

Land and Construct Contract

For Land Sale and Project Design and Construction

[insert property]

The State of Queensland through the Department of Housing and Public Works (**Principal**)

And

[insert] (**Contractor**)

ABN [insert]

Special Conditions of Contract and Annexure, to be read in conjunction with Australian Standard General Conditions of Contract for Design and Construct AS 4300-1995

FORMAL INSTRUMENT OF AGREEMENT

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

RECITALS

- A. The Contractor has made a proposal to provide the materials and perform the work required for the Works.
- B. The Contractor has, in lodging its proposal, represented to the Principal that it has the skill and judgement necessary to undertake the Works and that it has employed and will employ the necessary personnel in that regard and acknowledges that in entering into this agreement the Principal has relied upon these representations.
- C. The Contractor has proposed the Site and warrants that the Site is suitable for the work under the Contract and the Works. The Contractor acknowledges it remains fully responsible for the full performance of the Contract notwithstanding any aspect or condition of the Site. The Contractor has made its own independent investigations and assessments of the Site and all information in relation to the Site and has relied upon those investigations and assessments for the purposes of the Contract.
- D. The Contractor has warranted to the Principal that the Work when completed and every part thereof and all materials, articles and goods used or incorporated therein or supplied in performance or purported performance of the Contract, whether purchased under any patent or trade name or otherwise shall comply with the quality, quantity, number, nature, description and conditions required by the Contract and shall be of good quality, free from latent defects and reasonably fit for their intended purposes.
- E. The Contractor has agreed to undertake the work under the Contract and complete the Works pursuant to the terms of this Contract.

OPERATIVE PROVISIONS

- 1. By executing this Deed the Contractor warrants that each of the recitals is true and correct and acknowledges that the Principal has entered into this Deed in reliance thereon.
 - 2. The entire, final and concluded Contract between the Principal and the Contractor relating to the project, the work under the Contract, the Works and the Contract is as constituted by this document, the documents listed in the schedule and the Land Sale Contract. The Contractor acknowledges and agrees:
 - 2.1.1. This Contract supersedes any prior written or other agreement of, or communications between, the parties.
 - 2.1.2. The Principal (or any person acting on the Principal's behalf) has not made any representation or other inducement to the Contractor to enter into this Contract, except for representations or inducements expressly set out in this Contract.
 - 2.1.3. It does not enter into this Contract in reliance on any representation or other inducement by or on behalf of the Principal, except for representations or inducements expressly set out in this Contract.
 - 2.1.4. The Contract Sum is a lump sum and the Contractor is not entitled to any additional payment over and above the Contract Sum except as expressly set out in this Contract and the Contractor will not seek or claim any such additional payment from the Principal.
 - 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 Special Conditions of Contract and Annexure Parts A to P.
 - 3.3 Principal's Project Requirements comprising:
 - a)
 - 3.4 Australian Standard General Conditions of Contract for Design and Construct (AS4300 - 1995).
-

- 3.5 Land Sale Contract (to the extent referenced in this Contract - the Land Sale Contract does not form part of this Contract).
4. In consideration of the agreements on the part of the Principal in this Contract, the Contractor shall provide the materials and perform the work required to complete the works under the Contract and the 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 this 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 which may have passed between the parties to the Contract prior to its execution.
7. If any party to this Contract consists of one or more persons and one or more corporations this Contract shall bind such person or persons and such corporation or corporations (as the case may be) 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 the person or persons and/or corporation or corporations included in the term "Contractor" or the term "the Principal" in this Contract shall jointly be entitled to the benefit of the Contract and the Contract shall be read and construed accordingly.

SCHEDULE

Document Description	Where Found
Formal Instrument of Agreement	This document
Special Conditions of Contract and Annexure Parts A to P	Attached to this document and marked "A"
Principal's Project Requirements	Attached to this document and marked "B"
Australian Standard General Conditions of Contract for Design and Construct (AS4300-1995)	Not annexed to this document but a copy is available for perusal at the office of the Principal.

Full name of company secretary/director

"A"

*Special Conditions of Contract and Annexure, to be read in
conjunction with Australian Standard General Conditions of Contract
for Design and Construct AS 4300-1995*

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CONDITIONS OF CONTRACT

1. GENERAL

The Conditions of Contract shall be the Australian Standard General Conditions of Contract for Design and Construct (AS 4300 - 1995) as amended by the Special Conditions of Contract.

2. INTERPRETATION

In the event of conflict or inconsistency between the provisions of the Australian Standard General Conditions of Contract for Design and Construct (AS 4300 - 1995) and the Special Conditions of Contract, the Special Conditions of Contract shall take precedence.

References to "Annexures" to AS 4300 - 1995 shall be read as reference to Annexures attached to the Special Conditions of Contract.

References to "attached to these Conditions" shall be read as reference to attachments to the Special Conditions of Contract.

Clauses or part thereof in the Contract dealing with Project Bank Accounts pursuant to the BIF Act do not apply unless and until Chapter 2 of the BIF Act commences and becomes applicable to this Contract.

References in the Contract to the "BIF Act" only apply when the part of the BIF Act relevant to the reference commences and becomes applicable to this Contract, subject to the previous paragraph and the following:

- (a) In Clauses 23 and 42.6 of the Special Conditions of Contract, references to the "BIF Act" are to be read as references to the *Building and Construction Industry Payments Act 2004 (Qld)* (**BCIP Act**), unless and until the BCIP Act is repealed and Chapter 3 of the BIF Act commences and becomes applicable to this Contract, from which time the term "BIF Act" will revert to the meaning given in Clause 2 of the Special Conditions of Contract.
- (b) In Clauses 5.1 and 5.6 of the Special Conditions of Contract, references to the "BIF Act" are to be read as references to the *Subcontractors' Charges Act 1974 (Qld)* (**SCA**), unless and until the SCA is repealed and Chapter 4 of the BIF Act commences and becomes applicable to this Contract, from which time the term "BIF Act" will revert to the meaning in Clause 2 of the Special Conditions of Contract.
- (c) In Clause 43.2 and of the Special Conditions of Contract and Annexures Part I and Part J, references to the "BIF Act" are to be read as references to both:
 - (i) the BCIP Act, unless and until the BCIP Act is repealed and Chapter 3 of the BIF Act commences and becomes applicable to this Contract; and
 - (ii) the SCA, unless and until the SCA Act is repealed and Chapter 4 of the BIF Act commences and becomes applicable to this Contract,

from which time the term "BIF Act" will refer to the meaning in Clause 2 of the Special Conditions of Contract. During any period where only one of the above Acts has commenced and is applicable to this Contract, the reference to "BIF Act" will mean both the BIF Act and the relevant Act yet to be repealed.

- (d) To the extent (a) to (c) above apply, references to definitions, parts (however described) and sections of the BIF Act will be taken to refer to the equivalent definition, part or section of the BCIP Act or the SAC, as applicable.

SPECIAL CONDITIONS OF CONTRACT**1. CONSTRUCTION OF CONTRACT**

No amendment

2. INTERPRETATION

Add the following before the definition of 'Certificate of Practical Completion':

"

'Approvals' means any licence, easement, approval, permit, authorisation or other concession (including without limitation the approval identified in Annexure Part A and Building Certifications), relating to or required in respect of the Works, including the Site or Sites, whether required by Legislative Requirement or by the Contract;

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

'Building Certifications' means written confirmation from the Building Certifier:

- (a) prior to commencement of the construction of the Works, that the Design Documents are compliant with all applicable codes (including to the extent applicable, the Building Code of Australia, the Queensland Development Code and the *Building Act 1975* (Qld) requirements), so as to allow an immediate start to the construction of the Works; and
- (b) when the Works are approaching Practical Completion, that the Works are compliant with all applicable codes (including to the extent applicable, the Building Code of Australia, the Queensland Development Code and the *Building Act 1975* (Qld) requirements);

'Building Certifier' means the person so named in Annexure Part A or otherwise notified by the Contractor to the Principal and approved by the Principal;

'Business Day' means a day that is not:

- (a) a Saturday or Sunday; or
- (b) public holiday, special holiday or bank holiday in the place where the Works will be situated;

'Certificate of Classification' means a certificate of classification that complies with the requirements for a certificate of classification under the *Building Act 1975* (Qld);"

Add the following after the definition of 'Certificate of Practical Completion':

"

'Compensable Delay' means a delay for which an extension of time has been granted or should properly have been allowed under Clause 35.5 as a result of an event described in Clause 35.5(b);"

Delete the definition of 'Contract Sum' and replace it with:

"

'Contract Sum' means the lump sum amount accepted by the Principal, in Annexure Part A. This amount includes provisional sums but excludes the Purchase Price and any additions or deductions which may be required to be made under the Contract."

Delete the definition of 'Contractor's Design Obligations' and replace it with:

"

'Contractor's Design Obligations' means all tasks necessary to design and specify the Works required by the Contract, including preparation of the Schematic Design and the final for construction Design Documents and, if the documents stated in Annexure Part A as describing the Principal's Project Requirements include a Preliminary Design, developing the Preliminary Design;

Delete the definition of 'Date of Acceptance of Tender' and replace with:

"

'Date of Contract' means the date of execution of this Contract and where the parties execute on different days, it means the latest such date;"

Replace all references to 'Date of Acceptance of Tender' in the Contract with 'Date of Contract'.

Add the following after the definition of 'Daywork':

"

'Deed of Guarantee and Indemnity' means the deed in the form of Annexure Part M or other form approved by the Principal;

Add the following after the definition of 'Defects Liability Period':

" 'Delay Rate' means the daily rate calculated according to the formula set out in Annexure Part A;"

Delete the definition of 'Design Documents' and replace it with:

"

'Design Documents' means the drawings, specifications and other information, samples, models, patterns and the like required by the Contract, including the Preliminary Design, the Schematic Design and created (and including, where the context so requires, those to be created by the Contractor) for the construction of the Works;

Add the following after the definition of 'direction':

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

'Ethical Supplier Threshold' means the Ethical Supplier Threshold described in the Queensland Procurement Policy;"

Add the following after the definition of 'Final Payment Claim':

"

'Land Sale Contract' means the REIQ 14th edition 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, in accordance with the pro forma attached in the Annexure Part L;"

Delete the definition of 'Latent Condition'.

Add the following to the end of the existing definition of 'Practical Completion':

"

- (d) where Clause 52 applies, the survey plan referred to in that Clause has been signed and sealed by the relevant local government council and the community management statement has been signed by the relevant local government council;
- (e) all permits, registrations, Approvals, certifications, consents or licences which are reasonably required by the Principal before the Works are to be occupied as residential housing have been provided to the Superintendent, including without limitation the Certificate of Classification;
- (f) the certification referred to in Clause 8.4A(k) has been provided to the Superintendent;
- (g) the Superintendent has issued a notice to the Contractor and Principal under Clause 8.4A(l) that the Superintendent is satisfied that the constructed Works are in accordance with the Design Documents; and
- (h) all other specific requirements for Practical Completion set out in the Contract have been fully satisfied;"

Add the following after the definition of 'Principal's Project Requirements':

"

'Project' means the project the subject of the RFP;"

Add the following after the definition of 'provisional sum':

"

'Public Housing Notice' means a notice issued by the Principal to the Contractor which is given where:

- (a) the proposed Works are 'public housing' and accepted development under the relevant planning scheme in accordance with Schedule 6, Part 5 of the *Planning Regulation 2017* (Qld); and

- (b) either:
- (i) the chief executive, as defined in Schedule 6, Part 5 of the *Planning Regulation 2017* (Qld), considers that the proposed Works will be substantially inconsistent with the relevant planning scheme and decides that the proposed Works can proceed in accordance with Schedule 6, Part 5, section 30(1) of the *Planning Regulation 2017* (Qld); or
 - (ii) Schedule 6, Part 5, section 30 of the *Planning Regulation 2017* (Qld) does not apply to the proposed Works and the chief executive has complied with Schedule 6, Part 5, section 30(2) of the *Planning Regulation 2017* (Qld);"

Add the following after the definition of 'public liability policy':

"

'Purchase Price' means the amount to be paid by the Principal to acquire the Site under the Land Sale Contract;

'Responder' means any person that responded to the RFP;

'RFP' means the Principal's request for proposal that resulted in this Contract and the Land Sale Contract;"

Add the following after the definition of 'Schedule of Rates':

"

'Schematic Design' means design and other documents sufficient for the Principal to obtain a Public Housing Notice and otherwise complying with the requirements of this Contract, 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 Works;
- (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 Legislative Requirements;
- (g) all Approvals and approvals from adjoining owners; and
- (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;
 - (i) project environmental management plan;

- (j) 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;
- (j) written correspondence from the relevant Council advising on the Projects compliance with the relevant planning scheme; and
- (k) any other requirements for the Schematic Design specified in the Contract;"

'Security Interest' means an encumbrance that secures the payment of money or the performance of an obligation, or other interest or arrangement of any kind that gives a creditor priority over other creditors in relation to property;"

Replace the definition of 'Site' with the following:

"

'Site' means the land stated in Annexure Part A for the construction of the Works which is to be transferred to the Principal under the Land Sale Contract;

"

Amend the definition of "subcontractor" by inserting '4', before '9'.

3. NATURE OF CONTRACT

3.1 Performance and Payment

Replace the first paragraph of the Clause with the following:

"The Contractor shall:

- (a) execute and complete the work under the Contract in accordance with the requirements of the Contract;
- (b) ensure the transfer of the unencumbered estate in fee simple in the Site to the Principal in accordance with the Land Sale Contract, within the time required by this Contract, subject to the provisions of this Contract and the Land Sale Contract;
- (c) obtain all Approvals necessary to carry out the work under the Contract and complete the Works;
- (d) pay all fees, levies, charges, taxes, contributions or similar payments payable in respect of any Approval, including any infrastructure and head works charges;
- (e) obtain the Certificate of Classification for the Works, whether or not required by the *Building Act 1975* (Qld);
- (f) carry out the work under the Contract and complete the Works wholly in accordance with the Contract, Approvals and all Legislative Requirements so that, when complete, the Works will be fit for their intended use as a residential building;
- (g) provide new or augmented services to the Site where that is necessary to achieve the required health and safety (including fire safety) standards for the Works and its use as a residential building, including without limitation materials and equipment to increase water pressure; and
- (h) except where expressly provided otherwise in this Contract, accept all risks associated with the carrying out of the work under the Contract and completing the Works."

Add a new paragraph at the end of the Clause as follows:

"

The Principal shall:

- (a) where applicable, and subject to Clause 3.7, use its reasonable endeavours to provide the Public Housing Notice to the Contractor; and

- (b) subject to the terms of the Land Sale Contract, accept a transfer of the Site under the Land Sale Contract."

3.2 Quantities

No amendment

3.3 Adjustment of Actual Quantities - Schedule of Rates

No amendment

Add new subclauses-

"

3.4 Customs Tariff (Anti-Dumping) Legislation

The Contractor shall be responsible for payment of duties (if any) under the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) and any security under the *Customs Act* in respect of any duty that might become payable under the *Customs Tariff (Anti-Dumping) Act 1975*.

The lump sum or rates accepted by the Principal for the work under the Contract shall include for all amounts payable under this Clause and omissions in Schedules of Rates to specifically identify items in respect of such amounts shall not constitute an error under Clause 3.3 and the Contractor shall not be entitled to any additional remuneration whatsoever in respect of any such amounts that are payable or that may become payable.

The Contractor shall indemnify the Principal in respect of any payments that are payable or that may become payable under the *Customs Tariff (Anti-Dumping) Act 1975* or in respect of any security that is payable or may become payable under the *Customs Act* for duty that might become payable under the Customs Tariff (Anti-Dumping) legislation.

3.5 Sale of Goods Legislation

The *Sale of Goods (Vienna Convention) Act 1986* (Qld) is excluded and shall have no effect upon the terms of the Contract.

3.6 Purchase Price

Where the Site is owned by a party other than the Contractor, the parties acknowledge that the Purchase Price may be paid by the Principal directly to the Site owner.

3.7 Termination for failure to deliver Designs or inability to provide Public Housing Notice

This Contract is subject to:

- (a) the Contractor meeting all the timing requirements for the production of the Schematic Design and for construction Design Documents (50% complete and 100% complete) specified in Clause 8.4A and Annexure Part A (the Contractor is only entitled to make 2 resubmissions for each of the Schematic Design, the 50% complete for construction Design Documents and the 100% complete for construction Design Documents pursuant to the regimes in paragraphs 8.4A(b) and (c) and 8.4A(e) and (f) to meet this condition, subject to the Principal, in its absolute discretion, giving permission in writing for additional resubmissions i.e. the Principal may terminate the Contract pursuant to this Clause if more than 2 resubmissions (plus any additional resubmissions permitted in writing by the Principal, in its absolute discretion) are required, or the Contractor does not meet the time requirements specified for a submission or resubmission for any of the 3 sets of design documents);
- (b) in relation the Public Housing Notice:
 - (i) the Chief Executive (Chief Executive in the Department in which the *Housing Act 2003* (Qld) is administered), being satisfied that the Works on the Site constitutes the development of Public Housing for the purposes of Schedule 6, Part 5 of the *Planning Regulation 2017* (Qld);
 - (ii) all of the requirements of Schedule 6, Part 5 of the *Planning Regulation 2017* (Qld) being satisfied so that the Works at the Site are able to immediately proceed as an exempt development; and

- (iii) a Public Housing Notice being applicable to the Works and the work under the Contract being issued by the Principal.

If:

- (c) the conditions in paragraph 3.7(a) are unable to be satisfied by the Contractor for any reason; or
- (d) the conditions in Clause 3.7(b)(i), (ii) and (iii) are unable to be satisfied and for any reason the Principal is unable to provide the Public Housing Notice within the period stated in Annexure Part A or such further time as the Principal requires,

the Principal may, without giving a notice to show cause, terminate this Contract by written notice to the Contractor.

If the Contract is terminated pursuant to this Clause 3.7, the Contractor shall only be entitled to be paid for reasonable costs incurred by the Contractor for work reasonably performed pursuant to the Contract up to the date of termination which shall be valued under Clause 40.5. The Contractor shall not be entitled to any other compensation, including without limitation for loss of profits, as a result of such termination. The Principal is not obliged to pay for the preparation of any Design Documents (including the Schematic Design) pursuant to this paragraph except to the extent they are:

- (e) complete;
- (f) have been provided to the Principal in the number and in the formats required by the Principal;
- (g) approved by the Superintendent; and
- (h) the Contractor has complied with all the provisions of Clause 13 in relation to those Design Documents.

The Principal is not required to pay for any work on Design Documents (other than the Schematic Design) commenced before the requirements of Clause 8.4A(g)(i) have been satisfied. The Principal is not required to pay for any demolition work performed earlier than permitted by the Contract.

Notwithstanding its other obligations under this Contract and to enable the Principal to fulfil its obligations under this Clause 3.7, the Contractor must promptly provide upon request of the Principal any information or documents relating to the Works to enable the Chief Executive to make a decision under Schedule 6, Part 5 of the *Planning Regulation 2017* (Qld).

3.8 Land Sale Contract - Signing

- (a) This Contract is subject to and conditional upon the Land Sale Contract being executed by the parties to that contract within 5 Business Days of the Date of Contract.
- (b) If the Land Sale Contract is not executed within the period stated in Clause 3.8(a) for any reason, the Principal may, by notice in writing, terminate this Contract and in that event, Clause 3.9(b) applies.

3.9 Termination for non-settlement of Land Sale Contract

- (a) 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.
- (b) If the Principal terminates the Contract pursuant to Clause 3.8(b) or 3.9(a), the Contractor shall not be entitled to the payment of any amount under the 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 the Contract or its termination, including without limitation compensation for loss of profits.

- (c) This Clause does not affect:
 - (i) the right of the Principal to terminate this Contract for a breach; or
 - (ii) any rights and liabilities which accrue under or in respect of the Land Sale Contract or its termination.

3.10 Prohibition on use of Public Housing Decisions

If settlement of the Land Sale Contract does not occur, or this Contract is terminated, the Contractor must not in any way use, or represent an ability to use, any decision of the chief executive, as defined in Schedule 6, Part 5 of the *Planning Regulation 2017* (Qld), to proceed with the Works, in relation to the Site. This Clause shall survive termination of the Contract.

3.11 Effect of Land Sale Contract

Neither the payment of the Purchase Price by the Principal nor the settlement of the Land Sale Contract shall constitute approval of any work or other matter or shall prejudice any claim by the Principal or the Contractor."

4. WARRANTIES

4.1 Contractor's Warranties

4.1 (b)

Delete/Insert

" subject to Clause 9, shall engage and retain Consultants who are suitably qualified and experienced; "

Delete the word "and" at the end of subclause 4.1 (d).

Delete the "." at the end of subclause 4.1 (e) and replace it with ";".

Add at the end of the Clause -

"

- (f) the Site is suitable for the construction of the Works;
- (g) where the Contractor is required to establish a community titles scheme for the Works pursuant to Clause 52.2, to allow the requirements of Clause 52.2 to be met;
- (h) the Works when completed will comply with any relevant standards of Standards Australia, and if more than one standard applies, the highest such standard;
- (i) the Building Certifier holds the appropriate Queensland Building and Construction Commission licence to issue the Building Certification and Certificate of Classification;
- (j) the Contractor will engage and retain subcontractors who are suitably qualified, experienced and licenced; and
- (k) the Preliminary Design is sufficient to enable to conditions in Clause 3.7(c) to be achieved."

4.2 Warranties Unaffected

Delete the word "and" at the end of subclause 4.2 (c).

Delete the "." at the end of subclause 4.2 (d) and replace it with ";".

Add at the end of the Clause -

"

- (e) inspection of the Site or the Works by the Principal (whether before or after the Date of Contract), or the payment by the Principal of the Purchase Price or the Contract Sum;

- (f) receipt or review of, or comment or direction on the Design Documents, including the Schematic Design, (whether before or after the Date of Contract), by the Principal, the Superintendent or the Principal's agents, employees or representatives; or
- (g) a notice by the Superintendent under Clause 8.4A(l)."

5. SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

5.1 Purpose

Add at the end of the Clause, the words -

"and for the purpose of providing security of payment to subcontractors of the Contractor [as these terms are defined for Chapter 4 Subcontractors' Charges in the BIF Act]."

5.2 Provision of Security

No amendment

5.3 Form of Security

Delete/Insert the last sentence of the second paragraph -

"The form of undertaking attached to these Conditions is approved."

Delete from the second paragraph the words – "party having the benefit of the security" and insert in their place the word – "Principal".

5.4 Time for Provision of Security

Delete/insert:

"

The security must be provided within 7 days of the Date of Contract."

5.5 Retention Moneys

No amendment

5.6 Conversion of Security and Recourse to Retention Moneys

Delete/Insert

"

The Principal may at any time convert into money security that does not consist of money whether or not the Principal is then entitled to exercise a right under the contract in respect of the security. The Principal shall not be liable in any way for any loss occasioned by such conversion.

The Principal may have recourse to retention moneys, cash security or to moneys obtained by conversion of security where the Principal has become entitled to exercise a right under the Contract in respect of the retention moneys or security or is otherwise entitled at law to have recourse to such moneys or security.

If after the Principal has exercised all or any of the Principal's rights under the Contract in respect of the security (except for those set out in this Clause), the security or any part thereof then remaining is, but for this Clause, releasable to the Contractor pursuant to Clause 5.7 or 5.8, the Principal may, before releasing any security or any part thereof then remaining, ascertain the existence and amount of any subcontractors' charge [meaning a notice of claim made or given to the Principal by any subcontractor concerning the performance of Work for the Contractor (as those terms of "notice of claim", "subcontractor" and "Work" are defined for Chapter 4 Subcontractors' Charges in the BIF Act) purportedly pursuant to the provisions of Chapter 4 Subcontractors' Charges in the BIF Act].

In the event that any such subcontractors' charge is found to exist, the Principal may convert into money any security or any part thereof then remaining that does not consist of money whereupon any money so obtained shall be payable, creditable or allowable to the Contractor pursuant to the Contract in complete or partial satisfaction of the contract price (as the term is defined in the Chapter 4 Subcontractors' Charges in the BIF Act) and pay into court the money for the benefit of the chargee from such moneys so payable, creditable or allowable the total amount set out in the said subcontractors' charges and account to the Contractor as to the balance, if any."

5.7 Substitution of Security for Retention Moneys

Delete/Insert -

"

The Contractor may request at any time permission to provide an unconditional undertaking approved in writing by the Principal and given by a financial institution or insurance company approved in writing by the Principal to be held by the Principal in lieu of retention moneys. The Principal may in its entire discretion and without giving reasons reject any such request by the Contractor.

The form of undertaking attached to these Conditions is approved.

In the event that the Contractor requests to provide an unconditional undertaking and the Principal elects to agree to the request - the following provisions shall apply notwithstanding any other provision in the Contract to the contrary:

- (i) The undertaking shall be for an amount equal to 5% of the Contract Sum and shall be lodged with the Principal.
- (ii) Unless and until the expiration of a period of 5 working days after the undertaking is lodged, retention moneys shall be deducted in accordance with Clause 42.1.
- (iii) 5 working days after the lodgement of the undertaking - retention moneys pursuant to Clause 42.1 shall not be deducted and all retention moneys previously deducted (if any) pursuant to Clause 42.1 shall be the subject of the next following progress certificate issued by the Superintendent with appropriate amounts credited to the Contractor.
- (iv) Subject to the rights of the Principal under the Contract, the provisions of Clauses 5.6, 5.8 and 42.6 shall apply to the undertakings.
- (v) An undertaking given pursuant to this Clause shall be regarded as a performance undertaking with purposes as set out in Clause 5.1. "

5.8 Reduction of Security and Retention Moneys

No amendment

5.9 Release of Security and Retention Moneys

No amendment

5.10 Holding of and Interest on Cash Security and Retention Moneys

No amendment

5.11 Deed of Guarantee, Undertaking and Substitution

Delete/insert -

"

If stated in Annexure Part A to be required, the Contractor shall, at the time of entry into this Contract, provide to the Principal a Deed of Guarantee and Indemnity duly executed and enforceable against the Guarantor."

6. EVIDENCE OF CONTRACT

Delete/Insert Clause 6.1 -

"

6.1 Contract

The Contract (including the Land Sale Contract) (when executed)) contains the entire agreement between the parties and supersedes all prior arrangements, letters of intent, purchase orders, representations and documents (if any) relating to the Contract or the Works.

If any provision contained in this Contract is void, illegal or unenforceable, that provision is severable from the Contract and the remainder of the Contract has full force and effect.

Nothing in this Contract is to be construed as constituting a joint venture, agency or partnership between the Principal and the Contractor."

6.2 Formal Instrument of Agreement

Delete/Insert -

“Not used.”

Add new subclause -

“

6.3 Collusive Arrangements

The Contractor warrants and represents to the Principal that:

- (a) it had no knowledge of the pricing proposed by any other Responder in their responses to the RFP, nor did it communicate with any other Responder in relation to its response pricing, or a price above or below which a Responder may base in its response (excluding any pricing advised by the Principal), nor had it entered into any contract, arrangement or understanding with another Responder to the effect that the Contractor or another Responder would tender non-competitive pricing, for the Project or the work under the Contract, at the time of submission of its response to the RFP;
- (b) except as disclosed in its proposal in response to the RFP, 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 for the Project, this Contract or the Land Sale Contract, nor paid or allowed any such money, nor will it pay or allow any such money;
- (c) except by prior agreement with the Principal, it has not paid or allowed any money or entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to or on behalf of any other Responder for the Project or the work under the Contract, nor received any money or allowance from or on behalf of any other Responder relating in any way to its response to the RFP, the Project or this Contract, nor will it pay or allow or receive any money as aforesaid.

In the event of the Contractor paying or allowing any money in breach of this Clause 6.3, the Principal may deduct from payments to the Contractor an equivalent sum as an amount due from the Contractor to the Principal, in addition to any other claim, demand, action or proceeding the Principal may have against the Contractor (whether for damages or otherwise).

Without limitation, if the Contractor commits a breach of this Clause 6.3, the Principal may at its discretion terminate the Contract and claim damages for breach of contract. ”

Add new subclause –

“

6.4 Parties to the 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. ”

7. SERVICE OF NOTICES

No amendment

8. CONTRACT DOCUMENTS

8.1 Discrepancies

Delete all text after the first paragraph and replace it with -

“

The Contractor shall, at its own cost and expense, comply with any direction given by the Superintendent under this Clause.

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 shall in no event constitute a variation under Clause 40 of the Contract and the Contractor shall not be entitled to any payment or adjustment of the Contract Sum or any other compensation of any nature as a result of compliance with this Clause."

8.2 Dimensions

No amendment

8.3 Supply of Documents by Principal

No amendment

8.4 Supply of Documents by Contractor

Delete paragraph 3,4 and 5 and replace with the following:

"The Contractor shall ensure that:

- (a) the Schematic Design is consistent with the Principal's Project Requirements and is sufficient to enable the Principal to obtain a Public Housing Notice;
- (b) the final for construction Design Documents are consistent with the Schematic Design approved by the Superintendent and specify with sufficient particularity the scope, functionality and quality standards of the works, as required by the Contract, to enable the construction of the Works; and
- (c) the Design Documents comply with the Contract, the Principal's Project Requirements, all Approvals, all relevant Legislative Requirements and, where the Contractor is required to establish a Community Titles Scheme for the Works pursuant to Contract Clause 52.2, is sufficient to enable the requirements of Clause 52.2 to be met."

Add new Clauses –

8.4A Principal's Review of Design Documents

- (a) The Contractor shall submit within the times specified in Annexure Part A the Schematic Design, and if the Schematic Design is subsequently amended or supplemented, the revised Schematic Design, including a complete set of A1 size 1:100 scale 'construction issue' drawings, to the Superintendent for approval of the Schematic Design or the revised Schematic Design (as the case may be).
- (b) The Superintendent shall notify the Contractor within the time for review specified in Clause 8.4A(m) of all matters which it considers constitute a required amendment to the Schematic Design, being as a result of a departure from the requirements of this Contract including the Principal's Project Requirements, or a defect, discrepancy or omission in the Schematic Design or any revised Schematic Design (as the case may be). For clarification, a required amendment pursuant to this Clause 8.4A(b) is not a variation direction pursuant to Clause 40 and shall be undertaken at the Contractor's cost.
- (c) Where the Contractor is notified of a required amendment to the Schematic Design pursuant to Clause 8.4A(b), the Contractor shall amend the Schematic Design to correct the design and provide amended documentation to the Superintendent for review within the time specified in Annexure Part A. The Contractor is only entitled to make 2 resubmissions of the Schematic Design pursuant to the resubmissions regime in paragraphs 8.4A(b) and (c) before the Principal is entitled to exercise its termination rights in Clause 3.7, subject to the Principal, in its absolute discretion, giving permission in writing for additional resubmissions.
- (d) The Contractor shall submit within the times specified in Annexure Part A the for construction Design Documents (for both the 50% complete and 100% complete design stages), and if these Design Documents are subsequently amended or supplemented, the revised Design Documents, including a complete set of A1 size 1:100 scale 'construction issue' drawings, to the Superintendent for permission to use the Design Documents or the revised Design Documents (as the case may be).
- (e) The Superintendent shall notify the Contractor within the time for review specified in Clause 8.4A(m) of all matters which it considers constitute a required amendment to the

Design Documents submitted by the Contractor pursuant to Clause 8.4A(d), being as a result of a departure from the requirements of this Contract including the Principal's Project Requirements of the Schematic Design approved by the Superintendent, or a defect, discrepancy or omission in the Design Documents or any revised Design Documents (as the case may be). For clarification, a required amendment pursuant to this Clause 8.4A(e) is not a variation direction pursuant to Clause 40 and shall be undertaken at the Contractor's cost.

- (f) Where the Contractor is notified of a required amendment to the Design Documents or any revised Design Documents pursuant to Clause 8.4A(e), the Contractor shall amend the Design Documents or the revised Design Documents (as the case may be) to correct the design and provide amended documentation to the Superintendent for review within the time specified in Annexure Part A. The Contractor is only entitled to make 2 resubmissions for each of the 50% complete and the 100% complete for construction Design Documents pursuant to the resubmission regime in paragraphs 8.4A(e) and (f) before the Principal is entitled to exercise its termination rights in Clause 3.7, subject to the Principal, in its absolute discretion, giving permission in writing for additional resubmissions.
- (g) The Contractor must not proceed to:
 - (i) commence the preparation of the construction Design Documents:
 - A. without the Superintendent's written approval of the Schematic Design or any revised Schematic Design (as the case may be); nor
 - B. before the Public Housing Notice has been obtained by the Principal; nor
 - (ii) effect construction of the Works in accordance with the Design Documents or any revised Design Documents without the Superintendent's permission to use the Design Documents or the revised Design Documents (as the case may be).
- (h) The Contractor must allow for the requirements of this Clause 8.4A in the Contractor's Program.
- (i) The Superintendent may request copies of or access to the Design Documents at any time.
- (j) The Contractor must not, without the prior written approval of the Superintendent, depart from the Design Documents.
- (k) When the Contractor is of the opinion that, but for the certification required by this Clause 8.4A(k) and the notice required under Clause 8.4A(l), Practical Completion has been achieved, the Contractor shall provide to the Superintendent a certificate from the designer of the Works that the Works have been constructed in accordance with the Design Documents.
- (l) Within 7 days of the Superintendent's receipt of the certification required by Clause 8.4A(k), the Superintendent shall give to the Contractor and Principal written notice that the Superintendent is satisfied that the Works have been constructed in accordance with the Design Documents or reasons why the Superintendent is not satisfied that the Works have been constructed in accordance with the Design Documents.
- (m) The Superintendent has the amount of time specified in Annexure Part A to review any Schematic Design or the Design Document submitted by the Contractor pursuant to this Clause 8.4A.

8.4B Acknowledgements

The Contractor acknowledges that:

- (a) it shall remain responsible for the design for the Works notwithstanding any approval given under the *Building Act 1975* (Qld), any issuing of a Public Housing Notice, the Building Certifications, or any review or approval of the Design Documents undertaken by or on behalf of the Principal or the Superintendent;
- (b) the Principal is relying upon the Contractor's skill and expertise in effecting the design and construction of the Works;
- (c) neither the Superintendent nor the Principal owes a duty to the Contractor to review the Design Documents or any revised Design Documents submitted by the Contractor pursuant to Clause 8.4A for errors or omissions or to ensure its compliance with the Contract; and
- (d) no comments on, reviews of or rejection or permission to use of the Design Documents (including the Schematic Design) or any revised Design Documents (including the Schematic Design) by the Superintendent or the Principal, any notice given under Clauses 8.4A(b) or (e) or a notice given under Clause 8.4A(l), will relieve the Contractor from or alter or affect the Contractor's liabilities or responsibilities under the Contract or otherwise."

8.5 Availability of Documents

No amendment

8.6 Confidential Information

Add the following at the end of the existing subclause -

"The Contractor must ensure that it and its subcontractors, and their respective employees and agents keep confidential:

- (a) all documents and information provided to them by or on behalf of the Principal in connection with the Contract and the Works; and
- (b) details of all Principal supplied items, including any documents and information in connection with those items that are provided by or on behalf of the manufacturers or suppliers of those items.

If required in writing by the Superintendent, the Contractor must enter into, or cause any of its subcontractors, or any of their respective employees or agents to enter into, a separate agreement in the form of Annexure Part P or on such other terms as may be reasonably required by the Principal not to disclose to anyone else any confidential matter, whether before or after completion or earlier termination of the Contract."

8.7 Media Releases

Delete the words –

"without prior approval of the Principal which approval shall not be unreasonably withheld."

Add new subclause:

"8.8 Disclosure of Information

Notwithstanding any other provision of this Contract, the Principal may publish on the Queensland Government Marketplace Website or by any other means, all of the following details:

- (a) the name and address of the Principal and the Contractor;
- (b) a description of the goods and/or services to be provided pursuant to the Contract;
- (c) the Date of Contract;

- (d) the Contract Sum and value; and
- (e) the procurement method used.

9. ASSIGNMENT AND SUBCONTRACTING

9.1 Assignment

Delete / Insert

"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."

9.2 Subcontracting (including Work Performed by Consultants)

Delete/Insert

"

9.2 Subcontracting

- 9.2.1 The Contractor shall not without the written approval of the Superintendent, which approval shall not be unreasonably withheld, subcontract any of the work under the Contract. All subcontractors shall be local suppliers as described in the Queensland Procurement Policy. If a local supplier is unable to be provided, the Contractor shall provide evidence satisfactory to the Superintendent of its efforts to source a local supplier when seeking approval of other than a local supplier.
- 9.2.2 Any request for approval pursuant to Clause 9.2.1 shall be made by the Contractor to the Superintendent in the form attached to these Conditions.
- 9.2.3 In addition to Clause 9.2.2 the Contractor shall provide to the Superintendent such additional information which the Superintendent may reasonably request, including a copy of the proposed subcontract documents without prices.
- 9.2.4 Within fourteen days after a request by the Contractor for approval made in accordance with Clause 9.2.2 the Superintendent shall approve the subcontract or advise the Contractor of its objections.
- 9.2.5 The Superintendent may approve in exceptional circumstances, subcontract conditions that do not comply with the requirements of Clause 9.2.2.
- 9.2.6 The Contractor shall not, without the written approval of the Superintendent, allow -
 - (a) a subcontractor to assign or subcontract any of the work under the Contract; or
 - (b) the performance of any of the work under the Contract by any party (including without limitation, a sub subcontractor) other than the Contractor or an approved subcontractor.

When seeking approval pursuant to this Clause 9.2.6 the Contractor shall provide to the Superintendent such information and additional information which the Superintendent may reasonably request. The Superintendent may in its entire discretion and without giving reasons reject any such request for approval by the Contractor.

A request for approval to sub subcontract any of the work under the Contract pursuant to this Clause 9.2.6 must be made by the Contractor to the Superintendent in the form attached to these Conditions.

- 9.2.7 The Contractor must assign to the Principal the benefit of all warranties obtained by the Contractor from subcontractors and from manufacturers and suppliers of plant, equipment and

materials incorporated into the Works. All warranties must be delivered to the Superintendent at the times required by the Contract and if no time is stated, then within 14 days of the Date of Practical Completion.

9.2.8 The provisions of this Clause 9.2 shall not apply to work performed by Consultants."

9.3 Contractor's Responsibility

No amendment

9.4 Selected Subcontract Work

Delete the words "not less than two" appearing after the words "from a list of" in the third line of the paragraph and insert in their place the words "one or more".

9.5 Provisions Applying Generally to Selected Subcontract Work

No amendment

9.6 Termination of Selected Subcontract

No amendment

10. NOVATION

Add after the words "or the Selected Subcontractor" in the third line of the second paragraph, the words "or Consultant"

11. PROVISIONAL SUMS

No amendment

12. LATENT CONDITIONS

Delete / Insert:

"The Contractor has made its own independent investigations and assessments of the Site and all information in relation to the Site and has relied upon those investigations and assessments for the purposes of the Contract. It:

- (a) warrants that the Site is suitable for the work under the Contract and the Works; and
- (b) acknowledges that it remains fully responsible for the full performance of the Contract notwithstanding any aspect or condition of the Site.
- (c) is not entitled to any additional monetary compensation for dealing with ground conditions (whether known or unknown) regardless of whether the ground condition causes the Contractor to:
 - (i) carry out more work;
 - (ii) use more Constructional Plant; or
 - (iii) incur more cost (including but not limited to extra costs for delay or disruption "

13. PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

Add the following after Alternative 1 in Clause 13.2 -

"The Principal's licence to use the Design Documents (including any parts of the Preliminary Design provided by or on behalf of the Contractor) in this Clause 13.2:

- (a) survives termination of this Contract by any party and for any reason; and
- (b) extends to allow the Principal (or its nominee or other contractor) to use the Design Documents after any such termination for the Project, or a project similar the Project (including a project in a different location).

The Contractor must produce evidence satisfactory to the Principal that it holds sufficient interest in the Design Documents to pass to the Principal the licence required by this Clause. Provision of such proof is a condition precedent to any entitlement of the Contractor to make a payment claim pursuant to Clause 42.1."

Add the following after the last paragraph below Alternative 2 -

"The Contractor indemnifies the Principal against any claims, costs, losses or damages suffered or incurred by the Principal, arising out of or in any way connected with any infringement of any intellectual property right in the carrying out of the work under the Contract or the performance of the Contractor's other obligations under the Contract, but the Contractor's liability to indemnify the Principal under this Clause 13 shall be reduced proportionally to the extent that a negligent act or omission of the Principal or its employees or agents contributed to the claim, cost, loss or damage."

14. LEGISLATIVE REQUIREMENTS

14.1 Complying with Legislative Requirements

Add the following new paragraphs at the end of Clause 14.1 -

"

The Contractor must (at its own cost) engage the Building Certifier prior to commencement of any work on the Site and

- (a) maintain the engagement until all Building Certifications and the Certificate of Classification have been provided to the Superintendent; and
- (b) upon request, give to the Superintendent evidence that the Building Certifier holds professional indemnity liability insurance that satisfies s.52 of the Building Regulation 2006;
- (c) include in the scope of the engagement a requirement that the Building Certifier:
 - (i) liaise as required with all referral agencies relevant to the assessment process required to be performed by the Building Certifier under this Contract; and
 - (ii) contribute to a monthly status report.
- (d) on or before their engagement, give to the Building Certifier the statement in Annexure Part O.

The Contractor shall ensure all Building Certifications and the Certificate of Classification are obtained and provided to the Superintendent within the times required by the Contract. For this purpose, the Contractor shall pay all fees and submit to the Building Certifier all material necessary for obtaining such Building Certifications and the Certificate of Classification. The Contractor shall allow within the Contractor's Program a reasonable time for obtaining Building Certifications and the Certificate of Classification.

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

- (a) without derogating from the contractual requirement that the Contractor is providing housing for or on behalf of the Principal, the Contractor does not act as agent of the Principal in complying with any Legislative Requirement; and
- (b) the Contractor indemnifies the Principal against any damages, costs and consequences of failing to comply with any Legislative Requirement;
- (c) the Contractor shall remain responsible for the design notwithstanding any issue of a Public Housing Notice or any approval or confirmation of compliance given under or in connection with the *Building Act 1975*, nor any review of approval of the design undertaken on behalf of the Principal.

Without limitation to the Contractor's other obligations, the Contractor must design and construct any structures over carparks so they comply with the Building Code of Australia including, without limitation, where the structure is closer than 3 metres to the boundary of the Site.

The Contractor will give the Superintendent copies of all documents issued to the Contractor by municipal, public or other statutory authorities in respect of the Works, the work under the Contract and/or the Site, and in particular any approvals of work.”

14.2 Changes in Legislative Requirements

No amendment

Add new subclause -

“

14.3 Work Health and Safety Act 2011

14.3.1 For the purposes of this Clause:

‘Act’ means the *Work Health and Safety Act 2011* (Qld), as amended from time to time;

‘Regulation’ means the *Work Health and Safety Regulation 2011* (Qld), as amended from time to time;

‘workplace’, ‘inspector’, ‘notifiable incident’, ‘principal contractor’, ‘structure’ and ‘regulator’ have the same meanings as in the Act and ‘construction project’ and ‘construction work’ have the same meaning as in the Regulation.

‘WHS Management Plan’ means the work health and safety plan to be prepared by the Contractor under Clause 14.3.5 which must:

- (A) set out in adequate detail the procedures that the Contractor will implement to manage the Works from a work health and safety perspective;
- (B) describe how the Contractor proposes to ensure that the work under the Contract is performed consistently with the Act and the Regulation; and
- (C) comply with the specific requirements of part 6.4 of the Regulation in relation to the matters that a WHS management plan must include.

14.3.1 Where the work under the Contract comprises a construction project (i.e. a project that involves construction work of \$250,000 or more), from the Date of Contract:

- (a) the Principal engages the Contractor to be the principal contractor under the Regulation in relation to the work under the Contract and authorises the Contractor to:
 - (i) have management and control of the workplace at which the work under the Contract is being undertaken including the Site; and
 - (ii) discharge the duties of the principal contractor under the Regulation; and
- (b) the Contractor accepts the engagement as principal contractor from the Principal and agrees to fulfil all requirements and give effect to that engagement prior to the commencing any of the work under the Contract; and
- (c) the Contractor will comply with and discharge all obligations imposed on the Contractor, as principal contractor, as a person who conducts a business or undertaking and otherwise, by the Act, the Regulation and any other regulation in connection with health and safety; and
- (d) the Contractor will consult with the Principal and will consult with the designers of the whole or any part of a structure to be constructed under the Contract, about how to ensure that risks to health and safety arising from the design are eliminated during construction of the work under the Contract or, if it is not reasonably practicable to eliminate the risks, minimise, so far as is reasonably practicable;
- (e) the Contractor will, in performing its obligations under the Contract, take into account and take appropriate action having regard to any information given to the Contractor by the Principal or any other person, about hazards and risks at or in the vicinity of the workplace where the work under the Contract is being carried out; and

- (f) without limiting paragraph (c), ensure its officers, employees and agents, subcontractors and its subcontractors' officers, employees and agents, discharge their respective duties under the Act and the Regulation in connection with the work under the Contract.
- 14.3.3 The Contractor will indemnify the Principal against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, the Principal as a result of or in connection with:
- (a) any breach of this Clause by the Contractor;
 - (b) any breach by the Contractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety;
 - (c) any enforcement of obligations imposed on the Contractor under the Act, the Regulation or any other regulations.
- 14.3.4 If a notifiable incident occurs at the workplace at which the work under the Contract is being undertaken, the Contractor must:
- (a) immediately notify the regulator and the Superintendent of the notifiable incident; and
 - (b) take all reasonably practicable steps to secure the Site where the notifiable incident occurred until an inspector arrives at the Site or any earlier time that an inspector directs.
- 14.3.5 As a condition precedent to the Principal's obligation under this Contract to provide the Contractor with access to the Site, the Contractor must prepare and submit a WHS Management Plan to the Superintendent for approval. No comment upon nor any review, acceptance or approval of the WHS Management Plan by the Superintendent will affect any warranty or guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract"

15. PROTECTION OF PEOPLE AND PROPERTY

Add the following new paragraph at the end of Clause 15 -

"The Contractor shall indemnify the Principal against all costs, damages and expenses the Principal may sustain as a result the Contractor failing to strictly comply with this Clause."

Add the subclause number "15.1" and the subheading "Protection Measures" to the existing Clause 15.

Add new subclause -

"

15.2 Occupational Health and Safety Audit

- 15.2.1 This Clause 15.2 will apply unless otherwise noted in Annexure Part A.
- 15.2.2 In this Clause 15.2, the term "Accredited Auditor (Construction)" means a person accredited by Workplace Health and Safety Queensland as an occupational health and safety auditor to undertake auditing pursuant to the *Work Health and Safety Act 2011*.
- 15.2.3 Within 14 days of the Date of Contract, the Contractor must engage an Accredited Auditor (Construction) to perform the functions specified in Annexure Part N.
- 15.2.4 The cost of performance by the Accredited Auditor (Construction) of the required functions will be reimbursed by the Principal in accordance with the provisions specified in Annexure Part N. The reimbursable amount will be a debt due from the Principal to the Contractor.
- 15.2.5 The Contractor must ensure that the Accredited Auditor (Construction) engaged under Clause 15.2.3 has not:
- (a) in the two years prior to the Date of Contract, had a business or employment relationship with the Contractor including without limitation where the Accredited Auditor (Construction) has, either personally or as an employee or an agent of another person or entity, been involved in the development and/or maintenance of the Contractor's occupational health and safety management system in any capacity other than by reason of having been engaged as an Accredited Auditor (Construction); or

- (b) been engaged by the Contractor as an Accredited Auditor (Construction) more than three times within a 12 month period to perform the functions specified in the Contract.

15.2.6 The Contractor must provide copies of all reports and any corrective action notices received from the Accredited Auditor (Construction) to the Superintendent within three days of receipt. In relation to corrective action notices, in addition to any other avenues available under the Contract:

- (a) the Superintendent may direct the Contractor, by written notice, to carry out any required corrective action within the time specified in the Superintendent's notice; or
- (b) the Principal may take action under Clause 39.

15.2.7 A direction given under Clause 15.2.6(a) constitutes a direction under Clause 30.3. If such a direction is given, the Contractor must inform the Superintendent in writing immediately upon completion of the corrective actions."

16. CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

No amendment

17. DAMAGE TO PERSONS AND PROPERTY

Add a new subclause -

"

17.3 Continuing Obligation

The indemnity given by the Contractor under Clause 17.1 is a continuing obligation, separate and independent from the other obligations of the Contractor and survives termination of the Contract."

18. INSURANCE OF THE WORK UNDER THE CONTRACT

No amendment

19. PUBLIC LIABILITY INSURANCE

No amendment

20. INSURANCE OF EMPLOYEES

No amendment

21. PROFESSIONAL INDEMNITY INSURANCE

No amendment

22. INSPECTION AND PROVISIONS OF INSURANCE POLICIES

22.1 Proof of Insurance

No amendment

22.2 Failure to Produce Proof of Insurance

No amendment

22.3 Notices from or to the Insurer

Add the following paragraph at the end of the existing subclause

"

The insolvency of any insurance company providing insurance to the Contractor, or the failure of any insurance company to pay claims made by the Contractor does not abrogate, waive or alter any of the Contractor's liabilities under the Contract."

22.4 Notices of potential claims

No amendment

22.5 Settlement of Claims

Add the following paragraph at the end of the existing subclause

"

Any amounts not insured, including policy deductibles or amounts not recovered from insurers (including the cost of preparing insurance claims) must be borne by the parties according to their liabilities under the Contract."

22.6 Cross Liability

No amendment

Add new subclause

"

22.7 Effect of Insurance

Any amounts not insured, including policy deductibles or amounts not recovered from insurers (including the cost of preparing insurance claims) must be borne by the parties according to their liabilities under the Contract."

23. SUPERINTENDENT

Add new paragraph at the end of the existing Clause:

"For the purposes of the BIF Act, the Superintendent is deemed to be authorised to receive payment claims and to issue payment schedules on behalf of the Principal."

24. SUPERINTENDENT'S REPRESENTATIVE

No amendment

25. CONTRACTOR'S REPRESENTATIVE

No amendment

26. CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

No amendment

27. SITE

27.1 Access to and Possession of Site

No amendment

27.2 Access for the Principal and Others

No amendment

27.3 Delivery of Materials to and Work on the Site Before Possession

No amendment

27.4 Use of the Site by the Contractor

No amendment

27.5 Finding of Minerals, Fossils and Relics

No amendment

Add new subclause

"

27.6 Extra Land Required by Contractor

The Contractor shall procure for itself and at its own cost the right to the occupation or use of any land in addition to the site which the Contractor may deem necessary for the execution of the work under the Contract or for the purposes of the Contract and shall, as a condition precedent to the issue of the Final Certificate, if so required by the Superintendent, provide a properly executed release from all claims or demands (whether for damages or otherwise whatsoever) from the owner or occupier of such land and from any other person having an interest in such land. Any such release shall be in a form approved by the Principal."

28. SETTING OUT OF THE WORKS

No amendment

29. MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

29.1 Provision of Materials, Labour and Constructional Plant

No amendment

Add new subclauses

"

29.1A Training Policy

For the purposes of Clauses 29.1A and 29.1AB:

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

'Apprentice' or 'Trainee' has the meaning given to it in the Training Policy;

'Compliance Plan' means the plan developed by the Contractor demonstrating how the Contractor will comply with its obligations under this Clause 29.1AB and the Training Policy;

'CSQ' means Construction Skills Queensland;

'DATSIP' means the Department of Aboriginal and Torres Strait Islander Partnerships;

'Deemed Hours' means the number of hours calculated using the following formula:
Contract Sum (GST inclusive) x 0.0006, and for Major building projects: Contract Sum (GST inclusive) x 0.0009;

'Eligible Project' means the work under this Contract where the Contract Sum is \$500,000 or greater (including GST) and projects identified as Eligible Projects in the Training Policy;

'Indigenous Economic Opportunities Plan' means a plan that complies with the requirements of the Training Policy (template available via www.training.qld.gov.au/trainingpolicy) agreed to and signed by:

- (a) the Contractor;
- (b) the Principal; and
- (c) the relevant Aboriginal or Torres Strait Islander council or authority, or where there is no relevant Aboriginal and Torres Strait Islander council or authority, DATSIP;

'Indigenous Project' means:

- (a) an Eligible Project located in an Aboriginal or Torres Strait Islander community, or in the township of Weipa, or
- (b) an Eligible Project located in a part of Queensland not referred to in paragraph (a) of this definition that is selected as an Indigenous Project by Queensland Government agencies or by the Director General of DATSIP,

as further detailed in the Training Policy;

'Major building project' means a project where the Contract Sum (including GST) is \$100 million or greater.

'Practical Completion Compliance Report' means a report prepared by the Contractor demonstrating the compliance by the Contractor with Clause 29.1AB and the Training Policy;

'Training Policy' means the Queensland Government Building and Construction Training Policy, published by the Department of Employment, Small Business and Training and located at www.training.qld.gov.au/trainingpolicy, as amended from time to time;

'Training Policy Administration System' or 'TPAS' means the electronic reporting system administered by CSQ for the submission of the Compliance Plan, the Practical Completion Compliance Report and the Indigenous Economic Opportunities Plan located via www.training.qld.gov.au/trainingpolicy.

29.1AB Compliance with Training Policy

- (a) Where the work under the Contract constitutes an Eligible Project, the Contractor must:
 - (i) within 10 Business Days of the Date of Contract submit to CSQ via the TPAS, with a copy to the Superintendent, a completed Compliance Plan;
 - (ii) within 10 Business Days of the Date of Practical Completion, or if there is more than one the last occurring Date of Practical Completion, submit to CSQ via the TPAS, with a copy to the Superintendent, a completed Practical Completion Compliance Report ;
 - (iii) comply with the Training Policy;
 - (iv) ensure that new entrant Apprentices or Trainees, as set out in the Training Policy, work a minimum of 60% of the Deemed Hours applicable to the work under the Contract; and
 - (v) undertake other workforce training as set out in the Training Policy for the remaining Deemed Hours not allocated under Clause 29.1AB(a)(iv).

- (b) Where the work under the Contract constitutes an Indigenous Project the Contractor must, in addition to the requirements set out in Clause 29.1AB(a):
 - (i) within 10 Business Days of the Date of Contract submit to CSQ via the TPAS, with a copy to the Superintendent, a completed Indigenous Economic Opportunities Plan;
 - (ii) ensure that Aboriginal and Torres Strait Islander Apprentices and/or Trainees, and local Aboriginal and Torres Strait Islander workers work the Deemed Hours applicable to the work under the Contract as set out in the Training Policy;
 - (iii) ensure that, in addition to the requirements set out in Clause 29.1AB(b)(ii), the Contractor complies with the Indigenous Economic Opportunities Plan such that 3% of the Contract Sum is allocated toward the agreed Indigenous Economic Opportunities Plan in carrying out the work under the Contract; and
 - (iv) within 15 Business Days of the Date of Practical Completion, or if there is more than one the last occurring Date of Practical Completion, submit to CSQ via the TPAS, with a copy to the Superintendent, the achievement of outcomes against the Indigenous Economic Opportunities Plan in accordance with the Training Policy.
- (c) For Major building projects, in addition to the above requirements, the Contractor must develop a skills development plan, training delivery linked to occupational outcomes in applicable national accredited training packages, and employ a training coordinator to ensure the implementation of the skills development plan.
- (d) Nothing in Clauses 29.1AB(a), 29.1AB(b) or 29.1AB(c) limits or alters the Contractor's obligation to comply with the Training Policy generally.
- (e) The Contractor acknowledges that failure to comply in part or in whole with the requirements of Clauses 29.1A and 29.1AB will be a substantive factor that will be taken into account in the process of awarding future contracts by the Principal (the State of Queensland).
- (f) The Contractor must allow CSQ, as agent of the Principal, to undertake any periodic audits of the Contractor's compliance with this Clause 29.1AB, including providing CSQ with reasonable access to the Contractor's records and the Site if required, and the provision of information reasonably requested by CSQ or the Principal and to generally cooperate with CSQ in this regard. CSQ will provide a report to the Principal or the Superintendent on the Contractor's compliance with the requirements of this Clause 29.1AB."

29.1B Queensland Charter for Local Content

This Clause applies if specified in Annexure Part A.

The Contractor must, and must ensure its subcontractors, in carrying out the work under the Contract:

- (a) comply with the principles of the Queensland Charter for Local Content (Charter) and any requirements under the Contract in this regard;
- (b) comply with any Statement of Intent or equivalent local content statement under the Contract;
- (c) complete and submit a Charter for Local Content – Project Outcome Report (available from www.dsdip.qld.gov.au/local-content¹) to the Principal at Practical Completion and at such other times as reasonably requested by the Principal, with a copy to qclc@dsd.qld.gov.au.

¹ An example template of the Charter for Local Content – Project Outcome Report is attached to these Conditions.

29.1C Queensland Procurement Policy

The Contractor must, and must ensure its subcontractors, in carrying out the work under the Contract, comply with:

- (a) the principles of the Queensland Procurement Policy and any requirements under the Contract in this regard; and
- (b) the Ethical Supplier Threshold.

The Contractor acknowledges that a failure to comply with the Principal's policies that apply to the work under the Contract or the Contractor's obligations under the Contract can result in the imposition of a demerit or sanction under the Ethical Supplier Mandate, in addition to any other remedies available to the Principal under this Contract."

29.2 Removal of Materials and Constructional Plant

No amendment

29.3 Manufacture and Supply of Materials

No amendment

Add new subclauses

"

29.4 Site Personnel Register

29.4.1 From the commencement of work under the Contract until Practical Completion, the Contractor must maintain a register in the form attached to these Conditions ('Site Personnel Register') of all individuals who carry out work under the Contract on Site.

29.4.2 The Site Personnel Register must be available for inspection at all times by the Superintendent.

29.4.3 The Contractor must provide statistical information in the form attached to these Conditions ('Site Personal Register Summary') to the Superintendent every 13 weeks and at such other times as the Superintendent may direct.

30. MATERIALS AND WORK**30.1 Quality of Material and Work**

No amendment

30.2 Quality Assurance

No amendment

30.3 Defective Material or Work

Add to the end of the subclause:

"Until the cost of such work has been incurred by the Principal, the Principal may deduct the estimated cost of such work from payments to the Contractor as an amount due from the Contractor to the Principal."

30.4 Variations due to Defective Material or Work

No amendment

30.5 Acceptance of Defective Material or Work

No amendment

30.6 Generally

No amendment

31. EXAMINATION AND TESTING

No amendment

32. WORKING HOURS

Delete/Insert -

"The working hours and working days shall be as specified in Annexure Part A. These times shall not be varied without the prior approval of the Superintendent except when in the interests of safety of the work under the Contract or to protect life or property the Contractor finds it necessary to carry out work outside the working hours or on other than the working days specified in the Contract. In such cases the Contractor shall notify the Superintendent in writing of the circumstances as early as possible.

In approving a variation to the working hours or working days specified in the Contract the Superintendent may attach conditions. Such conditions may include but are not limited to a prohibition of or restriction on the performance of work which requires inspection and may also include a requirement that the Contractor meets the costs of contract administration including but not limited to costs of inspections by or on behalf of the Principal, of work during times approved by the Superintendent that are outside of the hours specified in the Contract."

33. PROGRESS AND PROGRAMMING OF THE WORKS

33.1 Rate of Progress

Add to the end of the existing text -

"

The Contractor must:

- (a) submit monthly reports on the progress of the work under the Contract, including the construction of the Works and with comprehensive current photos accurately depicting the progress of the Works on or around the date of the issue of the report;
- (b) ensure that the Contractor's Representative attends meetings arranged by the Superintendent or the Principal to review the progress of the work under the Contract and any problems, claims and matters related to the work under the Contract."

33.2 Contractor's Program

Delete the third paragraph and replace it with -

"Within 5 Business Days of the Date of Contract the Contractor must submit a Contractor's Program to the Superintendent for approval."

34. SUSPENSION OF THE WORKS

Delete 'or' at the end of subparagraph (b) and insert at the end of subparagraph (c).

Insert new subparagraph (d) as follows:

' (d) for any other reason that the Superintendent in its absolute discretion decides, '

35. TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION

35.1 Commencement

Add to the end of the existing text -

"

The Contractor shall not commence construction of the Works on the Site, without the prior written approval of the Superintendent, until all of the following have occurred:

- (a) settlement of the Land Sale Contract;
- (b) if a Public Housing Notice is applicable to the Works, the Principal has provided the Public Housing Notice;
- (c) the Building Certification referred to in paragraph (a) of the definition of Building Certifications in Clause 2 has been obtained;
- (d) the Contractor has submitted the Design Documents to the Superintendent in accordance with Clause 8.4 and 8.4A;
- (e) the Superintendent has given the Contractor permission to use the Design Documents; and
- (f) the Contractor has fulfilled the requirements of any other provision of the Contract required to be completed prior to commencement of construction of the Works on the Site."

35.2 Time for Practical Completion

No amendment

35.3 Separable Portions

In the first paragraph add "36," after the words "and Clauses 5.2, 5.5, 5.8 (if applicable), 5.9, 16, 35," in the fifth line.

In the second paragraph add ", delay costs" after the words "security, retention moneys, liquidated damages" in both the second and third lines.

35.4 Use of Partly Completed Works

No amendment

35.5 Extension of Time for Practical Completion

Delete subclauses a(i) and (iii), (b)(ii), (iii), (v), (vi) and (vii).

35.6 Liquidated Damages for Delay in Reaching Practical Completion

No amendment

35.7 Limit on Liquidated Damages

Delete

35.8 Bonus for Early Practical Completion

Delete

36. DELAY OR DISRUPTION COSTS

Amend the Clause heading to read "**36. DELAY COSTS**".

Express the existing provisions as "Alternative 1".

Delete the words "or disruption" in the second and third paragraphs.

Add new subclauses -

"

Alternative 2 (includes Clauses 36.1, 36.2 and 36.3)

36.1 Entitlement

- (a) Except as provided by this Clause or by Clause 40.5, the Contractor is not entitled to recover any additional payment for costs, losses or expenses or any damages or other compensation for delay or disruption in the execution or completion of the work under the Contract, however that delay or disruption may have been caused.
- (b) Where the Contractor has been delayed in the execution of the work under the Contract by a Compensable Delay, the Contractor shall only be entitled to recover from the Principal the amounts payable by way of agreed damages determined in accordance with Clause 36.2.

36.2 Amount Payable

The agreed damages payable under Clause 36.1 for each day of delay for which an extension of time is granted is the Delay Rate. The amount payable by the Principal to the Contractor under this Clause 36 is a limitation upon any liability which the Principal may have to the Contractor pursuant to the Contract, for breach of the Contract or otherwise according to law arising in connection with all and any delay howsoever caused or encountered by the Contractor in the execution of work under the Contract. "

37. DEFECTS LIABILITY

Add to the end of the fourth paragraph:

"Until the cost of the work of rectification has been incurred by the Principal, the Principal may deduct the estimated cost of such work from payments to the Contractor as an amount due from the Contractor to the Principal.

If the moneys payable to the Principal are insufficient to discharge the liability of the Contractor under this Clause 37, the Principal may have recourse to retention moneys and any security provided in lieu of retention moneys under the Contract."

38. CLEANING UP

No amendment

39. URGENT PROTECTION

No amendment

40. VARIATIONS**40.1 Variations to the Work under the Contract**

Add the following paragraphs at the end of the existing subclause:

"

Except where the Contractor has provided an offer under Clause 40.2, within a reasonable time the Contractor shall provide to the Superintendent a price, ascertained in accordance with Clauses 40.5 (a) to (h) and supported with measurements, rates and evidence of cost (including where applicable subcontractors' and suppliers' measurements, rates and evidence of cost) for the work the subject of a variation issued under this Clause 40.1. The Superintendent and Contractor shall endeavour to agree upon a price for the variation and any written agreement reached shall be binding upon the parties. If the Superintendent and Contractor fail to agree in writing upon a price for the variation or if the Contractor fails to provide a price to the Superintendent within a reasonable time, the variation shall be valued by the Superintendent under Clause 40.5.

Where the Principal has directed a variation for work to be omitted under Clause 40.1(a), the Principal may at any time, and at its absolute discretion, elect to perform omitted work itself or to engage another contractor to perform the omitted work"

40.2 Proposed Variations

Add the words "in writing" directly after the words "If the variation can be effected, the Contractor shall".

Delete paragraph (b) and replace with:

"(b) provide to the Superintendent a price, ascertained in accordance with Clauses 40.5 (a) to (h) and supported with measurements, rates and evidence of cost (including where applicable subcontractors' and suppliers' measurements, rates and evidence of cost) for carrying out the proposed variation."

Delete the last sentence and replace with:

"The Contractor's written response to Clauses 40.2 (a) and (b) shall constitute the Contractor's offer under this Clause 40.2.

The Superintendent may, in writing and within a reasonable time, accept the Contractor's offer and issue a direction under Clause 40.1 to carry out the proposed variation, in which case the value of the variation and any extension of time as a result of the direction under Clause 40.1 shall be in accordance with the accepted offer, which shall be binding upon the parties.

If the Superintendent rejects the Contractor's offer, the Superintendent may nevertheless issue a direction under Clause 40.1 to carry out the proposed variation, and the variation shall be valued by the Superintendent under Clause 40.5 and any costs associated with delay shall be assessed in accordance with the requirements of Clause 36.

If the Superintendent does not issue a direction under Clause 40.1 to carry out the proposed variation, then the Principal shall reimburse the Contractor for the reasonable costs of preparing a price under this Clause 40.2."

40.3 Pricing the Variation

Delete/insert:

"Not Used"

40.4 Variations for the Convenience of the Contractor

No amendment

Add new subclause:

"40.4A Innovation

The Contractor may submit, in writing to the Superintendent, a detailed proposal prepared at its own cost for changes to the Works which are likely to be of value to the Principal. The proposal shall state that it is a proposal made pursuant to this Clause 40.4A and shall include:

- (a) information sufficient to demonstrate that the proposed change and any consequential effects of the proposed change on the Works, meet all statutory requirements, are suitable, appropriate and adequate for the intended purpose and will have no further consequential effects on the Works that have not been addressed in the proposal;
- (b) details of the effect, if any, that the proposed change will have on the construction program and the time for Practical Completion;
- (c) an all-inclusive price for the performance of the work the subject of the change, which may involve a deduction to the Contract Sum and which includes without limitation any time related costs and the costs of designing, documenting, obtaining approval, constructing, installing and commissioning, to make the proposed change; and
- (d) any other information reasonably required by the Superintendent to assess the value of the proposed change to the Principal.

By submitting the proposal to the Superintendent, the Contractor warrants to the Principal that the proposed change and any consequential effects of the proposed change on the Works, meet all statutory requirements, are suitable, appropriate and adequate for the intended purpose and will have no further consequential effects on the Works that have not been addressed in the proposal.

The Superintendent may, at its discretion, in writing and within a reasonable time, accept the Contractor's proposal and issue a direction under Clause 40.1 to carry out the proposed change, in which case the value of the variation and any agreed adjustment to the Date for Practical Completion shall be in accordance with the accepted proposal, which shall be binding upon the parties.

The Contractor shall have no claim against the Principal for the Superintendent's failure or refusal to accept the Contractor's proposal."

40.5 Valuation

Add, as the last sentence of paragraph (c) -

"The valuation pursuant to subclause (c) shall include an amount for the Contractor's profit and overheads which shall be the greater of:

- (i) \$150.00 (excluding GST); and
- (ii) 12½% of the value of work carried out by the Contractor's own workers and 7½% of the amount properly payable by the Contractor for work carried out by others;"

Delete paragraph (ii) and replace with the following:

- “(ii) if the valuation relates to extra costs incurred by the Contractor for delay, excluding delay caused by suspension of the Works pursuant to Clauses 34.1 or 34.2, the costs shall be assessed in accordance with the requirements of Clause 36; and”.

Delete/insert the last paragraph:

"The Superintendent may, in respect of a variation directed under Clause 40.1, in its sole discretion and without obligation to act reasonably, allow the Contractor the reasonable cost of preparing measurements, rates and evidence of cost that has been incurred over and above the reasonable overhead cost."

41. DAYWORK

No amendment

42. CERTIFICATES AND PAYMENTS

42.1 Payment Claims, Certificates, Calculations and Time for Payment

Add the words "Subject to the prior receipt by the Superintendent of the information required by Clause 43.2," at the beginning of the first line of paragraph one.

Delete "Within 14 days" in the first line of paragraph four and insert in its place "Within 10 Business Days".

Delete "28 days" in the first line of paragraph 6 and insert in its place "15 Business Days".

Delete the following words from paragraph 6 "or within 14 days of issue of the issue by the Superintendent of the Superintendent's payment certificate, whichever is the earlier"

Add the following sentence to the end of the last paragraph of Clause 42.1:

"Nothing in this Contract shall oblige the Principal to pay for work that is not in accordance with the Contract."

42.2 Unfixed Plant and Materials

No amendment

42.3 Certificate of Practical Completion

Delete "14 days" in both the first and second paragraph, and insert in its place "10 Business Days".

42.4 Effect of Certificates

No amendment

42.5 Final Payment Claim

No amendment

42.6 Final Certificate

No amendment

Delete "Within 14 days" in the first line of the first paragraph and insert in its place "Within 10 Business Days".

Add in the first paragraph at the end of the first sentence -

"or give the Contractor in writing the reasons for not issuing the certificate."

Delete the final paragraph and insert -

"Subject to the Principal's rights to set-off pursuant to Clause 42.8 and to have recourse to security and retention pursuant to Clause 5.6, within 28 days of the issuance of a Final Certificate which certifies a balance owing by the Principal to the Contractor, and later of:

- (a) the finalisation of any dispute that has been commenced in accordance with Clause 47; and

- (b) the finalisation of any claim, adjudication or proceeding commenced pursuant to or in connection with the BIF Act, including proceedings commenced by the Principal to recover an amount the subject of a payment claim pursuant to the BIF Act,

the Principal shall release to the Contractor any retention moneys or security then held by the Principal."

42.7 Interest on Overdue Payments

No amendment

42.8 Set Offs by the Principal

Delete/Insert

"

42.8 General Right of Set Off

Without limiting the Principal's rights under any other provision in the Contract and notwithstanding the provisions of or the issue of a certificate by the Superintendent under Clause 42.1 and 44.6, the Principal may deduct from any moneys due to the Contractor any sum which is payable by the Contractor to the Principal whether or not the Principal's right to payment arises by way of damages debt, restitution or otherwise and whether or not the factual basis giving rise to the Principal's right to payment arises out of this Contract, any other contract, or is independent of any contract.

If the moneys payable to the Contractor are insufficient to discharge the liability of the Contractor to pay such sum to the Principal, the Principal may have recourse to retention moneys or alternative form of security provided by the Contractor in substitution for retention moneys, and if they are insufficient, to security provided under Clause 5.2 of the Contract.

Nothing in this Clause shall affect the right of the Principal to recover from the Contractor the whole of such moneys or any balance that remains owing."

42.9 Recourse for Unpaid Moneys

No amendment

Add new subclause -

"

42.10 Encumbrances

Upon payment by the Principal of an amount which includes payment in respect of any part of the Works (including materials and equipment) the Contractor represents and warrants that title to that part of the Works, materials and equipment will immediately pass to the Principal, free and clear of all charges, liens and other encumbrances and Security Interests."

43. PAYMENT OF WORKERS AND SUBCONTRACTORS

Delete/Insert

"

- 43.1 Unless under the BIF Act a project bank account is required for the Contract, at the request of the Contractor and out of moneys payable to the Contractor the Principal may on behalf of the Contractor make payment directly to a worker or subcontractor.

- 43.2 Prior to the making of a payment claim:

- (a) the Contractor must deliver to the Superintendent an original statutory declaration in the form attached to these Conditions completed by the Contractor, or where the Contractor is a corporation, by the representative of the Contractor who is in a position to know the facts attested to that:
- (i) all subcontractors and any sub subcontractors performing work under the Contract have been approved by the Superintendent in accordance with Clause 9.2; and
 - (ii) all subcontractors of the Contractor have been paid all that is due and payable to such subcontractors up to the date of submission by the Contractor of a payment claim in respect of the work under the Contract; and

- (iii) all its workers who at any time have been engaged on work under the Contract by the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of a payment claim, in respect of their engagement on the work under the Contract; and
- (iv) the Site Personnel Register maintained in accordance with Clause 29.4 is current and correct;
- (v) the Contractor has informed all subcontractors and any sub subcontractors performing work under the Contract of the existence of the BIF Act; and
- (vi) where Clause 43A applies and a project bank account is required for the Contract:
 - A. all Subcontractors have been paid via the project bank account, if required by the BIF Act;
 - B. all retention moneys in relation to Subcontractors have been paid into the retention account of the project bank account in respect of work under the Contract, if required by the BIF Act;
 - C. all amounts relating to a payment dispute, as that term is defined in section 35 of the BIF Act, have been paid into the disputed funds account of the project bank account in accordance with the BIF Act; and
 - D. all withdrawals from the project bank account have been made in accordance with the BIF Act; and

if requested in writing, reasonable supporting documentary evidence thereof;

- (b) if previously requested by the Superintendent, the Contractor must deliver to the Superintendent an original statutory declaration in the form attached to these Conditions completed by any subcontractor, or where the subcontractor is a corporation, by a representative of the subcontractor who is in a position to know the facts attested to -
 - (i) that all workers who have been engaged by a subcontractor of the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of a payment claim in respect of their engagement on the work under the Contract;
 - (ii) that all subcontractors of the subcontractor have been paid all that is due and payable to such subcontractors up to the date of submission by the Contractor of a payment claim in respect of the work under the Contract; and
 - (iii) that all sub subcontractors performing work under the Contract have been informed of the existence of the BIF Act,

if requested in writing, reasonable supporting documentary evidence thereof.

- 43.3 The Contractor acknowledges that the Principal may release to a subcontractor details of payments in percentage terms made by the Principal to the Contractor in respect of the works or any part thereof unless the Contractor shows reasonable grounds why such details should not be released or satisfies the Principal that all payments due and payable to the subcontractor by the Contractor have been paid.
- 43.4 Unless under the BIF Act a project bank account is required for the Contract, if a worker or subcontractor obtains a court order in respect of moneys unpaid and the subject of a statutory declaration under Clause 43.2, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

43A PROJECT BANK ACCOUNTS

43A.1 Application of Clause

Clauses 43A.4 to 43A.11 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 43A, shall have the meaning given to them by the BIF Act.

43A.2 Definitions

In this Clause 43A:

'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.

43A.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 Contract and the Contractor will enter into one or more Subcontracts by the date that is 20 business days after the Date of Contract; 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.

Nothing in this Clause affects the requirements of Clause 9.2 regarding subcontracting.

43A.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.

43A.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 42 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 42; and
- (b) no receipt of nor any review, comment, approval, expression of satisfaction or dissatisfaction by or on behalf of the Principal or Superintendent concerning a Subcontractor Payment Summary, nor any failure by the Principal or Superintendent to do any of those things will:
 - (i) result in the Principal or Superintendent 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 Superintendent 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.

43A.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.

43A.7 Retention Balance Report

If, at the time of the Contractor submitting its final payment claim pursuant to Clause 42.5, or if no final payment claim is submitted by the Contractor then at the time of issuance of the Final Certificate by the Superintendent, 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.

43A.8 Disputed Funds Balance Report

If, at the time of the Contractor submitting its final payment claim pursuant to Clause 42.5, or if no final payment claim is submitted by the Contractor then at the time of issuance of the Final Certificate by the Superintendent 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.

43A.9 Subcontractor Payment Schedules

This Clause 43A.9 only applies once Chapter 3 of the BIF Act commences.

In this Clause 43A.9 the following definitions apply:

- (a) 'payment claim' has the meaning given in Chapter 3 of the BIF Act; and
- (b) 'payment schedule' has the meaning given in Chapter 3 of the BIF Act.

The Contractor must include a requirement in its Subcontracts that once Chapter 3 of the BIF Act commences, the time to respond to a Subcontractor's payment claim with a payment schedule is 15 business days from receipt by the Contractor of the Subcontractor's payment claim under the Subcontract. However, the Contractor is not required to give the Subcontractor a payment schedule if the Contractor pays the amount claimed in the payment claim in full before the end of the 15 business day period.

43A.10 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.

43A.11 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 section 42 of the BIF Act, the Contractor must provide a copy of the completed approved form to both the Principal and Subcontractors.

43A.12 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."

44. DEFAULT OR INSOLVENCY

44.1 Preservation of Other Rights

No amendment

44.2 Default by the Contractor

In paragraph 1, delete 'and the Principal considers that damages may not be an adequate remedy'. Delete "and" at the end of subparagraph (g).

Delete subparagraph (h).

Add the following subparagraphs -

“

- (h) Failing to comply in any respect with the requirements of Clause 9.2;
- (i) Failing to comply with any requirement or request made pursuant to the requirements of Clause 43;
- (j) Providing a statutory declaration pursuant to Clause 43 which is false, misleading or deceptive in any respect;
- (k) Committing an act of insolvency as defined by Clause 44.11;
- (l) Failing to lodge a Deed of Guarantee Undertaking and Substitution in breach of Clause 5.11;
- (m) Failing to maintain all necessary licences that are required for the Contractor to perform all of its obligations under the Contract;
- (n) Failing to comply in any respect with the requirements of Clause 29.4;
- (o) Failing to comply in any respect with the requirements of Clause 15.2;
- (p) Failing to comply with or breaching in any respect the requirements of Clause 6.3; and/or
- (q) Failing to comply in any respect with the requirements of Clause 29.1A, Clause 29.1AB or Clause 29.1C.
- (r) Failing to obtain the Building Certifications referred to in Clause 14.1 within a reasonable time.
- (s) Failing to obtain or maintain any Approvals required for the Works or to perform the work under the Contract.
- (t) Breaching a warranty given in Clause 4.1.
- (u) Failing to comply with an obligation of the Contractor set out in Part 3 of divisions 4, 5, 6 and 7 of Chapter 2 of the BIF Act or failing to establish a project bank account as required by the BIF Act.”

44.3 Requirements of a Notice by the Principal to Show Cause

Delete from sub-Clause (d) the words and punctuation-

“(which time shall not be less than 7 clear days after the notice is given to the Contractor)”

44.4 Rights of the Principal

Replace the second paragraph with the following:

“Notwithstanding any other provision of this Contract, upon the giving of a notice under Clause 44.2:

- (c) the Contractor is not entitled to make a claim for payment; and
- (d) 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 44.4(a) or (b); or
- (iii) the date which is 7 days after the last day for showing cause in the notice under Clause 44.2.”

44.5 Procedure when the Principal Takes Over Work

Delete/Insert

“If the Principal takes work out of the hands of the Contractor under Clause 44.4(a) the Principal shall complete that work and the Principal may without payment of compensation take possession of such of the Constructional Plant and other things on or in the vicinity of the Site or on or in the vicinity of any land in addition to the site procured by the Contractor pursuant to Clause 27.6 as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work.

If the Principal takes possession of Constructional Plant or other things, the Principal shall maintain the Constructional Plant, and subject to Clause 44.6, on completion of the work the

Principal shall return to the Contractor the Constructional Plant and any things taken under this Clause which are surplus."

- | | | |
|-------|--|--------------|
| 44.6 | Adjustment on Completion of the Work Taken Out of the Hands of the Contractor | No amendment |
| 44.7 | Default of the Principal | No amendment |
| 44.8 | Requirements of a Notice by the Contractor to Show Cause | No amendment |
| 44.9 | Rights of the Contractor | No amendment |
| 44.10 | Rights of the Parties on Termination | No amendment |

Delete/Insert

- "(a) Subject to Clause 44.10(d), if the Contract is terminated pursuant to Clause 44.4, the rights and liabilities of the parties 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.
- (b) If the Principal has terminated the Contract, the Principal may, without payment of compensation:
- (i) take possession of the Design Documents; and
 - (ii) take an assignment or novation of the Contractor's rights and benefits under subcontracts including all warranties and guarantees in connection therewith; and
- (c) The Contractor agrees to execute all documents and do all things necessary (including giving all necessary notices to subcontractors and third parties) to allow the Principal to exercise its rights under this Clause.

44.11 Insolvency

Delete/Insert

"If:

- (a) The Contractor informs the other party in writing or creditors generally that the Contractor is insolvent or it is financially unable to proceed with the Contract;
- (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 it;
 - (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*:
 - 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*:
 - 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 is a corporation and:
 - (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 to the party;
- (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 the 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 44.4.

The rights given by this Clause 44.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of Contract."

45. TERMINATION BY FRUSTRATION

No amendment

46. NOTIFICATION OF CLAIMS

No amendment

47. DISPUTE RESOLUTION

Delete the first paragraph of Clause 47.1 and replace it with:

"

If a dispute or difference (hereafter called a 'dispute') arises between the Contractor and the Principal in connection with the Contract or the subject matter thereof or the breach, termination or invalidity thereof, including a dispute concerning:

- (a) a direction, determination, valuation or certificate of the Superintendent, or
- (b) a claim:
 - (i) for breach of contract;
 - (ii) in tort
 - (iii) under any statute;
 - (iv) for restitution based on unjust enrichment; or
 - (v) for rectification,

then either party shall deliver by hand or send by certified mail to the other party and to the Superintendent a notice of dispute in writing adequately identifying and providing details of the dispute."

48. WAIVER OF CONDITIONS

No amendment

Add new Clauses -

"

49. RECORDS AND ACCESS TO RECORDS

- 49.1 The Contractor shall make and keep and shall ensure all subcontractors make and keep accurate records of its tender and of the work under the Contract including but not limited to all documents referred to in the Conditions of Contract, and the Specifications, design calculations, tender estimates, calculations and make ups, records as to progress of the works, diary records of daily tasks, complete photographic records, quality system documents and record, manning and equipment records, results of the examination and testing of any work or materials, quality assurance records and reports, cost to date records, costs to complete calculations, time records,

all cost records relating in any way to delays, variations and day works, all consultants reports and opinions obtained by the Contractor in relation to the matters referred to in this Clause and all necessary supporting documents invoices records and related financial statements whether in writing or stored on any other medium whatsoever.

- 49.2 Subject to the Contractor's right to claim legal professional privilege in respect of any record, which is hereby maintained, the Principal or Superintendent shall have the right to inspect and to copy at any time any record referred to in Clause 49.1. Notwithstanding anything to the contrary contained herein, the Superintendent may defer any determination direction or certification under Clauses 42.1, 42.6, and 44.6 or any decision of the Superintendent under Clause 47 until after such inspection is permitted by the Contractor. In the case of any records referred to in Clause 49.1 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.
- 49.3 Without limiting any other obligation of the Contractor, for those records referred to in Clause 49.1 stored on a medium licensed from a third party, where the Principal is a party to the communication, the Contractor must provide the Principal with a copy of such records in CD format readable on the Principal's information technology system, or such other format as may be reasonably required by the Principal, each month until the issuance of the Final Certificate.
- 49.4 The Contractor shall not be entitled to refuse inspection of any record referred to in Clause 49.1 on any basis whatsoever other than on the basis that legal professional privilege attaches to the record.
- 49.5 The records referred to in Clause 49.1 shall not be destroyed without the prior written approval of the Principal and shall, if so required by the Superintendent be handed over to the Principal at the end of the defects liability period.

50. INFORMATION PRIVACY ACT

- 50.1 If the Contractor collects or has access to Personal Information in order to carry out work under the Contract, the Contractor must:
- (i) 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;
 - (ii) not use Personal Information other than in connection with carrying out work under the Contract, unless required or authorised by law;
 - (iii) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law;
 - (iv) ensure that its officers, employees, agents and subcontractors do not access, use or disclose Personal Information other than in connection with carrying out work under the Contract;
 - (v) 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;
 - (vi) 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
 - (vii) comply with such other privacy and security measures as the Principal may reasonably require from time to time.
- 50.1 On request by the Principal, the Contractor must obtain from its employees, officers, agents or subcontractors carrying out work under the Contract, an executed deed of privacy in a form acceptable to the Principal.
- 50.2 The Contractor must immediately notify the Principal on becoming aware of any breach of Clause 50.1.

50.3 This Clause will survive the termination or expiry of the Contract.

50.4 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.

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

51.1 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:
"GST Law" has the meaning given to that term in A New Tax System (*Goods and Services Tax*) Act 1999; 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*.

This Clause 24 shall not apply to the Purchase Price. The GST requirements in relation to the Purchase Price shall be governed in the provisions of the Land Sale Contract.

51.2 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 51.2, 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.

51.3 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.

51.4 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.

51.5 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 paragraph (c) of this Clause 51.5, 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*.
 - (c) The warranty in paragraph (b) of this Clause 51.5 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.

51.6 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.

51.7 Tax Invoices

If the Principal gives a written notice that it does not intend issuing recipient created tax invoices for a taxable supply to the Principal by the Contractor under or in connection with the Contract:

- (a) A party making a taxable supply the subject of the notice must issue to the other a tax invoice or adjustment note (as the case may require) within 3 business days after each of the following occurring in relation to that taxable supply:
 - (i) the party submitting a claim for payment;
 - (ii) the Superintendent 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.
- (b) For the purposes of GST Law, upon the occurrence of each of the events specified in Clause 51.7(a)(i), (ii) or (iii), the Principal shall be taken to have requested the Contractor to provide to the Principal the tax invoice or adjustment note referred to in Clause 51.7(a).
- (c) Until the Principal notifies the Contractor otherwise, the Superintendent 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."

52. CERTIFICATE OF CLASSIFICATION AND COMMUNITY MANAGEMENT STATEMENT

52.1 Certificate of Classification

Unless otherwise specified in the Contract, the Contractor must procure (at its cost), and do all things necessary to enable the Building Certifier to issue a Certificate of Classification in respect of the Works.

52.2 Titling arrangements

Where required by the Contract, the Contractor must establish a community titles scheme for the Works, or place the Principal in a position to enable the Principal to establish a community titles scheme for the Works. If so required:

- (a) the Contractor must, at its cost:
 - (i) convene a meeting with representatives nominated by the Principal to determine the particulars of the Principal's strata-titling requirements (for example, the number of lots to be created, whether separate lots should be created for each of the residences, the name of the scheme, the dedication of certain parts of the development as common property, etc);
 - (ii) within 28 days of the meeting referred to in Clause 52.2(a)(i) being convened, prepare and issue the following documents to the Principal for its review and comment:
 - (A) survey plan of the Works consistent with the Principal 's titling requirements;
 - (B) the proposed community management statement;
 - (C) if applicable, the proposed building management statement; and
 - (D) any proposed easements affecting the Site;
 - (iii) within 14 days of receiving from the Contractor the documents referred to in Clause 52.2(a)(ii), the Principal will notify the Contractor of any amendments to the documentation which it requires (acting reasonably);
 - (iv) the Contractor must then, promptly, arrange for revised documents (incorporating the Principal's amendments) to be prepared and re-issued to the Principal for its final review and comment; and
 - (v) the Principal will (once its required amendments have been adopted and once it is satisfied with the form and substance of the documentation) confirm to the Contractor that the documents are in an agreed form and suitable for registration.
- (b) For the purposes of Clause 52.2(a)(ii) the Principal may (at its election) provide the Contractor with copies of a pro-forma community management statement, building management statement and/or easement documents which the Principal requires to be used.
- (c) The Contractor must, at its cost:
 - (i) cause the survey plan to be signed and sealed by the relevant local government council; and
 - (ii) cause the community management statement to be signed by the relevant local government council.
- (d) If the Contract Annexure Part A specifies that the Contractor is required to establish a community titles scheme for the Works, the Contractor must:
 - (i) arrange for the survey plans, building management statement, community management statement and/or easement documents (each in the form agreed to by the Principal pursuant to Clause 52.2(a)(v)) to be registered in the Land Registry as required;
 - (ii) diligently pursue the registration of the documents with the Land Registry and promptly attend to any requisitions which are issued (if any); and
 - (iii) promptly notify the Principal once the community titles scheme has been established and the Contractor must then, with the co-operation and assistance of the Principal, ensure that the first general meeting of the body corporate is held in satisfaction of the requirements of the *Body Corporate and Community Management Act 1997* (Qld).

53. REMOVAL OF IMPROVEMENTS AND ASBESTOS FROM THE SITE

- (a) In this Clause 53 the following definitions apply:

"**Act**" means the *Work Health and Safety Act 2011* including all regulations.

"**Asbestos Removalist**" means a qualified and experienced person who conducts a business in respect of Asbestos Removal Work.

"**Asbestos Removal Work**" means work involving the removal of asbestos.

"**Code**" means the *How to Safely Remove Asbestos Code of Practice 2011*.

"**Clearance Certificate**" means an asbestos removal clearance certificate issued by a licensed assessor or Competent Person certifying that the asbestos has been removed from the Site.

"**Competent Person**" means a person who holds the required qualifications and experience to carry out the issuing of a Clearance Certificate.

- (b) The Contractor must:

- (i) for no additional consideration payable by the Principal (other than as provided for in this Contract), cause the demolition of all improvements on the Site and the Site to be provided in a clear and tidy state;
- (ii) ensure that any and all asbestos is removed from the Site;
- (iii) ensure that all Asbestos Removal Work is completed by an Asbestos Removalist and in accordance with the requirements of the Act and the Code;
- (iv) arrange for a clearance inspection to be carried out following demolition of the Improvements and obtain a Clearance Certificate in respect of the Site;
- (v) notify the Principal that the improvements and all asbestos have been removed as required under this Clause 53; and
- (vi) provide the Principal with a copy of the Clearance Certificate,

by 5.00pm on the date that is 20 days after the day the conditions in Clause 35.1 have been satisfied and the Contractor has been given access to the Site to commence further works (**Demolition Deadline**).

- (c) If the Contractor fails to comply with the obligations in Clause 53(b) by the Demolition Deadline, the Principal may (in its absolute discretion) elect to further extend the Demolition Deadline for a further 20 days."

CONDITIONS OF CONTRACT ANNEXURE PART A

This Annexure takes the place of Part A of the Annexure to the General Conditions of Contract (AS 4300 -1995)

The Law applicable is that of the State or Territory of: (Clause 1)

Queensland

Payments under the Contract shall be made at: (Clause 1)

Brisbane

Contract Sum
(Clause 2 and 3.1)

\$000.00 (inclusive GST)

The Principal: (Clause 2)

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

The address of the Principal:

Street Address: Level 22/41 George St, Brisbane Qld 4000

Postal Address: GPO Box 690, Brisbane Qld 4001

Attention: Contract Management Housing Portfolio Office

The Contractor (Clause 2)

ABN

Contractor's QBCC Licence No.

The address of the Contractor:

Phone:

Email:

The Superintendent: (Clause 2)

The address of the Superintendent:

Street address:

Postal address:

The Date for Practical Completion: (Clause 2)

[insert] weeks from the date of the Public Housing Notice.

The Dates for Practical Completion of each Separable Portion: (Clause 2)

The Site (Clause 2)

Approval (Clause 2)

All Approvals required by the Works or the works under the Contract

Building Certifier (Clause 2)

Public Housing Notice (Clause 2, 3.1, 3.7 and 7.4)

Preliminary Design: (Clause 2)

The Principal's Project Requirements are described in the following documents (additional to those listed in the Annexure item for Preliminary Design): (Clause 2)

The Principal's Project Requirements documents are:

Limits of accuracy applying to quantities for

25%

which the Principal accepted a rate or rates:
(Clause 3.3(b))

Time to provide Public Housing Notice
(Clause 3.7)

Within [insert] weeks of the Superintendent's written approval of the Schematic Design or any revised Schematic Design

Purchase Price under Land Sale Contract
(Clause 3.8)

\$000.00 (inclusive GST)

The amount of security (Clause 5.2)

Retention moneys shall be deducted progressively as follows: (Clauses 5.5 and 42.1)

10% of the value of work incorporated in the Works (excluding GST) until 5% of the Contract Sum, minus GST, is held

The percentage to which the entitlement to security and retention moneys is reduced:
(Clause 5.8)

Security -
Retention -

Holding of and interest on cash security and retention moneys - the alternative applying:
(Clause 5.10)

Alternative 2

Deed of Guarantee, Undertaking and Substitution (Clause 5.11)

A Deed of Guarantee and Indemnity is/is not required.

The number of copies to be supplied by the Principal: (Clause 8.3)

(3) three hard copies and 1 electronic format PDF

Documents, number of copies, and the times or design stages at which they are to be supplied by the Contractor: (Clauses 8.4 and 8.4A)

<u>DOCUMENTS</u>	NO. OF COPIES	TIME FOR SUBMISSION
Schematic Design	[3] hard copies and [1] electronic copy	[insert] weeks from Date of Contract
Any Schematic Design resubmit pursuant to Clause 8.4A(c)	[3] hard copies and [1] electronic copy	Within [insert] days of the Superintendent notifying of required changes pursuant to Clause 8.4A(b)
All for construction Design Documents - 50% Complete	[3] hard copies and [1] electronic copy	Within [insert] weeks of the issuing of the Public Housing Notice
Any for construction Design Documents 50% Complete resubmit pursuant to Clause 8.4A(f)	[3] hard copies and [1] electronic copy	Within [insert] days of the Superintendent notifying of required changes pursuant to Clause 8.4A(e)
All for construction Design Documents	[3] hard copies and [1] electronic copy	Within [insert] weeks of the Superintendent notifying the

100% Complete		Contractor that the 50% Complete Design Documents are satisfactory
Any for construction Design Documents resubmitted pursuant to Clause 8.4A(f)	[3] hard copies and [1] electronic copy	Within [insert] days the Superintendent notifying of required changes pursuant to Clause 8.4A(e)

The Principal may, in its absolute discretion, by notice in writing extend any time for submission or resubmission set out in the table above.

For the 50% Completed Design Document Stage, the Contractor shall provide PDF drawing files (batched as one single file) which include, at the minimum, the following design information:

1. External works plan showing the relationship of the project site to the building and proposed levels, site services, pavement slopes and landscaped features at a scale of 1:200 at A3 size;
2. Floor plans of each level of the preferred design 1:200 at A3 size;
3. Roof plan to a scale of 1:200 at A3 size showing slopes, materials and penetrations;
4. Elevations of all aspects and general sections showing roof forms and all projections at a scale of 1:200 at A3 size;
5. Plans and elevations of typical elements and sections of the proposed construction clearly showing materials to be used for external and internal finishes. The documents are to show clearly the location in which the materials and colours are to be used;
6. Wet area drawings including plans and wall elevations of bathrooms, laundry and kitchen, including joinery at scale 1:100 at A3 size – to a standard equivalent to the BAS Typical Joinery Details for Bathrooms and Kitchens;
7. A report explaining the Consultant's approach to the design solution and addressing the Principal's Project Requirements and incorporating the reports of acoustic and other consultants; and
8. Sketch-only plans of civil works, site drainage, hydraulics and retaining walls.

The time within which the Superintendent must review Design Documents: (Clause 8.4A(m))

14 Days

Subcontractors or Selected Subcontractors whose contracts the Principal may direct be novated: (Clause 10)

N/A

The percentage for profit and attendance: (Clause 11(b))

7½%

Intellectual property rights granted to the Principal – the alternative applying: (Clause 13.2)	Alternative 1
Legislative Requirements not required to be satisfied by Contractor: (Clause 14.1)	Nil – the Contractor is to satisfy all Legislative Requirements
Occupational Health and Safety Audit (Clause 15.2)	Applicable
Insurance of the Work under the Contract - the alternative applying: (Clause 18)	Alternative 1
The assessment for insurance purposes of the costs of demolition and removal of debris: (Clause 18(ii))	2½% of the Contract Sum
The assessment for insurance purposes of consultants' fees: (Clause 18(iii))	5% of the Contract Sum
The value of materials to be supplied by the Principal: (Clause 18(iv))	N/A
The additional amount or percentage: (Clause 18(v))	Nil
Public Liability Insurance - the alternative applying: (Clause 19)	Alternative 1
The amount of Public Liability Insurance shall be not less than: (Clause 19)	\$20,000,000
Amount of Contractor's professional indemnity insurance shall be not less than: (Clause 21)	\$ 2,000,000
Period for which Contractor's professional indemnity insurance shall be maintained after issue of the Final Certificate: (Clause 21)	6 years
Categories of Consultants and amounts of Consultants' professional indemnity insurance: (Clause 21)	N/A
Period for which each Consultant's professional indemnity insurance shall be maintained after issue of the Final Certificate: (Clause 21)	N/A
The time by which access to the Site shall be given for the Contractor to carry out the Contractor's Design Obligations: (Clause 27.1)	After the Public Housing Notice has been given to the Contractor and the Contract has complied with clause 35.1
The time for giving possession of the Site to enable commencement of further work: (Clause 27.1)	After the Public Housing Notice has been given to the Contractor and the Contract has complied with clause 35.1
Indigenous Project (Clause 29.1A)	
Queensland Charter for Local Content:	

(Clause 29.1B)

Working hours and working days: (Clause 32)

9 hours per day worked between the hours of 6:00am and 6:00pm Monday to Friday inclusive, excluding public holidays and industry rostered days off.

The times by, or periods within which the Superintendent is to furnish information, materials, documents or instructions to the Contractor:
(Clause 33.1)

N/A

Rate of liquidated damages: (Clause 35.6)

\$[insert] per day (exclusive of GST)

Rate of liquidated damages per day for each Separable Portion: (Clause 35.6)

Delay and Disruption Costs - the alternative applying: (Clause 36)

Alternative 2

Delay Rate
(Clauses 2 and 36)

(6.5% of the Contract Sum (exclusive of GST) ÷ (5 x the period of time (in weeks) for the achievement of Practical Completion as per Clause 35.2 at the time of entry into the Contract)

The Defects Liability Period: (Clause 37)

52 weeks

The Charge for overheads, profit, etc. for Daywork: (Clause 41(f))

12½%

Times for Payment Claims: (Clause 42.1)

On the last Business Day of each month after settlement of the Land Sale Contract up until the month in which Practical Completion is achieved or earlier termination of this Contract.

Unfixed Plant or Materials for which payment claims may be made notwithstanding that they are not incorporated in the Works: (Clause 42.2)

The amount of additional security for unfixed plant and materials: (Clause 42.2)

The rate of interest on overdue payments:
(Clause 42.7)

7% per annum

The delay in giving access to the Site which shall be a substantial breach: (Clause 44.7(c))

13 weeks

The delay in giving possession of the Site which shall be a substantial breach: (Clause 44.7)

13 weeks

The alternative required in proceeding with dispute resolution: (Clause 47.2)

Alternative 2

The person to nominate an arbitrator:
(Clause 47.3)

Chairperson, Queensland Building and Construction
Board.

Location of arbitration:
(Clause 47.3)

Brisbane

Is the Contractor required to establish a
community titles scheme (Clause 52.2)

CONDITIONS OF CONTRACT ANNEXURE PART B
Clauses 5.3, 5.7 and 42.2

FORM OF UNDERTAKING

CONTRACT for [Drafting note: description as stated on Contract] ("the Contract")

At the request of [Drafting note: Contractor as per special conditions of contract annexure]ACN ("the Contractor")

and in consideration of [Drafting note: Principal as per special conditions of contract annexure] ("the Principal")

accepting this undertaking [Drafting note: insert the financial institution's details and ACN]

.....
 ("the Financial Institution") unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate of \$
 (.....) ("the Sum").

The undertaking is to continue

- (i) until notification has been received from the Principal that the Sum is no longer required by the Principal; or
- (ii) until this undertaking is returned to the Financial Institution; or
- (iii) until payment to the Principal by the Financial Institution of the whole of the Sum.

Should the Financial Institution be notified in writing, purportedly signed by or on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the Sum, such notification to be delivered to any branch of the Financial Institution located within Australia, it is unconditionally agreed that the Financial Institution will make payment or payments to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.

The Principal shall not assign or transfer its rights under this undertaking.

Dated at day of 20

SIGNED for and on behalf of (Financial Institution)

.....

By its Attorney(s)

..... (Names)

Pursuant to Power of Attorney No)
 who hereby warrant that he has/they have not received)
 notification of revocation of his/their appointment.) Attorney

in the presence of -)
 Witness

Branch of Issue: Telephone:

CONDITIONS OF CONTRACT ANNEXURE PART C**Clause 9.2.1****REQUEST FOR APPROVAL TO SUBCONTRACT**

Re: Contract for
(specify the Contract)

Pursuant to Clause 9.2.2 of the Conditions of Contract I request approval to enter into a subcontract for

(specify the nature of the work)

The proposed subcontractor is

(specify the Subcontractor's name)

ACN: ABN:
 of

(specify the Subcontractor's address)

Licence Number: Category:

Trade: Restrictions (if any):

and the total value of the proposed subcontract is \$
(specify the subcontract value)

I confirm that:

- (i) the proposed subcontract documents incorporate AS2545 – 1993 or AS4303 – 1995 Australian Standard Subcontract Conditions (as applicable) as the general conditions of contract, amended only to reflect the Head Contract Conditions of Contract*;
[delete if the total value of the proposed subcontract is less than \$50,000]*
- (ii) the payment recording system required by Clause 43 of the conditions of contract has been established;
- (iii) the proposed subcontractor:
 - (A) has a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997 (Cwlth)*; or
 - (B) in relation to the work to be performed under the subcontract:
 - (I) will be paid to achieve a specified result or outcome; and
 - (II) is required to supply the plant and equipment or tools of trade needed to perform the work; and
 - (III) will be liable for the cost of rectifying any defect in the work performed.

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

Signed

.....
Contractor

CONDITIONS OF CONTRACT ANNEXURE PART D

Clause 9.2.6

REQUEST FOR APPROVAL TO SUB SUBCONTRACT

Re: Subcontract for
(specify the Subcontract and Head Contract)

Subcontractor
(specify the subcontractor proposing to sub subcontract)

Pursuant to Clause 9.2.6 of the Conditions of Contract I request approval to allow a subcontractor to enter into a sub subcontract for

(specify the nature of the work)

The proposed sub subcontractor is

.....
(specify the sub subcontractor's name)

ACN: _____ ABN: _____

of
(specify the sub subcontractor's address)

Licence Number: Category:

Trade: Restrictions (if any):

and the total value of the proposed sub subcontract is \$
(specify the sub subcontract value)

I confirm that:

- (i) the proposed sub subcontract documents incorporate AS2545 – 1993 or AS4303 – 1995 Australian Standard Subcontract Conditions (as applicable) as the general conditions of contract, amended only to reflect the Head Contract Conditions of Contract*;
[* delete if the total value of the proposed sub subcontract is less than \$50,000]
- (ii) the payment recording system required by Clause 43 of the conditions of contract has been established;
- (iii) the proposed sub subcontractor:
 - (A) has a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997 (Cwlth)*; or
 - (B) in relation to the work to be performed under the sub subcontract:
 - (I) will be paid to achieve a specified result or outcome; and
 - (II) is required to supply the plant and equipment or tools of trade needed to perform the work; and
 - (III) will be liable for the cost of rectifying any defect in the work performed.

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

Signed

Signed

.....
Contractor

.....
Subcontractor

CONDITIONS OF CONTRACT ANNEXURE PART E
Clauses 29.1A and 29.1AB

TRAINING POLICY

Privacy Statement – The Queensland Government Building and Construction Training Policy

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

The Queensland Government Building and Construction Training Policy (the Training Policy) requires that a minimum of 10 per cent of the total labour hours on eligible Queensland Government building or civil construction projects be undertaken by apprentices and/or trainees and through other workforce training. Contractors are required to provide evidence of compliance with the Training Policy, and this information will ultimately be considered in any review of their eligibility to tender for future government work.

The Department of Employment, Small Business and Training requires that contracted organisations collect personal information from participants including:

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

Contracted organisations must provide this information to Construction Skills Queensland (CSQ), as CSQ administers contractor compliance data on behalf of the Queensland Government, through the Training Policy Administration System (TPAS).

CSQ will consider the information and determine if there is non-compliance with the Training Policy by the contracted organisation. If CSQ determines that there is non-compliance with the Training Policy, personal information may be provided to the Department of Employment, Small Business and Training, the State Government agency procuring the project or the designated Principal Contractor.

Annual performance reports regarding a contractor's compliance with the policy will be provided by the Department of Employment, Small Business and Training to the Director-General of each Queensland Government agency.

Records collected will be treated as a public record and will be retained as required by the *Public Records Act 2002*. For the term that the record is maintained, CSQ will only use this information to administer the Training Policy on the Queensland Government's behalf.

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

A person may apply to access their personal information stored. Should a person have any queries regarding the information held about themselves, including if they think that the personal information held is incorrect in any way, or is out of date, please CSQ at info@csq.org.au or on 1800 798 488.

CONDITIONS OF CONTRACT ANNEXURE PART F

Clause 29.1B

CHARTER FOR LOCAL CONTENT – PROJECT OUTCOME REPORT

SCREENSHOT OF CHARTER FOR LOCAL CONTENT - PROJECT OUTCOME REPORT TEMPLATE

(found at www.dsd.qld.gov.au/local-content)

QUEENSLAND CHARTER FOR LOCAL CONTENT - PROJECT OUTCOME REPORT																																																																															
Information provided is Commercial-in-Confidence																																																																															
<p>Background and tips for using this workbook:</p> <p>By completing the Outcome Report, Government Agencies are able to demonstrate their delivery of the Queensland Charter for Local Content principles and local content outcomes. The Charter and associated documents can be found at www.dsd.qld.gov.au/local-content</p> <ol style="list-style-type: none"> Project Outcome Reports can be submitted to qclc@dsd.qld.gov.au Information regarding goods and services should be sourced from invoices paid. Please avoid duplication of information. Only white cells can be filled Refer to Call Comments for more tips on filling this template (Hover mouse on the cells with little red flags for comments to become visible) 																																																																															
Project title (or contract number)		Project X																																																																													
Estimated total cost of project		\$100,000,000.00																																																																													
Proposer Name		Department of X																																																																													
Contractor Name		Contractor X																																																																													
Previous Report Submission Date (dd/mm/yy)		30-Jul-15																																																																													
Name of organization completing this form		Company X																																																																													
Progressive reporting		Report date from	01-Aug-15	Report date to	31-Aug-15	Project completed		13%																																																																							
NUMBER AND VALUE OF CONTRACTS PLACED FOR THE PROJECT																																																																															
LOCATION OF SUPPLY		NUMBER	VALUE																																																																												
South East Queensland		2	\$3,000,000.00																																																																												
Regional Queensland		0	\$0.00																																																																												
Rest of Australia & NZ		2	\$3,200,000.00																																																																												
Outside of Australia & NZ		1	\$500,000.00																																																																												
Total		5	\$12,700,000.00																																																																												
<p style="text-align: center;">Please provide information relating to SUPPLIERS OF GOODS AND SERVICES contracts awarded for the Project (Please use one line per product / service / supplier)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>GOODS / SERVICES SUPPLIED</th> <th>SUPPLIER BUSINESS NAME</th> <th>SUPPLIER ABN</th> <th>SUPPLIER LOCATION</th> <th>POST CODE ON INVOICE</th> <th>TOTAL AMOUNT INVOICED IN PREVIOUS REPORTING PERIOD (GST exclusive)</th> <th>AMOUNT INVOICED FOR THIS REPORTING PERIOD (GST exclusive)</th> <th>TOTAL VALUE (GST exclusive)</th> <th>INDIGENOUS BUSINESS - DOES THE SUPPLIER IDENTIFY AS</th> <th>HAS THE SUPPLIER HAD PRIOR DEALINGS WITH Contractor X</th> </tr> </thead> <tbody> <tr> <td>Cement</td> <td>Cement Company X</td> <td>5648521534</td> <td>SE Queensland</td> <td>4110</td> <td>\$100,000.00</td> <td>\$0.00</td> <td>\$100,000.00</td> <td>50% indigenous owned</td> <td>No</td> </tr> <tr> <td>Steel</td> <td>Steel Company X</td> <td>9854754856</td> <td>Other</td> <td>0</td> <td>\$0.00</td> <td>\$500,000.00</td> <td>\$500,000.00</td> <td>50% indigenous owned</td> <td>Yes</td> </tr> <tr> <td>Plumbing</td> <td>Plumber X</td> <td>3254873511</td> <td>Rest of Australia</td> <td>2000</td> <td>\$0.00</td> <td>\$200,000.00</td> <td>\$200,000.00</td> <td>Majority indigenous owned</td> <td>Yes</td> </tr> <tr> <td>Electrical</td> <td>Electrician X</td> <td>9654125125</td> <td>SE Queensland</td> <td>4021</td> <td>\$2,000,000.00</td> <td>\$900,000.00</td> <td>\$2,900,000.00</td> <td>Not Stated</td> <td>No</td> </tr> <tr> <td>Furniture</td> <td>Furniture Company X</td> <td>7456251528</td> <td>Rest of Australia</td> <td>2354</td> <td>\$3,000,000.00</td> <td>\$0.00</td> <td>\$3,000,000.00</td> <td>Not Stated</td> <td>No</td> </tr> <tr> <td colspan="5"></td> <td></td> <td></td> <td>\$0.00</td> <td></td> <td></td> </tr> </tbody> </table>										GOODS / SERVICES SUPPLIED	SUPPLIER BUSINESS NAME	SUPPLIER ABN	SUPPLIER LOCATION	POST CODE ON INVOICE	TOTAL AMOUNT INVOICED IN PREVIOUS REPORTING PERIOD (GST exclusive)	AMOUNT INVOICED FOR THIS REPORTING PERIOD (GST exclusive)	TOTAL VALUE (GST exclusive)	INDIGENOUS BUSINESS - DOES THE SUPPLIER IDENTIFY AS	HAS THE SUPPLIER HAD PRIOR DEALINGS WITH Contractor X	Cement	Cement Company X	5648521534	SE Queensland	4110	\$100,000.00	\$0.00	\$100,000.00	50% indigenous owned	No	Steel	Steel Company X	9854754856	Other	0	\$0.00	\$500,000.00	\$500,000.00	50% indigenous owned	Yes	Plumbing	Plumber X	3254873511	Rest of Australia	2000	\$0.00	\$200,000.00	\$200,000.00	Majority indigenous owned	Yes	Electrical	Electrician X	9654125125	SE Queensland	4021	\$2,000,000.00	\$900,000.00	\$2,900,000.00	Not Stated	No	Furniture	Furniture Company X	7456251528	Rest of Australia	2354	\$3,000,000.00	\$0.00	\$3,000,000.00	Not Stated	No								\$0.00		
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							\$0.00																																																																								
<p style="text-align: center;">For each of the CONTESTABLE goods & services listed please indicate, by percentage of expenditure, where manufacturing (including all labour) was undertaken.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>South East Queensland</th> <th>Regional Queensland</th> <th>Rest of Australia & NZ</th> <th>Outside of Australia & NZ</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>100%</td> <td>0%</td> <td>0%</td> <td>0%</td> <td>100%</td> </tr> <tr> <td>0%</td> <td>0%</td> <td>0%</td> <td>100%</td> <td>100%</td> </tr> <tr> <td>0%</td> <td>0%</td> <td>90%</td> <td>10%</td> <td>100%</td> </tr> <tr> <td>80%</td> <td>0%</td> <td>0%</td> <td>20%</td> <td>100%</td> </tr> <tr> <td>0%</td> <td>0%</td> <td>60%</td> <td>40%</td> <td>100%</td> </tr> </tbody> </table>										South East Queensland	Regional Queensland	Rest of Australia & NZ	Outside of Australia & NZ	Total	100%	0%	0%	0%	100%	0%	0%	0%	100%	100%	0%	0%	90%	10%	100%	80%	0%	0%	20%	100%	0%	0%	60%	40%	100%																																								
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0%	0%	60%	40%	100%																																																																											

EXAMPLE SHEET (LOCKED)

SHEET TO COMPLETE (UNLOCKED)

CONDITIONS OF CONTRACT ANNEXURE PART G
Clause 29.4.1

SITE PERSONNEL REGISTER

Project Name:

Project Location:

Contractor's Name:

Project Registration Number:

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

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

CONDITIONS OF CONTRACT ANNEXURE PART H
Clause 29.4.3

SITE PERSONNEL REGISTER SUMMARY

Project Name:

Project Location:

Contractor's Name:

Project Registration Number:

Response	Total
1. Total number that responded Y to the question in column (b)?	
2. Total number that responded N to the question in column (b) and Y to the question in column (c)?	
3. Total number that responded N to the question in column (b) and N to the question in column (c)?	
4. Total number that responded N to the question in column (f)	
5. Total number that responded N to the question in column (g)	
6. Total number that responded N to the question in column (h)	
7. Total number that responded N to the question in column (i)	

Date:

Signature:

CONDITIONS OF CONTRACT ANNEXURE PART I
Clause 43.2

STATUTORY DECLARATION BY CONTRACTOR

Oaths Act 1867

Queensland

To Wit

I, of
.....
in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between
the State of Queensland through
.....
(the State) and
.....
"the Contractor" for
..... (the Contract).

1. I hold the position of
I am in a position to know the facts contained herein and to bind the Contractor by the terms of
this declaration, and I am duly authorised by the Contractor to make this declaration on
its/their behalf.
2. All subcontractors and sub subcontractors performing work under the Contract have been
approved by the Superintendent in accordance with Clause 9.2.
3. All the Contractor's workers who at any time have been engaged on work under the Contract
by the Contractor have been paid, in accordance with the relevant award or industrial
instrument, all moneys due and payable to them up to the date of submission by the
Contractor of Payment Claim No
4. All subcontractors of the Contractor have been paid, including via the project bank account
where required by the *Building Industry Fairness (Security of Payment) Act 2017* [BIF Act], all
that is due and payable to them up to the date of submission by the Contractor of Payment
Claim No in respect of
their part of the work under the Contract.
5. Where required by the BIF Act:
 - a. all retention moneys in relation to Subcontractors of the Contractor have been paid
into the retention account of the project bank account in respect of the work under the
Contract; and
 - b. all amounts relating to a payment dispute have been paid into the disputed funds
account of the project bank account; and
 - c. all withdrawals from the project bank account have been in accordance with the BIF
Act.
6. The Site Personnel Register maintained in accordance with Clause 29.4 of the conditions of
contract is current and correct.

All subcontractors and sub subcontractors performing work under the Contract have been informed of
the existence of the *Building Industry Fairness (Security of Payment) Act 2017*.

TAKEN AND DECLARED before me)
)
)
)
)
)
 at)
)
 in the State of)
)
 this day of 20)
)
)

Contractor

A Justice of the Peace/ Legal Practitioner/ Commissioner for Declarations

CONDITIONS OF CONTRACT ANNEXURE PART J
Clause 43.2

STATUTORY DECLARATION BY SUBCONTRACTOR

Oaths Act 1867

Queensland

To Wit

I, of

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

"the Contractor" for (the Contract)

..... *[name of Subcontractor]*

("the Subcontractor") is a Subcontractor to the Contractor for part of the work under the Contract, namely:

1. I hold the position of

I am in a position to know the facts contained herein and to bind the Subcontractor by the terms of this declaration, and I am duly authorised by the Subcontractor to make this declaration on its/their behalf.

2. All the Subcontractor's workers who at any time have been engaged on work under the Contract by the Subcontractor have been paid in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of Payment Claim No

3. All subcontractors of the Subcontractor have been paid all that is due and payable to them up to the date of submission by the Contractor of Payment Claim No in respect of their part of the work under the Contract.

4. All sub subcontractors performing work under the Contract have been informed of the existence of the *Building Industry Fairness (Security of Payment) Act 2017*.

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

TAKEN AND DECLARED before me)

.....)

.....)

.....)

(Name in full)

Subcontractor

at)

.....)

in the State of)

this day of 20 ...) A Justice of the Peace/ Legal
) Practitioner/ Commissioner for
) Declarations

[Suggested information to pass on to Subcontractors and sub subcontractors]

IMPORTANT INFORMATION FOR SUBCONTRACTORS

The Queensland Government has enacted the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) to assist in providing **security of payment** and timely payments for subcontractors in the building and construction industry:

The *Building and Construction Industry Payments Act 2004* and the *Subcontractors' Charges Act 1974* remain in force until those Acts are repealed and the relevant provisions of the *Building Industry Fairness (Security of Payment) Act 2017* commence.

Further information on these Acts, including approved forms, can be accessed on the Queensland Building and Construction Commission website at www.qbcc.qld.gov.au.

CONDITIONS OF CONTRACT ANNEXURE PART K
Clause 43A

SUBCONTRACTOR PAYMENT SUMMARY

Contract for:

Subcontractor name:

Subcontractor bank account name:

Subcontractor bank account BSB and account number:

ABN:

ACN:

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

**_CONDITIONS OF CONTRACT ANNEXURE PART L
LAND SALE CONTRACT**

See the attachment to this Annexure

**CONDITIONS OF CONTRACT ANNEXURE PART M
DEED OF GUARANTEE AND INDEMNITY**

See the attachment to this Annexure

Deed of Guarantee and Indemnity

The State of Queensland through the Department of Housing and Public Works

State

[_____]
Guarantor

Deed of Guarantee and Indemnity made at _____ on _____ 20____
The State of Queensland through the Department of Housing and Public Works of 22/41 George
Street, Brisbane Qld 4000 (**State**)
[_____] ABN [_____] of [_____] (**Guarantor**)

Recitals

- A. The State has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the State all of the Obligations and to indemnify the State against any loss arising from any failure by the Contractor to perform the Obligations.
- C. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

This Deed provides

1. Definitions and Interpretation**1.1 Definitions**

In this Deed:

Contract means the Land Sale and Project Design and Construction Contract for *[insert details]* dated on or about the date of this Deed between the State and the Contractor.

Contractor means *[insert details]*.

Event of Default means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

Event of Insolvency means:

- (a) a "controller" (as defined in section 9 of the *Corporations Act* 2001 (Cth)), manager, trustee, administrator, or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up a corporation; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of a person or the person's estate under any Insolvency Provision;
- (e) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that

person's creditors or a trustee, is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;

- (f) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or
- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

GST means any goods and services tax, consumption tax, value added tax or any similar tax, impost or duty imposed by any law of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia (whether in force before or coming into force after the date of this Deed).

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Insolvency Provision means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Obligations means all the liabilities and obligations of the Contractor to the State under or arising out of or in any way in connection with the Contract or the work to be carried out or performed by the Contractor under the Contract, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this Deed;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Contractor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the State comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (i) the capacity in which the Contractor and the State comes to owe or be owed such liability or obligation,

and **Obligation** means any liability or obligation forming part of the Obligations.

Power means any right, power, authority, discretion, remedy or privilege conferred on the State by the Contract, by statute, by law, or by equity.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

Specified Rate means the rate which is 2% above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at approximately 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or
- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the State at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

Taxes means all present and future taxes, levies, imposts, deductions, charges, fees and withholdings, in each case plus interest, related penalties, and any charges, fees or other amounts in respect of any of them.

1.2 Defined terms

Terms used in this Deed which are not otherwise defined will have the meaning given to them in the Contract.

1.3 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:
- (b) if the Contractor is more than one person, "Contractor" means each of them severally and all of them jointly;
- (c) if the Guarantor is more than one person, "Guarantor" means each of them severally and all of them jointly;
- (d) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, and a trust;
- (e) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (f) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;

- (g) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (h) words importing the singular include the plural (and vice versa), and words importing a gender include every other gender;
- (i) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (j) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) the word "includes" in any form is not a word of limitation; and
- (l) a reference to "\$" or "dollar" is to Australian currency.

1.4 No contra proferentem

No term or provision of this Guarantee will be construed against a party on the basis that the Guarantee or the term or provision in question was put forward or drafted by that party.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the State the due and punctual performance by the Contractor of all the Obligations.

2.2 Payment by Guarantor

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the State the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

3. Indemnity

As a covenant separate and distinct from that contained in Clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the State and at all times to keep the State indemnified against any loss or damage suffered by the State arising out of or in connection with:

- (a) any failure by the Contractor to perform the Obligations duly and punctually; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason, and whether or not the State knew or ought to have known of that reason.

4. Liability as Guarantor and indemnifier

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under

this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

5. Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Contractor or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
 - (i) any person, whether named as a party or not, does not execute this Deed;
 - (ii) the execution of this Deed by any person is invalid, forged or irregular in any way; or
 - (iii) this Deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this Clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) **(Event of Insolvency)**: the occurrence before, on or at any time after the date of this Deed, of any Event of Insolvency in relation to the Contractor or the Guarantor;
- (b) **(Distribution)**: the receipt by the State of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;
- (c) **(Event of Default)**: the occurrence of any Event of Default;
- (d) **(Invalidity etc.)**: the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) **(Further Security)**: the State accepting or declining to accept any Security from any person at any time;
- (f) **(Time or indulgence)**: the State granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;
- (g) **(Forbearance)**: the State not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) **(Acquiescence or other omission)**: any laches, acquiescence or other act, neglect, default, omission or mistake by the State;

- (i) **(Repudiation)**: the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the State or the Contractor or the Guarantor of the Contract or any Obligation;
- (j) **(Variation)**: any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Contractor or the Guarantor;
- (k) **(Release)**: the full, partial or conditional release or discharge by the State or by operation of law, of the Contractor or the Guarantor from the Contract or any Obligation;
- (l) **(Change of constitution)**: any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;
- (m) **(Transfer)**: the transfer, assignment or novation by the State or the Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;
- (n) **(Disclosure)**: any failure by the State to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the State relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the State was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;
- (o) **(Covenant not to take action)**: the State agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor;
- (p) **(Death or incapacity)**: (where the Guarantor is an individual) the death or mental incapacity of the Guarantor; or
- (q) **(Administration)**: the provisions of section 440J of the *Corporations Act* 2001 (Cth) operating to prevent or delay:
 - (i) the enforcement of this Deed against any Guarantor; or
 - (ii) any claim for contribution against any Guarantor.

5.3 No merger

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Contract or any other Power of the State.
- (b) The State will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

5.4 No obligation to gain consent

The Guarantor need not consent to or be made aware of any event referred to in Clause 5.2, any transaction between the State and the Contractor, or any particulars concerning any Obligation.

5.5 Appropriation

- (a) The State is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the State holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the State determines in its absolute discretion.
- (b) The State may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed, and which the State may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

5.6 Void or voidable transactions

If:

- (a) the State has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of the State; or
 - (b) any payment or other transaction to or in favour of the State has the effect of releasing or discharging:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security; and
 - (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
 - (d) that claim is upheld or is conceded or compromised by the State,
- then:
- (e) **(Restitution of rights)**: the State will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
 - (f) **(Restore State's position)**: the Guarantor must immediately do all things and execute all documents as the State may reasonably require to restore to the State all those rights; and
 - (g) **(Indemnity)**: the Guarantor must indemnify the State against costs, losses and expenses suffered or incurred by the State in or in connection with any

negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim

The liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Contractor against the State.

5.8 Claim on the Guarantor

The State is not required to make any claim or demand on the Contractor, or to enforce the Contract, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.

5.9 No representation by State etc.

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the State, the Contractor or any other person.

6. Representations and Warranties

6.1 General representations and warranties

The Guarantor or, if there is more than one Guarantor, each Guarantor represents and warrants to the State:

- (a) **(Legally binding obligation)**: this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) **(Execution, delivery and performance)**: the execution, delivery and performance of this Deed by the Guarantor does not breach any Statute or law, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) **(No material adverse effect)**: no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the business assets or financial condition of the Guarantor;
- (d) **(Information)**: all information relating to the Guarantor provided to the State in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect;
- (e) **(No trusts)**: the Guarantor is not the trustee of any trust nor does it hold any property subject to or impressed by any trust.

6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the State that:

- (a) **(Due incorporation)**: it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;

- (b) **(Constitution)**: the execution, delivery and performance of this Deed does not breach the Constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) **(Corporate power)**: it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) **(Filings)**: the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate.

6.3 Representations and warranties repeated

Each representation and warranty in this Deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

7. Payments

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the State in immediately available funds to the account and in the manner notified by the State to the Guarantor.

7.2 Payment in gross

All money received or recovered by the State on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the State or any Security, until the State has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under Clauses 2 and 3, the Guarantor must on demand by the State pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this Clause 7.3.

7.4 Merger

If the liability of the Guarantor to pay to the State any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under Clause 7.3 and that fixed by or payable under the judgment or order.

7.5 No set-off or deduction

All payments by the Guarantor to the State under this Deed must be:

- (a) free of any set-off or counterclaim; and

- (b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the State), then the Guarantor must:

- (a) pay to the State any additional amounts necessary to enable the State to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the State if no deduction or withholding was required to be made;
- (b) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the State for any Taxes and interest or penalties to which the State may become liable consequent on the failure of the Guarantor to pay those Taxes; and
- (c) deliver to the State, promptly on request from the State, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

8. Expenses and stamp duties

8.1 Expenses

The Guarantor must on demand reimburse the State for and keep the State indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the State in connection with:

- (a) **(Preparation)**: the preparation, negotiation and execution of this Deed and any subsequent consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
- (b) **(Enforcement)**: any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties

- (a) **(Payment of all duties)**: The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties, financial institutions duty and debits tax which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed; and
- (b) **(Indemnity)**: The Guarantor must indemnify the State against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

8.3 Goods and Services Tax

If the State is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, the Contract or this Deed (**GST Liability**) then:

- (a) to the extent that an amount is payable by the Guarantor to the State under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise - the Guarantor will indemnify and keep the State indemnified for the full amount of the GST Liability.

9. Assignment

The State may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the State relating to the Guarantor.

10. Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed and where applicable, the arbitration reference contained in Clause 10.3, is governed by and will be construed according to the laws of Queensland.

10.2 Jurisdiction

- (a) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (b) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this Clause.

11. Miscellaneous

11.1 Notices

Any communication under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

State

Name: *[Insert]*

Address: *[Insert]*

Fax no: *[Insert]*

For the attention of: *[Insert]*

Guarantor

Name: *[Insert]*

Address: *[Insert]*

Fax no: *[Insert]*

For the attention of: *[Insert]*

(or as otherwise notified by that party to the other party from time to time);

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with Clause 11.1(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid post) on the third business day after the date of posting to an address within Australia, and on the fifth business day after the date of posting to an address outside Australia;
 - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which that fax was sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is a non business day, or is after 5.00 pm on a business day, when that communication will be deemed to be received at 9.00 am on the next business day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in Clause 11.1(b), unless that delivery is made on a non business day, or after 5.00 pm on a business day, when that communication will be deemed to be received at 9.00 am on the next business day,

where "business day" means a day (not being a Saturday or Sunday) on which banks are generally open for business in the place of receipt of that communication.

11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the State will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.3 Further assurance

The Guarantor must immediately on the request of the State, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the State reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the State created, or intended to be created, by this Deed.

11.4 Form of demand

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the State determines. It need not specify the amount of the Guaranteed Money, nor the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

11.5 Severance

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

11.6 Remedies cumulative

Each Power is cumulative and in addition to each other Power available to the State.

11.7 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any Power by the State will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that, or any other Power.
- (b) Any waiver or consent given by the State under this Deed will only be effective and binding on the State if it is given or confirmed in writing by the State.
- (c) No waiver of a breach of any term of this Deed will operate as a waiver of another breach of that term or of a breach of any other term of this Deed.

11.8 Consents

Any consent of the State referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the State (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

11.9 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

11.10 Set-off

- (a) The State may (without prior notice at any time) set off any obligation then due and payable by the Guarantor under this Deed against any obligation (whether or not due and payable) by the State to the Guarantor, regardless of the place or currency of payment of either obligation or the office or branch through which either obligation is booked. If the obligations are in different currencies, the State may convert either obligation into the currency of the other obligation at a

market rate of exchange determined by it for the purpose of the set-off. If either obligation is unliquidated or unascertained, the State may effect the set off in an amount estimated by it in good faith to be the amount of that obligation.

- (b) The State is not obliged to exercise any right of set off pursuant to Clause 11.10(a), which is in addition to its other rights of combination of account, set-off or lien (by contract or operation of law).
- (c) On its exercise of any set off pursuant to Clause 11.10(a) against the Guarantor, the State will promptly notify the Guarantor of details of that set-off.

11.11 Counterparts

- (a) This Deed need not be executed by the State.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed on one or more separate counterparts, each of which constitutes the deed of that Guarantor.

Executed as a deed.

Executed by [Insert] by or
in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

CONDITIONS OF CONTRACT ANNEXURE PART N ACCREDITED AUDITOR (CONSTRUCTION)

Functions

Further to Special Conditions of Contract Clause 15.2.3, functions which an Accredited Auditor (Construction) is to perform on Queensland Government building and construction projects include:

- (a) Assessment of the Contractor's Work Health and Safety (WHS) management plan in relation to site construction activities being undertaken.
- (b) Inspection of the Contractor's site construction activities and assessment of safety practices observed against criteria contained in the Site Inspection Report checklist.
- (c) Providing the Superintendent with summary audit reports prepared after assessments / site inspections, including of any non-conformances and recommendations that:
 - work should be suspended for safety reasons;
 - urgent action is needed to protect work under the Contract, other property, or people.
- (d) Verification when corrective action notices are finalised, including providing corresponding notices to the Superintendent.

If, in the opinion of the Accredited Auditor (Construction), corrective action notices are taking longer than is reasonable to finalise, the Superintendent shall be notified and recommendations made in accordance with (c).

Number of site inspections required:

Project duration 16-25 weeks: 1

Project duration 26-38 weeks: 2

Project duration 39 weeks and above: 2 plus one for each additional 13 weeks.

Ensure that all audit requirements are included in the contractual agreement between the Contractor and the Accredited Auditor (Construction).

Payment

Further to Special Conditions of Contract Clause 15.2.4, the Principal shall reimburse the Contractor for Accredited Auditor (Construction) fees incurred in performing the functions specified above, provided always that fees shall not be reimbursed for "failed inspections".

The Contractor shall not be allowed any additional amount for profit, overheads or attendance in respect to Accredited Auditor (Construction) fees.

Reimbursement procedures shall be as follows:

- (a) After paying the fees, the Contractor shall submit to the Superintendent a monthly invoice seeking reimbursement, together with evidence of the amount paid to the Accredited Auditor (Construction) and a statement of functions performed in respect of that invoice.
- (b) Invoices for reimbursement of Accredited Auditor (Construction) fees shall not be included in payment claims made in accordance with Special Conditions of Contract Clause 42, but may be submitted at any time in the month.

(c) Invoices shall be given to the Superintendent and shall include:

- reference to the Project Number; and
- allowance for GST.

Invoices shall be considered separately from, and shall be paid separately from, payment claims made in accordance with Special Conditions of Contract Clause 42.

CONDITIONS OF CONTRACT ANNEXURE PART O

NOTICE TO BUILDING CERTIFIER

Self-Assessable Regulatory Environment

The Building Certifier is advised that the work under the Contract is to be carried out as a Development for the State.

A Development for the State is defined by the Planning Regulation 2017 as being “accepted development” (as defined in the Planning Act 2016).

Whilst the Works must comply with the applicable codes a building development approval is not required.

The Building Certifier should therefore be aware that they will not be acting as the assessment manager, rather will be acting as an “advisor” to the State – and hence:

- (a) a development permit is not required for the works, or prior to the commencement of the works
- (b) the Building Certifier will not have the authority under the Building Act 1975 to issue enforcement notices. That authority lies with the Director General of HPW. If the Building Certifier believed an enforcement notice was warranted, advice would need to be issued to the Director General of HPW by them
- (c) similarly, the appeal processes available through the Building and Development Tribunal do not apply in the self-assessable environment. Any regulatory or interpretive matters in dispute must be resolved by consultation with the project team
- (d) the assessment does not constitute a “development approval” process, and those matters prescribed in the IDAS and the Building Act as relevant to a “development approval” will not apply as required regulatory processes. In relation to this matter, take particular note that the following regulatory processes normally relevant to a development approval process will not apply:
 - (i) Building Act s100 (Issue of Certificate of Classification)
 - (ii) Building Act s114 (Occupancy not permitted without Certificate of Classification)
 - (iii) Building Act s86, and especially (1)(c) (lodgement of documents with Local Government and payment of lodgement fee)

But the Building Certifier should note the requirement under s255 of the Building Act.

CONDITIONS OF CONTRACT ANNEXURE PART P
CONFIDENTIALITY DEED POLL

DETAILS

DATE OF DEED:							
ROJECT:							
PRINCIPAL:	<table> <tr> <td>Name:</td> <td>State of Queensland through the Department of Housing & Public Works</td> </tr> <tr> <td>Address:</td> <td>Level 22/41 George Street, Brisbane Qld 4000</td> </tr> <tr> <td>Attention:</td> <td>The Director-General, Department of Housing and Public Works</td> </tr> </table>	Name:	State of Queensland through the Department of Housing & Public Works	Address:	Level 22/41 George Street, Brisbane Qld 4000	Attention:	The Director-General, Department of Housing and Public Works
Name:	State of Queensland through the Department of Housing & Public Works						
Address:	Level 22/41 George Street, Brisbane Qld 4000						
Attention:	The Director-General, Department of Housing and Public Works						
RECIPIENT	<table> <tr> <td>Name:</td> <td></td> </tr> <tr> <td>Address:</td> <td></td> </tr> <tr> <td>Telephone/ Fax:</td> <td></td> </tr> </table>	Name:		Address:		Telephone/ Fax:	
Name:							
Address:							
Telephone/ Fax:							
Recipient Address for Notices	<table> <tr> <td>Name:</td> <td></td> </tr> <tr> <td>Position:</td> <td></td> </tr> <tr> <td>Telephone/ Fax:</td> <td></td> </tr> </table>	Name:		Position:		Telephone/ Fax:	
Name:							
Position:							
Telephone/ Fax:							
CONFIDENTIAL INFORMATION:							
<p>1. The details of contracts and work being undertaken in connection with the Project;</p> <p>2. All documents and information provided to the Recipient by or on behalf of the Principal in connection with the Project,</p> <p>3. Technical information, drawings, designs, plans, samples, models, reports, photographs, videos or other media relating to the Project;</p> <p>4. Details of all Principal supplied items, including any documents and information in connection with those items that are provided by or on behalf of the manufacturers or suppliers of those items;</p> <p>5. Such further information as may be supplied to the Recipient by or on behalf of the Principal which is identified at the time of supply as being confidential,</p> <p>BUT does not include information to the extent:</p> <p>(a) it is or becomes in the public domain other than by breach of this Deed by the Recipient;</p> <p>(b) it was lawfully known to the Recipient prior to the date of this Deed.</p>							

This Deed Poll is made by the Recipient on the date specified in the Details.

OPERATIVE PROVISIONS

1. Subject to the terms of this Deed, and in consideration for the Recipient's participation in the Project and being given access to the Confidential Information, the Recipient undertakes to the Principal to:
 - (a) hold and treat the Confidential Information as strictly confidential and not disclose it to any other person without the prior consent in writing of the Principal;
 - (b) use the Confidential Information only in connection with the Project and for no other purpose;
 - (c) establish and maintain effective measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.
2. The Recipient may disclose the Confidential Information to those persons to whom it is necessary to disclose, or provide access to, the Confidential Information in order for the Recipient to undertake work or services in connection with the Project provided that, before disclosure:
 - (a) the Recipient informs each such person that the Confidential Information is confidential; and
 - (b) the person agrees that they are bound by obligations of confidentiality that are no less than the obligations of confidence imposed on the Recipient under this Deed.
3. The Recipient agrees and acknowledges that it will be liable for any breach of the terms of this Deed by its officers, employees or other representatives.
4. The Recipient may disclose the Confidential Information to a third party to the extent required by a court of law, stock exchange, government department or regulatory authority having jurisdiction over the Recipient or pursuant to any applicable legislation, provided that:
 - (a) the Recipient has informed the Principal in writing of the need to make the disclosure; and
 - (b) to the extent it is able, the Recipient permits the Principal to make representations to the court or other public body in respect of the disclosure and/or confidential treatment of the Confidential Information.
5. No rights, interests or entitlements possessed by the Principal in respect of any particular item of Confidential Information shall pass to the Recipient by virtue of the provisions of this Deed, nor shall the Principal be deemed to have licensed the use of the Confidential Information except as expressly provided for in this Deed.
6. The obligations of confidence on the part of the Recipient shall continue for as long as the Confidential Information retains the necessary quality of confidence notwithstanding the termination of this Deed or the Project being completed.
7. The Recipient agrees and acknowledges that damages would not be an adequate remedy for a breach of any terms of this Deed and that the Principal is entitled to specific performance, injunctive and other equitable relief for a threatened or actual breach of any term of this Deed by the Recipient.
8. This Deed is governed by the laws of Queensland and the Recipient irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland.

9. Part or all of any clause of this Deed that is illegal or unenforceable will be severed from this Deed and the remaining provisions continue in force.

EXECUTED as a Deed Poll

[Where the Recipient is a Company]

Executed by _____
(Company Name and ACN)

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

[Where the Recipient is an Individual]

Signed, sealed and delivered by _____

(Individual's name)

in the presence of:

Signature of witness

Signature

Full name of witness

"B"

Principal's Project Requirements

Planning Scheme

The Contractor is required to liaise with the relevant Council in relation to the Projects compliance, or otherwise, with the relevant planning scheme. Correspondence from the Council by way of written advice detailing the outcomes of their review of the Project against the relevant planning scheme is required to be submitted with the Schematic Design documentation (**indicative compliance letter**). For clarity, the provision of the indicative compliance letter is not a statutory notification under the Planning Regulation.

[insert Annexures]