

[project name]

Two Stage Project D&C Agreement

Category 2 (subject to settlement of
Land Sale Contract)

Stage One with Option for Stage Two

Draft - Not binding until signed

This is a draft document only and is subject to change by the Department.

The provision of this draft document by the Department:

- 1. is not an offer capable of acceptance;**
- 2. does not bind the Department to the terms of the document; and**
- 3. does not indicate an intention to enter into a legally binding arrangement.**

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FORMAL INSTRUMENT OF AGREEMENT

THIS AGREEMENT is made **BETWEEN** the State of Queensland through the Director-General, Department of Housing and Public Works of 22/41 George St, Brisbane Qld 4000 ("the Principal") of the one part **AND** [insert name and address] ("the Contractor") of the other part.

RECITALS

- A. The Principal requires the design and construction of the Project to be undertaken in a 2 stage process as follows:
- a. Stage One being the preparation by the Contractor of Schematic Design and a Stage Two Offer for the Project;
 - b. the decision by the Principal as to whether to accept or reject the Stage Two Offer; and
 - c. Stage Two, which is an optional stage that will only proceed if the Principal accepts the Stage Two Offer, which will involve the design and construction of the Project by the Contractor in accordance with the D&C Contract.
- B. The Contractor has agreed to this 2 stage process.
- C. The Contractor represents to the Principal that it has the skill, experience and judgement necessary to undertake the Stage One Works under this Contract, the D&C Works and the work under the D&C Contract and that it has employed and will employ the necessary personnel in that regard.
- D. The Contractor has agreed to undertake the Stage One Works in accordance with the Contract and, if Stage Two proceeds, to undertake the work under the D&C Contract and complete the D&C Works pursuant to the terms of the D&C Contract.

OPERATIVE PROVISIONS

1. By executing this Contract the Contractor warrants that each of the recitals is true and correct and acknowledges that the Principal has entered into this Contract in reliance thereon.
2. The entire, final and concluded Contract between the Principal and the Contractor relating to the Project is as constituted by this document and the documents listed in the schedule.
3. Should there be any discrepancy or inconsistency between the documents which constitute the Contract the following order of precedence shall apply to resolve the same:-
 - 3.1 This document.
 - 3.2 The Conditions of Contract.
 - 3.3 The Stage One Principal's Project Requirements set out in Attachment B to this Contract..
4. In consideration of the agreements on the part of the Principal in the Contract the Contractor shall perform the work required to complete the Stage One Works in accordance with the Contract and will otherwise perform, fulfil, comply with, submit to and observe all provisions of the Contract which are to be performed, fulfilled, complied with, submitted to or observed by or on the part of the Contractor.
5. In consideration of the agreements on the part of the Contractor in the Contract the Principal shall make payments to the Contractor in accordance with the Contract and will otherwise perform, fulfil, comply with, submit to and observe all provisions of the Contract which are to be performed, fulfilled, complied with, submitted to and observed by or on the part of the Principal.
6. This Contract shall take effect according to its tenor notwithstanding any prior contract in conflict with or at variance with it and any correspondence or documents relating to the subject matter of the Contract or the Project which may have passed between the parties to the Contract prior to its execution.

SCHEDULE

The Contract comprises the following:

Document Description	Where Found
Formal Instrument of Agreement	This document
Conditions of Contract	Attached to this document and marked "A"
Stage One Principal's Project Requirements	Attached to this document and marked "B"
Form of D&C Contract	Attached to this document and marked "C"

EXECUTED as an Agreement.

Signed for and on behalf of the **State of Queensland** through the **Department of Housing and Public Works** by a duly authorised person in the presence of:

Signature of witness

Signature of Authorised Person

Full name of witness

Full name of Authorised Person

Executed by [insert] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

"A"

Conditions of Contract

Department of Housing and Public Works

CONTENTS

	Page
Conditions of Contract	
1. CONSTRUCTION OF CONTRACT	6
2. INTERPRETATION	6
3. NATURE AND SCOPE OF CONTRACT	10
4. PARTIES TO CONTRACT	11
5. CONTRACT DOCUMENTS	11
6. COLLUSIVE ARRANGEMENTS, CONFLICT OF INTEREST and CRIMINAL ORGANISATIONS.....	11
7. COMMITMENT AND GOOD FAITH	12
8. QUALITY ASSURANCE.....	13
9. SERVICE OF NOTICES	13
10. STAGE TWO OFFER.....	14
11. WARRANTIES	17
12. DESIGN WORK	18
13. DESIGN REVIEW	19
14. VARIATION	20
15. ASSIGNMENT AND SUBCONTRACTING	21
16. PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS	21
17. STATUTORY REQUIREMENTS	22
18. PUBLIC LIABILITY INSURANCE.....	23
19. INSURANCE OF EMPLOYEES	23
20. PROFESSIONAL INDEMNITY INSURANCE	23
21. INSPECTION AND PROVISION OF INSURANCE POLICIES	23
22. PRINCIPAL'S REPRESENTATIVE	24
23. CONTRACTOR'S REPRESENTATIVE	24
24. SITE	24
25. PROGRESS.....	25
26. CLAIMS, CERTIFICATES AND PAYMENTS	25
27. PROJECT BANK ACCOUNTS	28
28. DEFAULT OR INSOLVENCY	31
29. TERMINATION FOR CONVENIENCE	35
30. DISPUTE RESOLUTION	35
31. WAIVER OF CONDITIONS.....	35
32. RECORDS AND ACCESS TO RECORDS	35
33. INFORMATION PRIVACY ACT	35
34. CONFIDENTIAL INFORMATION.....	36
35. MEDIA RELEASES	36
36. LAND SALE CONTRACT - SIGNING	36
37. SETTLEMENT OF LAND SALE CONTRACT	37

38. TERMINATION FOR NON-SETTLEMENT OF LAND SALE CONTRACT.....37
ANNEXURE TO THE CONDITIONS OF CONTRACT38

1. CONSTRUCTION OF CONTRACT

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

Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at Brisbane, Queensland.

Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960*, as amended from time to time.

This Contract is not subject to escalation unless expressly stated otherwise.

2. INTERPRETATION

2.1 Definitions

In the Contract, except where the context otherwise requires:

- 2.1.1 “**business day**” means a day other than a Saturday, Sunday, public holiday, special holiday or show holiday in Brisbane.
- 2.1.2 “**Chief Executive**” means the chief executive of the department in which the *Housing Act 2003* is administered.
- 2.1.3 “**Claim**” includes any claim, demand, action, proceeding or suit which the Contractor may make or bring against the Principal or any of the Principal's agents or employees relating to the construction of the Contract or as to any fact, matter or thing arising out of or in connection with the Contract, the Stage One Works or any decision by the Principal about whether to proceed with Stage Two including (without limitation) any claim, demand, action, proceeding or suit seeking the payment of money, or any costs, expenses, loss or damages on any ground whatsoever including (without limitation) pursuant to the Contract, on a quantum meruit, in quasi-contract, for unjust enrichment and insofar as is permitted by law, pursuant to any other principle of law.
- 2.1.4 “**Contract**” means the documents comprising the Contract set out in the Schedule of the Formal Instrument of Agreement.
- 2.1.5 “**Contract Materials**” means any work or documents produced or provided by either party in the course of performing the Stage One Works, including without limitation the Schematic Design, the Stage One Design Documents, all documents in the Stage Two Offer or any resubmitted Stage Two Offer, all documents included in any D&C Contract or renegotiated D&C Contract and any approvals.
- 2.1.6 “**Contract Sum**” means the Contract Sum for the D&C Contract.
- 2.1.7 “**Contractor**” means the person stated in the Annexure as the Contractor and includes that party's heirs, executors and permitted assigns and in the case of a body corporate its successors and permitted assigns.
- 2.1.8 “**Contractor's Representative**” means the person stated in the Annexure as the Contractor's Representative or other person from time to time appointed in writing by the Contractor.
- 2.1.9 “**D&C Contract**” means the D&C Contract, if any, entered into by the parties for Stage Two in accordance with this Contract and which shall be based upon the Form of D&C Contract.
- 2.1.10 “**D&C Works**” means the physical works, a brief description of which is set out in the Annexure, which the Contractor must plan and design under Stage One and, if the Principal elects to enter the D&C Contract, which the Contractor must construct, commission, complete and hand over to the Principal.

- 2.1.11 "**Date for Completion of Stage One**" means the Date for Completion of Stage One specified in the Annexure, which date the Principal can extend at any time in its absolute discretion and for any reason, including breach of contract by the Principal or other act or omission of the Principal, its employees or agents.
- 2.1.12 "**Date for Submission of Stage Two Offer**" means the Date for Submission of Stage Two Offer specified in the Annexure, which date the Principal can extend at any time in its absolute discretion and for any reason, including breach of contract by the Principal or other act or omission of the Principal, its employees or agents.
- 2.1.13 "**date of the Contract**" means the date on which the Contract was executed and where the parties execute on different dates, that latest such date.
- 2.1.14 "**day**" means calendar day except where the context otherwise indicates.
- 2.1.15 "**Form of D&C Contract**" means the form of design and construct contract attached to the Formal Instrument of Agreement and marked "C".
- 2.1.16 "**GST**" has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 2.1.17 "**Land Sale Contract**" means the REIQ contract and special conditions to be entered into by the owner of the Site and the Principal for the sale and transfer of the Site from the owner of the Site to the Principal".
- 2.1.18 "**Moral Rights**" are the moral rights granted to creators under the *Copyright Act 1968 (Cth)* and any similar rights existing under foreign laws.
- 2.1.19 "**notice**" has the meaning given to it by clause 9.
- 2.1.20 "**person**" includes an individual and a corporation.
- 2.1.21 "**Principal**" means the person stated in the Annexure as the Principal.
- 2.1.22 "**Principal's Project Requirements**" means the Principal's Project Requirements for Stage Two to be included in the D&C Contract that are to be developed by the Contractor during Stage One, including, without limitation, the Schematic Design.
- 2.1.23 "**Principal's Representative**" means the person stated in the Annexure as the Principal's Representative or other person from time to time appointed in writing by the Principal to be the Principal's Representative.
- 2.1.24 "**Project**" means the Project briefly described in the Annexure and more fully described in the Stage One Principal's Project Requirements.
- 2.1.25 "**Public Housing Date**" means the date specified in the Annexure.
- 2.1.26 "**Public Housing Notice**" means a notice issued by the Principal to the Contractor which is given where:
- (a) the proposed D&C Works as described in the Schematic Design are 'public housing' and accepted development under the relevant planning scheme in accordance with Part 5, Schedule 6 of the *Planning Regulation 2017*; and
 - (b) either:
 - (i) the Chief Executive considers that the proposed D&C Works as described in the Schematic Design will be substantially inconsistent with the relevant planning scheme and decides that the proposed D&C Works can proceed in accordance with section 30(1) of Part 5, Schedule 6 of the *Planning Regulation 2017*; or
 - (ii) section 30 of Part 5, Schedule 6 of the *Planning Regulation 2017* does not apply to the proposed D&C Works and the Chief Executive has complied with section

30(2) of Part 5, Schedule 6 of the *Planning Regulation 2017*.

2.1.27 "**Schematic Design**" means design and other documents that comply with the requirements of this Contract and are sufficient to enable the achievement of the criteria necessary for the Principal to issue a Public Housing Notice, including but not limited to:

- (a) developed Site and layout sketches;
- (b) developed and dimensioned Site and layout plans;
- (c) detailed Site and layout floor plans, elevations, sections, street elevations and 3-dimensional drawings;
- (d) developed drawings for services layout and connections by engineering disciplines;
- (e) colour boards to show all the intended finishes for the Project;
- (f) Nationwide House Energy Rating Scheme and National Australian Built Environment Rating System construction documentation assessment and report demonstrating an energy rating in accordance with Building Code of Australia and other applicable codes and Statutory Requirements;
- (g) all approvals including approvals from adjoining owners;
- (h) any necessary investigation reports, test reports and management plans on, but not limited to, the following:
 - (i) stormwater management;
 - (ii) traffic management;
 - (iii) acid sulphate soil management environmental management (construction);
 - (iv) erosion and sediment control;
 - (v) waste management;
 - (vi) water pressure;
 - (vii) acoustics; and
 - (viii) any other items referred in any environment checklist;
 - (ix) project environmental management plan;
 - (x) koala conservation self-assessment and koala management strategy;
- (i) a town planning assessment against the relevant Council planning scheme provisions and/or applicable codes undertaken by a qualified town planner; and
- (j) any other requirements for the Schematic Design specified in the Contract.

2.1.28 "**Settlement Notice**" means the notice from the Principal to the Contractor notifying the Contractor of settlement of the Land Sale Contract as provided for in clause 37.

2.1.29 "**Site**" means the land on which the Project is to be built as set out in the Annexure.

2.1.30 "**Stage One**" means the stage during which the Contractor performs all the Stage One Works including:

- (a) producing a Schematic Design; and
- (b) submitting a Stage Two Offer in compliance with the requirements of this Contract.

- 2.1.31 "**Stage One Design Documents**" means all design documentation (including documents, drawings, specifications, reports, models, samples, calculations, charts, tables, schedules and the Schematic Design) in computer readable and written forms which:
- (a) is required by the Stage One Principal's Project Requirement and the Contract;
 - (b) the Principal determines is necessary for a Stage Two Offer; and
 - (c) is required by any Variation.
- 2.1.32 "**Stage One Design Work**" means all work required to be undertaken by the Contractor to produce the Stage One Design Documents.
- 2.1.33 "**Stage One Fee**" means the lump sum stated in the Annexure for the performance of all Stage One Works.
- 2.1.34 "**Stage One Principal's Project Requirements**" means the documents described in the Annexure as the Stage One Principal's Project Requirements and attached to the Formal Instrument of Agreement and marked "B".
- 2.1.35 "**Stage One Works**" means all works, meetings, consultations and activities required to be undertaken by the Contractor to complete Stage One, including the production of a Schematic Design and the submission of a Stage Two Offer in accordance with the terms of this Contract.
- 2.1.36 "**Stage Two**" means, if a notice is given under clause 10.4.2(a) by the Principal accepting the Stage Two Offer, the performance of the work under the D&C Contract including the design and construction of the D&C Works in accordance with the terms of the D&C Contract.
- 2.1.37 "**Stage Two Offer**" means the offer to be submitted by the Contractor during Stage One in accordance with clause 10 to perform the work under the D&C Contract including to design and construct the D&C Works under the D&C Contract.
- 2.1.38 "**Statutory Requirements**" includes:
- (a) Acts of the Commonwealth;
 - (b) Acts of the State or Territory in which:
 - (i) the Stage One Works or any part thereof is carried out; or
 - (ii) the Site is located;
 - (c) ordinances, regulations, by-laws, orders and proclamations under the Acts referred to in paragraphs (a) and (b) above; and
 - (d) directions affecting the Project, the Stage One Works, the work under the D&C Contract or the D&C Works given by persons acting in the exercise of statutory powers enabling them to give such directions.
- 2.1.39 "**Submission Date**" means that later of the following:
- (a) the date of submission of the Stage Two Offer pursuant to clause 10.1.1; and
 - (b) the date of submission of the last resubmitted Stage Two Offer submitted pursuant to clause 10.2.3.
- 2.1.40 "**Submitter**" means any entity that submitted a response to the Principal's Request for Proposals for the Project.
- 2.1.41 "**Target Cost**" means the Target Cost specified in the Annexure which is the agreed target cost for the design and construction the Project under the terms of the D&C Contract in Stage Two.

2.1.42 **"Variation"** means:

- (a) a direction by the Principal's Representative which causes a material increase in the scope of the Stage One Design Work; or
- (b) a change to the D&C Works (whether by way of addition, increase, decrease, omission, deletion or removal to or from the D&C Works) which:
 - (i) does not arise out of or in connection with any act or omission of the Contractor; and
 - (ii) has a material effect on the scope of the Stage One Design Work and the resources required for, and the costs of, performing the Stage One Design Work which a prudent, competent and experienced contractor would not have anticipated as at the date of the Contract.

2.1.43 **"work under the D&C Contract"** means the "work under the Contract" as that term is defined in the D&C Contract.

2.2 **General**

2.2.1 In addition to these definitions, some terms, specific to a clause, are defined in that clause.

2.2.2 The clause headings in the Contract shall not form part of the Contract and shall not be used in the interpretation of the Contract.

2.2.3 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.

2.2.4 If any part of this 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 read as if the part had been deleted.

2.2.5 Except where the context otherwise requires, references to the Annexure shall be read as reference to the Annexure to these Conditions of Contract.

3. **NATURE AND SCOPE OF CONTRACT**

3.1 The Principal engages the Contractor to execute and complete the Stage One Works.

3.2 The Contractor shall not commence the Stage One Works until the Principal issues the Contractor with the Settlement Notice, unless the Principal provides it prior written consent.

3.3 The Contractor shall execute and complete the Stage One Works by the Date for Submission of Stage Two Offer.

3.4 If the Principal accepts the Contractor's Stage Two Offer pursuant to clause 10.4.2(a) of this Contract, the Principal shall engage the Contractor, and the Contractor will accept the engagement, for Stage Two, by:

- (a) executing the duly completed Form of D&C Contract; and
- (b) completing the work under the D&C Contract including the design and construction of the D&C Works pursuant to the D&C Contract.

3.5 For the avoidance of doubt and notwithstanding any other provision of this Contract, there shall be no contract in existence between the parties in respect of Stage Two unless and until the Principal accepts the Contractor's Stage Two Offer pursuant to clause 10.4.2(a) of the Contract and the parties execute the D&C Contract.

3.6 Without limiting the generality of the Contractor's responsibilities, the Contractor shall:

- (a) ensure that the Stage One Works progress to completion in accordance with the

Contract; and

- (b) be responsible for (and without limitation shall control, coordinate, administer and direct) all activities for the planning of the Stage One Works with proper skill, care and diligence.

3.7 Subject to the provisions of this Contract, the Principal shall pay the Contractor for performing the Stage One Works the Stage One Fee adjusted by all additions and deductions made pursuant to the provisions of the Contract.

4. **PARTIES TO CONTRACT**

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.

5. **CONTRACT DOCUMENTS**

5.1 **Discrepancies**

5.1.1 The several documents forming the Contract are to be taken as mutually explanatory of one another.

5.1.2 If there is any ambiguity, discrepancy or inconsistency in or between the documents comprising the Contract, the documents shall rank in order of precedence set out in the Formal Instrument of Agreement.

5.1.3 The Stage One Design Documents will comply in all respects with the Stage One Principal's Project Requirements and all other requirements of this Contract, provided that:

- (a) if there is an ambiguity or inconsistency between any standard required by this Contract, then the standard to be achieved shall be the higher of the standards prescribed; and
- (b) if this Contract does not specify the standard of workmanship, material, finish or any other aspect of the Project then the standard of such workmanship, material, finish, or other aspect, the Design Documents shall specify a standard of workmanship, materials, finish or other aspect of the Project that ensures the Project is fit for its intended purpose.

5.1.4 No rule of construction shall apply to the disadvantage of one party on the basis that that party put forward the documents comprising the Contract or any of them.

5.1.5 The party discovering an alleged ambiguity, discrepancy or inconsistency shall notify the Principal's Representative in writing of the ambiguity, discrepancy or inconsistency, who shall then direct the Contractor in writing as to the interpretation to be followed by the Contractor in carrying out the work.

5.1.6 The Contractor shall, at the Contractor's own cost and expense comply with any direction given to the Contractor by the Principal's Representative under this clause 5.1.

5.1.7 The Contractor acknowledges that it assumes the risk of all delays and increased costs, losses and expenses caused or resulting from any such ambiguity, discrepancy or inconsistency and that any direction given pursuant to this clause 5.1 shall in no event entitle the Contractor to make any Claim against the Principal.

5.2 **Dimensions**

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

6. **COLLUSIVE ARRANGEMENTS, CONFLICT OF INTEREST and CRIMINAL ORGANISATIONS**

6.1 The Contractor warrants and represents to the Principal that except as disclosed in its proposal, it has not entered into any contract, arrangement or understanding to pay or allow any money

directly or indirectly to a trade, industry or other association (above the published standard fee) relating in any way to its proposal or this Contract, nor paid or allowed any such money, nor will it pay or allow any such money.

- 6.2 In the event of the Contractor paying or allowing any money in breach of this Clause 6, the Principal may deduct from payments to the Contractor an equivalent sum as an amount due from the Contractor to the Principal (whether under the Contract or the D&C Contract or otherwise), in addition to any other claim, demand, action or proceeding the Principal may have against the Contractor (whether for damages or otherwise).
- 6.3 Without limitation, if the Contractor commits a breach of this clause 6, the Principal may at its discretion terminate either or both the Contract and the D&C Contract and claim damages for breach of contract.
- 6.4 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 Project or the Contract, any associated proposal or any actual or potential contract with any entity for the Project, the Stage One Works or Stage Two.
- 6.5 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 this 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.
- 6.6 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 1601P of the *Penalties and Sentences Act 1992 (Qld)*.
- 6.7 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 6 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. In addition to any other remedies available to it under law or contract, the Principal may, in its absolute discretion, immediately terminate either or both of the Contract and D&C Contract if it believes the Contractor has breached any warranty in this clause.

*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.

7. COMMITMENT AND GOOD FAITH

7.1 Commitment

The parties are committed to working together in a cooperative and collaborative manner with a view to:

- (a) encouraging cooperation and innovation;
- (b) establishing and maintaining an environment which encourages honest, open and timely sharing of information; and
- (c) sharing and transferring such behavioural aspects to all persons associated with Stage One to achieve a successful outcome in all respects.

This clause places no limits on the Principal's rights under clause 10 including the right to accept or reject the Contractor's Stage Two Offer.

7.2 Good Faith

The Contractor warrants that it shall perform all obligations, and act, in good faith, including, without limitation, in:

- (a) developing the Schematic Design to comply with the Stage One Principal's Project Requirements;
- (b) developing and submitting the Stage Two Offer and any resubmitted Stage Two Offer; and
- (c) endeavouring to develop a Contract Sum for the D&C Contract that is a lump sum and equal to or less than the Target Cost.

Acting in good faith includes:

- (d) being fair, reasonable and honest; and
- (e) doing all things reasonably expected by the Principal and by the Contract.

8. **QUALITY ASSURANCE**

- 8.1 The Contractor shall establish, implement and maintain a quality plan to the satisfaction of the Principal which shall comply with ISO 9001:2008.
- 8.2 The Contractor shall ensure that all provisions for quality assurance apply equally to all consultants and subcontractors engaged by the Contractor.
- 8.3 Within fourteen (14) days after the date of the Contract the Contractor shall submit to the Principal's Representative for approval the Contractor's quality plan.
- 8.4 The Contractor shall comply with directions by the Principal's Representative to change the Contractor's quality assurance system and quality plan to provide assurance of satisfactory compliance with the Contract.
- 8.5 The Contractor shall participate in and allow reasonable access to the Principal's agents to audit the Contractor's quality assurance program and quality plan. Verification by the Principal's agents shall not relieve the Contractor of any of the Contractor's liabilities and obligations under the Contract.

9. **SERVICE OF NOTICES**

9.1 **Address**

The Principal, the Contractor, the Principal's Representative and the Contractor's Representative shall each notify the others of a change of address and change of facsimile number.

9.2 **Service**

9.2.1 A notice in connection with the Contract:

- (a) must be signed by a duly authorised representative of the party giving the notice;
- (b) must be in writing; and
- (c) must be:
 - (i) delivered by hand to the address of the addressee contained in the Contract or which is subsequently notified under clause 9.1; or
 - (ii) sent by prepaid ordinary post to the address of the addressee contained in the Contract or which is subsequently notified under clause 9.1; or
 - (iii) sent by facsimile to the facsimile number of the addressee stated in the Contract or which is subsequently notified under clause 9.1; and

- (d) is deemed to be received:
 - (i) in the case of a notice delivered by hand, upon delivery, except if delivery occurs:
 - (A) after 5pm on a business day; or
 - (B) on a day which is not a business day,in which case delivery will be deemed to have occurred at 9am on the next business day;
 - (ii) in the case of a notice forwarded under Clause 9.2.1(c)(ii), within 5 business days of its posting; and
 - (iii) in the case of a notice delivered under Clause 9.2.1(c)(iii), on the production of a facsimile transmission report which indicates that the notice in its entirety was forwarded to the recipients facsimile number, except if the transmission is completed and confirmed to have occurred:
 - (A) after 5pm on a business day; or
 - (B) on a day which is not a business day,in which case the transmission will be deemed to have been completed and confirmed at 9am on the next business day.

9.2.2 Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.

9.2.3 Notwithstanding clause 9.2.1, the Principal's Representative may direct that specified notices or other communication may be effected by specified electronic means. In any such direction, the Principal's Representative must specify when such notices and communications shall be deemed to be received.

10. **STAGE TWO OFFER**

10.1 **Contractor's Stage Two Offer**

10.1.1 During Stage One, the Contractor shall submit to the Principal's Representative a Stage Two Offer by the Date for Submission of Stage Two Offer. The Stage Two Offer must meet all the requirements of this clause 10.

10.1.2 Failure to comply with this clause 10.1 will constitute a substantial breach of contract.

10.1.3 The Contractor's Stage Two Offer, or the last resubmitted Stage Two Offer where required, shall remain open for acceptance until the Principal notifies the Contractor in writing of the Principal's acceptance or rejection of the Stage Two Offer in accordance with clause 10.4.

10.2 **Contents of Stage Two Offer**

10.2.1 The Stage Two Offer must include the following as proposed by the Contractor:

- (a) the Schematic Design;
- (b) any other Stage One Design Documents required by the Stage One Principal's Project Requirements or this Contract;
- (c) the lump sum Contract Sum for the D&C Contract with a detailed costs breakdown;
- (d) where the proposed Contract Sum is more than the Target Cost, a detailed explanation of the reasons for this occurrence;
- (e) the Principal's Project Requirements;

- (f) the programme for the performance of the work under the D&C Contract including a proposed Date for Practical Completion for the D&C Contract; and
- (g) the D&C Contract, which must be a fully completed and ready for execution version of the Form of D&C Contract.

10.2.2 If the Principal is of the view any aspect of the Stage Two Offer is not in compliance with the requirements of this Contract, the Principal may, within 10 business days of its receipt of the Stage Two Offer, issue a written notice to the Contractor identifying the relevant aspects and the non-compliances.

10.2.3 If the Contractor receives a notice pursuant to clause 10.2.2, it shall address the issues raised by the Principal and resubmit its Stage Two Offer within 5 business days. In the absolute discretion of the Principal, the Principal may require any resubmitted Stage Two Offer to also be subject to the process in clauses 10.2.2 and 10.2.3.

10.3 Public Housing and Approvals Requirements

10.3.1 Entry into the D&C Contract is subject to all the following being achieved by the Public Housing Date:

- (a) the Chief Executive (or an authorised delegate of the Chief Executive) being satisfied that the Project as described in the Schematic Design is the development of Public Housing for the purposes of Part 5, Schedule 6 of the *Planning Regulation 2017*;
- (b) all of the requirements in Part 5, Schedule 6 of the *Planning Regulation 2017* being satisfied so that the construction of the Project on the Site in accordance with the Schematic Design is able to immediately proceed as an accepted development ; and
- (c) the issuing of a Public Housing Notice applicable to the Project, being the Project as described in the Schematic Design.

10.3.2 The Principal is entitled to treat failure to receive a response from the Chief Executive (or its authorised delegate) on or before the Public Housing Date as an unsatisfactory result.

10.3.3 The Principal will no later than two business days after the Public Housing Date issue to the Contractor either:

- (a) a Public Housing Notice; or
- (b) a written notice that the condition in clause 10.3.1 has not been satisfied.

10.3.4 The Principal will seek the response from the Chief Executive for the purposes of the condition in clause 10.3.1. The Contractor must promptly provide the Principal upon request with any information or documents required to enable the Chief Executive (or its authorised delegate) to make a decision under Part 5, Schedule 6 of the *Planning Regulation 2017* and such documents will be in compliance with the Contractor's obligations pursuant this Contract.

10.3.5 If the condition in clause 10.3.1 is not satisfied for any reason, including as a result of a default by the Principal, then the Principal may terminate this Contract by notice in writing to the Contractor. In that case:

- (a) the parties will not enter into the D&C Contract;
- (b) the Principal may proceed with the Project in any manner it thinks fit including by engaging another contractor; and
- (c) the Contractor will not be entitled to make any Claim against the Principal a result of a termination or non-entry into the D&C Contract pursuant to this clause 10.3.5, other than the Contractor's right to claim for payment pursuant to clause 28.8.

10.3.6 Clause 10.3.5 applies even if:

- (a) the Principal has accepted the Stage Two Offer pursuant to clause 10.4.2(a);
- (b) the Principal has initiated negotiations pursuant to clause 10.4.2(b); or
- (c) the parties have reached agreement on the terms of the D&C Contract pursuant to clause 10.4.5.

10.4 Principal's Options

10.4.1 Where there has been one or more resubmitted Stage Two Offers pursuant to clause 10.2.3, in this clause 10.4 the references to Stage Two Offer are taken to be references to that last Stage Two Offer submitted by the Contractor.

10.4.2 The Principal shall not be bound to accept the Contractor's Stage Two Offer. The Principal is free, at its sole discretion and without obligation to act reasonably, to at any time between the Submission Date and Date for Completion of Stage One by written notice:

- (a) accept the Contractor's Stage Two Offer;
- (b) initiate negotiations with the Contractor to change the D&C Contract included in the Stage Two Offer; or
- (c) reject the Contractor's Stage Two Offer (which rejection can occur even after the Principal initiates negotiations pursuant to clause 10.4.2(b)).

10.4.3 Without in any way limiting the Principal's rights and discretion under clause 10.4.2, the Contractor acknowledges and agrees that the Principal may elect to reject the Stage Two Offer if the Principal cannot obtain, or cannot obtain in sufficient time, internal financial approval to expend the Contract Sum from the person who has the relevant authority to give such approval.

10.4.4 If the Principal accepts the Stage Two Offer pursuant to clause 10.4.2(a), then the parties shall, subject to clause 10.3, promptly execute the D&C Contract included in the Stage Two Offer after the later of:

- (a) the issuing of the notice of acceptance by the Principal pursuant to clause 10.4.2(a); and
- (b) the issuing of the Public Housing Notice.

10.4.5 The following paragraphs apply if the Principal initiates negotiations pursuant to clause 10.4.2(b):

- (a) The negotiations about, and any agreement on, the terms of the D&C Contract are subject to clause 10.3.
- (b) Immediately upon the initiation of negotiations by the Principal, the parties are to commence negotiations on the terms of the D&C Contract.
- (c) At any time after the initiation of negotiations by the Principal, the Principal may in its absolute discretion and for any reason end negotiations and reject the Stage Two Offer pursuant to clause 10.4.2(c).
- (d) If the parties come to an agreement on the terms of the D&C Contract, the parties shall, subject to clause 10.3, promptly execute the agreed D&C Contract after the later of:
 - (i) reaching agreement on the terms of the D&C Contract; and
 - (ii) the issuing of the Public Housing Notice.

10.4.6 If:

- (a) the Stage Two Offer is rejected by the Principal pursuant to clause 10.4.2(c); or
- (b) the Principal initiates negotiations pursuant to clause 10.4.2(b) but the parties cannot

reach agreement on the terms of the D&C Contract by the Date for Completion of Stage One,

then:

- (c) this Contract is at an end the parties will not enter into the D&C Contract;
- (d) the Principal may proceed with the Project in any manner it thinks fit including by:
 - (i) engaging another contractor; and
 - (ii) using the Contract Materials pursuant to the intellectual property rights obtained under clause 16; and
- (e) the Contractor will have no entitlement or remedy or to make any Claim, other than for payment pursuant to clause 28.8.

11. WARRANTIES

11.1 Contractor's Warranties

The Contractor warrants that at all times the Contractor shall be suitably qualified and experienced and shall exercise due skill, care and diligence in the execution and completion of the Stage One Works. The Contractor further warrants to the Principal the following:

11.1.1 In:

- (a) submitting the Stage Two Offer and any resubmitted Stage Two Offer; or
- (b) agreeing to a D&C Contract pursuant to clause 10.4.5,

the Contractor warrants that it has investigated and satisfied itself of the adequacy and suitability of the Principal's Project Requirements included in the Stage Two Offer or the D&C Contract agreed pursuant to clause 10.4.5 to enable the Contractor to perform all the work under the D&C Contract without limitation in accordance with the D&C Contract so as to achieve the requirements of the Stage One Principal's Project Requirements.

11.1.2 In relation to collusion, those things referred to in clause 6.

11.1.3 The Contractor shall perform all duties and obligations under the Contract in good faith.

11.1.4 In carrying out the Stage One Design Work, the Contractor will exercise the degree of skill, care and diligence expected of a skilled and competent design professional, who regularly acts in the capacity in which the Contractor is engaged.

11.1.5 The Contractor will prepare the Schematic Design and the develop the Principal's Project Requirements in accordance with the Stage One Principal's Project Requirements and the other requirements of the Contract so that the Schematic Design and the Principal's Project Requirements will be suitable, appropriate and adequate:

- (a) for the purpose stated in the Stage One Principal's Project Requirements;
- (b) to meet the requirements of this Contract; and
- (c) to produce an end product that meets the requirements of the Stage One Principal's Project Requirements,

having regard to the assumptions that the Contractor can be reasonably expected to make in accordance with sound professional principles.

11.1.6 The Stage One Fee is sufficient and adequate to cover all costs of the Contractor performing all

Stage One Works and complying with obligations under this Contract.

11.2 Warranties and Indemnities Unaffected

The Contractor acknowledges that all warranties and indemnities given under the Contract will remain unaffected notwithstanding:

- (a) any advice, review, comment, approval, requirement to resubmit pursuant to clause 10.2.3 or direction by the Principal, the Principal's Representative or the employees, consultants or agents of the Principal in respect of:
 - (i) any matter which the Contractor has an obligation under the Contract to undertake its own investigations; and
 - (ii) Stage One Design Work, the Schematic Design or the Principal's Project Requirements;
- (b) the inclusion of any design documents or specifications in the Stage One Principal's Project Requirements that were provided by or on behalf of the Principal;
- (c) any negotiation or agreement on the terms of the D&C Contract pursuant to clause 10.4.5; or
- (b) that the Contractor engages any subcontractor or any consultant in connection with any of the Stage One Work (whether with or without the consent of the Principal).

11.3 Principal's Reliance on Warranties

The Contractor acknowledges that the Principal has entered into the Contract in reliance upon the warranties set out in the Contract.

12. DESIGN WORK

12.1 Design Obligation

Prior to the Date for Submission of Stage Two Offer, the Contractor must:

- (a) undertake such:
 - (i) Site investigations including topographical surveys, soil reports, bore holes and other geotechnical tests; and
 - (ii) other risk reduction studies,

as a prudent, competent and experienced contractor would consider necessary for the comprehensive, safe and accurate planning, scoping, design, costing and programming of the D&C Works during Stage One;
- (b) with skill, care and diligence
 - (i) consider reasonable options and alternatives which satisfy the requirements of the Stage One Principal's Project Requirements and the other requirements of this Contract;
 - (ii) develop the design of the D&C Works, and for this purpose prepare the Schematic Design, Principal's Project Requirements and other Stage One Design Documents:
 - A in accordance with the Stage One Principal's Project Requirements and the other requirements of the Contract;
 - B so that the Contract Sum in the Stage Two Offer is minimised as much as possible;

- C that are fit for purpose; and
 - D so that work under the D&C Contract can be completed in a reasonable time.
- (c) submit the Stage One Design Documents to the Principal's Representative for review as required by the Contract, in a form satisfactory to the Principal's Representative and at those times stated in the Contract or requested by the Principal's Representative or, if no times are stated in the Contract or requested by the Principal's Representative, then in a reasonable time that will give the Principal a reasonable opportunity to review the Stage One Design Documents within the period of time within which the Principal may review it under clause 13;
- (d) participate in meetings with the Principal as required by the Contract or as otherwise reasonably required by the Principal; and
- (e) conduct the design review activities identified in the Contract.

12.2 Supply of Documents by Principal

Documents supplied to the Contractor by the Principal shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing.

The documents shall not, without the prior written approval of the Principal, be used, copied or reproduced by the Contractor for any purpose other than the execution of the Stage One Work or the work under the D&C Contract pursuant to the D&C Contract.

12.3 Supply of Documents by Contractor

If the Contract requires the Contractor to supply documents to the Principal, the Contractor shall, unless otherwise stated, supply 4 hard copies and an electronic copy in a format which is acceptable to the Principal.

All drawings required to be provided by the Contractor must be in both hard copy and electronic format. The hard copy format shall be in accordance with the relevant standards. The electronic format shall be provided on CD-ROM or any other such electronic format acceptable to the Principal.

12.4 Availability of Documents

Whilst Stage One Work is being undertaken, the Contractor must make available to the Principal and the Principal's Representative all Contract Materials upon request and whether or not complete.

13. DESIGN REVIEW

- (a) The Principal may (in its absolute discretion):
- (i) review any Stage One Design Document or any resubmitted Stage One Design Document, prepared and submitted by the Contractor; and
 - (ii) within the number of days specified in the Annexure of the submission by the Contractor of such Stage One Design Documents or resubmitted Stage One Design Documents consent, reject or comment on the Stage One Design Documents.
- (b) If any Stage One Design Document is rejected, the Contractor must submit an amended Stage One Design Document to the Principal's Representative.
- (c) The Principal does not assume or owe any duty of care to the Contractor to review, or in reviewing, the Stage One Design Documents submitted by the Contractor for errors, omissions or compliance with the Contract.

- (d) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Stage One Design Document prepared by the Contractor or any direction by the Principal's Representative in relation to, the Stage One Design Documents will:
 - (i) relieve the Contractor from, or alter or affect, the Contractor's obligations under the Contract or otherwise at law or in equity; or
 - (ii) prejudice the Principal's rights against the Contractor under the Contract or otherwise at law or in equity.

14. VARIATION

14.1 Variation Price Request

At any time prior to the end of Stage One, the Principal's Representative may issue a document titled "**Variation Price Request**" to the Contractor which will set out details of a proposed Variation which the Principal is considering.

Within the number of days specified in the Annexure of the receipt of a Variation Price Request the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

- (a) the adjustment (if any) to the Stage One Fee;
- (b) the effect (if any) that the carrying out of the proposed Variation will have on the achievement of:
 - (i) a Stage Two Offer by the Date for Submission of Stage Two Offer; and
 - (ii) the Target Cost.

14.2 Variation Order

Whether or not the Principal's Representative has issued a "Variation Price Request" under clause 14.1, the Principal's Representative may at any time during Stage One instruct the Contractor to carry out a Variation by a written document titled "Variation Order" in which the Principal's Representative will state one of the following:

- (a) the proposed adjustments to the amounts payable under the Contract as set out in the Contractor's notice under clause 14.1 are agreed and will be made; or
- (b) any adjustment to the amounts payable under the Contract will be determined under clause 14.3.

14.3 Valuation of Variation

The adjustment to the Stage One Fee will be valued:

- (a) as agreed under clause 14.2(a);
- (b) if clause 14.3(a) does not apply, in accordance with the rates or prices included in any table of variation rates and prices under any relevant approved subcontract agreement if and insofar as the Principal's Representative determines that those rates or prices are applicable to the Variation; or
- (c) if clause 14.3(b) does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Principal's Representative.

14.4 Variations Generally

No Variation will invalidate the Contract irrespective of the nature, extent or value of the work the subject of the Variation.

14.5 Omissions

If a Variation the subject of a direction by the Principal's Representative omits any part of the Stage One Works, the Principal may thereafter carry out this omitted work either itself or by engaging other contractors.

15. ASSIGNMENT AND SUBCONTRACTING

15.1 Assignment

The Principal may, at any time, by notice in writing to the Contractor, assign all or any of its rights under the Contract to any person identified in the notice ("the assignee").

The Contractor acknowledges and agrees that from the date of any notice given by the Principal pursuant to this clause, any assignment by the Principal takes effect as if the assignee had been originally named as a party to the Contract in place of the Principal.

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.

16. PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

16.1 Warranty and Indemnity

The Contractor warrants to the Principal that the Contract Materials it produces or provides as part of the Stage One Works will not 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.

16.2 Intellectual Property Rights granted to Principal

The ownership of and copyright in all Contract Materials produced or provided as part of the Stage One Works shall vest absolutely in the Principal upon their creation.

To the extent that copyright in or relating to the Contract Materials is not capable of being vested in the Principal, the Contractor shall ensure that the Principal is irrevocably licensed to use the relevant Contract Materials for Stage Two and for the Project, even if the Contractor does not perform Stage Two.

This clause survives any termination or ending of this Contract and it applies even where the Principal rejects the Stage Two Offer or the Contractor does not otherwise perform Stage Two.

16.3 Moral Rights

16.3.1 To the extent the Contractor, a subcontractor, consultant or anyone associated with any of them (including their personnel) has Moral Rights in the Contract Materials, the Contractor consents to:

- (a) the Principal;
- (b) any third party to whom the Principal expressly or impliedly licenses, or grants any other right to use or possess, any Contract Materials ('licensee'), including without limitation another contractor where the Contractor does not perform Stage 2 for any reason; or
- (c) any third party to whom the Principal assigns copyright in any part of the Contract Materials ('assignee'),

doing any of the following for purposes connected with this Contract, Stage Two or the Project:

- (d) acknowledging in any manner or failing to acknowledge the Contractor's or any other

- person's authorship of any Contract Materials;
- (e) modifying, varying or amending any Contract Materials; or
 - (f) altering any Contract Materials by adding to, or removing elements from, any Contract Materials, including by combining elements of any Contract Materials with any other material.
- 16.3.2 The Contractor must use its best endeavours to obtain a signed, written consent from all individuals who create or may create any Contract Materials to enable the Principal or any licensee or assignee to use the Contract Materials as provided for in clause 16.3.1.
- 16.3.3 Upon request by the Principal's Representative, the Contractor will produce to the Principal's Representative the written consents obtained pursuant to clause 16.3.2.

17. STATUTORY REQUIREMENTS

17.1 Variance with the Contract

The Contractor shall satisfy all Statutory Requirements except those which the Principal's Representative directs are to be satisfied by or on behalf of the Principal.

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 Principal's Representative in writing specifying the difference.

The Principal's Representative will direct how the Contractor is to proceed given the variance and the Contractor shall comply with that direction. The Contractor is not entitled to any additional payment or to make any Claim arising out of such a direction.

17.2 Contractor's Declaration and Indemnity

The Contractor agrees that except insofar as it is expressly provided otherwise by the Contract:

- (a) the Contractor does not act as agent of the Principal in complying with any Statutory Requirement; and
- (b) the Contractor indemnifies the Principal against any damages, costs and consequences of failing to comply with any Statutory Requirement.

17.3 Building Act Compliance

- 17.3.1 A Building Certifier is required to be engaged by the party stated in the Annexure to provide advice on compliance of the Stage One Works and the Contract Materials with the provisions of the *Building Act 1975* and, in the performance of the Building Certifier's duties, must be required to act as an independent party and not as an agent of the Principal.

The Contractor shall ensure the Building Certifier shall have sufficient access to the Stage One Works and all Contract Materials to ensure compliance with the provisions of the *Building Act 1975* and any regulations, by laws, orders and proclamations made thereunder.

- 17.3.2 The Contractor shall:

- (a) comply with; and
- (b) bear the costs of complying with,

all requirements of the Building Certifier. The Contractor is also responsible for paying all the Building Certifier's fees and costs.

- 17.3.3 Approvals and certificates issued to the Contractor by the Building Certifier shall be surrendered to the Principal.

18. PUBLIC LIABILITY INSURANCE

18.1 Before the Contractor commences Stage One Works, the Contractor shall take out a Public Liability Policy of Insurance

18.2 The Public Liability Policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in the Annexure and shall be effected with an insurer and in terms both approved in writing by the Principal (such approval not to be unreasonably withheld). The policy shall be maintained for the entire duration of this Contract.

19. INSURANCE OF EMPLOYEES

Before commencing work under the D&C Contract the Contractor shall insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law.

The insurance cover shall be maintained as required by statute and otherwise for the duration of the Contract.

20. PROFESSIONAL INDEMNITY INSURANCE**20.1 Contractor to effect Insurance**

Within seven (7) days of the date of the Contract the Contractor shall effect a Professional Indemnity Policy of insurance with an insurer approved by the Principal (such approval not to be unreasonably withheld):

- (a) for a total cover not less than the amount stated in the Annexure with any associated excess to be a reasonable amount; and
- (b) covering the Contractor's liability to any person arising from an act or omission of the Contractor in connection with the professional activities and duties of the Contractor.

20.2 Period of Insurance

Professional Indemnity Insurance under this clause shall be maintained by the Contractor until the expiration of 6 years after conclusion of the Contract.

21. INSPECTION AND PROVISION OF INSURANCE POLICIES**21.1 Proof of Insurance**

Before the Contractor commences work and whenever requested in writing by the Principal, the Contractor shall produce certificates of currency of insurance, and if required by the Principal details of an insurance policy, to the Principal evidencing the insurance effected and maintained, and showing the applicable insurance excess.

The effecting of insurance shall not limit the liabilities or obligations of the Contractor under this Contract or otherwise.

21.2 Failure to Produce Proof of Insurance

If, after being requested in writing by the Principal so to do, the Contractor fails to produce evidence of compliance with insurance obligations under clauses 18, 19 or 20 to the satisfaction and approval of the Principal, the Principal may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the Contractor to the Principal.

The Principal may refuse all payment until evidence of compliance with insurance obligations under clauses 18, 19 or 20 is produced by the Contractor to the satisfaction and approval of the Principal.

The rights given by clause 21.2 are in addition to any other right.

21.3 Notices from or to the Insurer

The 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.

21.4 Notices of Potential Claims

The Contractor shall, as soon as practicable, inform the Principal in writing of any occurrence that may give rise to a claim under a policy of insurance required by clause 18, 19 or 20 and shall keep the Principal informed of subsequent developments concerning the claim.

22. PRINCIPAL'S REPRESENTATIVE

The Principal shall ensure that at all times there is a Principal's Representative and that in the exercise of the functions of the Principal's Representative under the Contract. The Principal's Representative acts as the agent of the Principal and not as an independent certifier.

If, pursuant to a provision of the Contract enabling the Principal's Representative to give directions, the Principal's Representative gives a direction, then the Contractor shall comply with the direction.

23. CONTRACTOR'S REPRESENTATIVE

The Contractor shall ensure that at all times there is a Contractor's Representative who possesses the appropriate skill, expertise and qualifications and that in the exercise of the functions of the Contractor's Representative under the Contract, the Contractor's Representative acts in good faith.

The Contractor shall forthwith notify the Principal's Representative in writing of any subsequent changes to the Contractor's Representative.

Matters within the knowledge of, and matters which should have been within the knowledge of, the Contractor's Representative shall be deemed to be within the knowledge of the Contractor.

24. SITE

By the time stated in the Annexure, the Principal shall give the Contractor access to the Site sufficient to enable the Contractor to commence and carry out Stage One Works in accordance with the Contract. The Contractor must not exercise any right of access to the Site conferred on the Contractor by the Principal under this Contract before the Principal issues the Contractor with the Settlement Notice unless the Principal provides the Contractor with prior written consent. If the Contractor accesses the Site with the Principal's consent before the Settlement Notice is issued under this clause 24, the Contractor:

- (a) acknowledges and agrees that the Principal is not obligated under this Contract to provide the Contractor with access to the Site until after the Settlement Notice has issued;
- (b) must comply with any conditions of access imposed by the Principal;
- (c) must minimise disturbance to the Site (including any occupiers of the Site);
- (d) must not damage any improvements or structures on the Site; and
- (e) indemnifies the Principal against any damages, costs and consequences of failing to comply with this clause.

Notwithstanding the provisions of this clause 24, if the Contractor is in breach of clause 21.1, the Principal may refuse to give the Contractor access to the Site until the Contractor has complied with the requirements of clause 21.1.

Access to the Site shall confer on the Contractor a right to only such access as is necessary to enable the Contractor to execute the Stage One Works.

25. PROGRESS

The Contractor shall:

- (a) subject to clause 3.2, proceed with the Stage One Works with due expedition and without delay; and
- (b) submit a compliant Stage Two Offer by the Date for Submission of Stage Two Offer.

26. CLAIMS, CERTIFICATES AND PAYMENTS**26.1 GST and PAYG****26.1.1 Definitions**

- (a) Terms defined by the GST Law and PAYG Law and used (without separate definition) in this clause, shall have the meaning given to them by the GST Law or PAYG Law.
- (b) For the purposes of this clause:

"ABN" means Australian Business Number and has the meaning given to that term in *A New Tax System (Australian Business Number Act 1999 (Cth))*.

"GST Law" has the meaning given to that term in *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)*.

26.1.2 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 paragraph (a) of this clause 26.1.2, 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.

26.1.3 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.

26.1.4 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.

26.1.5 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 26.1.5(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 26.1.5(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.

26.1.6 Principal Created Tax Invoices

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:

- (a) the Principal shall issue tax invoices and adjustment notes in respect of those supplies;
- (b) the Contractor shall not issue tax invoices or adjustment notes in respect of those supplies;
- (c) 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
- (d) the Contractor must notify the Principal immediately it becomes aware of an adjustment event occurring in respect of those supplies.

26.1.7 Tax Invoices

- (a) A party making a taxable supply 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:
 - (i) the party submitting a claim for payment;
 - (ii) the Principal's Representative certifying an amount for payment different to the amount claimed;
 - (iii) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified,

unless the Principal is providing Principal created tax invoices for the taxable supply under clause 26.1.6.

- (b) For the purposes of GST Law, upon the occurrence of each of the events specified in paragraph (a)(i), (ii) or (iii) of this clause 26.1.7, the Principal shall be taken to have requested the Contractor to provide to the Principal the tax invoice or adjustment note referred to in paragraph (a) of this clause 26.1.7.
- (c) Until the Principal notifies the Contractor otherwise, the Principal's Representative 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.

26.2 Payment Claims

- 26.2.1 The Contractor shall deliver to the Principal's Representative payment claims at the times for payment claims under the Contract stated in the Annexure.
- 26.2.2 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 Principal's Representative may reasonably require.
- 26.2.3 If the time for any payment claim falls due on a day which is not a business day, the Contractor shall submit the payment claim on the next business day following that date.
- 26.2.4 If the Contractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement shall not require the Principal's Representative 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.
- 26.2.5 If the Contractor fails to make a payment claim, the Principal's Representative may nevertheless issue a payment certificate.
- 26.2.6 The Contractor shall be entitled to make a payment claim based on the percentage of Stage One Works completed at the date of the payment claim.

26.3 Payment Certificates

- 26.3.1 Within 10 business days of receipt of a payment claim, the Principal's Representative shall assess the payment claim and determine whether the Contractor has satisfied the provisions of the Contract and issue a payment certificate or give reasons in writing for not issuing the certificate.
 - 26.3.2 The Principal's Representative shall:
 - (a) assess the amount claimed by the Contractor under clause 26.2; and
 - (b) issue a payment certificate as its assessment of the amount claimed after adjustment for:
 - (i) payments already made;
 - (ii) the correction of any errors made in previous payment certificates; and
 - (iii) all other adjustments which may be required to be made pursuant to the provisions of the Contract.
 - 26.3.3 The Principal is only required to pay for Stage One Works carried out to the date of each payment claim and in accordance with this Contract.
- ## 26.4 Payment
- 26.4.1 The Principal shall pay to the Contractor, or the Contractor shall pay the Principal, as applicable, the amount shown in a payment certificate.
 - 26.4.2 In making any payment, the Principal shall be entitled to deduct any sets offs pursuant to this

Contract.

26.4.3 The Principal shall make payment to the Contractor, or the Contractor shall pay the Principal, as applicable, within 15 business days after receipt by the Principal's Representative of a payment claim.

26.5 **Amount Properly Due**

A payment made pursuant to this clause 26 shall not prejudice the right of either party to dispute whether or not the amount so paid is the amount properly due.

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account. Nothing in this Contract shall oblige the Principal to pay for work that is not in accordance with the Contract.

26.6 **Interest on Overdue Payments**

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be due thereon from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid. The rate of interest shall be 12% per annum or such higher amount as may be required by statute. Interest shall be compounded at six monthly intervals.

27. **PROJECT BANK ACCOUNTS**

27.1 **Application of clause**

Clauses 27.3 to 27.10 apply if a project bank account is required for this Contract by operation of the BIF Act.

Terms defined by the BIF Act as relevant to the operation of Chapter 2 of the BIF Act and used (without separate definition) in this clause 27, shall have the meaning given to them by the BIF Act.

If the Principal is a State authority, the Annexure states whether the Principal has decided that a project bank account is to be established for the Contract, provided the other matters that determine when a project bank account is required under the BIF Act are satisfied.

27.2 **Definitions**

In this clause 27:

'business days' has the meaning given by the BIF Act;

'PBA contract' has the meaning given by the BIF Act;

'PBA Details' means the following details of a project bank account:

- (a) the name of the project bank account;
- (b) the name, Bank/State/Branch (BSB) number and account number of the general trust account;
- (c) the name, Bank/State/Branch (BSB) number and account number of the retention account;
- (d) the name, Bank/State/Branch (BSB) number and account number of the disputed funds account;
- (e) the name of the financial institution where the project bank account is kept;

'Subcontract' means 'first tier subcontract' as defined in Chapter 1 of the BIF Act;

'Subcontractor' means 'subcontractor beneficiary' as defined in Chapter 2 of the BIF Act;

'Subcontractor Payment Summary' means the information to be provided in the form attached to these Conditions.

27.3 Establishment of project bank account

If the Contract:

- (a) is a PBA contract, and
- (b) is not a contract of the type identified in Part 2 Division 2 of Chapter 2 of the BIF Act,

the Contractor must establish a project bank account:

- (c) where the Contract is a PBA contract at the date of the Contract and the Contractor will enter into one or more Subcontracts as confirmed in the Returnable Tender Schedule – Project Bank Accounts, by the date that is 20 business days after the Date of Acceptance of Tender; and
- (d) otherwise within the period by which the BIF Act requires a project bank account to be established for this Contract.

The Contractor must notify the Principal of the PBA Details within 10 Business Days of opening the trust accounts forming the project bank account.

27.4 Authorisation to view project bank accounts

The Contractor must provide electronic viewing access to the project bank account to the Principal's authorised nominees, being those persons notified to the Contractor by the Principal in writing, including such additional or replacement persons as may be notified by the Principal in writing from time to time, to view, electronically (without the Principal requiring any particular software or electronic platform other than internet access), deposits, withdrawals, payment instruction information and account payment reports of each trust account for the project bank account for this Contract.

The Contractor must make such arrangements and provide the Principal and its authorised nominees with such information as will enable those persons to securely log in to view the project bank account trust accounts via internet access and to print statements or reports relating to those accounts.

27.5 Subcontractor Payment Summary

In addition to the other requirements set out in this Contract, the Contractor must submit with a payment claim that is delivered under clause 26.2 a completed Subcontractor Payment Summary in the form attached to these Conditions.

The Contractor agrees that:

- (a) the submission of a Subcontractor Payment Summary does not affect the assessment required to be made under clause 26.2; and
- (b) no receipt of nor any review, comment, approval, expression of satisfaction or dissatisfaction by or on behalf of the Principal or Principal's Representative concerning a Subcontractor Payment Summary, nor any failure by the Principal or Principal's Representative to do any of those things will:
 - (i) result in the Principal or Principal's Representative assuming any responsibility or liability for the adequacy of, or any errors or omission in, the Subcontractor Payment Summary;

- (ii) constitute an admission that the Principal or Principal's Representative or any of their agents or employees have checked the Subcontractor Payment Summary for errors or omissions; and
- (c) where a Subcontractor's name and the name of the Subcontractor's bank account for receipt of payment via the project bank account are different, the Contractor will provide to the Principal, within 5 business days of becoming aware of the difference, confirmation in writing from the Subcontractor that the bank account details the Contractor will use for the relevant payment instructions are correct; and
- (d) each Subcontractor Payment Summary shall include details of all Subcontractor payment claims that have been received at the time of issue of the Subcontractor Payment Summary and include details of all payment instructions that have been issued.

27.6 **Payment Instruction**

The Contractor must prepare a payment instruction to be given to the financial institution where the project bank account is kept for the purpose of withdrawals from a trust account and transfers between trust accounts forming the project bank account.

The Contractor must, as soon as practicable and no later than 3 business days after giving the financial institution the payment instruction, ensure a copy of the information contained in the payment instruction, to the extent required by the BIF Act, is given to the Principal and the relevant Subcontractors.

27.7 **Retention Balance Report**

If, at the time of the Contractor submitting its final payment claim, or if no final payment claim is submitted by the Contractor then at the time of issuance of the final certificate by the Principal's Representative, there is a retention amount remaining in the retention account, the Contractor must provide the Principal with a written report with the final payment claim (or within 2 Business Days of the final certificate if the Contractor does not submit a final payment claim) which, in respect of the remainder in the retention account sets out:

- (a) the amounts to be released; and
- (b) to whom each retention amount is to be paid; and
- (c) where the Contractor continues to retain a retention amount from a Subcontractor, the name of the relevant Subcontractor and reason for the continued retention; and
- (d) the expected date for payment out of the retention account of the respective retention amounts,

so that the aggregate of the amounts identified pursuant to paragraphs (a) to (d) above equal the amount of the Retention Amount remaining in the retention account.

27.8 **Disputed Funds Balance Report**

If, at the time of the Contractor submitting its final payment claim, or if no final payment claim is submitted by the Contractor then at the time of issuance of the final certificate by the Principal's Representative there is an amount remaining in the disputed funds account, the Contractor must provide the Principal with a written report with the final payment claim (or within 2 Business Days of the final certificate if the Contractor does not submit a final payment claim) which, in respect of the amount in the disputed funds account states:

- (a) the amount of the funds in the disputed funds account and to which Subcontractor each amount refers; and
- (b) whether a dispute resolution process has commenced in relation to the funds.

27.9 **Dissolving the Project Bank Account**

A Contractor must not dissolve the project bank account, by closing the trust accounts, except in accordance with the BIF Act and not without providing to the Principal written notice of its intent to dissolve the accounts of the project bank account at least 5 business days before the accounts are closed.

The Contractor must provide written notice to the Principal with a printed copy of the final balance of each account of the project bank account at the time the project bank account is dissolved.

27.10 **Delegation of powers of the Contractor**

If the Contractor delegates to another person any powers of the Contractor in relation to a project bank account in accordance with s.42 of the BIF Act, the Contractor must provide a copy of the completed approved form to both the Principal and Subcontractors.

27.11 **General Obligations**

The Contractor must ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the BIF Act.

28. **DEFAULT OR INSOLVENCY**

28.1 **Preservation of Other Rights**

If a party breaches or repudiates the Contract, nothing in this clause 28 shall prejudice the right of the other party to recover damages or exercise any other right. This clause 28 also does not prejudice any of the Principal's rights under clause 10.

28.2 **Default by the Contractor**

If the Contractor commits a substantial breach of Contract the Principal may give the Contractor a written notice to show cause.

Substantial breaches include but are not limited to:

- (a) failing to produce the Schematic Design in accordance with the requirements of this Contract;
- (b) failing to submit a Stage Two Offer that is in accordance with the requirements of this Contract by the Date for Submission of Stage Two Offer;
- (c) failing to proceed with the Stage One Works with due expedition and without delay;
- (d) failing to provide evidence of insurance in accordance with clause 21.1;
- (e) failing to comply with a direction of the Principal's Representative pursuant to this Contract;
- (f) committing an act of insolvency as defined by clause 28;
- (g) failing to do those things which the Contractor warranted it would do or has done in accordance with the terms of the Contract including but not limited to the warranties pursuant to clause 0; or
- (h) failing to comply with or breaching, in any respect, the requirements of clause 6;

28.3 **Requirements of a Notice by the Principal to Show Cause**

A notice given under clause 28.2 shall:

- (a) state that it is a notice under clause 28 of the Contract;

- (b) specify the alleged substantial breach;
- (c) require the Contractor to show cause in writing why the Principal should not exercise its rights in clause 28.4;
- (d) specify the time and date by which the Contractor must show cause (the notice must provide at least 5 business days); and
- (e) specify the place at which cause must be shown.

28.4 **Rights of the Principal**

28.4.1 If, by the time specified in a notice given under clause 28.2, the Contractor fails to show reasonable cause why the Principal should not exercise its rights in this clause 28.4, the Principal may by notice in writing to the Contractor terminate the Contract.

28.4.2 Notwithstanding any other provision of this Contract, upon giving a notice under clause 28.2:

- (a) the Contractor is not entitled to make a claim for payment; and
- (b) the Principal may suspend payments to the Contractor,

until the earlier of:

- (i) the date upon which the Contractor shows reasonable cause;
- (ii) the date upon which the Principal takes action under clause 28.4.1; or
- (iii) the date which is 7 days after the last day for showing cause in the notice given under clause 28.2.

28.4.3 If the Contractor by notice in writing advises the Principal that the Contractor is unable or unwilling to complete performance of the Contract, the Principal may forthwith exercise the rights under clause 28.4.1.

28.5 **Default of the Principal**

If the Principal commits a substantial breach of Contract and the Contractor considers that damages may not be an adequate remedy, the Contractor may give the Principal a written notice to show cause.

Substantial breaches include but are not limited to failing to make a payment payable under the Contract.

28.6 **Requirements of a Notice by the Contractor to Show Cause**

A notice given under clause 28.5 shall:

- (a) state that it is a notice under clause 28 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 28.7;
- (d) specify the time and date by which the Principal must show cause (the notice must provide at least 5 business days); and
- (e) specify the place at which cause must be shown.

28.7 **Rights of the Contractor**

If by the time specified in a notice given under clause 28.5, the Principal fails to show reasonable

cause why the Contractor should not exercise a right referred to in this clause 28.7, the Contractor may by notice in writing to the Principal suspend the whole or any part of the Stage One Works.

The Contractor shall lift the suspension if the Principal remedies the breach within 28 days of the date of suspension under this clause 28.7. If:

- (a) within 28 days of the date of suspension the Principal fails to remedy the breach; or
- (b) 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.

28.8 **Rights of the Parties on Termination or ending of the Contract**

If the Contract is terminated pursuant to clauses 6.3, 6.7, 10.3.5, 28.4.1, 28.7, 28.9 or 29 or otherwise or the Contract comes to an end pursuant to clause 10.4.6:

- (a) The Contractor shall immediately cease the Stage One Works and comply with any directions by the Principal's Representative.
- (b) Subject to any Principal entitlements to make set offs and the Contractor's compliance with the obligations set out in this clause 28.8, the Contractor's only entitlements are to payment:
 - (i) of the amount due to the Contractor shown in any unpaid payment certificate; and
 - (ii) the relevant portion of the Stage One Fee payable for any other Stage One Work performed in accordance with this Contract before the date of termination or ending of this Contract that is not covered by a previous payment certificate,and the Contractor is not entitled to any other compensation, payment or Claim in relation to or in any way arising out of the Contract, the Stage One Works, Stage Two, the Project or the termination or ending of this Contract, including without limitation any Claim for loss of profits.
- (c) The Principal's rights pursuant to clause 16.2 will not be affected and will survive the termination or end of this Contract.
- (d) The Contractor shall, without payment of compensation, immediately deliver to the Principal all Contract Materials and any drawings, specifications and other information, samples, models, patterns and the like created for the Stage One Works.

If the Contract is terminated by the Principal pursuant to clause 6.3, clause 6.7, clause 28.4.1 or clause 28.9, the Principal's rights against the Contractor, in addition to its other rights in this clause 28.8, shall be the same as they would have been at common law had the Contractor repudiated the Contract and the Principal elected to treat the Contract as at an end and recover damages.

28.9 **Insolvency**

If:

- (a) the Contractor informs another party in writing or creditors generally that the Contractor is insolvent or is financially unable to proceed with the Contract;
- (b) execution is levied against the Contractor by a creditor;
- (c) the Contractor, being an individual person, or a partnership including an individual person and that person:
 - (i) commits an act of bankruptcy;

- (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
- (iii) presents a debtor's petition or a declaration of an intention to present a debtor's petition to the Official Receiver;
- (iv) is made bankrupt;
- (v) under part IX of the *Bankruptcy Act 1966 (Cth)*:
 - A makes a written proposal for a debt agreement; and
 - B the proposal becomes a debt agreement; or
- (vi) makes a proposal for a deed of assignment, deed of arrangement or a composition; or
- (vii) under Part X of the *Bankruptcy Act 1966 (Cth)*:
 - A has a deed of assignment or deed of arrangement made;
 - B accepts a composition;
 - C is required to present a debtor's petition; or
 - D has a sequestration order made; or
- (d) the Contractor, being a corporation and if:
 - (i) a notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) the Contractor enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) a meeting of creditors is called with a view to:
 - A entering a scheme of arrangement or composition with creditors; or
 - B appointing a controller or administrator;
 - (v) a receiver of the property or part of the property of the Contractor is appointed;
 - (vi) 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 creditors or any of them;
 - (vii) a winding up order is made; or
 - (viii) 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 28.4.1.

The rights given by this clause 28.9 are in addition to any other rights and may be exercised

notwithstanding that there has been no breach of Contract.

29. TERMINATION FOR CONVENIENCE

- 29.1 In addition to any other right available to the Principal to terminate the Contract, the Principal may, at any time at its sole discretion and without obligation to act reasonably, by written notice to the Contractor terminate the Contract.
- 29.2 Where the Principal terminates the Contract pursuant to clause 29.1, the Principal may have the remaining Stage One Work not completed by the Contractor prior to termination of the Contract and Stage Two carried out by others.

30. DISPUTE RESOLUTION

30.1 Notice of Dispute

If a dispute or difference (hereafter called a 'dispute') between the Contractor and the Principal (hereafter called individually "a party" and collectively "the parties") arises in connection with the Contract or the subject matter thereof, then a party shall deliver by hand or send by certified mail to the other party and to the Principal's Representative a notice of dispute in writing adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the Principal and the Contractor shall continue to perform the Contract and, subject to clause 28, the Contractor shall continue with the Stage One Works and the Principal and the Contractor shall continue to comply with clauses 26.2 and 26.4.

30.2 Negotiations

Within 28 days after the service of a notice of dispute, the parties shall confer at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

30.3 Litigation

Compliance with clauses 30.1 and 30.2 shall be a binding preliminary to the commencement of litigation by the Principal or the Contractor provided that nothing shall prejudice the right of a party to institute proceedings to enforce payment due under clause 26 or to seek urgent injunctive or declaratory relief in respect of any matter arising under the Contract.

31. WAIVER OF CONDITIONS

Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior consent in writing in each instance of the party against whom a waiver, discharge or release is claimed.

32. RECORDS AND ACCESS TO RECORDS

- 32.1 The Contractor shall make and keep accurate records of its proposal and of the Stage One Works including but not limited design calculations, proposal estimates, calculations and mark ups, records as to progress of the Stage One Works, quality system documents and records and time records whether in writing or stored on any other medium whatsoever.
- 32.2 Subject to the Contractor's right to claim legal professional privilege in respect of any record, which is hereby maintained, the Principal shall have the right to inspect and to copy at any time any record referred to in clause 32.1. In the case of any records referred to in clause 32.1 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.

33. INFORMATION PRIVACY ACT

- 33.1 If the Contractor collects or has access to Personal Information in order to carry out the Stage

One Works, the Contractor must:

- (a) if the Principal is an “agency” within the meaning of the *Information Privacy Act 2009* (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 Stage One Works, 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 Stage One Works;
- (e) ensure that its sub-contractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause;
- (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.

33.2 On request by the Principal, the Contractor must obtain from its employees, officers, agents or sub-contractors carrying out Stage One Works, an executed deed of privacy in a form acceptable to the Principal.

33.3 The Contractor must immediately notify the Principal on becoming aware of any breach of clause 33.1.

33.4 This clause will survive the termination or expiry of the Contract.

33.5 In this clause, “Personal Information” is 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.

34. **CONFIDENTIAL INFORMATION**

Drawings, specifications, information, samples, models, patterns and other documents, supplied or produced by either the Contractor or the Principal, including all Contract Materials, and which relate in any way to the Contract, the Project, the Stage One Work or Stage Two, shall be regarded as confidential and shall not be disclosed to a third party, except with the prior written agreement of the Principal.

35. **MEDIA RELEASES**

The Contractor, the Contractor’s subcontractors and consultants shall not issue or be involved with the release of, any information, publication, statement, interview, document or article for publication concerning the Stage One Works, Stage Two, the Project, the Contract or the Site in any media without the prior written approval of the Principal. The Contractor shall refer to the Principal any enquiries concerning the Stage One Works, Stage Two, the Project, the Contract or the Site from any media and shall advise the Principal of all approaches by any media.

36. **LAND SALE CONTRACT - SIGNING**

36.1 This Contract is subject to and conditional upon the Land Sale Contract being executed by the parties to that contract either before the Date of Contract or within 5 Business Days of the Date of

Contract.

- 36.2 If the Land Sale Contract is not executed within the period stated in clause 36.1 for any reason, the Principal may, by notice in writing, terminate this Contract and in that event, clause 38.2 applies.

37. **SETTLEMENT OF LAND SALE CONTRACT**

The Principal must notify the Contractor of settlement of the Land Sale Contract by issuing the Contractor with the Settlement Notice within a reasonable period of time following settlement of the Land Sale Contract.

38. **TERMINATION FOR NON-SETTLEMENT OF LAND SALE CONTRACT**

- 38.1 If the Land Sale Contract is terminated, or if settlement of the Land Sale Contract does not occur for any reason, the Principal may, without giving a notice to show cause, terminate this Contract.

- 38.2 If the Principal terminates the Contract pursuant to clause 38.1, the Contractor shall not be entitled to the payment of any amount under this Contract, and the Principal shall not otherwise be liable to the Contractor on any basis however arising for any cost, loss, expense or damage incurred by the Contractor under or in connection with this Contract or its termination, including without limitation compensation for loss of profits.

ANNEXURE TO THE CONDITIONS OF CONTRACT

This Annexure shall be read as part of the Contract.

The Principal: (clause 2)

**The State of Queensland through the
Director-General, Department of Housing and
Public Works**

The address of the Principal: (clause 9)

Level 22/ 41 George Street, Brisbane Qld 4000

The Principal's Representative: (clause 2)

The Project Co-ordinator

The address of the Principal's Representative:
(clause 9)

Level 22/41 George St, Brisbane Qld 4000

The Contractor: (clause 2)

Name: [insert]

ABN: [insert]

QBCC Licence No.: [insert]

The address of the Contractor: (clause 9)

Address: [insert]

Fax:
Email:

The Contractor's Representative: (clause 2)

The address of the Contractor's Representative:
(clause 9)

Address: Level [insert]

Fax:

Project (clause 2)

Development at

Date for Submission of Stage Two Offer:
(clause 2)

The date [insert] months after the date of the
Settlement Notice.

Public Housing Date: (clause 2)

The date [insert] months after the Submission
Date.

Date for Completion of Stage One: (clause 2)

The date that is [insert] days after the Public
Housing Notice.

Site: (clause 2)

Address: [insert]

Real Property Description: [insert]

Stage One Fee: (clause 2)

\$(amount) (excluding GST)
\$(amount) (including GST)

Stage One Principal's Project Requirements:
(clause 2)

The Stage One Principal's Project Requirements
set out in Attachment B.

Target Cost: (clause 2)

[\$amount] (excluding GST)
[\$amount] (including GST)

Note: *The cost is the average cost per unit of accommodation across all of the dwellings provided in the Stage One Principal's Project Requirements. The Target Cost is for the construction works including foundations on a site with no greater than 600mm fall over the site and nominal class 'M' soil type. It also includes:*

- *the design work required under this Contract*
- *Contractor's offsite overheads and profit*

The Target Cost does not include:

- *Stage One Fee*
- *Demolition of improvements*
- *Extra-ordinary works such as:*
 - o *Piling and/or bored piers*
 - o *Retaining walls greater than 1m high*
 - o *Earthworks greater than 1.5m deep*
 - o *Hazardous materials handling (eg asbestos, acid sulphate soils, and the like)*
 - o *Any in-ground services diversions*
 - o *Any works outside the site boundaries (other than connections to water, gas, sewer, stormwater, electricity, telephone, data).*
- o *Foundations beyond that described above*

Design Review Response (clause 13)

[insert] days

Response to Variation Price Request (clause 14.1)

[insert] days

The party responsible for engaging the Building Certifier is: (clause 17.3)

Contractor

The amount of Public Liability Insurance shall be not less than: (clause 18)

\$20 million

The amount of Professional Indemnity Insurance shall be not less than (clause 20)

\$20 million

The time by which access to the Site shall be given: (clause 24)

The later of:

1. settlement of the Contract for the sale of the Land between the current owner and the Principal; and
 2. the date of this Contract
- unless otherwise agreed

Time for payment claims: (clause 26.2)

Last Business Day of each month

Clause 27.5

SUBCONTRACTOR PAYMENT SUMMARY

Contract for:

Subcontractor

name:

ABN:

Subcontractor bank

account name:

ACN:

Subcontractor bank account BSB and

account number:

Date:

Claim No.	Date of subcontractor Payment Claim	Amount claimed this claim	Date certified / payment schedule	Amount certified / payment schedule	Date of payment instruction to financial institution	Date of payment out of project bank account to subcontractor	Payment instruction amount to Subcontractor	Payment instruction amount to retention account	Payment instruction amount to disputed funds account

Note: Subcontractor Payment Summary to include for all subcontractor payment claims and all payment instructions

ATTACHMENT "B"

Stage One Principal's Project Requirements

ATTACHMENT "C"

Form of D&C Contract