



# Term Maintenance Contract

## Volume 2 of 3 – Conditions of Contract

Project Name

Project Number

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**Guide note: Delete this guide note**

***The Conditions of Contract have been developed by Contract Services, Department of Energy and Public Works, but require completion by the project team to meet project specific requirements. Where this document is being used for a Queensland Government maintenance project, Contract Services should be consulted in accordance with the Building Policy Framework.***

## Contents

### Volume 2 of 3 – Conditions of Contract

<b>CONDITIONS OF CONTRACT</b>	<b>4</b>
1. DEFINED TERMS AND INTERPRETATION	4
2. NATURE OF THE CONTRACT	8
3. PRINCIPAL'S OPTION TO EXTEND THE TERM	10
4. CONTRACTOR'S WARRANTIES	11
5. CONTRACT MANAGEMENT	11
6. DOCUMENTS	12
7. ASSIGNMENT AND SUBCONTRACTING	12
8. FACILITY	17
9. ESTABLISHMENT	18
10. UNPLANNED MAINTENANCE WORK	18
11. ANCILLARY WORK	19
12. EMERGENCY EVENTS	20
13. MATERIALS, LABOUR AND EQUIPMENT	21
14. DEFECTS	23
15. PLANNING AND REPORTING (APPLICABLE IF REQUIRED BY THE ANNEXURE)	24
16. WORK HEALTH AND SAFETY AND QUALITY ASSURANCE	26
17. VARIATIONS	28
18. SUSPENSION	30
19. HANDOVER (APPLICABLE IF THE ANNEXURE STATES THERE IS A HANDOVER PERIOD)	30
20. PROTECTION AND MAKE GOOD DAMAGE	31
21. INDEMNITY	32
22. INSURANCE	32
23. PAYMENT	33
24. PAYMENT OF WORKERS AND SUBCONTRACTORS	35
25. INTELLECTUAL PROPERTY	36
26. STATUTORY REQUIREMENTS AND FACILITY REQUIREMENTS	37
27. CONFIDENTIAL INFORMATION	38
28. ANTI-COMPETITIVE CONDUCT, CONFLICT OF INTEREST AND CRIMINAL ORGANISATIONS	39
29. INFORMATION PRIVACY	40
30. QUEENSLAND GOVERNMENT POLICIES	41
31. MODERN SLAVERY	43
32. GOODS AND SERVICES TAX (GST) AND PAY AS YOU GO (PAYG)	44
33. DEFAULT	46

34.	NOTIFICATION OF CLAIMS	49
35.	DISPUTE RESOLUTION	50
36.	NOTICES	51
37.	MISCELLANEOUS	52
	<b>ANNEXURE</b>	<b>53</b>
	<b>SCHEDULES</b>	<b>56</b>
	SCHEDULE 1 – REQUEST FOR APPROVAL TO SUBCONTRACT	56
	SCHEDULE 2 – SUBCONTRACTOR DEED POLL	58
	SCHEDULE 3 – TRAINING POLICY PRIVACY STATEMENT	60
	SCHEDULE 4 – SITE PERSONNEL REGISTER	61
	SCHEDULE 4 (CONT'D) – SITE PERSONNEL REGISTER SUMMARY	62
	SCHEDULE 5 – STATUTORY DECLARATION BY CONTRACTOR	63
	SCHEDULE 6 – STATUTORY DECLARATION BY SUBCONTRACTOR	66
	SCHEDULE 7 – VARIATIONS IN RATES OF EXCHANGE AND DUTY	68

## CONDITIONS OF CONTRACT

### 1. DEFINED TERMS AND INTERPRETATION

#### 1.1. Definitions

The following definitions apply to the Contract:

**Annual Work Program (AWP)** means the annual work program submitted by the Contractor under clause 15.3 and approved by the Contract Manager under clause 15.4;

**BIF Act** means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) and the regulations made under or in respect of that Act;

**Business Day** means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place where the Facility is located; or
- (c) a day in the period from 22 December in a particular year to 10 January in the following year, both days inclusive;

**Claim** includes any claim, action, demand, suit or proceeding (including by way of contribution or indemnity), whether for an increase in the Contract Price, the payment of money (including a debt, damages or additional costs or expenses) or any other relief or remedy, and whether made:

- (a) under, arising out of, or in any way in connection with, the Contract (including any direction of the Contract Manager);
- (b) arising out of, or in any way in connection with, the Contractor's Activities or the Facility or either party's conduct before the date of the Contract or during the performance of the Contract; or
- (c) otherwise at law, including:
  - (i) under any statute;
  - (ii) in tort (for negligence or otherwise, including negligent misrepresentation); or
  - (iii) for restitution (including on a quantum meruit or unjust enrichment basis);

**Confidential Information** includes drawings, manuals, specifications and other information created or supplied by either the Contractor or the Principal in connection with the Contract or any other information of which the Contractor becomes aware as a result of its performance of the Contractor's Activities or its access to the Facility which is not in the public domain including information which:

- (a) is by its nature confidential;
- (b) is communicated by the Principal to the Contractor as confidential;
- (c) the Contractor knows or ought to know is confidential;
- (d) is comprised in or relates to any intellectual property rights of the Principal;
- (e) relates to the internal management and structure of the Principal, or the personnel, policies, practices, procedures or strategies of the Principal;
- (f) is of any actual or potential commercial value to the Principal or to the person or corporation which supplied that information; or
- (g) is in the Contractor's power, possession or control and relates to the Principal;

**Contract** means the agreement between the Principal and the Contractor;

**Contract Manager** means the representative of the Principal referred to in Item 3 of the Annexure, or such other person appointed by the Principal from time to time by written notice to the Contractor under clause 5.1(a);

**Contract Materials** means all items, materials, documentation (including any plans, drawings, manuals and specifications), software and products produced, created or developed for the Principal by or on behalf of the Contractor as part of providing the Contractor's Activities for the purposes of, or in anticipation of, this Contract, irrespective of whether they are produced, created or developed before or after the date of the Contract;

**Contract Price** means the amount payable in accordance with clause 23 and calculated in accordance with the Pricing Schedule, as adjusted in accordance with the Contract;

**Contractor** means the person bound by the Contract to perform and complete the Contractor's Activities;

**Contractor's Activities** means all things or tasks which the Contractor is required to do to comply with its Contract obligations, including Establishment Work, Recurrent Maintenance Work, Unplanned Maintenance Work, and the performance of Variations, Handover Work and Rectification Work;

**Contractor's Background IP** means any intellectual property rights owned by or licensed to the Contractor as at the Date of Acceptance of Tender or created or acquired by the Contractor in the future other than for the primary purpose of the provision of the Contractor's Activities under this Contract;

**Contractor's Representative** means the person appointed by the Contractor from time to time by written notice to the Principal under clause 5.3;

**Contractor's Tender** means the offer to carry out the Contractor's Activities submitted by the Contractor and accepted by the Principal;

**Date of Acceptance of Tender** means the date written on the Principal's letter of acceptance of the Contractor's Tender;

**Defect** means any aspect of the Contractor's Activities which is not in accordance with the Contract (including any defect in services, materials or workmanship or any omission from the Contractor's Activities);

**Emergency** means the existence of circumstances where there is a potential or actual risk or threat to:

- (a) public interest or safety; or
- (b) the structural integrity or safety of any part of the Facility or any asset of the Facility Operator or of the Principal at the Facility,

or the existence of a circumstance where it may be necessary for the Principal or Facility Operator to take immediate action to discharge its statutory duties or powers;

**Establishment Period** means the period stated at Item 5 of the Annexure commencing on the Date of Acceptance of Tender;

**Establishment Work** has the meaning given to it by the Maintenance Brief;

**Ethical Supplier Mandate** means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" or any policy that replaces that policy;

**Ethical Supplier Threshold** means the Ethical Supplier Threshold described in the Queensland Procurement Policy;

**Expiry Date** means:

- (a) the Initial Expiry Date; or
- (b) if the Principal exercises its option pursuant to clause 3.3 of the Contract, the date notified by the Principal as the expiry date in the notice given under that clause;

**Facility** means the place or places including buildings, improvements, chattels and other things comprising the place or places where the Contractor's Activities are to be performed and includes, where the context so requires, anything in, on or about the Facility;

**Facility Operator** means the facility operator stated at Item 6 of the Annexure as the Facility Operator as renamed, reconstituted or replaced from time to time or any other entity to whom statutory powers and functions for operating the Facility are transferred, from time to time and notified in writing to the Contractor;

**Facility Requirements** means any standard, code, specification, guide, manual, policy or procedure of the Principal with which the Contract requires the Contractor or the Contractor's Activities to comply, that is:

- (a) from time to time notified or made available by the Principal to the Contractor; or
- (b) referred to in the Maintenance Brief;

**Good Industry Practice** means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a reputable and prudent person in providing maintenance activities similar to the Contractor's obligations and under conditions comparable to those applicable to the Contractor's obligations;
- (b) compliance with applicable standards and codes, being the standards and codes specified in this Contract or, if this Contract does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied in the circumstances; and
- (c) compliance with applicable Statutory Requirements;

**Government Department or Instrumentality** means:

- (a) any government department responsible for compliance with government policy, including:
  - (i) the Queensland Government Procurement Compliance Branch within the Procurement Division of the Department of Energy and Public Works;
  - (ii) the Queensland Apprenticeship and Traineeship Office within the Department of Employment, Small Business and Training; and
  - (iii) Local Content with the Department of State Development, Infrastructure, Local Government and Planning; and
- (b) any government regulator, including:
  - (i) the Queensland Building and Construction Commission;
  - (ii) the Office of Industrial Relations;
  - (iii) the Fair Work Commission;
  - (iv) the Australian Taxation Office;
  - (v) the Fair Work Ombudsman; and
  - (vi) the Office of the Federal Safety Commissioner;

**Handover Period** means, if the Annexure states that there is a Handover Period, the period referred to in Item 7 of the Annexure;

**Handover Work** means the tasks to be performed by the Contractor pursuant to the Handover Work Management Plan;

**Handover Work Management Plan** means the plan to be prepared by the Contractor in accordance with clause 19.5;

**Initial Expiry Date** means the date or expiry of the duration stated at Item 8 of the Annexure;

**Letter of Acceptance** means the letter issued by the Principal to the Contractor accepting the Contractor's Tender;

**Local Benefits Test** means the local benefits test described in the Queensland Procurement Policy;

**Maintenance Brief** means the document that describes the requirements of the Principal and the Facility Operator in respect of maintenance of the Facility during the Term included in the Contract.

**Outgoing Contractor** means each maintenance contractor so described in Item 10 of the Annexure;

**Pricing Schedule** means the document identified as the pricing schedule in the Contractor's Tender;

**Principal** means the principal stated at Item 1 of the Annexure as the Principal;

**Principal Supplied Material** means materials, plant, equipment, tools, supplies and other items described in the Brief which are supplied or made available to the Contractor by the Principal for incorporation into or use in the maintenance of the Facility;

**QGP Compliance Branch** means the State of Queensland's Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works and any successor administrative unit;

**Queensland Procurement Policy** means the Queensland Government policy titled "Queensland Procurement Policy" or any policy which replaces that policy;

**Rectification Work** means the work which is necessary to remedy a Defect, including the performance or reperformance of services, and the supply of replacement materials or parts;

**Recurrent Maintenance Work** has the meaning given to it by the Maintenance Brief (including the provision of all necessary or incidental labour, equipment, materials, services and other things);

**SAMP** means the strategic asset management plan approved by the Contract Manager under clause 15.2 of the Contract or regarded under clause 15.2(c) to be the strategic asset management plan;

**Selected Subcontractor** means a subcontractor identified in Item 9 of the Annexure, to which the Contractor must subcontract the particular work stipulated;

**Site Personnel Register** has the meaning given in clause 8.3;

**Statutory Requirements** includes:

- (a) Acts of the Commonwealth;
- (b) Acts of the State of Queensland; and
- (c) ordinances, regulations, by laws, orders and proclamations under the Acts referred to in paragraphs (a) and (b) above;
- (d) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the performance of the Contractor's Activities; and
- (e) fees and charges payable in connection with the foregoing;

**Successor Contractor** means the entity that will perform all or any part of the Contractor's Activities after the expiry of the Term;

**Supplier Code of Conduct** means the Queensland Government Code titled "Queensland Government Supplier Code of Conduct" or any code that replaces that code;

**Term** means the period commencing on the Date of Acceptance of Tender and continuing until the Expiry Date, unless terminated earlier in accordance with the Contract;

**Unplanned Maintenance Work** means any maintenance and minor work (including the provision of all necessary or incidental labour, equipment, materials, services and other things) required to be carried out which is not:

- (a) Recurrent Maintenance Work; or
- (b) work required to be carried out by the Contractor as Rectification Work in accordance with clause 10; and

**Variation** means, unless otherwise stated in the Contract, any change to the Contractor's Activities including any addition, increase, decrease, omission, deletion or removal to or from the Contractor's Activities. For the avoidance of doubt, the direction of Unplanned Maintenance Work will not, in itself, constitute a Variation.

## 1.2. Interpretation

- (a) In addition to the definitions at clause 1.1, some terms, specific to a clause, are defined in that clause.
- (b) The clause headings in the Contract shall not form part of the Contract and shall not be used in the interpretation of the Contract.
- (c) In the Contract, unless the context indicates a contrary intention:
  - (i) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
  - (ii) references to a person include an individual, firm or a body, corporate or unincorporated;
  - (iii) references to a schedule shall be read as references to a schedule to these Conditions of Contract for Maintenance Work;
  - (iv) measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth);
  - (v) prices are in Australian currency and payments shall be made in Australian currency at the place stated in Item 11 of the Annexure. If nothing is stated, Brisbane, Queensland;
  - (vi) the words "include", "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
  - (vii) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it; and
  - (viii) if any party to this Contract consists of one or more persons, this Contract shall bind such persons and their respective executors, administrators, successors (in the case of the Contractor) and permitted assigns (in the case of the Principal) jointly and severally, and this Contract must be read and construed accordingly.

## 2. NATURE OF THE CONTRACT

### 2.1. Contractor's primary obligation

The Contractor must carry out the Contractor's Activities during the Term in accordance with the Contract.

### 2.2. Principal's primary obligation

In consideration of the Contractor performing the Contractor's Activities, the Principal will pay the Contractor the Contract Price in accordance with the Contract.



### 2.3. All work included

Subject to any express term of the Contract to the contrary:

- (a) the Contractor must, without adjustment to the rates and prices in the Pricing Schedule, provide all services, work, labour, materials, equipment and plant necessary for the performance of the Contractor's Activities, whether or not the services, work, labour, materials, equipment and plant are expressly mentioned in this Contract or were anticipated by the Contractor at the date of the Contract; and
- (b) those things referred to in clause 2.3(a) must be undertaken and provided by the Contractor at its own cost and will not constitute a Variation or otherwise entitle the Contractor to make any Claim for additional payment.

### 2.4. Discrepancies

- (a) The documents forming the Contract are mutually explanatory and anything contained in one but not in another is equally binding as if contained in all.
- (b) If the Contractor discovers any ambiguity or discrepancy in any document forming the Contract, it must notify the Contract Manager in writing as soon as practicable. In the event of an ambiguity or discrepancy, the Contract Manager will direct the Contractor as to the interpretation to be followed in carrying out the Contractor's Activities. If the direction causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, then the extra or reduced costs necessarily and reasonably incurred or saved by the Contractor in complying with the change, as valued by the Contract Manager under clause 17.3, will be added to or deducted from the Contract Price.

### 2.5. Variations in the rates of exchange and duty

- (a) Subject to clause 2.5(b), if it is shown to the satisfaction of the Contract Manager:
  - (i) that the Contractor has placed its orders for any materials, machinery, or other goods required to be imported from overseas sources, in time to achieve a rate of progress satisfactory to the Contract Manager, and
  - (ii) that at the time of the Contractor's payment of an invoice for any materials, machinery, or other goods a difference has occurred in comparison to the price obtained and included in the tender of such materials, machinery, or other goods, which difference is solely attributable to an alteration in the rates of exchange or duty,

the value of such difference shall, upon application in writing to the Contract Manager by the Contractor or upon notification in writing to the Contractor by the Contract Manager, be taken into account in determining the Contract Price. The value of such difference shall be calculated using the method illustrated in the entire example calculation included in Schedule 7.

- (b) For the purposes of this clause 2.5 and the example calculation included in Schedule 7, the evaluation of such difference shall be based upon:
  - (i) the selling exchange rate for the appropriate foreign currency as published by the Reserve Bank of Australia at the closing of business on the 14th day prior to the closing of tenders;
  - (ii) the selling exchange rate for the appropriate foreign currency as published by the Reserve Bank of Australia as applied at the time of payment of the invoice by the Contractor for the material, machinery, or other goods;
  - (iii) the rate of duty payable at the closing of business on the 14th day prior to the closing of tenders, and

- (iv) the rate of duty paid at the time of payment of the invoice by the Contractor for the material, machinery, or other goods.
- (c) In the case of an application to the Contract Manager by the Contractor, the provisions of clause 2.5 shall apply only to those goods that have been listed by the Contractor in a notice using the form in Schedule 7, which is properly completed and submitted to the Contract Manager within 10 business days after the Date of Acceptance of Tender, or, in the case of goods required by a variation to the Contract, to those listed by the Contractor in a notice using the form in Schedule 7 which is properly completed and submitted at the time of submission of the Contractor's price for the variation.

### **3. PRINCIPAL'S OPTION TO EXTEND THE TERM**

#### **3.1. First notice**

No later than the expiry of the time stated Item 12 of the Annexure, the Principal may, in its absolute discretion, and without being under any obligation to give a notice under this clause 3.1, give the Contractor a written notice:

- (a) stating that it may exercise its right to extend the Term beyond the Initial Expiry Date until a nominated date, which may be any date within the period stated in Item 13 of the Annexure;
- (b) requiring the Contractor to submit to the Principal:
  - (i) its proposed Contract Price for the period of any extension to the Term; and
  - (ii) its proposed dates of adjustment and formula for adjustment to the Contract Price during the period of any extension to the Term.

#### **3.2. Contractor's submission**

- (a) Within the period stated in Item 14 of the Annexure, after the receipt of a notice from the Principal under clause 3.1, the Contractor must either submit to the Principal a proposal setting out those things referred to in clause 3.1(b) or notify the Principal, in writing, that the Contractor does not wish to extend the Term.
- (b) The Contractor's proposal submitted under clause 3.2(b) must be prepared as if the Contractor was tendering on a competitive basis, and the Principal may in its absolute discretion seek tenders from others for the provision of services in the nature of the Contractor's Activities when seeking or considering the Contractor's proposal under clause 3.2(b).

#### **3.3. Principal's option**

Within the period stated in Item 15 of the Annexure after receipt of the Contractor's proposal submitted under clause 3.2(b), the Principal may (in its absolute discretion) give the Contractor a written notice stating that (at the Principal's option):

- (a) the Principal accepts the Contractor's proposal submitted under clause 3.2(b), and the Term is to continue beyond the Initial Expiry Date until a nominated date that occurs within the period stated in Item 13 of the Annexure (but which date may be a date different from the date nominated under clause 3.1(b)); or
- (b) the Term will expire upon the Initial Expiry Date.

#### **3.4. Contractor's acknowledgement**

The Contractor acknowledges and agrees that:

- (a) neither:
  - (i) the standard of the Contractor's performance during the Term; nor

- (ii) any other fact, matter or thing arising out of or in connection with the Contractor's Activities or the Contract,

will limit the Principal's absolute discretion under clause 3.1 or clause 3.3 or oblige the Principal to exercise that discretion in any particular manner; and

- (b) the Contractor will have no Claim arising out of or in connection with:

- (i) any notice given under clause 3.1 or clause 3.3; or
- (ii) any other act, matter or thing arising out of or in connection with the Principal's exercise of its rights under clause 3.1 or clause 3.3.

#### **4. CONTRACTOR'S WARRANTIES**

4.1 Without limiting the generality of clause 2.1, the Contractor warrants:

- (a) that it is and will be at all times suitably qualified and experienced to carry out and complete the Contractor's Activities, and will at all times exercise due skill, care and diligence in the performance of the Contractor's Activities; and
- (b) that the Contractor will carry out and complete the Contractor's Activities:
  - (i) in accordance with the Contract and all Statutory Requirements;
  - (ii) in accordance with Good Industry Practice;
  - (iii) using workmanship of the standard specified in the Contract, and to the extent it is not so specified, of a standard consistent with Good Industry Practice; and
  - (iv) using materials:
    - (A) which are new and comply with the requirements of the Contract, and to the extent not fully described in the Contract, which are consistent with Good Industry Practice; and
    - (B) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Contractor's Activities.

#### **5. CONTRACT MANAGEMENT**

##### **5.1. Contract Manager**

- (a) Without preventing the Principal from exercising any function under the Contract, the Principal shall ensure that at all times there is a Contract Manager. The Principal must notify the Contractor of any change in the person appointed to be the Contract Manager.
- (b) The Contractor must comply with any direction by the Contract Manager given or purported to be given under a provision of this Contract.
- (c) Direction includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.
- (d) The Contract Manager will give directions and carry out all its other functions under the Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer).
- (e) Except where the Contract otherwise provides, a direction may be given orally but the Contract Manager shall as soon as practicable thereafter confirm it in writing.

## 5.2. Contract Manager's representative

- (a) The Contract Manager may from time to time appoint individuals to exercise any functions of the Contract Manager under the Contract but not more than one Contract Manager's Representative shall be delegated the same function at the same time. The appointment of a Contract Manager's Representative shall not prevent the Contract Manager from exercising any function.
- (b) The Contract Manager must ensure that, at all times, the Contractor is provided with the names of any Contract Manager's Representative and the functions delegated to the Contract Manager's Representative.

## 5.3. Contractor's Representative

- (a) The Contractor must ensure that the Contractor's Representative is present at any location where the Contractor's Activities are being carried out at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.
- (b) A direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.
- (c) Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.
- (d) If the Principal or the Contract Manager makes a reasonable objection to the appointment of the Contractor's Representative, the Contractor shall terminate the appointment and appoint another representative (by notice in writing to the Principal).

## 5.4. Contractor's employees and subcontractors

The Contract Manager may direct the Contractor to have removed, within a stated time, from the Facility or from any activity comprising or associated with the Contractor's Activities, any person employed by the Contractor or any subcontractor in connection with the Contractor's Activities who, in the Contract Manager's opinion, is incompetent, negligent or guilty of misconduct.

# 6. DOCUMENTS

## 6.1. Supply of documents 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 be used, copied or reproduced for any purpose other than performing the Contractor's Activities under the Contract.

## 6.2. Supply of documents by Contractor

- (a) The Contractor must supply to the Principal the documents (including in the format and the number of copies) set out in the Maintenance Brief.
- (b) Documents provided to the Principal by the Contractor will become the property of the Principal from the time the documents are provided.

# 7. ASSIGNMENT AND SUBCONTRACTING

## 7.1. Assignment

- (a) The Principal may assign, novate or otherwise deal with its rights or obligations under the Contract in its absolute discretion and without consent from the Contractor and the Contractor must at its own cost (as required by the Principal):
  - (i) do all things reasonably required by the Principal to give effect to the assignment, novation or other dealing (including executing a deed on terms reasonably required by the Principal giving effect to the assignment novation or other dealing); and

- (ii) provide replacement insurance complying with the terms of the Contract in the name of the assignee, novatee or counterparty to the dealing.
- (b) The Contractor acknowledges and agrees that from the date that the assignment, novation or other dealing takes effect pursuant to this clause, it will take effect as if the assignee had been originally named as a party to the Contract in place of the Principal.
- (c) The Contractor must not, without the prior written approval of the Principal, and except on such terms and conditions as are determined in writing by the Principal, assign the Contract or any payment or other right, benefit or interest under or in respect of the Contract.

## 7.2. Subcontracting

- (a) The obligations of government agencies contained in the Queensland Procurement Policy shall apply equally to the Contractor as though it is a government agency, and the Contractor shall procure subcontracts in accordance with the requirements of the Queensland Procurement Policy.
- (b) The Contractor shall prepare and produce all required copies of the subcontract tender documentation ("Subcontract Tender Documentation"), which:
  - (i) incorporates suitable conditions of contract which reflect the provisions of the Contract;
  - (ii) requires subcontract tenders and subcontractors to consent to a relevant Government Department or Instrumentality providing information to the Principal or the QGP Compliance Branch about the tenderer's or subcontractor's compliance with government policies and legislation, including commitments made in relation to or required by the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the Building and Construction Training Policy (if applicable), the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld);
  - (iii) requires subcontract tenderers and subcontractors to acknowledge that the information referred to in clause 7.2(b)(ii), which includes payroll records, management records, time recordings and records of project-specific training that may be held by any Government Department or Instrumentality, may be obtained by or made available to the Principal and the QGP Compliance Branch, for its information and verification of the subcontract tenderer's or subcontractor's compliance with commitments made in relation to or required by government policies and legislation;
  - (iv) includes terms that evidence the right of the Principal and the QGP Compliance Branch to exercise the discretion in clause 7.5(j) to publish any information relevant to the Ethical Supplier Mandate, including but not limited to information about the subcontractor's compliance with the Ethical Supplier Threshold and Ethical Supplier Mandate, and prohibits the subcontractor from exercising any rights at law, including in contract, at common law or in equity, against the Principal or the Contractor in relation to that publication;
  - (v) requires the subcontractor to submit statutory declarations in the form attached to these Conditions, if requested by the Contract Manager under clause 24.1(b);
  - (vi) requires the subcontractor to execute a deed poll in favour of the Principal in the form in Schedule 2 of these Conditions and provide this as part of their tender;
  - (vii) requires the subcontractor to make and keep the records referred to in clause 7.5(a);
  - (viii) provides for evaluation of subcontract tender responses against clear evaluation criteria and weightings; and
  - (ix) incorporates any other documentation or information required for the tendering or the completion of the Contractor's Activities.

- (c) The Contractor must ensure that all subcontractors and any sub subcontractors:
- (i) for the purposes of the Queensland Procurement Policy are:
    - (A) local suppliers as described in the Queensland Procurement Policy, and if a local supplier is unable to be sourced by the Contractor having used its best endeavours to do so, the Contractor shall seek approval from the Contract Manager to use a supplier who is not a local supplier and in doing so shall provide evidence, satisfactory to the Contract Manager, of its efforts to source a local supplier;
    - (B) compliant with the Ethical Supplier Threshold; and
    - (C) not subject to a current sanction under the Ethical Supplier Mandate;
  - (ii) are informed of the existence of the BIF Act; and
  - (iii) either:
    - (A) have a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
    - (B) in relation to the work to be performed under the subcontract (or sub subcontract):
      - (I) will be paid to achieve a specified result or outcome;
      - (II) are required to supply the plant and equipment or tools of trade needed to perform the work; and
      - (III) will be liable for the cost of rectifying any defect in the work performed.
- (d) The Contractor shall examine, analyse and evaluate all subcontract tenders received, in accordance with the Subcontract Tender Documentation, and in doing so, the Contractor shall:
- (i) ensure evaluation of subcontract tender responses against clear evaluation criteria and weightings; and
  - (ii) prepare and retain written records of the evaluation process undertaken, all evaluation findings and recommendations and, if requested, submit these to the Contract Manager at the completion of each subcontract evaluation.
- (e) The Contractor must not, without the prior written approval of the Contract Manager which shall not be unreasonably withheld, subcontract or allow a subcontractor to subcontract any of the Contractor's Activities. When seeking approval pursuant to this clause, the Contractor shall provide to the Contract Manager a request for approval in the form set out in Schedule 1 and such other information which the Contract Manager may reasonably request.
- (f) Within 10 Business Days after a request by the Contractor for approval made in accordance with clause 7.2(e), the Contract Manager shall approve the request or advise the Contractor of any objections. If approval is given to sub subcontract part of the Contractor's Activities, the Contractor must ensure the requirements of clause 7.2 are met.
- (g) The Principal may at any time during the Term, undertake an audit in respect of the Contractor's compliance with clause 7.2, in accordance with the provisions of clause 7.5(d).

### 7.3. Selected Subcontractors

Where the Principal has specified that Selected Subcontractors exist for any work, materials or goods described in Item 9 of the Annexure:

- (a) the Contractor must enter into a subcontract for the relevant work with one of the specified Selected Subcontractors;

- (b) if no Selected Subcontractor in Item 9 of the Annexure will subcontract to carry out the selected subcontract work, the Contractor shall provide a list of proposed subcontractors for the written approval of the Principal;
- (c) the Principal is not liable for the performance, non-performance, default or selection of any Selected Subcontractor;
- (d) if any subcontract entered into by the Contractor with a Selected Subcontractor is terminated in any manner or for any reason whatsoever, then Contractor must at its cost enter into a subcontract for the relevant work with another subcontractor approved by the Principal; and
- (e) the Principal shall not be liable upon any Claim arising out of or in connection with the requirement to engage a Selected Subcontractor or any default or insolvency on the part of the Selected Subcontractor.

#### 7.4. Contractor remains responsible

- (a) The Contractor shall be responsible for, and liable to the Principal for, the acts, defaults and omissions of subcontractors (including selected subcontractors) and employees and agents of subcontractors as if they were those of the Contractor.
- (b) None of the following shall relieve the Contractor from any obligations or liabilities under the Contract or at law:
  - (i) the Contractor's Tender or the Contract, including the names of one or more prospective subcontractors;
  - (ii) any approval to subcontract given by the Contract Manager under clause 7.2;
  - (iii) the subcontracting of any Contractor's Activities to a subcontractor (including a selected subcontractor); or
  - (iv) the termination of any subcontract (including a selected subcontract).

#### 7.5. Records and access to records

- (a) The Contractor shall make and keep and shall ensure that every subcontractor makes and keeps accurate and complete records of:
  - (i) the Contractor's or a subcontractor's tender, including the preparation and submission of that tender;
  - (ii) tenders received by it, whether accepted or not;
  - (iii) the performance of the Contractor's Activities or the activities under the subcontract; and
  - (iv) compliance with commitments made in the Contractor's Tender or a subcontractor's tender relating to or required by government policies including but not limited to the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Building Construction Training Policy (if applicable).
- (b) The records referred to in clause 7.5(a) shall include records that are required to be created or provided, or that are otherwise referred to, under the Contract or under the subcontract, as well as other records including those that:
  - (i) relate to the Contractor's Tender or a subcontractor's tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;
  - (ii) relate to design, including design calculations, option studies, opinions, reviews and reports;

- (iii) relate to the performance of the Contractor's Activities (whether by the Contractor or a subcontractor), including labour, subcontracts, subcontractors, consultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
  - (iv) are required to demonstrate compliance with the matters referred to in clause 7.5(a)(iv) including payroll records, management records, time recordings and records of project-specific training; and
  - (v) are in a format or stored on any medium, including photographs, electronic files, telecommunications or social media.
- (c) The records referred to in clause 7.5(a) shall not be destroyed without the prior written approval of the Principal.
- (d) Without limiting any other rights or obligations under this clause 7.5, the Principal and the QGP Compliance Branch may, at any time after giving written notice to the Contractor that an audit shall be undertaken pursuant to this clause, undertake an audit in respect of the Contractor's compliance with clause 7.2. In undertaking the audit, the Principal and the QGP Compliance Branch, shall have the right to inspect and copy any record referred to in clause 7.5(a) and to access any of the Contractor's systems and processes which are in any way connected with subcontracting. Upon receipt of written notice of the audit pursuant to this clause 7.5(d), the Contractor shall promptly and at its own cost provide the Principal and the QGP Compliance Branch with every reasonable facility necessary to undertake the audit, including but not limited to:
  - (i) providing to the Principal and the QGP Compliance Branch any record requested for inspection or copying pursuant to clause 7.5(e);
  - (ii) making staff available to the Principal and the QGP Compliance Branch to access or explain systems, processes or any record referred to in clause 7.5(a); and
  - (iii) arranging and providing access to the Contractor's or subcontractor's workplaces, sites, premises, or facilities.
- (e) Subject to the Contractor's right to claim legal professional privilege in respect of any record, which is hereby maintained, the Principal and the QGP Compliance Branch shall have the right to inspect and to copy at any time any record referred to in clause 7.5(a). In the case of any records referred to in clause 7.5(a) stored on a medium other than in writing, the Contractor shall make available forthwith upon request such facilities as may be necessary to enable a legible reproduction thereof to be provided to the Principal and the QGP Compliance Branch.
- (f) Where a record referred to in clause 7.5(a) is created, maintained, or stored by the Contractor or a subcontractor in an electronic format, it shall be provided to the Principal in its native, operable form or such other format as may be reasonably required by or acceptable to the Principal.
- (g) Where a record referred to in clause 7.5(a) is stored on a medium licensed from a third party, where the Principal is a party to the communication, the Contractor must provide the Principal with a copy of such records in an external electronic storage device, readable on the Principal's information technology system, or such other format as may be reasonably required by the Principal, each month during the Term.
- (h) The Contractor shall comply in all respects with any request made pursuant to clause 7.5(e) to inspect or copy records referred to in clause 7.5(a), or any audit undertaken pursuant to clause 7.5(d), and shall not be entitled to refuse audit, inspection or copying of any record referred to in clause 7.5(a) on any basis whatsoever other than on the basis that legal professional privilege attaches to the record.
- (i) Records accessed under clause 7.5(d) or 7.5(e) may be used to assess the Contractor's or its subcontractors' compliance with the Contract, the subcontract, the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Building and Construction Training Policy (if applicable) and may be shared with



relevant Government Departments or Instrumentalities for the purposes of the making of a recommendation about compliance with the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Building and Construction Training Policy (if applicable).

- (j) The Principal and the QGP Compliance Branch may in their absolute discretion, publish information about the Contractor's or a subcontractor's compliance with the Ethical Supplier Mandate, including but not limited to any sanctions or penalties imposed, and the parties acknowledge and agree that to do so will not constitute a breach of this Contract by the Principal nor give rise to any other right or remedy of the Contractor at law or in equity against the Principal or the QGP Compliance Branch.

## **8. FACILITY**

### **8.1. Facility access**

Subject to any access requirements in the Maintenance Brief and the Contractor providing evidence of any insurance under clause 22.3, the Principal and the Facility Operator:

- (a) will give the Contractor sufficient access to the Facility to enable it to carry out the Contractor's Activities on the days and times stated in the Maintenance Brief or otherwise agreed to in writing by the Contract Manager; and
- (b) notwithstanding clause 8.1(a), will only provide the Contractor with the right to such access to the Facility as is necessary to enable it to carry out the Contractor's Activities.

### **8.2. Coordination with Facility Operator**

The Contractor:

- (a) acknowledges that the Facility will (throughout the Term) remain in use and be administered and operated by the Facility Operator;
- (b) agrees that it has satisfied itself as to and has made an allowance in connection with the Contract for the co-ordination of the Contractor's Activities with the requirements of and the operations of the Facility Operator, including the Facility Requirements;
- (c) must:
- (i) comply with the access arrangements and security measures stated in the Contract or Facility Requirements or as directed by the Contract Manager;
  - (ii) perform the Contractor's Activities so as to minimise disruption to the administration and operation of the Facility by the Facility Operator;
  - (iii) take any steps which are reasonably necessary or reasonably required by the Contract Manager to minimise disruption or inconvenience to the Facility Operator and to the operation of the Facility;
  - (iv) not examine, copy, remove or otherwise interfere with anything in the Facility except for the purposes of undertaking the Contractor's Activities;
  - (v) regularly remove rubbish and surplus material resulting from the performance of the Contractor's Activities and keep the area clean (including ensuring that the Contractor leaves no loose or foreign materials); and
  - (vi) require and ensure its employees and subcontractors comply with the requirements of the Contract.

### **8.3. Site Personnel Register**

- (a) During the Term, the Contractor must maintain a register in the form set out in Schedule 4 ('Site Personnel Register') of all individuals who carry out the Contractor's Activities.

- (b) The Site Personnel Register must be available for inspection at all times by the Contract Manager.
- (c) The Contractor must provide statistical information in the form attached to these Conditions ('Site Personal Register Summary') to the Contract Manager when directed by the Contract Manager.

## 9. ESTABLISHMENT

9.1 During the Establishment Period, the Contractor must:

- (a) perform the Establishment Work; and
- (b) where an Outgoing Contractor has been identified in the Tender Documents, fully cooperate with the Principal and the Outgoing Contractor and do all such tasks and things as may be necessary to enable the smooth transition of the provision of the Contractor's Activities from the Outgoing Contractor to the Contractor.

## 10. UNPLANNED MAINTENANCE WORK

### 10.1. Contractor to notify

- (a) If the Contractor becomes aware that Unplanned Maintenance Work is required, the Contractor must notify the Contract Manager as soon as reasonably practicable and, in any event, in accordance with any time requirements stated in the Maintenance Brief. The Contractor's notice under this clause 10.1(a) must contain details of the nature of the Unplanned Maintenance Work required.
- (b) Within the time stated in Item 16 of the Annexure from the date that the Contractor becomes aware that Unplanned Maintenance Work is required, the Contractor must provide a further notice to the Contract Manager. The Contractor's notice under this clause 10.1(b) must contain details of:
  - (i) the nature of the Unplanned Maintenance Work required (including any parts to be replaced);
  - (ii) its estimate of the time required to carry out the Unplanned Maintenance Work;
  - (iii) the date and time at which it proposes to carry out the Unplanned Maintenance Work; and
  - (iv) its estimate of the cost of carrying out the Unplanned Maintenance Work.

### 10.2. Contract Manager may direct

Whether or not the Contractor has provided a notice under clause 10.1, the Contract Manager may direct the Contractor as to the order and times at which Unplanned Maintenance Work is to be carried out.

### 10.3. Principal notified Unplanned Maintenance Work

- (a) The Contract Manager may at any time give notice in writing to the Contractor to carry out Unplanned Maintenance Work.
- (b) Upon receipt of a notice in writing from the Contract Manager advising the Contractor of the Unplanned Maintenance Work under clause 10.3(a), the Contractor must advise the Contract Manager of whether the Unplanned Maintenance Work can be effected.
- (c) If the Unplanned Maintenance Work can be effected, the Contractor must provide to the Contract Manager:
  - (i) a price, ascertained in accordance with the Pricing Schedule and supported with measurements, rates and evidence of cost (including where applicable subcontractors' and suppliers' measurements, rates and evidence of cost) for carrying out the Unplanned Maintenance Work;
  - (ii) its estimate of the time required to carry out the Unplanned Maintenance Work; and
  - (iii) the date and time at which it proposes to carry out the Unplanned Maintenance Work.

- (d) The Contractor's written response under clause 10.3(c) shall constitute the Contractor's offer to carry out the Unplanned Maintenance Work.
- (e) The Contract Manager may, in writing and within a reasonable time, accept the Contractor's offer and direct the Contractor to carry out the Unplanned Maintenance Work, in which case the value of the Unplanned Maintenance Work shall be in accordance with the accepted offer, which shall be binding upon the parties.
- (f) If the Contract Manager rejects the Contractor's offer, the Contract Manager may nevertheless issue a direction to carry out the Unplanned Maintenance Work, and the Unplanned Maintenance Work so directed shall be valued by the Contract Manager under clause 17.3.
- (g) If the Contract Manager does not issue a direction under clause 10.3(e) or 10.3(f) to carry out the Unplanned Maintenance Work, then the Principal shall reimburse the Contractor for the reasonable extra costs of preparing an offer under this clause 10.3.

#### 10.4. Payment for Unplanned Maintenance Work

If any work amounting to Unplanned Maintenance Work is performed in respect of which there is no rate in the Pricing Schedule, the Contractor shall be entitled to be paid:

- (a) the amount agreed by the parties for that work; or
- (b) where the parties have not agreed to an amount, a reasonable amount for that work, as valued by the Contract Manager under clause 17.3.

### 11. ANCILLARY WORK

11.1 Where the Contractor is required to carry out any Unplanned Contractor's Activities which involves the carrying out of minor work involving the construction or installation of improvements to the Facility, the Contractor must in carrying out such work:

- (a) cooperate with, and coordinate with works, services or supplies being provided by other contractors at the Facility;
- (b) correctly set out the works at the Facility;
- (c) comply with any Principal notified requirements;
- (d) progress with due diligence and without delay;
- (e) notify the Contract Manager as soon as the Contractor becomes aware of any site condition which may affect the works;
- (f) not allow the disconnection of or disruption to any utility or other services or alteration of or disruption to existing improvements or operations, without the Principal's approval;
- (g) protect all people from death or injury (including by the provision and maintenance of barricades, guards, fences, signs, lighting and traffic flagging);
- (h) protect the work (including any unfixed plant, materials and goods) and all other property (including property or works of the Principal or others) from loss or damage;
- (i) promptly make good, at its own cost, any loss or damage to the work or to any property of the Principal or third parties (except to the extent it is caused by the breach or negligence of the Principal or its officers, employees, agents or other contractors);

- (j) unless the Principal directs otherwise, before the commencement of any such works at the Facility, effect a policy of insurance against loss, damage or destruction to such works (including all plant and materials) whether on or off the Facility or in transit to the Facility which must:
  - (i) be at least for the value of the relevant works;
  - (ii) be effected with an insurer and on terms and conditions reasonably satisfactory to the Principal;
  - (iii) have the Principal as a named insured party to the policy; and
  - (iv) be maintained by the Contractor until the Contractor has completed all relevant work;
- (k) upon completion of the relevant work, deliver to the Principal:
  - (i) all suppliers or manufacturers warranties, inspection or testing certificates and operation or maintenance manuals relating to the work available to the Contractor or required by the Contract (on terms allowing their enforcement by the Principal);
  - (ii) all approvals, certificates or other authorisations required for the work (including those required before the work can be applied to its intended purpose); and
  - (iii) all other documents reasonably required by the Contract or the Principal to be delivered by the Contractor;
- (l) where the Principal gives a direction relating to the work, comply with the direction (without affecting the Contractor's responsibility for its own actions as an independent contractor). If the Contractor considers that it is not for any reason to comply with the direction, the Contractor must notify the Principal that it considers itself not so bound and the reason, immediately after the direction is first given; and
- (m) give the Principal seven (7) days' prior written notice of the date upon which the Contractor anticipates completion of the work.

## 12. EMERGENCY EVENTS

### 12.1. Rights in an Emergency

Without limiting, derogating from or otherwise affecting any statutory rights or powers that may be conferred upon the Principal or the Facility Operator, if an Emergency occurs, the Principal may elect to:

- (a) temporarily take or assume total or partial possession, management and control of the Facility and the performance of the Contractor's Activities; and
- (b) take such other steps as, in the reasonable opinion of the Principal, are necessary or desirable to mitigate the threat or event which caused the Emergency and, at its option, to continue the performance of the Contractor's Activities,

and the Contractor will assist the Principal and the Facility Operator as requested by the Principal in these circumstances.

### 12.2. Notice

The Principal may exercise its rights under clause 12.1 without prior notice to the Contractor, but the Principal will, if reasonably practical to do so, give prior notice and in any event will, as soon as practicable, provide notice to the Contractor that it is exercising these rights.

### 12.3. Suspension of rights and obligations

Upon the Principal exercising its rights in an Emergency, the Contractor's rights and obligations under the Contract are suspended to the extent necessary to permit the Principal to exercise those rights.

#### 12.4. Cease to exercise rights

- (a) The Principal may cease to exercise its rights in an Emergency at any time.
- (b) The Principal must cease to exercise its rights in an Emergency:
  - (i) as soon as the relevant threat or event which caused the Emergency is averted or overcome; or
  - (ii) where the relevant threat or event which caused the Emergency has materialised, its consequences have been mitigated or otherwise dealt with to the Principal's reasonable satisfaction.
- (c) The Principal will notify the Contractor as soon as practicable after the Principal ceases to exercise its rights under this clause 12.

#### 12.5. Effect of exercise of rights

The Contractor acknowledges and agrees that the exercise of the Principal's rights in an Emergency does not limit any other right of the Principal under the Contract.

#### 12.6. Recommencement of Contractor's Activities

Upon the Principal advising the Contractor under clause 12.4 that it has ceased to exercise its rights under clause 12.1:

- (a) the Contractor must immediately recommence performance of any of its obligations which were suspended pursuant to clause 12.3; and
- (b) the Principal will give reasonable assistance to the Contractor to ensure that this process of transition is effected as smoothly as possible.

#### 12.7. Payments during Emergency

- (a) To the extent that the Emergency was caused by a failure of the Contractor to perform the Contractor's Activities as required by the Contract, the Contractor will pay to the Principal all extra costs reasonably and necessarily incurred by the Principal in exercising its rights under clause 12 as a debt due from the Contractor to the Principal.
- (b) In situations of Emergency, the Principal will continue to pay the Contract Price during the period it exercises its rights under clause 12 notwithstanding that Contractor's Activities affected by the Emergency is suspended or is being provided by the Principal.
- (c) The Principal shall have no liability to the Contractor, and the Contractor will not be entitled to make any Claim arising out of or in connection with the exercise by the Principal of its rights in an Emergency over and above the Contract Price, except where the Emergency was itself caused by an act or omission of the Principal, the Contract Manager, the Facility Operator or any officer, employee or agent of any of them, in which event the Principal shall reimburse the Contractor for any extra costs (as valued by the Contract Manager under clause 17.3) as are reasonably and necessarily incurred by reason of the Emergency, after deducting the value of any savings resulting from the Principal exercising its rights in connection with the Emergency or any suspension of work associated with the Emergency.

### 13. MATERIALS, LABOUR AND EQUIPMENT

#### 13.1. Provision of materials, labour and equipment

- (a) Except to the extent that the Contract otherwise provides, the Contractor shall supply everything necessary for the proper performance of the Contractor's Activities, whether or not expressly mentioned in the Maintenance Brief.
- (b) The Contractor must maintain an inventory of parts and materials to ensure the Contractor is able to comply with this Contract.

- (c) The Contractor must promptly notify the Principal if any part or material required to perform the Contractor's Activities is not available to the Contractor.

### 13.2. Principal Supplied Material

- (a) The Principal may require the Contractor to use Principal Supplied Materials (if any) specified in the Maintenance Brief when performing the Contractor's Activities.
- (b) Unless the parties agree otherwise, the Principal Supplied Material shall be provided by the Principal at no charge to the Contractor.
- (c) The Contractor must give the Contract Manager written notice of when it needs to use the Principal Supplied Materials within the time stated in the Maintenance Brief for giving such a notice, or if no time is stated in the Maintenance Brief within a reasonable time (having regard to the nature of the Principal Supplied Materials).
- (d) The Principal will provide the Principal Supplied Materials to the Contractor at the times and collection points stated in the Maintenance Brief (and if not stated, then as notified by the Contract Manager). If the Contractor incurs more cost in collecting the Principal Supplied Materials from the collection points than the Contractor could reasonably have anticipated at the time of tendering, then a valuation will be made under clause 17.3 of the extra costs reasonably and necessarily incurred by the Contractor.
- (e) Subject to the terms of this clause, from the date the Principal Supplied Material is made available to the Contractor:
  - (i) the Contractor shall be responsible for the care of the Principal Supplied Material; and
  - (ii) the Contractor shall bear the risk of and be liable for reinstatement of loss or damage to the Principal Supplied Material from any cause.
- (f) The Contractor must:
  - (i) inspect the Principal Supplied Material and notify the Contract Manager immediately if it becomes aware that any of the Principal Supplied Material is for any reason not fit for its intended purpose;
  - (ii) ensure the safe and secure use and storage of the Principal Supplied Material at all times;
  - (iii) ensure that the Principal Supplied Material is not used other than for the Contractor's Activities and in accordance with the Contract;
  - (iv) not substitute any plant, equipment or materials for the Principal Supplied Material without the Contract Manager's consent;
  - (v) comply with any lawful direction of the Contract Manager as to the use of the Principal Supplied Material; and
  - (vi) unless the Contract Manager directs otherwise, ensure any Principal Supplied Material not used up in the Contractor's Activities (including all unused materials and constructional plant) is promptly returned to the premises nominated by the Principal.
- (g) Nothing in this clause 13.2 or clause 13.1 will make the Contractor responsible for or liable to rectify a defect or fault in any Principal Supplied Material, except one that:
  - (i) is caused by the Contractor, a subcontractor or any of their respective employees or agents; or
  - (ii) would have been obvious to a reasonably competent contractor experienced in providing services of the type required by this Contract at the time of inspection of the Principal Supplied Material under clause 13.2(f)(i).

**13.3. Removal of plant and equipment**

- (a) The Contractor must comply with any restrictions on the removal of plant and equipment (being things used by the Contractor to carry out the Contractor's Activities) from the Facility that are stated in the Maintenance Brief or Facility Requirements.
- (b) The Contract Manager may by written notice to the Contractor direct the Contractor not to remove plant and equipment (being things used by the Contractor to complete the Contractor's Activities) from the Facility. Thereafter, the Contractor shall not remove the plant and equipment without the prior written approval of the Contract Manager, which approval shall not be unreasonably withheld.
- (c) If the Contract Manager gives a direction under clause 13.3(b) and the Contractor incurs more cost as a result of its compliance with the Contract Manager's direction than the Contractor could reasonably have anticipated at the time of tendering, then a valuation will be made under clause 17.3 of the extra costs reasonably and necessarily incurred by the Contractor.

**13.4. Manufacture and supply of materials**

The Contract Manager 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.

**13.5. Warranties**

- (a) The Contractor must:
  - (i) ensure that all warranty entitlements from subcontractors and from manufacturers with respect to plant, equipment, materials or other items incorporated in the Facility, include the Principal and the Contractor as named beneficiaries.
  - (ii) prior to the Expiry Date, assign to the Principal the benefit of all warranties obtained by the Contractor from subcontractors and from manufacturers with respect to plant, equipment, materials or other items incorporated in the Facility where such warranties continue to operate beyond the Expiry Date.
- (b) Nothing in this clause 13.5, nor any assignment of rights as contemplated by this clause, will limit any of the Contractor's obligations or liabilities, or any of the rights which the Principal may have against the Contractor, in respect of the subject matter of the warranties or the assignments.

**14. DEFECTS**

- (a) If the Contract Manager discovers a Defect, the Contract Manager may give a written direction to the Contractor to correct the Defect at the Contractor's own cost.
- (b) Within 5 Business Days of receipt of the Contract Manager's notice under clause 14(a), the Contractor must submit a written plan to the Contract Manager detailing a plan for correcting the Defect and stating dates by which the Contractor must commence and complete the Rectification Work.
- (c) Upon receipt of the Contractor's response under clause 14(b), or if the Contractor does not submit a plan within the time required by clause 14(b), the Contract Manager may give a written direction to the

Contractor requiring the Contractor to perform the necessary Rectification Work, at the Contractor's own cost, in accordance with:

- (i) the plan submitted by the Contractor under clause 14(b); or
  - (ii) if the Contractor did not submit a plan within the time required under clause 14(b) or if the Contract Manager (acting reasonably) considers that the dates by which the Contractor must commence and complete the Rectification Work as stated in a plan submitted by the Contractor under clause 14(b) are unreasonable, such other dates as may be notified in writing by the Contract Manager (acting reasonably).
- (d) If the Rectification Work is not commenced or completed by the dates referred to in clause 14(c)(i) or 14(c)(ii) (as applicable), the Principal may have the Rectification Work carried out at the Contractor's expense, either itself or by a third party, and the reasonable cost of the Rectification Work incurred by the Principal will be a debt due from the Contractor to the Principal. Until the cost of the Rectification Work has been incurred by the Principal, the Principal may deduct the estimated cost of such work from payments to the Contractor as an amount due from the Contractor to the Principal.
- (e) Without limiting clause 14(c), the Contractor must correct the Defect in a manner which causes as little inconvenience to the users of the Facility as is reasonably possible.

## **15. PLANNING AND REPORTING (applicable if required by the Annexure)**

### **15.1. Submission of SAMP**

Within the period stated in Item 17 of the Annexure from the Date of Acceptance of Tender or such later date as may be advised by the Contract Manager acting reasonably, the Contractor must submit to the Contract Manager the SAMP:

- (a) based on, but expanding upon, the Contractor's tendered SAMP;
- (b) containing a report on:
  - (i) the condition of each asset in respect of which the Contractor is required to carry out the Contractor's Activities;
  - (ii) the residual life of each asset;
- (c) identifying any assets which require replacement, or which will require replacement, and in respect of which the replacement value will exceed \$5,000 (excluding GST); and
- (d) showing how the Contractor plans to carry out the Contractor's Activities during the Term.

### **15.2. Approval of SAMP**

- (a) The Contract Manager must consent to or reject the SAMP submitted by the Contractor under clause 15.1 within the period stated in Item 18 of the Annexure.
- (b) If the Contract Manager reasonably rejects the SAMP, the Contractor must submit an amended SAMP for consent within 10 Business Days of the rejection, and that submission will be deemed to be under clause 15.1.
- (c) Until such time as the SAMP is approved under this clause 15.2, the Contractor's tendered SAMP will be regarded as the SAMP.

### **15.3. Submission of AWP**

At the following times:

- (a) within the period stated in Item 19 of the Annexure from the Date of Acceptance of Tender, or such later date as may be advised by the Contract Manager (acting reasonably); and



- (b) each year during the Term on the anniversary of the Date of Acceptance of Tender, the Contractor must submit to the Contract Manager an AWP, in accordance with the Maintenance Brief, setting out for the ensuing year details of the nature of all Contractor's Activities proposed to be carried out on a month-by-month basis, including identifying:
- (c) inspections proposed to be undertaken;
  - (d) those assets which require to be serviced and the nature of the service;
  - (e) any assets which are to be replaced or repaired;
  - (f) other repairs to be undertaken;
  - (g) pest management to be undertaken;
  - (h) cleaning to be undertaken;
  - (i) landscaping to be undertaken; and
  - (j) any goods to be procured.

#### 15.4. Approval of AWP

- (a) The Contract Manager must consent to or reject the AWP submitted by the Contractor under clause 15.3 within the period stated in Item 20 of the Annexure.
- (b) If the Contract Manager reasonably rejects the AWP, the Contractor must submit an amended AWP for consent within 10 Business Days of the rejection, and that submission will be deemed to be under clause 15.3.

#### 15.5. No obligation to review

- (a) The Contract Manager owes no duty to the Contractor to review the SAMP or AWP submitted by the Contractor under clause 15.1 or clause 15.3 for errors or omissions or to ensure its compliance with the Contract.
- (b) No comments on, reviews of, or rejection or consent to the use of the SAMP or AWP by the Contract Manager will relieve the Contractor from or alter or affect the Contractor's liabilities or responsibilities under the Contract or otherwise.
- (c) The Contractor agrees that:
  - (i) the SAMP and AWP must be consistent with the Contract and all Statutory Requirements;
  - (ii) the Contract and any Statutory Requirements will prevail over the SAMP and AWP to the extent of any inconsistency or discrepancy between them; and
  - (iii) the SAMP and AWP will comprise only the minimum obligations of the Contractor and the Contractor will remain fully responsible for complying with the Contract and all Statutory Requirements and will not be relieved of any obligation or liability arising out of or in connection with the Contract, notwithstanding the obligation of the Contractor to prepare, implement or comply with the requirements of the SAMP and AWP.

#### 15.6. Compliance with and amendment of SAMP and AWP

The Contractor must:

- (a) carry out the Contractor's Activities according to the SAMP and the AWP; and

- (b) amend or update the SAMP and AWP, in consultation with and subject to the consent of the Contract Manager, where either the Contractor or the Principal reasonably believes it is necessary to do so to ensure the Contractor's compliance with the Contract.

#### 15.7. Reporting

The Contractor must provide reports to the Contract Manager:

- (a) on an annual basis, on the anniversary of the Date of Acceptance of Tender; and
- (b) on a monthly basis, at the end of each month,

reporting on actual progress of work as compared to the work indicated in the SAMP and AWP. Where the actual progress of work is more or less than that indicated in the SAMP or AWP, the Contractor must provide reasons for the difference.

### 16. WORK HEALTH AND SAFETY AND QUALITY ASSURANCE

#### 16.1. Clause 16 definitions

For the purposes of this clause 16:

- (a) 'Act' means the *Work Health and Safety Act 2011* (Qld);
- (b) 'ACM' (from asbestos containing material) has the meaning given to it in the WHS Laws;
- (c) 'asbestos' has the meaning given to it in the WHS Laws;
- (d) 'inspector', 'notifiable incident', 'regulator', 'structure' and 'workplace' have the same meanings as in the Act;
- (e) 'Regulation' means the *Work Health and Safety Regulation 2011* (Qld);
- (f) 'WHS Laws' means the Act, the Regulation and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards; and
- (g) 'WHS Requirements' means the Facility Requirements relating to health and safety.

#### 16.2. Work health and safety

- (a) In relation to the Contractor's Activities under the Contract, the Contractor will:
  - (i) comply with and discharge all obligations imposed on the Contractor by the Act, the Regulation and any other regulation in connection with health and safety, including on a person who conducts a business or undertaking;
  - (ii) accept that it is the person having management and control of the area of the workplace at which the Contractor's Activities under the Contract is being undertaken;
  - (iii) discharge the duties of a person who conducts a business or undertaking under the Regulation; and
  - (iv) comply with all WHS Requirements.
- (b) The Contractor will indemnify the Principal against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, the Principal as a result of or in connection with:
  - (i) any breach of this clause by the Contractor;
  - (ii) any breach by the Contractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety; and

- (iii) any enforcement of obligations imposed on the Contractor under the Act, the Regulation or any other regulations.
- (c) If a notifiable incident occurs at the workplace at which the Contractor's Activities under the Contract is being undertaken, the Contractor must:
  - (i) immediately notify the regulator and the Contract Manager of the notifiable incident; and
  - (ii) take all reasonably practicable steps to secure the area where the notifiable incident occurred until an inspector arrives at the area or any earlier time that an inspector directs.

### 16.3. Asbestos and ACM (applicable if required by the Annexure)

- (a) Where Item 21 of the Annexure states that clause 16.3(a) applies, the Contractor acknowledges and agrees that:
  - (i) asbestos and/or ACM are known to be, or are likely to be, present at the Facility;
  - (ii) it has received and inspected a copy of the workplace asbestos register and the workplace asbestos management plan identifying, amongst other things, the locations at the Facility at which asbestos and/or ACM are known to be present or are likely to be present.
- (b) Without limiting any other obligation of the Contractor under this Contract, the Act, the Regulation or any other regulation, if material which might contain asbestos or other hazardous substance is discovered, the Contractor must:
  - (i) not disturb the asbestos, ACM or material which is reasonably believed to be asbestos or ACM pending further direction from the Contract Manager;
  - (ii) immediately notify the Contract Manager of the existence and location of the asbestos, ACM or material which is reasonably believed could be asbestos or ACM; and
  - (iii) comply with all applicable obligations and restrictions imposed by the Act, the Regulation and any other Statutory Requirement in relation to asbestos and ACM.

### 16.4. Occupational health and safety audit (applicable if required by the Annexure)

- (a) This clause 16.4 applies if Item 22 of the Annexure states an occupational health and safety audit is required.
- (b) For the purpose of this clause 16.4:

'Accredited Auditor (Construction)' means a person accredited by Workplace Health and Safety Queensland as an occupational health and safety auditor to undertake auditing pursuant to the *Work Health and Safety Act 2011* (Qld).
- (c) Within 10 Business Days of the Date of Acceptance of Tender, the Contractor must engage an Accredited Auditor (Construction) to perform the functions specified in the Contract.
- (d) The cost of performance by the Accredited Auditor (Construction) of the required functions will be reimbursed by the Principal in accordance with the Contract. The reimbursable amount will be a debt due from the Principal to the Contractor.
- (e) The Contractor must ensure that the Accredited Auditor (Construction) engaged under clause 16.4 has not:
  - (i) in the two years prior to the Date of Acceptance of Tender, had a business or employment relationship with the Contractor including where the Accredited Auditor (Construction) has, either personally or as an employee or an agent of another person or entity, been involved in the development and/or maintenance of the Contractor's occupational health and safety management

system in any capacity other than by reason of having been engaged as an Accredited Auditor (Construction); or

- (ii) been engaged by the Contractor as an Accredited Auditor (Construction) more than three times within a 12-month period to perform the functions specified in the Contract.
- (f) The Contractor must provide copies of all reports and any corrective action notices received from the Accredited Auditor (Construction) to the Contract Manager within 3 Business Days of receipt. In relation to corrective action notices, in addition to any other avenues available under the Contract:
  - (i) the Contract Manager may direct the Contractor, by written notice, to carry out any required corrective action within the time specified in the Contract Manager's notice; or
  - (ii) the Principal may take action under clause 20.4.
- (g) A direction given under clause 16.4(f)(i) constitutes a direction under clause 14(a). If such a direction is given, the Contractor must inform the Contract Manager in writing immediately upon completion of the corrective actions.

### 16.5. Quality assurance

The Contractor:

- (a) must implement a quality assurance system representing best industry standards;
- (b) must allow the Contract Manager access to the quality system of the Contractor and its subcontractors to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise by Law as a result of:
  - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
  - (ii) any direction by the Contract Manager concerning the Contractor's quality assurance system or its compliance or non-compliance with that system;
  - (iii) any audit or other monitoring by the Contract Manager, or anyone else acting on behalf of the Principal, of the Contractor's compliance with the quality assurance system; or
  - (iv) any failure by the Contract Manager, or anyone else acting on behalf of the Principal, to detect any Defect including where any such failure arises from any negligence on the part of the Contract Manager or other person.

## 17. VARIATIONS

### 17.1. Contract Manager may direct Variations

- (a) The Contract Manager may in writing direct the Contractor, pursuant to this clause 17.1, to carry out a Variation.
- (b) No Variation will invalidate the Contract, irrespective of the nature, extent or value of the services the subject of the Variation.
- (c) A Variation shall be valued by the Contract Manager under clause 17.3.
- (d) Despite any other provision of the Contract, the Contract Manager may direct, under this clause, the omission of whatever proportion of the Contractor's Activities the Principal may in its absolute discretion require and the Principal may carry out itself or have any other person carry out for it the whole or any part of the Contractor's Activities so omitted.

## 17.2. Proposed Variation

- (a) The Contract Manager may give the Contractor written notice of a proposed Variation.
- (b) As soon as practicable after receipt of a notice given under clause 17.2(a) (and no later than 10 Business Days after its receipt), the Contractor must give the Contract Manager written notice of whether the proposed variation can be effected and, if it can be effected, the Contractor must:
  - (i) advise of the effect (if any) which the Contractor anticipates that the Variation will have on the SAMP or AWP and the time for performance of other work; and
  - (ii) provide:
    - (A) a detailed quotation of the cost (including, where applicable, saving) of the proposed Variation, inclusive of GST; and
    - (B) advice as to the effect of the proposed Variation on any applicable warranty or other obligation of the Contractor under the Contract.
- (c) The Contract Manager may, in their absolute discretion:
  - (i) issue a written notice that accepts the Contractor's quotation and contains a direction in respect of the Variation, in which event the Variation shall be valued under clause 17.3 using the agreed price for the Variation;
  - (ii) issue a written notice that does not accept the Contractor's quotation but contains a direction in respect of the Variation, in which event the Variation shall be valued in accordance with clause 17.3;
  - (iii) not accept the Contractor's quotation and not direct the proposed Variation.
- (d) If the Contract Manager gives a direction under clause 17.2(c)(ii) and the Contractor does not agree with the Contract Manager's valuation under clause 17.3, the Contractor must proceed with the directed Variation but may issue a notice of dispute under clause 35.2.

## 17.3. Valuation

- (a) Where the Contract provides that a valuation is to be made under clause 17.3, the Contract Manager must assess the value using the following order of precedence:
  - (i) prior agreement on the price;
  - (ii) if what is to be valued is 'extra cost', the extra costs that the Contractor establishes to the Contract Manager's reasonable satisfaction have been or will be reasonably incurred by the Contractor;
  - (iii) if clause 17.3(a)(i) or clause 17.3(a)(ii) do not apply, valued using rates set out in the Pricing Schedule to the extent the Contract Manager determines they can reasonably be applied; or
  - (iv) if none of clauses 17.3(a)(i), 17.3(a)(ii) or 17.3(a)(iii) apply, valued by the Contract Manager using reasonable rates or prices.
- (b) The assessed value shall be added to or deducted from the Contract Price.

## **18. SUSPENSION**

### **18.1. Suspension by the Contract Manager**

If the Contract Manager considers that the suspension of the whole or part of the Contractor's Activities under the Contract is necessary:

- (a) because of an act or omission of:
    - (i) the Contract Manager, the Facility Operator, the Principal or its employees, consultants, agents or other contractors (not employed by the Contractor); or
    - (ii) the Contractor, a subcontractor or their employees or agents;
  - (b) for the protection or safety of any person or property;
  - (c) to comply with an order of a court; or
  - (d) for any other reason which the Contract Manager or Principal determines in its absolute discretion,
- then the Contract Manager may direct the Contractor to suspend the progress of the whole or part of the Contractor's Activities for such time as the Contract Manager directs.

### **18.2. Contractor's suspension**

If the Contractor wishes to suspend the carrying out the whole or part of the Contractor's Activities, other than under clause 33.8 or the BIF Act, the Contractor must first obtain the prior written approval of the Contract Manager. The Contract Manager may impose conditions of approval.

### **18.3. Recommencement of work**

As soon as the Contract Manager becomes aware that the reason for any suspension no longer exists, the Contract Manager shall direct the Contractor to recommence work.

### **18.4. Cost of suspension**

The Contractor shall be entitled to be paid any extra costs reasonably and necessarily incurred by the Contractor by reason of the suspension, as valued by the Contract Manager in accordance with clause 17.3, except for the following:

- (a) the cost of suspension under clause 18.1(a)(ii) or clause 18.2; and
- (b) the cost of suspension under clauses 18.1(b), 18.1(c) and 18.1(d) where the suspension is necessary due to an act or omission of the Contractor, its employees, agents or subcontractors.

## **19. HANDOVER (applicable if the Annexure states there is a Handover Period)**

### **19.1. Consultation and cooperation**

The Contractor must, during the Handover Period:

- (a) fully cooperate with the Principal and any prospective Successor Contractor; and
- (b) do all such things as may be necessary to ensure the smooth transition of the provision of the Contractor's Activities to the Principal or a Successor Contractor.

### **19.2. Development and update of Handover Work Management Plan**

- (a) In consultation with the Principal, within the period stated in Item 23 of the Annexure, (or such later date as may be advised by the Contract Manager (acting reasonably)), the Contractor must develop and

deliver to the Principal in accordance with this clause 19.2(a), a plan (the Handover Work Management Plan) that sets out:

- (i) the respective tasks to be accomplished by each party in connection with the orderly transition and migration of the Contractor's Activities from the Contractor to the Principal or the Successor Contractor at the conclusion of the Term or on termination of this Contract; and
  - (ii) a timetable pursuant to which these tasks are to be completed.
- (b) The Contractor must, during the Term, review and update the Handover Work Management Plan with the Principal within the period stated in Item 24 of the Annexure.

### 19.3. Handover

- (a) The Contractor must comply with the Handover Work Management Plan and perform the Handover Work during the Handover Period to ensure there is an effective transition.
- (b) If the Principal appoints a third party to take over the provisions of the Contractor's Activities or any part of the Contractor's Activities, the Contractor must act in accordance with the Handover Work Management Plan with respect to those Contractor's Activities in relation to that third party.
- (c) The Contractor must provide to the Contract Manager:
- (i) all documents, manuals, records, reports, software and other things necessary for the performance of the Contractor's Activities (other than the Contractor's plant and equipment);
  - (ii) an updated SAMP; and
  - (iii) any assistance, including by way of training of the Principal's employees, agents or other persons (including a Successor Contractor), that the Principal may reasonably require.

### 19.4. Payment for Handover Work

The Principal will pay the Contractor for Handover Work in accordance with the Pricing Schedule.

### 19.5. Handover Work Management Plan

The Handover Work Management Plan must:

- (a) address, at a high level, the activities to be undertaken by the Contractor during the Handover Period;
- (b) detail the processes by which safety will be maintained at existing levels for all aspects of the Contractor's Activities; and
- (c) address all handover requirements of the Maintenance Brief.

## 20. PROTECTION AND MAKE GOOD DAMAGE

20.1 Insofar as compliance with the Contract permits, the Contractor must:

- (a) provide all things and take measures necessary to protect people and property; and
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

20.2 If the Contractor, its subcontractors or their respective agents or employees damage any property (including the Facility) or anything in or upon the Facility, the Contractor must promptly make good the damage at its own cost.

20.3 If the Contractor fails to make good damage caused by it within 10 Business Days of being notified by the Contract Manager of the damage or in the case of major damage, within such time as may be determined by

the Contract Manager (acting reasonably), then the Principal may have the damage remedied by others and the costs of doing so will be a debt due by the Contractor to the Principal. Until the cost of remediation has been incurred by the Principal, the Principal may deduct the estimated cost of such work from payments to the Contractor as an amount due from the Contractor to the Principal.

20.4 If urgent action is necessary to protect property or people and the Contractor fails to take the action, the Principal may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the cost incurred will be a debt due from the Contractor to the Principal. If time permits, the Principal will give the Contractor prior notice of its intention to take action pursuant to this clause.

## 21. INDEMNITY

21.1 The Contractor indemnifies the Principal against:

- (a) loss of or damage to property of the Principal, including existing property in or upon the Facility;
- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property; and
- (c) loss or liability arising from any actual or threatened damage to or destruction of the environment, arising out of or as a consequence of breach by the Contractor of the Contract, negligent or wilful act or omission of the Contractor or its employees or agents or the performance by the Contractor of the Contractor's Activities, but the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that any act or omission of the Principal, the Contract Manager, the Facility Operator or their respective employees or agents may have contributed to the loss, damage, death or injury.

## 22. INSURANCE

### 22.1. Public liability insurance

- (a) Prior to commencing the Contractor's Activities, the Contractor must effect and maintain a public liability policy of insurance which nominates the Principal as an insured party and which covers the Principal, the Contract Manager, the Facility Operator, the Contractor and any subcontractors employed from time to time in relation to the Contractor's Activities for their respective rights and interests and covers their liabilities to third parties, arising from or in relation to an occurrence in connection with the Contractor's performance of the Contractor's Activities.
- (b) Without limiting the generality of clause 22.1(a), the policy must also cover the Contractor's liability to the Principal and the Principal's liability to the Contractor for loss of or damage to property 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).
- (c) The public liability policy of insurance must be for an amount in respect of any one occurrence not less than the sum stated at Item 25 of the Annexure and must be effected with an insurer and in terms both approved in writing by the Principal (which approval shall not be unreasonably withheld).
- (d) The public liability policy must be maintained until the Expiry Date.

### 22.2. Insurance of employees

- (a) Prior to commencing the Contractor's Activities, the Contractor must insure against liability for death of or injury to persons employed by the Contractor including liability under statute and at common law.
- (b) The insurance cover must be maintained until the Expiry Date.
- (c) Where permitted by law, the insurance must be extended to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor.
- (d) The Contractor must ensure that every subcontractor is similarly insured.



### 22.3. Inspection and provision of insurance policies

Prior to commencing the Contractor's Activities and whenever requested in writing by the Principal, the Contractor must produce certificates of currency of insurance, and if required by the Principal details of the insurance policies effected, to the Principal evidencing the insurance effected and maintained.

### 22.4. Failure to produce proof of insurance

If, after being requested in writing by the Principal to do so, the Contractor fails to produce evidence of compliance with insurance obligations under clauses 22.1 and 22.2 to the satisfaction and approval of the Principal, the Principal may effect and maintain the insurance and pay the premiums. The amount paid will be a debt due from the Contractor to the Principal.

### 22.5. Notices from or to the insurer

The Contractor must immediately inform the Principal in writing of any:

- (a) notice of cancellation or other notice concerning the policy provided by the insurer; and
- (b) failure to renew a policy or to pay a premium, and where possible prior to the insurer giving any notice of cancellation.

### 22.6. 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 clauses 22.1 and 22.2 and shall keep the Principal informed of subsequent developments concerning the claim.
- (b) The Contractor shall ensure that subcontractors, in respect of their operations, similarly inform the Contractor and that the Contractor then informs the Principal.

### 22.7. Cross liability

Any insurance required to be effected by the Contractor with the Principal as an insured party in accordance with the Contract must include a cross liability clause by 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).

### 22.8. Liabilities unaffected

The effecting of insurance by the Contractor does not limit any obligations or liabilities of the Contractor (including the obligation to effect the insurances required by the Contract).

## 23. PAYMENT

### 23.1. Progressive payment

Subject to clause 23.6, the Principal will pay the Contractor the Contract Price in progressive payments as provided in the Pricing Schedule for:

- (a) Establishment Work
- (b) Recurrent Maintenance Work;
- (c) Unplanned Maintenance Work; and
- (d) Handover Work,

carried out in accordance with the Contract, and any other amounts payable by the Principal to the Contractor under the Contract.

### 23.2. Payment claims

- (a) The Contractor must give the Contract Manager claims for payment on account of the Contract Price and any other amounts payable by the Principal to the Contractor under the Contract at the times stated in Item 26 of the Annexure.
- (b) The payment claim shall be supported by sufficiently detailed evidence of the amount claimed to be due to the Contractor and such information as the Contract Manager may reasonably require.
- (c) If the Contractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement shall not require the Contract Manager to issue a payment certificate in respect of that payment claim earlier than would have been the case had the Contractor submitted the payment claim in accordance with the Contract.
- (d) If the Contractor fails to make a payment claim, the Contract Manager may (in its absolute discretion) nevertheless issue a payment certificate.

### 23.3. Payment certificates

- (a) The Contract Manager must within 10 Business Days of receipt of a payment claim under clause 23.2 give the Contractor, on behalf of the Principal, a payment certificate which states:
  - (i) the payment claim to which it relates;
  - (ii) the amount already paid to the Contractor;
  - (iii) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract;
  - (iv) the amount (if any) which the Contract Manager believes to be then payable by the Principal to the Contractor on account of the Contract Price and otherwise under the Contract and which the Principal proposes to pay to the Contractor; and
  - (v) if the amount in paragraph (iv) is less than the amount claimed in the payment claim:
    - (A) the reason why the amount in paragraph (iv) is less than the amount claimed in the payment claim; and
    - (B) if the reason for the difference is that the Principal has retained, deducted, withheld or set off payment for any reason, the reason for the retention, deduction, withholding or setting off payment.
- (b) The issue of a payment certificate by the Contract Manager does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Contractor's Activities covered by the payment certificate has been satisfactorily carried out in accordance with the Contract.
- (c) For the purposes of the BIF Act, the Contract Manager is deemed to be authorised to receive payment claims and to issue payment schedules on behalf of the Principal (without affecting the Principal's right to issue a payment schedule itself).

### 23.4. Payment by Principal

Subject to clause 23.6, the Principal must pay the Contractor the amount set out as payable in the payment certificate within 15 Business Days of receipt by the Contract Manager of the payment claim under clause 23.2.

### 23.5. Debt due from Contractor to Principal

If a payment certificate issued under clause 23.3 shows an amount owing by the Contractor to the Principal, the Contractor must pay the Principal that amount within 10 Business Days of receipt by the Contractor of the payment certificate, or within 15 Business Days of receipt of the Contractor's claim for payment, whichever is earlier.

### 23.6. Right of set-off

- (a) Without limiting the Principal's rights under any other provision of the Contract and notwithstanding the provisions of or the issue of a payment certificate by the Contract Manager under clause 23.3(a), the Principal may deduct from any moneys due to the Contractor any sum which the Principal claims as payable by the Contractor to the Principal whether or not the Principal's right to payment arises by way of damages, debt, restitution or otherwise and whether or not the factual basis giving rise to the Principal's right to payment arises out of the Contract, any other contract, or is independent of any contract.
- (b) Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of such moneys or any balance that remains owing.

### 23.7. Interest

- (a) 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 is payable thereon at the rate stated in Item 27 of the Annexure from but excluding the date upon which or the expiration of the period within which the moneys should have been paid to and including the date upon which the moneys are paid.
- (b) This will be a party's sole entitlement to interest including damages for loss of use of, or the cost of borrowing money.

## 24. PAYMENT OF WORKERS AND SUBCONTRACTORS

### 24.1. Statutory declaration

The Contractor must deliver to the Contract Manager, with each payment claim:

- (a) a signed statutory declaration in the form in Schedule 5 completed by the Contractor, or where the Contractor is a corporation, by the representative of the Contractor who is in a position to know the facts, attesting that:
  - (i) all subcontractors and any sub subcontractors performing the Contractor's Activities have been approved by the Contract Manager in accordance with clause 7.2;
  - (ii) the Site Personnel Register is current and correct, maintained in accordance with clause 8.3;
  - (iii) the Contractor has fulfilled or complied with any commitments made in the Contractor's Tender for the Contractor's Activities relating to the Local Benefits Test; and
  - (iv) all the Contractor's workers who at any time have been engaged in connection with the Contractor's Activities by the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of a payment claim, in respect of their engagement in connection with the Contractor's Activities; and

if requested in writing, reasonable supporting documentary evidence thereof; and

- (b) if previously requested by the Contract Manager, a signed statutory declaration in the form set out in Schedule 6 completed by any subcontractor, or where the subcontractor is a corporation, by a representative of the subcontractor who is in a position to know the facts, attesting that:
- (i) all workers who have been engaged by a subcontractor of the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of a payment claim in respect of their engagement in connection with the Contractor's Activities;
  - (ii) all subcontractors of the subcontractor have been paid all that is due and payable to such subcontractors up to the date of submission by the Contractor of a payment claim in respect of the Contractor's Activities; and
  - (iii) the subcontractor has fulfilled or complied with any commitments made in its tender for the subcontract works relating to the Local Benefits Test; and
- if requested in writing, reasonable supporting documentary evidence thereof.

#### 24.2. Provision of information to subcontractor

The Contractor acknowledges that the Principal may release to a subcontractor details of payments in percentage terms made by the Principal to the Contractor in respect of the Contractor's Activities unless the Contractor shows reasonable grounds why such details should not be released or satisfies the Principal that all payments due and payable to the subcontractor by the Contractor have been paid.

#### 24.3. Principal payment to worker or subcontractor

- (a) Unless under the BIF Act a project trust account is required for the Contract, at the request of the Contractor and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor make payment directly to a worker or subcontractor.
- (b) Unless under the BIF Act a project trust is required for the Contract, if a worker or subcontractor obtains a court order in respect of moneys unpaid and the subject of a statutory declaration under clause 24.1, 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 will be a debt due from the Contractor to the Principal.

### 25. INTELLECTUAL PROPERTY

#### 25.1. Warranty and indemnity

The Contractor warrants to the Principal that neither the Contract Materials nor the methods of working adopted by the Contractor in carrying out the Contractor's Activities will infringe any patent, copyright, moral right, registered design, trademark or name, or other protected right, and the Contractor indemnifies the Principal in respect of any such infringement.

#### 25.2. Intellectual property rights granted to Principal

- (a) Subject to clause 25.3, the ownership of and copyright in all Contract Materials shall vest absolutely in the Principal upon creation or (where they existed prior to the Term) supply to the Principal.
- (b) To the extent that copyright in or relating to the Contract Materials is not capable of being vested in the Principal because the Contractor does not own the copyright, the Contractor shall ensure that the Principal is granted an irrevocable and perpetual licence to use the relevant Contract Materials free of charge for any purpose relating to the Facility (including after the expiry of the Term or the earlier termination of the Contract for any reason).

### 25.3. Contractor's Background IP

- (a) Ownership of the Contractor's Background IP will remain vested in the Contractor.
- (b) The Contractor grants the Principal an irrevocable and perpetual licence to use the intellectual property rights subsisting in the Contractor's Background IP free of charge for the operation, maintenance and use of the Facility (including after the expiry of the Term or the earlier termination of the Contract for any reason).

## 26. STATUTORY REQUIREMENTS AND FACILITY REQUIREMENTS

### 26.1. Contractor's obligations

- (a) The Contractor shall satisfy all Statutory Requirements except those which Item 28 of the Annexure or the Contract Manager directs are to be satisfied by or on behalf of the Principal.
- (b) If a Statutory Requirement is at variance with a provision of the Contract, as soon as the Contractor discovers the variance, the Contractor shall notify the Contract Manager in writing specifying the difference.
- (c) Without limiting paragraph (a) above, the Contractor shall:
  - (i) ensure that it and its subcontractors hold all licences, registrations or other rights required under any Statutory Requirements in connection with the carrying out of the Contractor's Activities or the performance of the Contract;
  - (ii) pay all taxes, charges and other fees applying to or arising from the provision of the Contractor's Activities or the performance of the Contract; and
  - (iii) obtain, and comply with the requirements of, all approvals, consents or other permissions required to be obtained under any Statutory Requirements in connection with the Contractor's Activities or the performance of the Contract.

### 26.2. Changes in Statutory Requirements

- (a) If a change to a Statutory Requirement or a new Statutory Requirement:
  - (i) necessitates:
    - (A) a change to the performance of the Contractor's Activities as may be specified in the Maintenance Brief;
    - (B) a change, being the provision or ceased provision or expansion or reduction of services of a municipal, public or statutory authority in connection with the Contractor's Activities;
    - (C) an increase or decrease in a fee, tax or charge or payment, or removal of a new fee, tax or charge, under a Statutory Requirement to be paid by the Contractor in connection with the Contractor's Activities in accordance with the Contract; or
    - (D) an increase or decrease in GST,that directly results in a change in the Contractor's costs of providing the Contractor's Activities;
  - (ii) has effect after the 14th day prior to the date of submission of the Contractor's Tender; and
  - (iii) could not reasonably have been anticipated by a competent contractor prior to the closing of tenders,

then the extra costs necessarily and reasonably incurred by the Contractor or the costs saved by the Contractor in complying with the new Statutory Requirement or the change to the Statutory Requirement, will be valued by the Contract Manager under clause 17.3.

- (b) The Contractor must take all steps possible to mitigate additional costs necessarily and reasonably incurred referred to in clause 26.2(a).

### 26.3. Changes in Facility Requirements

- (a) If a change to a Facility Requirement or a new Facility Requirement:
  - (i) necessitates a change to the performance of the Contractor's Activities as may be specified in the Maintenance Brief that directly increases the Contractor's costs of providing the Contractor's Activities;
  - (ii) has effect after the 14th day prior to the date of submission of the Contractor's Tender;
  - (iii) could not reasonably have been anticipated by a competent contractor prior to the closing of tenders; and
  - (iv) the requirement for which is not the result of any breach of contract by the Contractor or any other act or omission of the Contractor or any of its personnel, then the extra costs reasonably and necessarily incurred by the Contractor in complying with the change, as valued by the Contract Manager under clause 17.3, will be added to the Contract Price.
- (b) The Contractor must take all steps possible to mitigate the additional costs necessarily and reasonably incurred referred to in clause 26.3(a).

### 26.4. Industrial relations

The Contractor must:

- (a) ensure that all employees of both the Contractor and subcontractors are employed and remunerated in accordance with any applicable Statutory Requirements; and
- (b) do all things reasonably necessary to maintain good industrial relations with all employees of the Contractor and subcontractors employed in connection with the Contractor's Activities.

### 26.5. Environment

The Contractor must take all action necessary to:

- (a) protect and preserve the environment from any harm or damage which may arise from or in connection with the carrying out of the Contractor's Activities; and
- (b) ensure that it complies with and does not cause the Principal to breach any Statutory Requirement relating to the protection or preservation of the environment.

## 27. CONFIDENTIAL INFORMATION

### 27.1. Confidential Information

- (a) The Contractor must not, and must ensure that its officers, employees, agents and subcontractors do not use or disclose to any third party any Confidential Information without the Principal's consent, other than in accordance with this clause 27.
- (b) The Contractor may disclose Confidential Information:
  - (i) to its officers, employees, agents and subcontractors to the extent necessary for the performance of the Contract, provided that the Contractor:
    - (A) makes such persons aware that the information is confidential;
    - (B) if required by the Contract, obtains from such persons a deed of confidentiality in a form acceptable to the Principal; and

- (C) ensures such persons only use the Confidential Information in connection with the performance of the Contract;
  - (ii) as authorised in writing by the Principal;
  - (iii) where the Contract requires disclosure to a third party;
  - (iv) as required by any law, judicial or parliamentary body or governmental agency; or
  - (v) when required (and only to the extent required) to the Contractor's professional advisers, and the Contractor must ensure that such professional advisers are bound by the confidentiality obligations imposed on the Contractor under this clause 27.1.
- (c) The Contractor must keep all Confidential Information in a secure location so that no unauthorised person is able to gain access to it.

## 27.2. Return or destruction of Confidential Information

- (a) Subject to clauses 27.2(c) and 27.2(d), at any time upon receipt of a written request by the Principal either during the Contract or upon termination or expiration of the Contract, the Contractor must deliver to the Principal any Confidential Information in the Contractor's power, possession or control.
- (b) Subject to clauses 27.2(c) and 27.2(d), the Contractor must:
  - (i) return any Confidential Information to the Principal upon the completion of the Contract; and/or
  - (ii) destroy its files and any copy (but not the original) of any Confidential Information held in its file or otherwise within its power, possession or control in accordance with usual business practice and any applicable legislative requirements.
- (c) If the Contractor wishes to retain a copy of any Confidential Information in connection with the Contract for the purposes of the Contractor's own reasonable internal credit, risk, insurance, legal and professional responsibilities, the Contractor must notify the Principal in writing prior to the expiration or termination of the Contract, identifying the Confidential Information the Contractor wishes to retain and the reasons for the request for retention and obtain the Principal's consent to that retention.
- (d) Any consent granted by the Principal may be given by the Principal subject to reasonable conditions (including that the Contractor must return the copies of the Confidential Information to the Principal at the end of 7 years after the termination or expiration of the Contract). If the Principal does not require the return of the Confidential Information, the Contractor must destroy each copy of the Confidential Information at the end of the 7 years after the termination or expiration of the Contract.
- (e) Regardless of the terms of the Principal's consent, the Contractor must maintain confidentiality and otherwise comply with the terms of the Contract.

## 28. ANTI-COMPETITIVE CONDUCT, CONFLICT OF INTEREST AND CRIMINAL ORGANISATIONS

### 28.1 For the purposes of this clause 28:

'Personnel' means officers, directors, employees, agents, and subcontractors;

'Conflict of Interest' includes any actual, reasonably anticipated, or perceived conflict of interest, whether personal, financial, professional, or otherwise.

### 28.2 The Contractor warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated tender or any actual or potential contract with any entity for the Contractor's Activities. In addition to any other remedies available to it under law or contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has engaged in collusive or anti-competitive conduct.

- 28.3 The Contractor warrants that it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under the Contract, except as disclosed. If the Principal requests, the Contractor must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Principal.
- 28.4 The Contractor warrants that neither it nor its Personnel have been convicted of an offence where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 161P of the *Penalties and Sentences Act 1992* (Qld).
- 28.5 The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Contractor warrants that it will immediately notify the Principal if it becomes aware that any warranty made in this clause was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way.
- 28.6 In addition to any other remedies available to it under law or contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has breached any warranty in this clause.

## 29. INFORMATION PRIVACY

- 29.1 For the purposes of this clause 29:

'Personal Information' means information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.

- 29.2 If the Contractor collects or has access to Personal Information in order to carry out the Contractor's Activities, the Contractor must:

- (a) if the Principal is an 'agency' within the meaning of the *Information Privacy Act 2009* (Qld) ("IPA"), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Contractor was the Principal;
- (b) not use Personal Information other than in connection with carrying out the Contractor's Activities, unless required or authorised by law;
- (c) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law;
- (d) ensure that its officers, employees, agents, and subcontractors do not access, use, or disclose Personal Information other than in connection with carrying out the Contractor's Activities;
- (e) ensure that its subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause 29;
- (f) fully co-operate with the Principal to enable the Principal to respond to applications for access to or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- (g) comply with such other privacy and security measures as the Principal may reasonably require from time to time.

- 29.3 On request by the Principal, the Contractor must obtain from its employees, officers, agents, or subcontractors carrying out the Contractor's Activities, an executed deed of privacy in a form acceptable to the Principal.

- 29.4 The Contractor must immediately notify the Principal on becoming aware of any breach of clause 29.



29.5 The Contractor acknowledges that, in accordance with the Contract, the Contract Manager, the Principal and the QGP Compliance Branch:

- (a) will collect information for the purposes of administering the Contract that may contain Personal Information, which will be used in accordance with the Contract and may be disclosed to the Contract Manager, the Principal, the QGP Compliance Branch and agents, consultants, or other contractors engaged by the Principal, but will not be disclosed to any other third party without the Contractor's consent unless authorised or required by law or the Contract; and
- (b) may collect information containing Personal Information for the purposes of determining the Contractor's compliance with the Ethical Supplier Threshold and the Ethical Supplier Mandate which may be disclosed to the Tripartite Procurement Advisory Panel for compliance purposes, but will not be disclosed to any other third party without the Contractor's consent unless authorised or required by law or the Contract.

29.6 Personal Information will be handled in accordance with the IPA.

### 30. QUEENSLAND GOVERNMENT POLICIES

#### 30.1. Training Policy (applicable to the extent provided for in the Annexure)

- (a) This clause 30.1 applies if Item 29 of the Annexure states that the Contract is an Eligible Project.
- (b) For the purposes of clause 30.1:

'Aboriginal or Torres Strait Islander' means a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives;

'Apprentice' and 'Trainee' have the same meaning as in the *Further Education and Training Act 2014* (Qld);

'Compliance Plan' means the plan submitted electronically by the Contractor in TPAS demonstrating how the Contractor will comply with its obligations under this clause and the Training Policy;

'DSDSATSIP' means the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships;

'Deemed Hours' means the number of on-the-job training hours required under this clause and the Training Policy, and are calculated using the following formula:

- (i) for building projects, except for Major building projects – contract sum (including GST) x 0.0006;
- (ii) for Major building projects – contract sum (including GST) x 0.0009;

'DESBT' means the Department of Employment, Small Business and Training;

'Eligible Project' means a contract where:

- (i) the Contractor's Activities are carried out in Queensland; and
- (ii) the contract sum is \$500,000 or greater (including GST);

'IEO Plan' means the Indigenous Economic Opportunities Plan developed by the Contractor that complies with the requirements of the Training Policy and is agreed to and signed by:

- (i) the Contractor;
- (ii) the Principal; and

- (iii) the relevant Aboriginal or Torres Strait Islander council or authority, or where there is no relevant Aboriginal and Torres Strait Islander council or authority, DSDSATSIP;

'Indigenous Project' means an Eligible Project, located in:

- (i) an Aboriginal or Torres Strait Islander community, or in the township of Weipa, as indicated of the Annexure; or
- (ii) a part of Queensland not referred to in paragraph (i) of this definition that is selected as an Indigenous Project by Queensland Government agencies, government owned corporations or by the Director-General of DSDSATSIP, as indicated of the Annexure;

'Practical Completion Report' means the report submitted electronically by the Contractor in TPAS demonstrating compliance by the Contractor with this clause and the Training Policy;

'Training Policy' means the Queensland Government policy titled "Queensland Government Building and Construction Training Policy" or any policy which replaces that policy;

'TPAS' means the Training Policy Administration System being the electronic reporting system administered by DESBT for contract compliance reporting under the Training Policy.

- (c) The Contractor must comply with the Training Policy and must:
  - (i) within 10 working days of the Date of Acceptance of Tender submit the Compliance Plan electronically in TPAS, and as soon as possible afterwards provide a copy of the TPAS email notification for the submitted Compliance Report to the Contract Manager;
  - (ii) allocate a minimum of 60% of the Deemed Hours towards the employment of Trainees or new entrant Apprentices, as required by the Training Policy;
  - (iii) for the remaining Deemed Hours not allocated under clause 30.1(b), undertake other workforce training, as required by the Training Policy;
  - (iv) provide the privacy statement in the schedule attached to these Conditions to each participant regarding the collection and use of personal information; and
  - (v) within 15 working days of the Expiry Date, submit the Practical Completion Report electronically in TPAS, and as soon as possible afterwards provide a copy of the TPAS email notification for the submitted Practical Completion Report to the Contract Manager.
- (d) If Item 30 of the Annexure states that the Contract is an Indigenous Project, the Contractor must also:
  - (i) within 10 working days of the Date of Acceptance of Tender submit the IEO Plan as part of the Compliance Plan electronically in TPAS, and as soon as possible afterwards provide a copy to the Contract Manager;
  - (ii) prioritise the employment of Aboriginal or Torres Strait Islander Apprentices and Trainees, and local Aboriginal and Torres Strait Islander workers to meet the Deemed Hours requirement under clause 30.1(b);
  - (iii) allocate an additional amount towards the IEO Plan, which must be a minimum of 3% of the contract sum including GST; and
  - (iv) within 15 working days of the Expiry Date, submit the achievement of outcomes against the IEO Plan as part of the Practical Completion Report electronically in TPAS, and as soon as possible afterwards, provide a copy of the submitted achievement of outcomes against the IEO Plan to the Contract Manager.
- (e) Nothing in clauses 30.1(c) or 30.1(d) limits or alters the Contractor's obligation to comply with the Training Policy.

- (f) The Contractor acknowledges that failure to comply in part or in whole with the requirements of clause 30.1 and non-compliance with the Training Policy will be considered in any review of a Contractor's eligibility to tender for future Queensland Government contracts in addition to any other sanctions that may apply.

### 30.2. Queensland Charter for Local Content (applicable if required by the Annexure)

- (a) This clause applies if specified in Item 31 of the Annexure.
- (b) The Contractor must, and must ensure its subcontractors, in carrying out the Contractor's Activities:
  - (i) comply with the principles of the Queensland Charter for Local Content and any requirements under the Contract in this regard;
  - (ii) comply with any Statement of Intent or equivalent local content statement under the Contract;
  - (iii) complete and submit a Charter for Local Content – Project Outcome Report (available from [www.dsdmip.qld.gov.au/charter](http://www.dsdmip.qld.gov.au/charter)) to the Principal at Practical Completion and at such other times as reasonably requested by the Principal, with a copy to [qclc@dsd.qld.gov.au](mailto:qclc@dsd.qld.gov.au).

### 30.3. Queensland Procurement Policy

- (a) The Contractor must, and must ensure its subcontractors, in carrying out the Contractor's Activities, comply with:
  - (i) the principles of the Queensland Procurement Policy and any requirements under the Contract in this regard;
  - (ii) the Ethical Supplier Threshold; and
- (b) The Contractor acknowledges that a failure to comply with the Principal's policies that apply to the performance of the Contractor's Activities or the Contractor's obligations under the Contract can 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.

## 31. MODERN SLAVERY

### 31.1 In this clause 31:

- (a) 'Modern Slavery' has the meaning given to it in the *Modern Slavery Act 2018* (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons; and
- (b) 'Modern Slavery Laws' means the *Modern Slavery Act 2018* (Cth) and any other applicable legislation addressing similar subject matter.

### 31.2 The Contractor warrants that:

- (a) it complies with and will continue to comply with all applicable Modern Slavery Laws;
- (b) it has thoroughly investigated its labour practices, and those of its subcontractors in respect of any Modern Slavery used anywhere in its operations or supply chain or in the operations or supply chain of any of its subcontractors (to the extent reasonably possible);
- (c) it has put in place all necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and
- (d) it has taken, and will take in the future, all necessary actions and investigations to validate the warranties provided under this clause.

31.3 Should the Contractor become aware of any:

- (a) Modern Slavery risks in its supply chain or operations, it must notify the Principal of those risks and advise the Principal of the steps it is taking to eliminate or minimise those risks; or
- (b) Modern Slavery practices being carried out within its operations or supply chain, it must:
  - (i) in writing, immediately notify the Principal of those practices and of the remediation action it proposes to take; and
  - (ii) at its cost, take any such additional remediation action required by the Principal (acting reasonably and after due consultation with the Contractor).

31.4 If the Contractor is a 'reporting entity' for the purposes of any state or federal Modern Slavery Laws, including the *Modern Slavery Act 2018* (Cth), it must provide the Principal with a copy of any report it is required to prepare under that legislation at the Principal's request.

## 32. GOODS AND SERVICES TAX (GST) AND PAY AS YOU GO (PAYG)

### 32.1. Definitions

For the purposes of this clause:

'ABN', 'adjustment event', 'adjustment note', 'amount', 'Australian resident', 'consideration', 'GST', 'GST Group', 'GST Law', 'input tax credit', 'recipient created tax invoice', 'registered', 'representative member', 'supply', 'tax invoice', 'taxable supply' have the same meanings as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and

'PAYG Law' means any Act dealing with or relating to the PAYG system referred to in Schedule 1 of the *Taxation Administration Act 1953* (Cth).

### 32.2. Payment of GST

Where a party is obliged to provide consideration to another party for a taxable supply made under or in connection with the Contract:

- (a) any amount which the Contract provides:
  - (i) is to be the amount of the consideration;
  - (ii) is to (or may) be used to calculate the amount of the consideration (and the amount of the consideration so calculated); or
  - (iii) is included (provisionally or otherwise) in the consideration,shall be taken to include GST payable in connection with the taxable supply unless the amount is specifically stated to exclude GST;
- (b) where, despite clause 32.2(a), any consideration to be provided for a taxable supply is exclusive of GST, the party providing the consideration must also pay the GST payable in respect of the taxable supply, when the consideration is provided; and
- (c) no other provision of the Contract shall apply to give the Contractor any claim in connection with GST.

### 32.3. Liability net of GST

Where under or in connection with the Contract, a party is required to pay an amount which is (or is to be calculated by reference to) any cost, expense, loss, or other liability suffered or incurred by another party that amount shall be (or be calculated by reference to) the cost, expense, loss, or other liability net of any input tax credits available to the other party or the representative member of its GST Group.

**32.4. Notification of GST registration status**

- (a) The Contractor warrants to the Principal that:
  - (i) the Contractor is registered for GST; and
  - (ii) the Contractor's ABN stated in the Contract (or otherwise notified by the Contractor to the Principal) is correct.
- (b) The Contractor must notify the Principal immediately if it ceases to be registered for GST at any time.

**32.5. Tax withholding**

- (a) Whenever the Contractor does not have an ABN or the Principal becomes aware that the Contractor's ABN notified to it is incorrect or the Principal otherwise reasonably considers itself bound by PAYG Law to do so, the Principal shall be entitled to withhold from any payment otherwise due to the Contractor under or in connection with the Contract, amounts calculated and to be withheld in accordance with the PAYG Law.
- (b) Subject to clause 32.5(c), each time the Contractor makes a claim for any payment under or in connection with the Contract, the Contractor shall be taken to warrant to the Principal that it is an Australian resident for the purposes of the foreign resident withholding provisions in Subdivision 12-FB of the *Taxation Administration Act 1953* (Cth).
- (c) The warranty in clause 32.5(b) shall not apply to the extent the Contractor has notified the Principal in writing that it is not an Australian resident before any claim for payment is made.

**32.6. Principal created tax invoices**

- (a) Except to the extent the Principal at any time gives to the Contractor written notice that it does not intend issuing recipient created tax invoices for any taxable supplies to the Principal by the Contractor under or in connection with the Contract:
  - (i) the Principal shall issue tax invoices and adjustment notes in respect of those supplies;
  - (ii) the Contractor shall not issue tax invoices or adjustment notes in respect of those supplies;
  - (iii) the Principal acknowledges that it was registered for GST when it entered into the Contract and that it will notify the Contractor if it ceases to be registered; and
  - (iv) the Contractor must notify the Principal immediately it becomes aware of an adjustment event occurring in respect of those supplies.

**32.7. Tax invoices**

- (a) If the Principal gives a written notice that it does not intend on issuing recipient created tax invoices for a taxable supply to the Principal by the Contractor under or in connection with the Contract:
  - (i) A party making a taxable supply the subject of the notice must issue to the other a tax invoice or adjustment note (as the case may require) within 5 Business Days after each of the following occurring in relation to that taxable supply:
    - (A) the party submitting a claim for payment;
    - (B) the Contract Manager certifying an amount for payment different to the amount claimed;
    - (C) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.
- (b) For the purposes of GST Law, upon the occurrence of each of the events specified in clause 32.7, the Principal shall be taken to have requested the Contractor to provide to the Principal the tax invoice or adjustment note referred to in clause 32.7(a).

- (c) Until the Principal notifies the Contractor otherwise, the Contract Manager is authorised to provide to or receive from the Contractor tax invoices or adjustment notes (as the case may be) on the Principal's behalf.

### **33. DEFAULT**

#### **33.1. Preservation of other rights**

If a party breaches or repudiates the Contract, nothing in clause 33 shall prejudice the right of the other party to recover damages or exercise any other right.

#### **33.2. Default by the Contractor**

- (a) If the Contractor commits a substantial breach of the Contract the Principal may give the Contractor a written notice to show cause.
- (b) Substantial breaches include but are not limited to:
- (i) failing to commence the Contractor's Activities in accordance with the requirements of the Contract;
  - (ii) failing to comply with a direction of the Contract Manager in accordance with clause 14(a);
  - (iii) failing to use the materials or standards of workmanship in accordance with clause 4.1(b);
  - (iv) if clause 30.1 applies, failing to comply with the requirements of clause 30.1;
  - (v) failing to comply with the requirements of clause 30.3;
  - (vi) failing to submit a SAMP in accordance with clause 15.1;
  - (vii) failing to submit an AWP in accordance with clause 15.3;
  - (viii) failing to effect, have in place or otherwise maintain or provide evidence of insurance as required by clause 22;
  - (ix) failing to maintain all necessary licences that are required for the Contractor to perform all of its obligations under the Contract;
  - (x) providing a statutory declaration pursuant to clause 24.1 which is false, misleading or deceptive in any respect;
  - (xi) assigning, novating or dealing with its rights or obligations under the Contract in breach of clause 7.1;
  - (xii) if the Maintenance Brief nominates response times, failing to achieve those nominated response times; or
  - (xiii) committing the same or a substantially similar breach of any provision of the Contract on three or more occasions at any time during the Term.

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

A notice given under clause 33.2 must:

- (a) state that it is a notice under clause 33 of the 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 33.4(a);
- (d) specify the time and date by which the Contractor must show cause; and

- (e) specify the place at which cause must be shown.

#### 33.4. Rights of the Principal

- (a) If by the time specified in a notice given under clause 33.2, the Contractor fails to show reasonable cause why the Principal should not exercise a right referred to in this clause 33.4, the Principal may by notice in writing to the Contractor:
  - (i) take out of the Contractor's hands the whole or part of the Contractor's Activities under the Contract; or
  - (ii) terminate the Contract.
- (b) If the Principal exercise the right under clause 33.4(a)(ii), the Contractor shall not be entitled to any payment in respect of the Contractor's Activities taken out of the hands of the Contractor unless payment becomes due to the Contractor under clause 33.5.

#### 33.5. Procedure when the Principal take over the work

- (a) If the Principal issues a direction to the Contractor to take over the Contractor's Activities under clause 33.4(a)(i), the Principal may without payment of compensation to the Contractor:
  - (i) take possession of the Contract Materials;
  - (ii) take possession of and use materials, equipment and other things intended for the performance of the Contractor's Activities and in the vicinity of the Facility as were used by the Contractor; and
  - (iii) contract with such of the Contractor's subcontractors and consultants,  
as are reasonably required by the Principal to facilitate the carrying out of the Contractor's Activities taken over by the Principal.
- (b) The Contractor agrees to execute all documents and do all things necessary (including giving all necessary notices to subcontractors and third parties) to allow the Principal to exercise its rights under this clause.
- (c) The Principal shall keep records of the costs of carrying out the Contractor's Activities taken over by the Principal.
- (d) As the Contractor's Activities taken out of the hands of the Contractor is completed, the Principal may from time to time assess and notify the Contractor of the cost thereby incurred (showing the calculations therefore). Any excess in those costs over the amount which would otherwise have been paid to the Contractor if the Contractor's Activities had been carried out by the Contractor shall be a debt due by the Contractor to the Principal.
- (e) If the Contractor is indebted to the Principal, the Principal may retain such materials, equipment and other things under this clause until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell such materials, equipment and other things and apply the proceeds to the satisfaction of the debts and the costs of sale. Any excess shall be paid to the Contractor.

#### 33.6. Default of the Principal

- (a) If the Principal commits a substantial breach of the Contract, the Contractor may give the Principal a written notice to show cause.
- (b) Substantial breaches include but are not limited to:
  - (i) failure by the Principal or the Facility Operator to give the Contractor access to the Facility or sufficient access to enable the Contractor to commence, or diligently continue with, the performance of the Contractor's Activities but only if the failure continues for longer than the period stated at Item 32 of the Annexure and subject to any rights of the Principal in an Emergency; and

- (ii) failing to make a payment, due under the Contract.

### 33.7. Requirements of a notice by the Contractor to show cause

A notice given under clause 33.6 shall:

- (a) state that it is a notice under clause 33 of the 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 33.8;
- (d) specify the time and date by which the Principal must show cause; and
- (e) specify the place at which cause must be shown.

### 33.8. Rights of the Contractor

- (a) If by the time specified in a notice given under clause 33.6, the Principal fails to show reasonable cause why the Contractor should not exercise a right referred to in this clause 33.8, the Contractor may by notice in writing to the Principal suspend the performance of the Contractor's Activities.
- (b) The Contractor shall lift the suspension if the Principal remedies the breach within 20 Business Days of the date of suspension under this clause 33.8.
- (c) If:
  - (i) within 20 Business Days of the date of suspension the Principal fails to remedy the breach; or
  - (ii) the breach is not capable of remedy, and the Principal fails to make other arrangements to the reasonable satisfaction of the Contractor, then the Contractor may by notice in writing to the Principal terminate the Contract, which termination will take effect on the date upon which the Contractor's written notice is given to the Principal.
- (d) If the Contractor terminates or suspends the performance of Contractor's Activities under the Contract under this clause or under the general law, the Contractor shall not be entitled to any Claim other than for damages incurred by the Contractor by reason of the suspension or termination.

### 33.9. Insolvency

- (a) Subject to clause 33.10, if:
  - (i) the Contractor informs the other party in writing or creditors generally that the Contractor is insolvent or it is financially unable to proceed with the Contract;
  - (ii) execution is levied against the Contractor by a creditor;
  - (iii) the Contractor, being 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 it;
    - (C) presents a debtor's petition or a declaration of an intention to present a debtor's petition to the Official Receiver;
    - (D) is made bankrupt;
    - (E) under Part IX of the *Bankruptcy Act 1966* (Cth):
      - (I) makes a written proposal for a debt agreement; and



- (II) the proposal becomes a debt agreement; or
- (F) makes a proposal for a deed of assignment, deed of arrangement or a composition; or
- (G) under Part X of the *Bankruptcy Act 1966* (Cth):
  - (I) has a deed of assignment or deed of arrangement made;
  - (II) accepts a composition;
  - (III) is required to present a debtor's petition, or
  - (IV) has a sequestration order made; or
- (iv) the Contractor is a corporation and:
  - (A) a notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (B) the Contractor enters a deed of company arrangement with creditors;
  - (C) a controller or administrator is appointed;
  - (D) a meeting of creditors is called with a view to:
    - (I) entering a scheme of arrangement or composition with creditors; or
    - (II) appointing a controller or administrator to the party;
  - (E) a receiver of the property or part of the property of the Contractor is appointed;
  - (F) the Contractor takes or commences or has taken, commenced or instituted against it any process, action or proceeding, whether voluntary or compulsory, which has an object or may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or a controller or administrator is appointed or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on the Contractor's business for the benefit of the creditors or any of them;
    - (I) a winding up order is made; or
    - (II) execution is levied by creditors, debenture holders or trustees or under a floating charge;

then the Principal may, without giving a notice to show cause, exercise the rights under clause 33.4(a)(i) or 33.4(a)(ii).

- (b) The rights given by this clause 33.9 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of Contract.

### 33.10. Stay on rights

The rights given by this clause 33 are subject to any restrictions on their enforcement under Part 5.1, Part 5.2, or Division 17 of Part 5.3A *Corporations Act 2001* (Cth)."

## 34. NOTIFICATION OF CLAIMS

### 34.1. Notice of intention to Claim

- (a) The Contractor shall give to the Contract Manager a notice of intention to Claim as soon as practicable after the Contractor becomes aware of any breach, act, omission, direction, approval or circumstance which may entitle the Contractor to Claim.

- (b) The notice of intention to Claim shall detail the general basis and quantum of the Claim.
- (c) This clause 34.1 shall not apply to any Claim which is required to be notified by another provision of the Contract.

#### 34.2. **Liability for failure to give notice of intention to Claim**

The failure of the Contractor to comply with the provisions of clause 34.1 or to notify the Contract Manager in accordance with the relevant provision of the Contract will, among other things:

- (a) entitle the Principal to damages from the Contractor for breach of Contract. Such damages shall be assessed by the Contract Manager and included in a payment certificate pursuant to clause 23.3;
- (b) neither bar nor invalidate the Claim; and
- (c) the Contractor will not be entitled to interest pursuant clause 23.7 in respect of the Claim.

#### 34.3. **Notice of Claim**

- (a) If a Claim is based on a breach, act, omission, direction, approval or circumstance, then the Contractor must give to the Contract Manager the notice of Claim not later than 60 days after the Contractor becomes aware of the breach, act, omission, direction, approval or circumstance.
- (b) A notice of Claim must include particulars of:
  - (i) the breach, act, omission, direction, approval or circumstances on which the Claim is based;
  - (ii) the provision of the Contract or other basis for the Claim; and
  - (iii) the quantum of the Claim.
- (c) This clause 34.3 will not apply to any Claim which is required to be notified by another provision of the Contract.

### 35. **DISPUTE RESOLUTION**

#### 35.1. **Disputes**

Any dispute or difference arising out of or in connection with this Contract or its subject matter or the conduct of either party prior to this Contract (including any question relating to the existence, validity, or termination of this Contract), must be resolved in accordance with this clause 35.

#### 35.2. **Dispute notice**

If a dispute arises, then a party must, if it wants to pursue the dispute, give notice in writing to the other party specifying:

- (a) the dispute;
- (b) particulars of the dispute; and
- (c) the position that the party believes is correct.

#### 35.3. **Negotiation**

If a dispute notice is given, then:

- (a) the parties must ensure that their authorised representatives meet and undertake genuine and good faith negotiations within 10 Business Days after the date on which the dispute notice is given (or any longer period agreed by the parties in writing), with a view to resolving the dispute; and

- (b) any agreement reached between the representatives must be reduced to writing and signed by or on behalf of each party and will be final and binding on the parties.

#### 35.4. Reference to arbitration

- (a) If by the expiration of 42 Business Days after the date on which a dispute notice is given (or any longer period agreed by the parties in writing) the dispute remains unresolved (in whole or in part), then the dispute must be referred to arbitration if either party wishes to pursue its resolution (and whether or not clause 35.3 has been complied with).
- (b) For the purposes of clause 35.4(a), the dispute is referred to arbitration by either party giving written notice to that effect to the other party.

#### 35.5. Conduct of arbitration

If a dispute is referred to arbitration under clause 35.4, then:

- (a) the seat of the arbitration will be Brisbane, Queensland;
- (b) the language of the arbitration will be English;
- (c) there will only be one arbitrator;
- (d) if, within 14 days after the referral to arbitration, the parties have not agreed upon an arbitrator, then the arbitrator will be nominated by the person stated in Item 33 of the Annexure; and
- (e) the arbitration will be conducted in accordance with the rules nominated in Item 34 of the Annexure.

#### 35.6. Proportionate liability

To the extent permitted by law, the parties agree that:

- (a) the powers conferred and restrictions imposed on a court by Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld) are not conferred or imposed on an arbitrator appointed under this clause 35; and
- (b) any such arbitrator shall have no power to make an order or award in respect of a dispute by applying or considering the provisions of Chapter 2 Part 2 of the *Civil Liability Act 2003* (Qld) (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this clause 35.6, have applied to any dispute referred to arbitration.

#### 35.7. Continued performance

Despite the existence of a dispute, each party must continue to comply with, and perform its obligations under, this Contract.

#### 35.8. Rights not affected

Nothing in clause 35 prejudices the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of a dispute under clause 35 or any matter arising under the Contract.

### 36. NOTICES

- (a) A notice shall be deemed to have been given when it is received by the person to whom it is addressed or is delivered to the address of that person stated in the Contract or last communicated in writing by that person to the person giving the notice, whichever is the earlier.
- (b) The Principal, the Contractor and the Contract Manager shall each notify the others of a change of address.
- (c) Without limiting the generality of 'notice', it includes a document.

## **37. MISCELLANEOUS**

### **37.1. Waiver of conditions**

Except as provided at law or in equity or elsewhere in the Contract, none of the provisions of the Contract shall be varied, waived, discharged or released, except with the prior written consent of the parties.

### **37.2. Governing Law**

This Contract is governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.

### **37.3. Severability**

If any part of the Contract is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the Contract will not be affected and the Contract will be read as if the part had been deleted.

## ANNEXURE

**Guidance note: Delete this guidance note and all guidance notes shown in red text below.**

**Complete all items in accordance with the instructions shown in red text. Delete instructions and use black text for inserted text.**

1	Principal (clause 1.1)	The State of Queensland through <b>[insert]</b>				
2	Principal's Address	<b>[insert or (delete one)]</b> [As stated in the Letter of Acceptance]				
3	Contract Manager (clause 1.1)	<b>[insert]</b> , or such other person appointed by the Principal from time to time by written notice to the Contractor under clause 5.1(a)				
4	Contract Manager's Address	<b>[insert]</b>				
5	Establishment Period (clause 1.1)	<b>[insert]</b> weeks  <b>Guidance note: Period stated to align with Establishment Works under the Maintenance Brief. Period is expressed as an amount of week, commencing on the date of acceptance of the tender.</b>				
6	Facility Operator (clause 1.1)	<b>[insert]</b>				
7	Handover Period (clause 1.1)	<b>[insert period]</b> prior to the Expiry Date <b>or</b> There is not a Handover Period. <b>(delete one)</b>  <b>Guidance note: Handover Period should align with the Handover Works under the Maintenance Brief.</b>				
8	Initial Expiry Date (clause 1.1)	<b>[insert]</b>				
9	Selected Subcontractor (clause 1.1)	Applicable <b>or</b> Not Applicable <b>(delete one)</b>  <table border="1"> <thead> <tr> <th>Selected Subcontractor</th> <th>Activity</th> </tr> </thead> <tbody> <tr> <td><b>[insert or delete]</b></td> <td><b>[insert or delete]</b></td> </tr> </tbody> </table> <b>Guidance note: Insert details if there are selected subcontractors, remove table if not.</b>	Selected Subcontractor	Activity	<b>[insert or delete]</b>	<b>[insert or delete]</b>
Selected Subcontractor	Activity					
<b>[insert or delete]</b>	<b>[insert or delete]</b>					
10	Outgoing Contractor (clause 1.1)	<b>[insert] or</b> Not Applicable <b>(delete one)</b>				
11	Payments (clause 1.2(c)(v))	Payments under the contract shall be made in Australian currency at Brisbane, Queensland				
12	First Notice Period (clause 3.1)	<b>[insert period]</b> prior to the Initial Expiry Date				
13	Option Term Period (clause 3.1(a))	<b>[insert maximum length of option term]</b> from the Initial Expiry Date				

14	Contractor's Submission (clause 3.2(a))	<b>[insert number]</b> of Business Days after receipt of a notice from the Principal under clause 3.1
15	Notice of Option Acceptance (clause 3.3)	<b>[insert number]</b> of Business Days after receipt of the Contractor's proposal submitted under clause 3.2(a)
16	Further notice required for Unplanned Maintenance Work (clause 10.1(b))	<b>[insert number]</b> Business Days <i>If nothing is stated, 14 Business Days.</i>
17	Submission of SAMP period (clause 15.1)	<b>[insert]</b> Business Days <b>or</b> Not Applicable <b>(delete one)</b>  <b>Guidance note:</b> For simple term maintenance contracts where there is no requirement from the Tenderer to tender back the SAMP, clause 15 would be not applicable.
18	Approval of SAMP period (clause 15.2(a))	<b>[insert]</b> Business Days of the date of the Contractor's submission of the SAMP under clause 15.1. <i>If nothing is stated, within 20 Business Days of the date of the Contractor's submission of the SAMP under clause 15.1.</i>
19	Submission of AWP period (clause 15.3(a))	<b>[insert]</b> Business Days <b>or</b> Not Applicable <b>(delete one)</b>  <b>Guidance note:</b> For simple term maintenance contracts where there is no requirement from the Tenderer to tender back the AWP, clause 15 would be not applicable.
20	Approval of AWP period (clause 15.4(a))	<b>[insert]</b> Business Days of the Contractor's submission of the AWP under clause 15.3 <i>If nothing is stated, within 20 Business Days of the date of the Contractor's submission of the AWP under clause 15.3.</i>
21	Asbestos and ACM (clause 16.3(a))	Applicable <b>or</b> Not Applicable <b>(delete one)</b>  <b>Guidance note:</b> Contract Manager to complete according to site.
22	Occupational health and safety audit (clause 16.4(a))	Is required <b>or</b> Is not required <b>(delete one)</b>   <i>If nothing is stated, an occupational health and safety audit is not required.</i>  <b>Guidance note:</b> Applicable unless the Contract Sum is less than \$500,000 including GST, the construction period does not exceed 16 weeks, or the Contract is not a for a government building project, under the Building Policy Framework.
23	Period for the development and delivery of the Handover Work Management Plan (clause 19.2(a))	<b>[insert]</b>   <i>If nothing is stated, 40 Business Days of the Date of Acceptance of Tender</i>
24	Period for the review and update of the Handover Work Management Plan (clause 19.2(b))	<b>[insert]</b>   <i>If nothing is stated, 30 Business Days prior to the end of each year of the Term.</i>
25	Amount of Public Liability Insurance (clause 22.1(c))	Shall be not less than <b>[insert]</b>    <b>Guidance note:</b> The amount of insurance required should be based on a risk assessment for the consultancy.
26	Times for Payment Claims (clause 23.2(a))	<b>[insert]</b> , where that day is not a Business Day, the next Business Day.

27	Interest rate (clause 23.7(a))	90 day bank bill rate
28	Statutory Requirements to be satisfied on or behalf of the Principal (clause 26.1(a))	<b>[insert] or Not Applicable (delete one)</b>
29	Eligible Project (clause 30.1(a))	Contract is an Eligible Project <b>or</b> Contract is not an Eligible Project <b>(delete one)</b>
30	Indigenous Project (clause 30.1(b))	<b>Yes or No (delete one)</b>
31	Queensland Charter for Local Content (clause 30.2)	Applicable <b>or</b> Not Applicable <b>(delete one)</b>
32	The failure to give access to the Facility which shall be a substantial breach (clause 33.6(b)(i))	13 weeks
33	The person to nominate an arbitrator (clause 35.5(d))	The Chair of the Resolution Institute
34	Rules of arbitration (clause 35.5(e))	The Resolution Institute Arbitration Rules

# SCHEDULES

## SCHEDULE 1 – REQUEST FOR APPROVAL TO SUBCONTRACT

### Clause 7.2

Contract Name: .....

Project Number: .....

Pursuant to clause 7.2(e) of the Conditions of Contract for Maintenance Work I request approval to enter into a subcontract for the following part of the works under the Contract:.....

Proposed subcontractor: .....

ACN: ..... ABN: .....

Address: .....

Licence No: ..... Category: .....

Trade: ..... Restrictions (if any): .....

Total value of proposed subcontract: \$.....

I confirm that:

1. the Contractor has complied with the requirements of clause 7.2 of the Conditions of Contract including, the Contractor’s obligations to procure the subcontract in accordance with the requirements of the Queensland Procurement Policy; and
2. the Contractor has provided an original version of the Deed Poll executed by the proposed subcontractor;
3. the proposed subcontractor:
  - a. for purposes of the Queensland Procurement Policy:
    - i. is:
      - A.  a local supplier as described by the Queensland Procurement Policy; or
      - B.  not a local supplier as described by the Queensland Procurement Policy and evidence is attached demonstrating the Contractors efforts to source a local supplier;
    - ii. is compliant with the Ethical Supplier Threshold; and
    - iii. is not subject to a current sanction under the Ethical Supplier Mandate;
  - b. has been informed of the existence of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (BIF Act);
  - c. if a project trust is required at the time of this request, has been given a notice of project trust as required by the BIF Act;
  - d. for the purposes of the BIF Act:
    - i.  IS a related entity, as defined by section 10A of the BIF Act, or
    - ii.  IS NOT a related entity, as defined by section 10A of the BIF Act; and
  - e. either:
    - i. has a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
    - ii. in relation to the work to be performed under the subcontract:
      - A. will be paid to achieve a specified result or outcome;
      - B. is required to supply the plant and equipment or tools of trade needed to perform the work; and
      - C. will be liable for the cost of rectifying any defect in the work performed.

I warrant that if approval is granted, the subcontract will be entered into in accordance with the above.

Signed .....  
Contractor

Date ...../...../.....





**SCHEDULE 2 – SUBCONTRACTOR DEED POLL**

**Clause 7.2(b)(vi)**

**FORM OF DEED POLL**

THIS DEED POLL is made at [.....] on the [.....] day of [.....] 20[.....]

BY [.....] (ABN [.....]) of [.....] (the “Subcontractor”).

IN FAVOUR OF: [The State of Queensland through .....] (hereinafter with its successors in office, nominated agents and the Queensland Government Procurement Compliance Branch (‘QGP Compliance Branch’) called the “Principal”).

**RECITALS**

- A. The Principal has entered into an agreement with: ..... (the “Contractor”) for the ..... (the “Project”).
- B. The Subcontractor has or will have an agreement (the “Subcontract”) with the Contractor or a subcontractor of the Contractor for the execution and completion and/or supply of the ..... (the “Subcontract Works”) for the Project.
- C. It is or will be a condition of the Subcontract that the Subcontractor executes this Deed Poll.

This Deed Poll provides as follows:

- 1. The Subcontractor warrants that:
  - a. it will make and keep accurate and complete records of:
    - i. its tender, including the preparation and submission of that tender;
    - ii. tenders received by it, whether accepted or not;
    - iii. the execution and completion of the work under the Subcontract; and
    - iv. compliance with any commitments made in the Subcontractor’s tender and its obligations under the Subcontract relating to compliance with government policies including but not limited to the Queensland Procurement Policy, the Local Benefits Test contained in the Queensland Procurement Policy, the Ethical Supplier Mandate, the Ethical Supplier Threshold and the Building and Construction Training Policy (if applicable);
  - b. the records referred to in clause 1.a. above shall include records that are required to be created or provided, or that are otherwise referred to, under the Subcontract, as well as other records including but not limited to those that:
    - i. relate to the Subcontractor’s tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;
    - ii. relate to design, including design calculations, option studies, opinions, reviews, and reports;
    - iii. relate to the execution and completion of the work under the Subcontract, including labour, subcontracts, subcontractors, consultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
    - iv. are required to demonstrate compliance with the matters referred to in 1.a.iv above, including payroll records, management records, time recordings and records of project-specific training; and

- v. are in a format or stored on any medium, including photographs, electronic files, telecommunications, or social media;
  - c. subject to the Subcontractor’s right to claim legal professional privilege in respect of any record, which is hereby maintained, permit the Principal and the QGP Compliance Branch to inspect and to copy at any time any records referred to in clause 1.a. or 1.b. above, provide electronic copies of such records in native format and provide any access to the subcontractor’s sites, premises, or facilities necessary for an inspection referred to in this paragraph;
  - d. without limiting the previous paragraphs, the Subcontractor shall permit the Principal and the QGP Compliance Branch to undertake an audit of the records referred to in clause 1.a. or 1.b. above for the purposes of verifying the subcontractor’s compliance with any commitments made in the subcontractor’s tender and its obligations under the Subcontract relating to compliance with government policies including the Queensland Procurement Policy, the Local Benefits Test contained in the Queensland Procurement Policy, the Ethical Supplier Mandate, the Ethical Supplier Threshold and the Building and Construction Training Policy (if applicable).
2. The Subcontractor consents to the Principal and the QGP Compliance Branch disclosing or providing copies of any records which the Principal and the QGP Compliance Branch inspects or copies in accordance with clause 1 of this Deed Poll to the Contractor.
  3. The Subcontractor consents to the Principal and the QGP Compliance Branch, in its absolute discretion, publishing information about the subcontractor’s compliance with the Ethical Supplier Mandate, including but not limited to any sanctions or penalties imposed, and warrants that it will not exercise any right at law, including in contract, at common law or in equity, against the Principal, including the QGP Compliance Branch, in relation to that publication.
  4. This Deed Poll is governed by and construed in accordance with the laws of Queensland. The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
  5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.

**EXECUTED as a DEED POLL**

on the [.....]day of [.....] 20[.....] by

..... Name of Company – Subcontractor	..... ACN
--	--------------

in accordance with s.127 of the *Corporations Act 2001*

..... Name of Director	..... Signature of Director
---------------------------	--------------------------------

..... Name of Director / Secretary	..... Signature of Director / Secretary
---------------------------------------	--

OR

..... Name of Person – Subcontractor	..... Signature of Person – Subcontractor
---	--

In the presence of:

..... Name of Witness	..... Signature of Witness
--------------------------	-------------------------------

### SCHEDULE 3 – TRAINING POLICY PRIVACY STATEMENT

#### Clause 30.1(c)(iv)

#### Privacy Statement – The Queensland Government Building and Construction Training Policy

This Privacy Statement is to be provided to each participant on an eligible Queensland Government funded Building and Civil Construction project to comply with the *Information Privacy Act 2009* (Qld).

The Queensland Government Building and Construction Training Policy (the Training Policy) requires that a minimum of 10 per cent of the total labour hours on eligible Queensland Government building projects be undertaken by apprentices and/or trainees and through other workforce training. For eligible major building projects, a minimum 15 per cent of the total labour hours is required.

Compliance and reporting requirements under the Training Policy are conditions of contract for contractors and compliance is measured using data recorded in the Training Policy Administration System (TPAS). This information will ultimately be considered in any review of contractors' eligibility to tender for future government work.

The Queensland Government requires that contracted organisations collect personal information from participants including:

Apprentice or Trainee	Registration ID Name Engaged as Apprentice or Trainee Employer Indigenous status Total hours
Cadet Undergraduate Employee Student Indigenous Employee	First & surname name Engaged as Cadet/Undergraduate/ Tradesperson/ Non-Tradesperson/ Prevocational Student (SWL) Indigenous status Total Hours

Contracted organisations must report this information to the Queensland Government in TPAS. The Department of Employment, Small Business and Training (DESBT) administers contractor compliance data through TPAS on behalf of the Queensland Government.

In addition to any contractual provisions, performance reports regarding a Contractor's compliance with the policy will be provided by DESBT to the Director-General or Chief Executive Officer of each Queensland Government agency or Government Owned Corporation as required.

Records collected will be treated as a public record and will be retained as required by the *Public Records Act 2002* (Qld). For the term that the record is maintained, the Queensland Government will only use this information to administer the Training Policy and report on contractor compliance.

Only authorised officers will have access to this information and personal information will not be disclosed to any other third party without consent unless authorised or required under law.

A person may apply to access their personal information stored. Should a person have any queries regarding the information held about themselves, including if they think that the personal information held is incorrect in any way, or is out of date, please contact DESBT on 1300 369 935 or [TrainingPolicy@desbt.qld.gov.au](mailto:TrainingPolicy@desbt.qld.gov.au).

**SCHEDULE 4 – SITE PERSONNEL REGISTER**

**Clause 8.3**

Project Name: ..... Project Location: .....

Contractor’s Name: ..... Project Registration Number: .....

Name	Is this person an owner/partner of an approved subcontractor/ sub subcontractor? Y or N (if N please complete the rest of the table as applicable)	Is this person remunerated in accordance with an award or industrial instrument? Y or N (if Y please complete column (d) and (e) only; if N complete columns (e) to (i) only)	Name of award or industrial instrument? (if applicable)	Name of this person’s Employer?	Is a WorkCover premium paid in respect of this person? Y or N	Are superannuation contributions made in respect of this person? Y or N	Is tax withheld from payments made to this person? Y or N	Is Payroll tax paid in respect of this person where applicable? Y or N or N/A
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

Note: If the answer to the question in column (b) is NO, the individual concerned will be considered to be a “worker” as that term is defined in the *Work Health and Safety Act 2011* (Qld) and the *Workers’ Compensation and Rehabilitation Act 2003* (Qld) unless evidence can be provided to the contrary.

**SCHEDULE 4 (CONT'D) – SITE PERSONNEL REGISTER SUMMARY**

**Clause 8.3**

Project Name: ..... Project Location: .....

Contractor's Name: ..... Project Registration Number: .....

Response	Total
Total number that responded <b>Y</b> to the question in column (b)?	
Total number that responded <b>N</b> to the question in column (b) and <b>Y</b> to the question in column (c)?	
Total number that responded <b>N</b> to the question in column (b) and <b>N</b> to the question in column (c)?	
Total number that responded <b>N</b> to the question in column (f)	
Total number that responded <b>N</b> to the question in column (g)	
Total number that responded <b>N</b> to the question in column (h)	
Total number that responded <b>N</b> to the question in column (i)	

Signed .....|

Date [.../.../.....]

**SCHEDULE 5 – STATUTORY DECLARATION BY CONTRACTOR**

**Clause 24.1**

*Oaths Act 1867*

Queensland

To Wit

I, [.....] of [.....]

in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between the State of Queensland through .....

.....(the "Principal") and [.....](the "Contractor") for [.....](the "Contract"),

1. I hold the position of [.....]. I am in a position to know the facts contained herein and to bind the Contractor by the terms of this declaration, and I am duly authorised by the Contractor to make this declaration on its/their behalf;
2. this statutory declaration is made in support of the Contractor's Payment Claim No. [.....] ("Payment Claim");
3. in this declaration, the words "project trust account", "retention trust account" and "subcontractor" have the meaning given to them in the *Building Industry Fairness (Security of Payment) Act 2017* ("BIF Act");
4. all subcontractors and sub subcontractors performing work under the Contract have been engaged in accordance with clause 7.2 of the Contract;
5. the Site Personnel Register is current and correct, maintained in accordance with clause 8.3 of the Contract;
6. the Contractor has fulfilled or complied with any commitments made in its tender for the work under the Contract relating to the Local Benefits Test contained in the Queensland Procurement Policy;
7. all the Contractor's workers who at any time have been engaged in connection with the Contractor's Activities by the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission of the Payment Claim;
8. except for those subcontractors listed in the Schedule below (if any), all subcontractors of the Contractor in respect of the Contractor's Activities have been paid the full amount owed to them by the Contractor at the date of the Contractor's submission of the Payment Claim. If no subcontractors are listed in the Schedule, all subcontractors of the Contractor in respect of the Contractor's Activities have been paid all amounts owed to them by the Contractor at the date of the Contractor's submission of the Payment Claim;

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the **Oaths Act 1867**.

I declare that the contents of this statutory declaration are true and correct. Where the contents of this declaration are based on information and belief, the contents are true to the best of my knowledge and I have stated the source of that information and grounds for the belief.

I understand that it is a criminal offence to provide a false matter in a declaration, for example, the offence of perjury under section 123 of the *Criminal Code Act 1899* (Qld).

**Signed and declared by:**

.....	.....
-------	-------

*Full name of declarant*

*Signature of declarant*

.....  
*Place where declarant is located*

.....  
*Date*

In the presence of:

.....  
*Full name of witness*

.....  
*Signature of witness*

.....  
*Type of witness*

.....  
*Date*

.....  
*Name of law practice/ witness's place of employment (cross out if not applicable)*





**SCHEDULE 6 – STATUTORY DECLARATION BY SUBCONTRACTOR**

**Clause 24.1**

*Oaths Act 1867*

Queensland

To Wit

I, [.....] of [.....]  
 [.....]  
 in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between [the State of Queensland through .....]  
 [.....] (the "Principal") and  
 [.....] (the "Contractor") for  
 [.....] (the "Contract"),  
 [.....] (the "Subcontractor")  
 is a Subcontractor to the Contractor for part of the work under the Contract, namely: [.....];

1. I hold the position of [.....]. I am in a position to know the facts contained herein and to bind the Subcontractor by the terms of this declaration, and I am duly authorised by the Subcontractor to make this declaration on its/their behalf;
2. all the subcontractor's workers who at any time have been engaged in connection with the Contractor's Activities have been paid in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of Payment Claim No [.....];
3. all subcontractors of the Subcontractor have been paid all that is due and payable to them up to the date of submission by the Contractor of Payment Claim No [.....] in respect of their part of the Contractor's Activities; and
4. the Subcontractor has fulfilled or complied with any commitments made in its tender for the subcontract works relating to the Local Benefits Test contained in the Queensland Procurement Policy.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the **Oaths Act 1867**.

I declare that the contents of this statutory declaration are true and correct. Where the contents of this declaration are based on information and belief, the contents are true to the best of my knowledge and I have stated the source of that information and grounds for the belief.

I understand that it is a criminal offence to provide a false matter in a declaration, for example, the offence of perjury under section 123 of the *Criminal Code Act 1899* (Qld).

**Signed and declared by:**

.....	.....
<i>Full name of declarant</i>	<i>Signature of declarant</i>

.....  
*Place where declarant is located*

.....  
*Date*

In the presence of:

.....  
*Full name of witness*

.....  
*Signature of witness*

.....  
*Type of witness*

.....  
*Date*

.....  
*Name of law practice/ witness's place of employment (cross out if not applicable)*



**SCHEDULE 7 – VARIATIONS IN RATES OF EXCHANGE AND DUTY**

**Clause 2.5**

Costs inserted in the Schedule are costs 14 days prior to the closing of tenders.

A	B	C	D	E
Description of goods obtained from overseas	Cost free on board at overseas port from which despatched \$AUD	Duty payable expressed as a percentage of the Column B cost	Duty Payable (Column B multiplied by Column C percentage) \$AUD	Total included in Tender (Column B + Column D) \$AUD
	\$	%	\$	\$

Signed [.....]

Date [.../.../.....]

**EXAMPLE CALCULATION**

A	B	C	D	E
Description of goods obtained from overseas	Cost free on board at overseas port from which dispatched \$AUD	Duty payable expressed as a percentage of the Column B cost %	Duty Payable (Column B multiplied by Column C percentage) \$AUD	Total included in Tender (Column B + Column D) \$AUD
Chiller	\$100,000	10	\$10,000	\$110,000

Exchange rate 14 days prior to closing of tenders AUD\$1 = £0.3800

Exchange rate as applied at the time of payment of the invoice by the Contractor AUD\$1 = £0.4200.

Duty paid at the time of payment of the invoice by the Contractor = 15%

**The Calculation**

- Adjustment to Contract Price for variation in rates of exchange for and the goods =  $\frac{0.3800 - 0.4200}{0.4200} \times \$100,000$  = (\$9,523.81)
- Adjustment to Contract Price for variation in duty =  $((\$100,000 - \$9,523.81) \times 15\%) - \$10,000$  = \$3,571.43
- Hence the total adjustment to the Contract Price in relation to the Chiller =  $(\$9,523.81) + \$3,571$  = (\$5,952.38)