*[Any guidance text provided to help with completion of this Form will be shown in green italic font and in square brackets. To delete the guidance text, triple click mouse on the guidance text then press ‘Delete’]*

# Details

|  |  |
| --- | --- |
| The deed is made on | Type here day of Type here 202Type here |
| *[Insert date from signing page that last party signs this deed]* |
| **between** |  |
| Name | The State of Queensland acting through the Department of Transport and Main Roads | **ACN** | 39 407 690 291 |
| ‘the Principal’ |  |
| of |
| Address | Type here |
| **and** |  |
| Company name | Type here | **ACN** | Type here |
| *[insert full name of Contractor]* |  |
| of |  |  |  |
| Address | Type here |
| ‘the Contractor’ |

# Parties

|  |  |
| --- | --- |
| **Name** | Type here*[insert full name of Contractor]* |
| **ABN / ACN** | Type here*[insert ABN/ACN #]* |
| **Short form name** | **Contractor** |
| **Notice details** | Type here*[insert address details]* |
|  |
| **Name** | The State of Queensland acting through the Department of Transport and Main Roads |
| **ABN / ACN** | 39 407 690 291 |
| **Short form name** | **Principal** |
| **Notice details** | Type here*[insert address details]* |

# Background

|  |  |
| --- | --- |
| A | The Contractor and the Principal are parties to the Transport Infrastructure Contract (**TIC**) Construct Only (**CO**) Contract Number Type here dated Type here (**Agreement**). *[insert Date of Award]* |
| B | The parties have agreed to vary the terms of the Agreement in accordance with this deed. |

# Agreed terms

# Defined terms and interpretation

## Defined terms

1. Words which begin with a capital letter and are not defined in this deed but are defined in the Agreement have the same meaning in this deed as in the Agreement.
2. In this deed, Effective Date means the date of this deed.

## Interpretation

In this deed, unless the contrary intention appears, the principles of interpretation set out in Clause 2.2 of the Agreement shall apply to the interpretation of this deed.

# Variation and its effect

1. The Agreement as executed before the Effective Date has full effect up to but not including the Effective Date in respect of all events occurring up to but not including the Effective Date.
2. On and from the Effective Date:
3. the Agreement is varied by the amendments at Schedule 1 to Annexure B – Conditions of Contract C7832.TIC of the Agreement; and
4. the Agreement as varied by this deed has full effect from the Effective Date.
5. If there is an inconsistency between this deed and the Agreement as varied by this deed, this deed prevails.

# Consent and acknowledgment

Each party consents to the amendments made to the Agreement by this deed and acknowledges that, other than pursuant to Clause 2, their respective liabilities and obligations to each other are not released, reduced or diminished as a result of the amendments pursuant to this deed.

# General

## Further assurance

Each party must promptly at its own cost do all things (including executing and, if necessary, delivering all documents) necessary or desirable to give full effect to this deed.

## Execution of counterparts

This deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

## Severability

If anything in the Agreement as amended by this deed is unenforceable, illegal or void then it is severed and the rest of the Agreement as amended by this deed remains in force.

## Waiver

1. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
2. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
3. A waiver is not effective unless it is in writing.
4. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## Variation

An amendment or variation to this deed is not effective unless it is in writing and signed by the Parties.

## Costs and outlays

Each Party must pay its own costs and outlays connected with the negotiation, preparation and execution of this deed.

## Governing law and jurisdiction

1. The laws of Queensland govern this deed.
2. Each Party unconditionally and irrevocably submits to the non‑exclusive jurisdiction of the courts of Queensland.

## Entire agreement

This deed contains the entire Agreement between the Parties as to the subject matter of this deed.

## Confidentiality

The terms of this deed are confidential. A Party must not disclose or permit to be disclosed either directly or indirectly the terms of this deed or details of any discussions or negotiations between the Parties in relation to this deed except:

1. with the express written consent of each other Party;
2. to the extent required by law; or
3. on a confidential basis to any of their insurers or professional advisers.

## Dispute resolution

A Party claiming that a dispute has arisen out of or in connection with this deed must comply with the provisions of Clause 47 of the Agreement in relation to that dispute.

## Notices

A notice, approval, certificate, consent or other communication in connection with this Deed is to be given in accordance with Clause 7 of the Agreement.

# Schedule 1 – Amendments to Annexure B (Commercial Framework)

Clause 5.3 of Annexure B – Conditions of Contract C7832.TIC is varied in accordance with the following markings of additional words (underlined):

**5.3 Other adjustments**

1. Where the original Date for Practical Completion specified in the Tender Documents is greater than 90 days after the Date of Acceptance of Tender, in addition to adjustments under Clause 5.2, but subject to Clause 5.3(e), payments to the Contractor shall be subject to a cost adjustment to reflect variations in the cost of labour and materials in accordance with the following formula:

*H = (0.85×(G−F)×E) / F*

where:

E = the value of the *monthly* payment certificate subject to rise and fall less:

* + any variations or payments made under a Provisional Sum Item, that were based on actual cost or current prices and for which rise and fall payments do not apply;
	+ any Daywork assessed using plant for which the Daywork rates were established during the Contract; and
	+ the assessed value of bitumen used in sprayed seals and asphalt for which a cost adjustment is payable under Clause 5.2.

F = the value of the Index for the quarter prior to the month in which the Contractor submitted its final pricing.

G = the value of the Index for the quarter prior to the month during which the work under the Contract is performed.

H = the applicable cost adjustment.

1. For the purposes of this Clause 5.3 of the Commercial Framework, the 'Index' is the index of road and bridge construction (Australia) in Table 17 of catalogue 6427.0 (Producer Price Indexes, Australia) published quarterly by the Australian Bureau of Statistics.
2. If at any time the Index is discontinued or modified, the Administrator shall request the Australian Bureau of Statistics to nominate the index or Authority which in its opinion is the most practical for the purposes of measuring any variation in costs during the performance of the Contract. The index or Authority nominated by the Australian Bureau of Statistics shall be adopted for the purposes of making the calculation under this Clause. If the Australian Bureau of Statistics fails to nominate an index or Authority which is practical for the purpose of measuring any variation in costs, then the amount of the cost adjustment shall be the amount determined by the Administrator acting reasonably.
3. For the purposes of this Clause 5.3 of the Commercial Framework, the date on which the Contractor submitted its final pricing means:
4. the date the Contractor's Tender was lodged; or
5. where the Contractor submitted any revised pricing after lodgement of the Tender which differed from the pricing included in the Tender, means the date that the final agreed revised pricing was submitted by the Contractor.
6. Where the original Date for Practical Completion specified in the Tender Documents is greater than 90 days but less than [365 / 730] days after the Date of Acceptance of Tender, the adjustment in Clause 5.3(a) of this Commercial Framework will only apply to Work Under the Contract which is performed from the Date of Contract Variation (Rise and Fall) until [30 November 2023 (inclusive)], unless extended by the Administrator in its absolute discretion.

*[The 365 or 730 day option will depend on whether the Annexure B used has a 365 or 730 day threshold for rise and fall]*

1. For the purposes of Clause 5.3(e) of the Commercial Framework, ***Date of Contract Variation (Rise and Fall)*** means the date of the deed of variation to the Contract to incorporate this clause 5.3 into the Commercial Framework.

# Signing page

EXECUTED as a deed.

|  |
| --- |
| Execution by the Contractor |
| **Signed, sealed and delivered for and on behalf of** |
| Name of Authorised Party (1) for the Contractor | Position |
| Type here | Type here |
| Name of Authorised Party (2) for the Contractor | Position |
| Type here | Type here |
| Signature (1) | Date | The Company Seal(where applicable) |
|  | Type here |
| Signature (2) | Date |  |
|  | Type here |
| **who certified his/her/their authorisation to execute this Deed in the presence of** |
| Name of witness | Date witnessed |
| Type here | Type here |
| Witness signature |
|  |
| The Department of Transport and Main Roads collects personal information on this form so that you may execute the Contract for and on behalf of the Contractor. The information on this form is accessible by authorised departmental officers and third parties engaged to administer the Contract or resolve disputes who will not disclose your personal details to a third party without your consent unless required to do so by law. |

|  |
| --- |
| Execution by the Principal |
| **Signed, sealed and delivered for and on behalf of the State of Queensland acting through the Department of Transport and Main Roads by** |
| Name | Position |
| Type here | Type here |
| Signature | Date |
| Type here | Type here |
| **as delegate of the Director-General of the Department of Transport and Main Roads in the presence of** |
| Witness signature | Date |
|  | Type here |