the new DRB Member and remaining DRB Members.

#### **48.8 Meeting**

- a) Each party shall execute and shall ensure that the DRB Member nominated by the party or by Resolution Institute on the party's behalf, executes the DRB Agreement at the first DRB meeting.
- b) The first DRB meeting shall be held at the place nominated by the Principal. During the first meeting, the DRB shall confirm the Principles of Process in Part 2 to the DRB Agreement for the conduct of its routine Site visits and its meetings on disputes. The conduct of the business of the DRB shall be based on the provisions of the Contract but procedures must be adaptable to changing the situations and, if requested by the Principal and the Contractor, the DRB shall initiate new procedures or modified procedures.
- c) The DRB will visit the Site and meet with representatives of the parties at periodic intervals and at other times requested by the parties.
- d) Each meeting with representatives of the parties shall consist of an informal discussion followed by a field observation of the progress of the Work Under the Contract. The discussion and field observation shall be attended by representatives of the Principal and the Contractor.

#### **48.9 Review of Disputes**

If a dispute is referred to the DRB under Clause 47.3, the DRB shall consider that dispute in accordance with the Principles of Process included in the DRB Agreement and provide its written recommendation to the parties. A recommendation shall be in writing, shall contain reasons for the recommendation and, where it is not a unanimous recommendation, shall include the recommendations of the majority and the minority of the DRB Members.

#### **48.10 Recommendations**

- a) For the purposes of this Clause 48.10 and Clauses 48.9 and 48.11, a recommendation includes a recommendation of at least two of the DRB Members.



- b) A recommendation of the DRB shall be binding on both parties only if:
  - i. it is a recommendation in relation to a Claim for the payment of an amount of \$1 000 000 or less (excluding GST), or
  - ii. it is a recommendation in any other case and within 10 Business Days of receiving the DRB's recommendation in writing, or such longer time as is specified by the DRB in providing its recommendation in writing, either the Principal or the Contractor fail to provide written notice to the other and to the DRB of the rejection of the recommendation.

#### **48.11 Admissibility**

If the DRB's recommendation is not binding on both parties, the DRB recommendation and any recommendation of a single DRB Member may be admitted to establish:

- a) that the DRB considered the dispute
- b) the qualification of the DRB Members, and
- c) the DRB recommendation that resulted from the process

to the extent permitted by law in any subsequent dispute resolution proceedings or forum.

#### **48.12 Payment**

- a) The fees and expenses of all three DRB Members shall be shared equally by the Principal and the Contractor.
- b) The Contractor shall pay the invoices of the DRB Members after approval by the Principal and include in payment Claims under Clause 42.1, fifty per cent of all invoices paid in accordance with this Clause 48.12(b).
- c) The Contractor is not entitled to any payment for the participation of anyone on its behalf or for whom it is responsible, including any Subcontractor or designer in the DRB process.

### **49 Issue Resolution Advisor**

#### **49.1 Issues Resolution Advisor**

This Clause 49 only applies if 'Alternative 1A or 1B' is selected in Item 43A as the alternative applying for dispute resolution pursuant to Clause 47.

#### **49.2 Establishment and tenure of the Issues Resolution Advisor**

- a) Within 10 Business Days after the appointment of the IRA in accordance with Clause 49.5, the Principal and the Contractor shall procure the execution of the IRA Agreement.
- b) The IRA will be established as of the date all the parties to the IRA Agreement execute the IRA Agreement. Where Alternative 1A of Item 43A applies, the appointment of the IRA will continue until 10 Business Days after the dispute has been resolved and the outcome formally agreed by the parties. Where Alternative 1B of Annexure A applies the appointment of the IRA will continue until 10 Business Days after the date of the Final Certificate under Clause 42.8. In either case, the establishment of the IRA is subject to the earlier termination of the Contract by either party, or termination of the IRA Agreement by the Principal and the Contractor.
- c) It is expected that all issues will be resolved by the Date of Practical Completion.

#### **49.3 Selection of Issues Resolution Advisor**

The IRA will be a person appointed in accordance with Clause 49.5.

#### **49.4 Issues Resolution Advisor criteria and Disclosure Statements**

- a) Unless otherwise agreed in writing by the Principal and the Contractor, the IRA shall be experienced in works similar to the Works, interpretation of Contract documents and resolution of construction disputes.
- b) The IRA shall have expertise relevant to the nature of the dispute, or alternatively engage appropriate specialist advisors.
- c) The IRA shall be neutral, act impartially and be free of any conflict of interest. For the purposes of this Clause 49.4, the term 'IRA' also includes the IRA's current primary full-time employer, and 'involved' means having a contractual relationship with either party to the Contract, or any other entity, such as a Subcontractor, design professional or consultant having a role in relation to the Works.
- d) A person is prohibited from being an IRA if the person or IRA:
  - i. has an ownership interest in any entity involved in the Contract, or a financial interest in the Work Under the Contract except for payment for services on the IRA
  - ii. was previously employed by, or had financial ties to, any party involved in the Work Under the Contract within a period of two years prior to award of the Contract, except for fee-based consulting services on other projects
  - iii. has had a professional or personal relationship with any key member of any entity involved in the Work Under the Contract which, in the opinion of either party, could suggest partiality, or
  - iv. has had prior involvement in the Work Under the Contract of a nature which, in the opinion of either party, could suggest partiality.
- e) The IRA shall be replaced if the person:
  - i. is employed or engaged by any entity involved in the Work Under the Contract unless the written approval of both parties is given, or
  - ii. discusses during the term of the Contract being employed or engaged by any entity involved in the Work Under the Contract after the Work Under the Contract is completed.

#### **49.5 Nomination and approval of Issues Resolution Advisor**

- a) The Principal shall nominate a minimum of three proposed IRAs and give the nominees' names and Disclosure Statement to the Contractor within five Business Days after a party requests the engagement of an IRA under Alternative 1A of Item 43A or five Business Days after the Date of Acceptance of Tender under Alternative 1B of Item 34A. The Contractor shall pick a person as the IRA from the list of nominees, within five Business Days of receiving the name and Disclosure Statement.
- b) The IRA chosen shall be from the Transport and Main Roads Infrastructure Building and Construction Panel (IBCP) – DRA03 Dispute Resolution Advisor LO3 .

**49.6 Replacement**

If the IRA becomes incapable of performing its functions or does not continue to satisfy all of the criteria in Clause 49.4, or engages in any prohibited activity the party on whose behalf the IRA was appointed, or if the IRA was nominated under Clause 49.5, the Principal shall nominate a replacement IRA in accordance with the Contract acceptable to the Contractor. The parties shall request to procure the execution of a further IRA Agreement by the new IRA.

**49.7 Meeting**

- a) Clauses 49.7 c) to e) are applicable to the engagement of the IRA under Alternative 1B of Item 43A.
- b) Each party shall execute and shall ensure that the IRA nominated by Transport and Main Roads on the parties' behalf, executes the IRA Agreement at the first IRA meeting.
- c) The first IRA meeting shall be held at the place nominated by the Principal. During the first meeting, the IRA shall confirm the principles of process in the IRA Agreement for the conduct of its routine Site visits and its meetings on disputes. The conduct of the business of the IRA shall be based on the provisions of the Contract but procedures must be adaptable to changing the situations and, if requested by the Principal and the Contractor, the IRA shall initiate new procedures or modified procedures.
- d) The IRA will visit the Site and meet with representatives of the parties at periodic intervals and at other times requested by the parties. Unless noted otherwise, the IRA shall attend all monthly Site meetings.
- e) Each meeting with representatives of the parties shall consist of an informal discussion followed by a field observation of the progress of the Work Under the Contract. The discussion and field observation shall be attended by representatives of the Principal and the Contractor.
- f) All communications in relation to IRA matters outside of meetings shall be copied to all parties to ensure the Principal, Contractor and IRA remain fully informed.
- g) The IRA will be provided with:
  - i. a copy of the signed Contract documentation, and
  - ii. copies of the following documents:
    - a) monthly reports
    - b) minutes of meetings, and
    - c) any Other Documents needed by the IRA to perform the role.

**49.8 Review of disputes**

If a dispute is referred to the IRA under Clause 47.3, the IRA shall consider that Dispute in accordance with the Principles of Process included in the IRA Agreement and provide its written recommendation to the parties. A recommendation shall be in writing and contain reasons for the recommendation.

**49.9 Recommendations**

A recommendation of the IRA shall be binding on both parties only if:

- a) it is a recommendation in relation to a Claim for the payment of an amount of \$500 000 or less (excluding GST), or

- b) it is a recommendation in any other case and within 10 Business Days of receiving the IRA's recommendation in writing, or such longer time as is specified by the IRA in providing its recommendation in writing, either the Principal or the Contractor fail to provide written notice to the other and to the IRA of rejection of the recommendation.

#### **49.10 Admissibility**

If the IRA's recommendation is not binding on both parties, the IRA recommendation may be admitted to establish:

- a) that the IRA considered the Dispute
- b) the qualification of the IRA, and
- c) the IRA recommendation that resulted from the process

to the extent permitted by law in any subsequent dispute resolution proceedings or forum.

#### **49.11 Payment**

- a) The fees and expenses of the IRA shall be shared equally by the Principal and the Contractor.
- b) The Contractor shall pay the invoices of the IRA after approval by the Principal and include in payment Claims under Clause 42.1, 50 per cent of all invoices paid in accordance with this Clause 49.11(b).
- c) The Contractor is not entitled to any payment for the participation of anyone on its behalf or for whom it is responsible, including any Subcontractor or designer in the IRA process.

### **50 General**

#### **50.1 Warranties by joint venturers**

Where the Contractor is two or more legal entities, the Contract shall be binding upon them jointly and severally and:

- a) each joint venture warrants to the Principal:
  - i. the joint venturers have entered into a valid and binding joint venture agreement, a copy of which has been provided to the Principal before the Date of Acceptance of Tender
  - ii. it will promptly provide to the Principal a copy of any amendment to the joint venture agreement
  - iii. it will fully comply with the terms of the joint venture agreement, and
  - iv. it will give prompt notice to the Principal of any dispute between the joint venturers, of which formal notice has been given by one to the other
- b) the receipt or review of, or any comment on, the joint venture agreement by the Principal shall not constitute a representation by the Principal that the agreement is suitable, workable or consistent with the terms of the Contract and shall not relieve the Contractor from the performance of, or compliance with, any term of this Contract.

**50.2 Waiver of conditions**

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

**99 Additional clauses**

**99.1 Clause Bank (C7836.TIC)**

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

