



# Managing Contractor – Design and Construction Management – Stage One with option for Stage Two

## Volume 3 of 4 – Conditions of Contract – Schedules

Project name

.....

Project number

.....

**Guide note:**     *Delete this guide note*

***This document has been developed by Contract Services, Department of Housing, Local Government, Planning and Public Works, in accordance with the Building Policy Framework. Where indicated in the document, the project team is to insert project specific requirements.***

This document has been developed in accordance with the Building Policy Framework.

## Contents

<b>Volume 3 of 4 – Conditions of Contract – Schedules .....</b>	<b>1</b>
<b>SCHEDULE 1 – Not Used</b>	<b>3</b>
<b>SCHEDULE 2 – Approved Form of Unconditional Undertakings</b>	<b>4</b>
<b>SCHEDULE 3 – Performance Warranty from Suppliers or Manufacturers</b>	<b>5</b>
<b>SCHEDULE 4 – Consultant’s Deed of Obligation</b>	<b>10</b>
<b>SCHEDULE 5 – Minimum Consultancy Services</b>	<b>15</b>
<b>SCHEDULE 6 – Subcontractor Forms</b>	<b>16</b>
<b>SCHEDULE 7 – Statutory Declarations</b>	<b>20</b>
<b>SCHEDULE 8 – Queensland Government Building and Construction Training Policy</b>	<b>25</b>
<b>SCHEDULE 9 – Variations in Rates of Exchange and Duty</b>	<b>26</b>
<b>SCHEDULE 10 – Deed of Guarantee and Indemnity</b>	<b>27</b>
<b>SCHEDULE 11 – Requirements of the Building Certifier</b>	<b>39</b>
<b>SCHEDULE 12 – Formal Instrument of Agreement</b>	<b>40</b>
<b>SCHEDULE 13 – Site Personnel Register</b>	<b>44</b>
<b>SCHEDULE 13 (cont’d) – Site Personnel Register Summary</b>	<b>45</b>
<b>SCHEDULE 14 – Requirements for GCS Offer</b>	<b>46</b>
<b>SCHEDULE 15 – Activities to be Carried out during Stage One</b>	<b>47</b>
<b>SCHEDULE 16 – Subcontractor Deed Poll</b>	<b>49</b>
<b>SCHEDULE 17 – Best Practice Industry Conditions</b>	<b>51</b>

## **SCHEDULE 1 – Not Used**

NOT USED

# SCHEDULE 2 – Approved Form of Unconditional Undertakings

## Clause 9.3

CONTRACT for *[insert description as per letter of acceptance]* ..... (the “Contract”) at the request of *[insert Managing Contractor as per letter of acceptance]*..... ACN ..... (the “Managing Contractor”) and in consideration of *[insert Principal as per Conditions of Contract Annexure]* ..... (the “Principal”) accepting this undertaking *[insert the financial institution’s details]* ..... 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:

- 1 until notification has been received from the Principal that the Sum is no longer required by the Principal; or
- 2 until this undertaking is returned to the Financial Institution; or
- 3 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 Managing Contractor and notwithstanding any notice given by the Managing 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 .....this.....day of ..... 20.....

SIGNED for and on behalf of .....  
*Financial Institution*

By its Attorney(s) .....  
 .....  
*Names of Attorney(s)*

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

In the presence of .....  
*Name of Witness* *Signature of Witness*

Branch of Issue: ..... Telephone: .....

## **SCHEDULE 3 – Performance Warranty from Suppliers or Manufacturers**

### ***Clause 12.4***

List of Items of Materials, Goods, Plant and Equipment Requiring a Performance Warranty

To be advised by the Principal during Stage One

**FORM OF WARRANTY**

THIS DEED is made the ..... day of ..... 20.....

BETWEEN: The State of Queensland through ..... (the “Principal”)

AND: ..... [insert name of Managing Contractor] Of  
 ..... [insert address] (hereinafter with  
 its successors, substitutes and permitted assigns called the “Managing Contractor”), and

AND: The party described in Annexure, Item 1 (hereinafter with its successors, substitutes and permitted  
 assigns called the “Warrantor”)

**RECITALS**

- A The Principal and the Managing Contractor have entered into the Contract described in Annexure, Item 2 (the “Contract”) pursuant to which the Managing Contractor has agreed to perform the work described in Annexure, Item 3 (the “Works”).
- B The Warrantor has agreed to supply or to supply and install the goods described in Annexure, Item 4 (the “Equipment”) for the Works.
- C The Warrantor has agreed to give the warranties and indemnity herein contained to the Principal and the Managing Contractor.

**OPERATIVE:**

- 1 The Warrantor hereby warrants to the Principal and the Managing Contractor:
  - (a) that the Equipment shall be in accordance with the quality and/or standard stipulated by the specification described at Annexure, Item 8 and to the extent that the quality and/or standard is not so stipulated, shall be of merchantable quality and be fit for the purpose or purposes for which it is required; and
  - (b) on the terms more particularly set out in Annexure, Item 5 with respect to the Equipment.
- 2 The above warranties shall be in addition to and shall not derogate from any warranty implied by law in respect of the Equipment.
- 3 The Warrantor covenants with the Principal and the Managing Contractor to replace and/or make good to the reasonable satisfaction of the Principal and the Managing Contractor but at the expense of the Warrantor, so much of the Equipment as within the period described in Annexure, Item 6 shall be found to be of a lower quality or standard than that referred to in clause 1 of this Deed or shall show deterioration to such extent that in the opinion of the Principal or the Managing Contractor the Equipment ought to be made good or replaced in order to achieve fitness for the purpose or purposes for which it is required and whether this is on account of utility, performance, appearance or otherwise.
- 4 The Warrantor further covenants with the Principal and the Managing Contractor to meet the cost of any work necessary to any part of the Works to enable the requirements of clause 3 of this Deed to be carried out and/or necessary to make good the Works afterwards.
- 5 The decision of the Principal as to:
  - (a) the Equipment failing to comply with quality or standard as abovementioned or otherwise failing to comply with the foregoing warranties;
  - (b) as to the extent of replacement and/or making good which shall be necessary to properly remedy the defects; or
  - (c) as to the extent of any work required under clause 3 of this Deed,
 shall be notified in writing to the Warrantor and shall be final and binding upon the parties.

6 The Warrantor further covenants that, within a reasonable time after written notification to the Warrantor of a decision of the Principal or the Managing Contractor as to work required as aforesaid, the Warrantor will replace and/or make good the Equipment or parts thereof and/or meet the cost of any work required by clause 3 of this Deed, whether or not any dispute or difference exists between the parties hereto, and the Warrantor hereby agrees to indemnify and keep indemnified the Principal and the Managing Contractor against any direct loss or damages of any nature whatsoever sustained by them or either of them, directly or indirectly arising out of any breach of the warranties, covenants or other conditions hereby given by the Warrantor howsoever arising.

7 If, within the time prescribed in clause 6 of this Deed (and the Principal's decision as to what is a reasonable time in any case shall be final and binding upon the parties), the Warrantor shall fail to fully and properly carry out the work, the Managing Contractor or the Principal may carry out such work, or cause the same to be carried out, and the Warrantor hereby agrees to indemnify and keep indemnified the Managing Contractor and the Principal against all the costs and expenses of and incidental to the carrying out of the work and also against any direct loss or damages sustained by the Managing Contractor or the Principal as a result of the Warrantor's failure as aforesaid.

8 The provisions of this Deed shall come into operation in favour of the Principal and the Managing Contractor as soon as it has been executed by the Warrantor, notwithstanding that it may not have been or may not thereafter be executed by the Principal or the Managing Contractor.

9 Nothing contained in this Deed is intended to nor shall render the Principal in any way liable to the Warrantor in relation to any matters arising out of the Managing Contractor or otherwise.

#### 10 GOVERNING LAW AND JURISDICTION

This Deed shall be construed in accordance with the law of the State or Territory in which the Works are situated and the parties irrevocably submit to the jurisdiction of the Courts of that State or Territory.

#### 11 NOTICES

- (a) A party may give a notice required under this Deed by delivering such notice to the address provided in Annexure, Item 7. Such notice may be delivered by hand.
- (b) If a party gives the notice by post the notice will be taken as given on the second business day in the place of delivery after the notice is posted.
- (c) The parties may give notice of another address (within Australia) to the other party and the new address shall be the address for service of the party for the purpose of this clause.

#### 12 NON REVOCATION OF POWER OF ATTORNEY

Each of the Attorneys executing this Deed states that at the time of execution of this Deed, no notice of revocation of the Power of Attorney, pursuant to which this Deed has been executed, has been received.

#### 13 EXECUTION AS A DEED

The parties agree that this instrument is and shall operate as a Deed.

**ANNEXURE**

**Item**

- 1 The Warrantor: .....
- 2 The Contract (Recital A): .....
- 3 The Works (Recital A): .....
- 4 The Equipment (Recital B): .....
- 5 Detailed Warranty of Warrantor (clause 1): .....
- 6 Period of Years (clause 3): ..... years from the Practical Completion of the Works as defined in the Contract
- 7 Address for notices (clause 11): .....
- 8 Details of Specification (clause 1): .....



**EXECUTED AS A DEED:**

**EXECUTED**

on the .....day of ..... 20..... by

.....  
Managing Contractor ACN

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

.....  
Name of Director Signature of Director

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

**EXECUTED**

on the ..... day of ..... 20..... by

.....  
Warrantor ACN

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

.....  
Name of Director Signature of Director

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

**SIGNED, SEALED AND DELIVERED**

on the .....day of ..... 20.....

for and on behalf of the Principal by an authorised officer

.....  
Name of authorised officer Signature of authorised officer

in the presence of:

.....  
Name of Witness Signature of Witness

## SCHEDULE 4 – Consultant’s Deed of Obligation

### Clause 18.7

THIS DEED is made on the ..... day of ..... 20.....

BETWEEN: The State of Queensland through ..... (the “Principal”),

AND: ..... [insert name of Managing Contractor] of ..... [insert address] (hereinafter with its successors, substitutes and permitted assigns called the “Managing Contractor”),

AND: The party described in Annexure, Item 1 (the “Consultant”).

### RECITALS:

- A The Principal and the Managing Contractor have entered into the Contract described in Annexure, Item 2 (the “Managing Contractor’s Contract”) to effect certain works, brief particulars of which are set out in Annexure, Item 3 (the “Works”).
- B The Consultant has been engaged by the Managing Contractor pursuant to the Contract described in Annexure, Item 4 (the “Consultant Agreement”) to provide services in respect of: ..... [INSERT from the following - Design Work, Documentation Work, Construction Work] as those terms are defined in the Managing Contractor’s Contract and brief particulars of which are set out in Annexure, Item 5 and which works form part of the Works.
- C Pursuant to the Managing Contractor’s Contract, the Managing Contractor must ensure that the ownership of and copyright in all drawings and documents comprising or to comprise the Developed Design and Subcontract Construction Documentation shall vest absolutely in the Principal upon their creation.
- D The Consultant has agreed to assign to the Principal the copyright in the material and to consent to any use of the material which might be inconsistent with any Moral Rights (as defined herein) of the Consultant or any of its servants or agents.

### OPERATIVE:

The parties agree:

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. Definitions

In this Deed, unless the context requires otherwise:

**this Deed** means this document and includes its Annexures and annexure (if any);

**Contract Materials** means any work produced in the course of performing the Contract;

**Moral Rights** are the moral rights granted to creators under the Copyright Act 1968 (Cth) and any similar rights existing under foreign laws.

##### 1.2. Interpretation

In this Deed, unless the context requires otherwise:

- (a) words importing the singular number includes the plural number and vice versa; and
- (b) references to any party to or in this Deed or in any other document include its successors, substitutes and permitted assigns.

**2. COPYRIGHT**

- 2.1 The ownership of and copyright in all Contract Materials shall vest absolutely in the Principal upon their creation.
- 2.2 To the extent that copyright in or relating to the Contract Materials is not capable of being vested in the Principal because the Consultant does not own the copyright, the Consultant shall ensure that the Principal is irrevocably licensed to use the relevant Contract Materials.
- 2.3 To the extent that the Consultant has Moral Rights in any Contract Materials, the Consultant:
- (a) waives those Moral Rights to the extent permitted by law; and
  - (b) unconditionally consents to any use contemplated by the nature of this Deed and any reproduction, publication, adaptation, or communication to the public of the material or on behalf of the Principal.
- 2.4 To the extent that any person other than the Consultant has Moral Rights in Contract Materials the Consultant acknowledges and agrees that:
- (a) for existing materials, it has used its best endeavours to obtain or procure; and
  - (b) for new materials coming into existence in the course of performing the consultancy services, it will use its best endeavours to obtain or procure prior to or immediately on creation,
- all consents or waivers from the individual creator necessary to ensure that the Principal may do or authorise any acts or omissions in relation to the material without infringing any Moral Rights therein.
- 2.5 Upon being requested to do so by the Principal's Representative, the Consultant will produce to the Principal's Representative, all consents and waivers required by this clause to the extent available and will advise the Principal's Representative of any consents or waivers the Consultant has been unable to procure.
- 2.6 The Consultant indemnifies the Principal for all loss, damage, costs, claims, or demands arising out of the Contract Materials infringing any patent, copyright, moral right, registered design, trademark or name or other protected right. However, the Consultant's liability to indemnify the Principal shall be reduced proportionally to the extent that an act or omission of the Principal or the employees, agents or other contractors of the Principal contributed to the loss, damage, costs, claims or demands.
- 2.7 The Principal grants to the Consultant a paid up, non-exclusive, irrevocable license to use the copyright in all material created by the Consultant in respect of the Works that has been vested in the Principal pursuant to clause 2.1 of this Deed, on the condition that the Consultant:
- (a) does not breach its obligations under this Deed; and
  - (b) indemnifies and holds harmless the State of Queensland and its officers, servants and agents from and against all loss, damage, costs, claims and demands, whatsoever and howsoever arising out of the Consultant's use of the copyright material or any part thereof, which may be brought or made against any of them by any person.
- 2.8 The Consultant shall not be liable for any changes, subtractions or additions to the material created by the Consultant with respect to the Works or other subject matter produced during the performance of or as a result of the services in Annexure Item 5 or any part of any such works or subject matter made, without the express approval of the Consultant, but only to the extent of such changes, subtractions or additions.
- 2.9 The Consultant shall retain the copyright in any original ideas, equipment, processes, or systems created outside the terms of the Consultancy Agreement and used in carrying out the consultancy services. The Consultant shall grant or cause to be granted to the Principal a paid up, non-exclusive, irrevocable license to use such original ideas, equipment, processes, or systems for any purpose for which the consultancy services are provided.

### **3. DUTY OF CARE**

- 3.1 The Consultant hereby acknowledges and agrees to the Principal that it:
- (a) has the necessary expertise to perform the services in Annexure, Item 5 to the standard of skill, care and diligence expected of a competent design professional; and
  - (b) will exercise skill, care, and diligence in performing the services in Annexure, Item 5 to the standard of skill, care and diligence expected of a competent design professional.
- 3.2 The Consultant further acknowledges that the Principal will be relying upon the skill, care, and diligence of the Consultant in performing the services referred to in Recital B and in issuing reports and certificates.

### **4. FURTHER ASSURANCES**

The Managing Contractor and the Consultant undertake upon request by the Principal to execute all documents and do all things necessary to give effect to the terms of this Deed.

### **5. ASSIGNMENT**

- 5.1 The Principal may, at any time, by notice in writing to the Managing Contractor and the Consultant, assign all or any of its rights under this Deed to any government or statutory entity identified in the notice (the "assignee").
- 5.2 The Managing Contractor and the Consultant acknowledge and agree 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 this Deed in place of the Principal.
- 5.3 The Managing Contractor and the Consultant 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 all or any part of this Deed.

### **6. GOVERNING LAW AND JURISDICTION**

This Deed shall be construed in accordance with the law of the State of Queensland and the parties irrevocably submit to the jurisdiction of the Courts of the State of Queensland.

### **7. NOTICES**

- 7.1 A party may give a notice required under this Deed by delivering such notice to the address provided in Annexure, Item 6. Such notice may be delivered by hand.
- 7.2 If a party gives the notice by post the notice will be taken as given on the fifth business day in the place of delivery after the notice is posted.
- 7.3 The parties may give notice of another address (within Australia) to the other party and the new address shall be the address for service of the party for the purpose of this clause.

### **8. NON REVOCATION OF POWER OF ATTORNEY**

Each of the Attorneys executing this Deed states that at the time of execution of this Deed, no notice of revocation of the Power of Attorney pursuant to which this Deed has been executed has been received.

**ANNEXURE**

**Item**

- 1 Name and Address of Consultant: .....
- 2 Details of Managing Contractor’s Contract (Recital A):  
Project Description: .....  
Date: .....  
Parties: .....
- 3 Brief description of the Works (Recital A): .....
- 4 The Consultant Agreement (Recital B): .....
- 5 Brief description of the Services (Recital B): .....
- 6 Address for notices (Clause 7.1): .....

Executed by the parties as a Deed.

**EXECUTED AS A DEED:**

**EXECUTED**

on the .....day of ..... 20..... by

.....  
Managing Contractor ACN

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

.....  
Name of Director Signature of Director

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

**EXECUTED**

on the .....day of ..... 20..... by

.....  
Consultant ACN

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

.....  
Name of Director Signature of Director

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

**SIGNED, SEALED AND DELIVERED**

on the .....day of ..... 20.....

for and on behalf of the Principal by an authorised officer

.....  
Name of authorised officer Signature of authorised officer

in the presence of

.....  
Name of Witness Signature of Witness

## SCHEDULE 5 – Minimum Consultancy Services

*Conditions of Contract – Clause 18 and Conditions of Tender – Clause 7.12*

**Guide note:**     *Delete this guide note*

***This Schedule is to be used to nominate the Minimum Consultancy Services only, as required by Clause 18.1.1 of the Conditions of Contract.***

***The Managing Contractor is required to engage consultants to undertake the Minimum Consultancy Services stated in this Schedule 5 but is also responsible for any services in addition to the Minimum Consultancy Services required to fulfil the Managing Contractor’s obligations under the Contract.***

<b>DISCIPLINE</b>	<b>MINIMUM CONSULTANCY SERVICES</b>
Architects & Primary Consultants	
Quantity Surveyors	
Mechanical Engineers	
Electrical Engineers	
Communications	
Lift Services	
Fire Services	
Security Services	
Hydraulic Services	
Civil Engineers	
Structural Engineers	
Façade Engineers	
Acoustics	
[Other Service] .....	

## SCHEDULE 6 – Subcontractor Forms

### Notice of Acceptance of a Subcontract Tender

#### Clause 21.2

Contract Name: .....

Project Number: .....

Pursuant to Clause 21.2.19 of the Conditions of Contract, I give notice of acceptance of a Subcontract tender for:

Subcontract:..... *[Insert description of work under the Subcontract]*

Subcontractor: .....

Subcontract Sum which appeared on the notice of acceptance: \$.....

Date of acceptance of the tender which appeared on the notice of acceptance: .....

Time for commencement of the work: .....

The Managing Contractor:

- 1 confirms it has complied with the requirements of Clauses 21.2 and 21.3 of the Conditions of Contract, including without limitation, the Managing Contractor’s obligations to procure subcontracts in accordance with the requirements of the Queensland Procurement Policy, including the Best Practice Principles (if applicable), and to evaluate Subcontract tenders against the Best Practice Industry Conditions (if applicable);
- 2 confirms it has provided an original version of the Deed Poll executed by the proposed Subcontractor;
- 3 confirms that the Subcontractor:
  - (a) for the purposes of the Queensland Procurement Policy:
    - (i) is:
      - a local supplier as described by the Queensland Procurement Policy; or
      - not a local supplier as described by the Queensland Procurement Policy and evidence is attached demonstrating the Managing Contractors efforts to source a local supplier;
    - (ii) is compliant with the Ethical Supplier Threshold; and
    - (iii) is not subject to a current sanction under the Ethical Supplier Mandate;
  - (b) has been informed of the existence of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (BIF Act);
  - (c) for the purposes of the BIF Act:
    - IS a related entity, as defined by section 10A of the BIF Act, or
    - IS NOT a related entity, as defined by section 10A of the BIF Act; and
  - (d) either:
    - (i) has a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or



(ii) in relation to the work to be performed under the subcontract:

- (A) will be paid to achieve a specified result or outcome;
- (B) is required to supply the plant and equipment or tools of trade needed to perform the work;  
and
- (C) will be liable for the cost of rectifying any defect in the work performed; and

4 re-affirms the warranties and indemnities given to the Principal pursuant to Clause 21.3 of the Conditions of Contract.

I, the undersigned, am in a position to know the facts contained herein and I am duly authorised by the Managing Contractor to provide this notice pursuant to the terms of the Contract on the Managing Contractor's behalf.

.....  
*Signature of Managing Contractor's Representative*

.....  
*Signature of witness*

.....  
*Name of Managing Contractor's Representative*

.....  
*Name of witness*

/ /  
*Date*

**Request for Approval to Sub Subcontract**

**Clause 21.2**

Contract Name: .....

Project Number: .....

Subcontract: .....

Subcontractor: .....

Pursuant to Clause 21.2.22 of the Conditions of Contract I request approval to allow the above Subcontractor to enter into a sub subcontract for the following part of the works under the Contract: .....

Proposed sub subcontractor: .....

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

Address: .....

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

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

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

I confirm that:

- 1 the proposed sub subcontract documents incorporate suitable general conditions of contract which reflect the provisions of the Contract;
- 2 if the Best Practice Principles (as that term is defined in the Contract) apply, the subcontractor has complied and will continue to comply with Clause 21.2 of the Conditions of Contract when procuring and entering into the sub subcontract;
- 3 the proposed sub subcontractor:
  - (a) for the purposes of the Queensland Procurement Policy:
    - (i) is:
      - a local supplier as described by the Queensland Procurement Policy, or
      - not a local supplier as described by the Queensland Procurement Policy and evidence is attached demonstrating the efforts made to source a local supplier;
    - (ii) is compliant with the Ethical Supplier Threshold; and
    - (iii) is not subject to a current sanction under the Ethical Supplier Mandate;
  - (b) has been informed of the existence of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld); and
  - (c) either:
    - (i) has a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
    - (ii) in relation to the work to be performed under the subcontract:
      - (A) will be paid to achieve a specified result or outcome;

- (B) is required to supply the plant and equipment or tools of trade needed to perform the work;  
and
- (C) will be liable for the cost of rectifying any defect in the work performed.

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

.....  
*Signature of Managing Contractor's Representative*

.....  
*Signature of Subcontractor*

.....  
*Name of Managing Contractor's Representative*

.....  
*Name of Subcontractor*

/ /  
*Date*

## SCHEDULE 7 – Statutory Declarations

### Statutory Declaration by Managing Contractor

#### Clause 58.2

*Oaths Act 1867*

Queensland

To Wit

I, ..... of .....

in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between the State of Queensland through ..... (the “Principal”), and

.....(the “Managing 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 Managing Contractor by the terms of this declaration, and I am duly authorised by the Managing Contractor to make this declaration on its/their behalf;
- 2 this statutory declaration is made in support of the Managing Contractor’s Payment Claim No. .... (“Payment Claim”);
- 3 in this declaration, the words “project trust account”, “retention trust account” and “subcontractor” have the meaning given to them in the *Building Industry Fairness (Security of Payment) Act 2017* (“BIF Act”);
- 4 all Subcontractors performing work under the Contract have been engaged in accordance with Clause 21.2 of the Contract;
- 5 all sub subcontractors performing work under the Contract have been approved by the Principal’s Representative in accordance with Clause 21.2 of the Contract;
- 6 the Site Personnel Register is current and correct, maintained in accordance with Clause 41.6 of the Contract;
- 7 the Managing Contractor has fulfilled or complied with any commitments made in its tender for the work under the Contract and the obligations under the Contract relating to:
  - (a) the local benefits test contained in the Queensland Procurement Policy; and
  - (b) the Best Practice Principles and the Best Practice Industry Conditions (as those terms are defined in the Contract) (if applicable);
- 8 all of the Managing Contractor’s workers who at any time have been engaged on work under the Contract by the Managing Contractor have been paid, in accordance with the relevant award or industrial instrument or the Managing Contractor’s obligations in relation to the Best Practice Principles and the Best Practice Industry Conditions (if applicable), all moneys due and payable to them up to the date of submission of the Progress Claim;
- 9 except for those Subcontractors or Consultants listed in the Schedule below (if any), all Subcontractors and Consultants of the Managing Contractor in respect of work under the Contract have been paid the full amount owed to them by the Managing Contractor at the date of the Managing Contractor’s submission of the Payment Claim. If no Subcontractor or Consultant is listed in the Schedule, all Subcontractors and Consultants of the Managing Contractor in respect of work under the Contract have been paid all amounts owed to them by the Managing Contractor at the date of the Managing Contractor’s submission of the Payment Claim;

- 10 where required by the BIF Act, all Subcontractors of the Managing Contractor have been paid via the project trust account in respect of the work under the Contract;
- 11 where required by the BIF Act, all retention moneys in relation to Subcontractors of the Managing Contractor have been paid into the retention trust account in respect of the work under the Contract; and
- 12 where required by the BIF Act, all withdrawals from the project trust account and the retention trust account have been in accordance with the BIF Act.

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

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

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

**Signed and declared by:**

..... <i>Full name of declarant</i>	..... <i>Signature of declarant</i>
..... <i>Place where declarant is located</i>	..... <i>Date</i>

**In the presence of:**

..... <i>Full name of witness</i>	..... <i>Signature of witness</i>
..... <i>Type of witness</i>	..... <i>Date</i>
..... <i>Name of law practice/ witness's place of employment (cross out if not applicable)</i>	

**SUPPORTING STATEMENT SCHEDULE**

Payment Claim No. ....

The following Subcontractor(s) have not been paid the full amount that is owed to them by the Managing Contractor at the date of the Managing Contractor’s submission of the Payment Claim

<b>Subcontractor Name</b>	<b>Amount still unpaid</b>	<b>Details of the unpaid payment claim for the Subcontractor</b>	<b>Date(s) the Subcontractor carried out the construction work or supplied the related goods and services</b>	<b>Reasons the amount owed to the Subcontractor was not paid in full</b>

**Statutory Declaration by Subcontractor**

**Clause 58.2**

*Oaths Act 1867*

Queensland

To Wit

I, ..... of .....

in the State of Queensland, do solemnly and sincerely declare that, in relation to the Contract between the State of Queensland through ..... (the “Principal”) and

..... (the “Managing Contractor”) for..... (the “Contract”),

..... (the “Subcontractor”) is a Subcontractor to the Managing 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 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 or the Subcontractor’s obligations in relation to the Best Practice Principles and the Best Practice Industry Conditions (if applicable), all moneys due and payable to them up to the date of submission by the Managing Contractor of Progress 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 Managing Contractor of Progress 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* (Qld); and
- 5 the Subcontractor has fulfilled or complied with any commitments made in its tender for the Subcontract work and the obligations incorporated in the Subcontract relating to:
  - (a) the local benefits test contained in the Queensland Government’s Queensland Procurement Policy; and
  - (b) the best practice principles contained in the Queensland Government guidelines document titled “Best practice principles; Quality, safe workplaces” and the Best Practice Industry Conditions (if applicable).

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

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

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

**Signed and declared by:**

.....  
*Full name of declarant*

.....  
*Signature of declarant*

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

.....  
*Date*

In the presence of:

.....  
*Full name of witness*

.....  
*Signature of witness*

.....  
*Type of witness*

.....  
*Date*

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



## SCHEDULE 8 – Queensland Government Building and Construction Training Policy

### Clause 41.4

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

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

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

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

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

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

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

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

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

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

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

## SCHEDULE 9 – Variations in Rates of Exchange and Duty

### Clause 55.2

Costs inserted in the Schedule are costs on the date the Managing Contractor’s GCS Offer was submitted.

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

Signed:.....

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

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

Exchange rate on the date the Managing Contractor’s GCS Offer was submitted AUD\$1 = £0.3800

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

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

**The Calculation**

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

## SCHEDULE 10 – Deed of Guarantee and Indemnity

### Clause 9.13

THIS DEED is made on the ..... day of ..... 20.....

BETWEEN: the Group Companies identified in Annexure, Item 1 (the “Group Companies”);

AND: the Trustee identified in Annexure, Item 3 (the “Trustee”);

AND: The State of Queensland through ..... (the “Principal”),

### RECITALS:

- A The company identified in Annexure, Item 2 (the “Managing Contractor”) is involved in various trading activities, including construction.
- B The Group Companies have agreed to guarantee and indemnify the Principal and Creditors in respect of the liabilities of the Managing Contractor pursuant to and in respect of a Contract with the Principal (the “Contract”) for the ..... [insert project description] (the “Project”).
- C Each of the Group Companies consider that they will derive a commercial benefit from providing the guarantee and indemnity contained in this Deed.

### OPERATIVE:

This Deed provides:

#### 1. INTERPRETATION

##### 1.1. DEFINITIONS

In this Deed, unless the context otherwise requires:

**Associate** has the meaning given by Division 2 of Part 1.2 of the *Corporations Act 2001* (Cth);

**Assumption Deed** means a Deed executed pursuant to clause 10 by which a further company or companies may be joined as a Group Company to this Deed of Guarantee and Indemnity;

**Corporations Act** means the *Corporations Act 2001* (Cth) and any regulations or instruments made under that Act, as amended from time to time;

**Creditor** means a person (whether now ascertained or ascertainable or not) other than a Group Company to whom now or at any future time:

- (a) a Debt is or may at any future time be or become payable by the Managing Contractor; or
- (b) the Managing Contractor’s Obligations (whether now existing or not) are or may at any future time be or become owing,

in respect of the Project;

**Debt** means any monetary sum which is or may at any future time be or become payable by the Managing Contractor in respect of the Project to a Creditor for any reason, in any capacity, and:

- (a) whether the Managing Contractor is liable alone, jointly, severally, or jointly and severally;
- (b) whether the sum is payable as a debt as damages or on any legal or equitable basis whatsoever;
- (c) whether the Managing Contractor is liable as principal debtor, surety or otherwise;

- (d) whether the amount is payable or owing to, or payable, advanced, or paid by, the Creditor alone or with any other person;
- (e) whether the Creditor is entitled for its own account or that of another person;
- (f) whether or not the amounts were of a type originally contemplated by the parties; and
- (g) whether the Creditor is the person originally entitled to payment of the sum or is an assignee of such person and:
  - (i) whether or not the Group Companies or the Managing Contractor consented to, or knew of, any assignment; and
  - (ii) no matter when any assignment occurred;

providing that any assignment is permitted by the relevant agreement between the Managing Contractor and the Creditor and the assignment has been undertaken in accordance with the relevant agreement;

**Final Certificate** means the Final Certificate under the Contract in respect of the Project;

**Group Company** means (until this Deed of Guarantee and Indemnity ceases to apply to that company by virtue of a Revocation Deed Poll under clause 5.2):

- (a) any one of the companies listed in Annexure, Item 1; and
- (b) any company joined to this Deed of Guarantee and Indemnity by the execution of an Assumption Deed;

**Group Company's Obligations** means the obligations of each Group Company under this Deed of Guarantee and Indemnity;

**Guarantee** means any guarantee, indemnity, letter of credit, performance bond or legally enforceable undertaking or obligation:

- (a) to pay or to provide funds (including by the purchase of any property) in or to enable the payment or discharge of;
- (b) to indemnify against the consequences of default in the payment of; or
- (c) otherwise to be responsible for,

any obligation (whether or not it involves the payment of money) or indebtedness, or otherwise to be responsible for the solvency or financial condition, of any person;

**Managing Contractor's Obligations** means any obligations or liabilities of the Managing Contractor in respect of the Project to the Principal or to any Creditor (present or future, actual or contingent) howsoever arising;

**Revocation Deed Poll** means a deed poll executed in accordance with clause 5.2 by virtue of which this Deed of Guarantee and Indemnity ceases to apply to one or more of the Group Companies;

**Security Interest** means:

- (a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secure interest, title retention arrangement, preferential right, trust arrangement or other arrangement having the same or equivalent commercial effect as a grant of security; or
- (b) an agreement to create or give any arrangement referred to in paragraph (a) of this definition;

**Trust** means the trust described in clause 4.

## 1.2. GENERAL

In this Deed:

- (a) headings are for convenience of reference only and shall not affect the construction or interpretation of the provisions of this Deed;

and unless the context indicates a contrary intention:

- (b) a reference to any legislation or legislative provision include any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation under that legislation or legislative provision;
- (c) words importing the plural number include the singular and vice versa;
- (d) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state, or government or vice versa;
- (e) a reference to any gender includes all genders;
- (f) a reference to a recital, clause, schedule, or annexure is to a recital, clause, schedule, or annexure of or to this Deed of Guarantee and Indemnity;
- (g) a reference to any party to this Deed of Guarantee and Indemnity or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (h) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (i) a reference to "bankruptcy" or "winding up" includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)) and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters.

## 2. GUARANTEE

2.1 Each Group Company covenants with the Trustee for the benefit of each Creditor and the Principal that each Group Company unconditionally guarantees to each Creditor and the Principal:

- (a) the due and punctual payment of any Debt by the Managing Contractor in accordance with the terms of any agreement between the Creditor and the Managing Contractor and otherwise as required by law; and
- (b) the due and punctual performance by the Managing Contractor of the Managing Contractor's Obligations in accordance with the terms of the Contract and any agreement between the Creditor and the Managing Contractor and otherwise as required by law.

2.2 The Principal may, by notice in writing to the Group Companies, require the Group Companies to forthwith cause the performance of any or all of the Managing Contractor's Obligations, including the performance of the work under the Contract. The Group Companies agree to forthwith comply with such request, and for this purpose to satisfy any legal requirements, including, without limitation, any requirements of the *Queensland Building and Construction Commission Act 1991* (Qld).

## 3. INDEMNITY

3.1 Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that as a separate and additional covenant each Group Company agrees to unconditionally indemnify, and keep indemnified, the Principal and each and every Creditor against any loss or damage suffered as a result of:

- (a) any delay in the payment of any Debt by the Managing Contractor in accordance with the terms of any agreement between the Creditor and the Managing Contractor and otherwise as required by law;

- (b) any breach by the Managing Contractor of the Managing Contractor's Obligations in accordance with the terms of the Contract and any agreement between the Creditor and the Managing Contractor and otherwise as required by law;
  - (c) the Managing Contractor's Obligations being unenforceable, or disclaimed by a liquidator or trustee in bankruptcy, in whole or in part;
  - (d) a Debt, in whole or in part being unrecoverable from the Managing Contractor or having been recovered are repaid and restored.
- 3.2 The Principal shall be obliged to take reasonable steps to mitigate any loss and damage arising out of any breach by the Managing Contractor of the Managing Contractor's obligations and the indemnity provided by the Group Company pursuant to this clause 3 shall be limited to the extent that the Principal does not take reasonable steps to mitigate its loss or damage.

#### **4. BENEFIT OF COVENANTS HELD ON TRUST**

The Trustee and each Group Company acknowledges that the Trustee holds the benefit of the covenants of each Group Company made pursuant to this Deed of Guarantee and Indemnity upon trust for each Creditor.

#### **5. CONTINUING GUARANTEE AND REVOCATION**

##### **5.1. Continuing Guarantee and Indemnity**

The Group Companies agree with the Principal and with the Trustee for the benefit of each Creditor that this Deed of Guarantee and Indemnity may not be revoked or released except as expressly permitted by this Deed of Guarantee and Indemnity.

##### **5.2. Revocation**

The Group Companies which are from time to time parties to this Deed of Guarantee and Indemnity may revoke this Deed of Guarantee and Indemnity by executing a Revocation Deed Poll provided that:

- (a) the Revocation Deed Poll is not executed before the later of:
  - (i) the date that is 6 months after the date of the Final Certificate; and
  - (ii) the final determination or settlement of all disputes (if any) between the Managing Contractor and the Principal and between the Managing Contractor and all Creditors which arose prior to the date which is 6 months after the date of the Final Certificate;
- (b) the Revocation Deed Poll is conditional upon none of the Group Companies becoming subject to a bankruptcy or winding up within six months following the execution of the Revocation Deed Poll; and
- (c) the Revocation Deed Poll only releases any Group Company in respect of liability arising or accruing from this Deed of Guarantee and Indemnity after the execution of the Revocation Deed Poll.

#### **6. TRUSTEE'S OBLIGATIONS**

##### **6.1 The only obligations of the Trustee are:**

- (a) to act as bare trustee for the benefit of each Creditor of the covenants of each Group Company contained in this Deed of Guarantee and Indemnity;
- (b) on request, to assign to any Creditor the benefit of this Deed of Guarantee and Indemnity insofar as it benefits that Creditor;
- (c) not to unreasonably withhold its consent upon receipt of a request from any Creditor to permit its name to be used in any demand or notice made or given by or legal proceedings brought by any Creditor seeking to enforce the benefit of this Deed of Guarantee and Indemnity (in which case the Creditor must fully indemnify the Trustee for any liability for legal costs arising in relation to such demand notice or legal proceedings);

- (d) on request, to lodge in its name on behalf of any Creditor or Creditors a proof of debt in the winding up of a Group Company of a claim under this Deed of Guarantee and Indemnity.
- 6.2 The Trustee has no duty to supervise or monitor any Group Company or to claim or pursue any Debt or, except as provided in clause 6.1, to enforce this Deed of Guarantee and Indemnity.
- 6.3 The Trustee is hereby indemnified by the Group Companies and each of them jointly and severally in respect of anything done by the Trustee (other than for acts or omissions which are a result of the Trustee's fraud, negligence, or breach of trust) pursuant to this Deed of Guarantee and Indemnity.
- 6.4 The Trustee may retire and appoint a new Trustee, provided that the new Trustee:
- (a) is not an Associate of the Managing Contractor or any Group Company;
  - (b) has the capacity to fulfil the obligations of the Trustee under this Deed of Guarantee and Indemnity; and
  - (c) is approved by the Principal.
- 6.5 The Trustee enters into this Deed of Guarantee and Indemnity only in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Deed of Guarantee and Indemnity is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of property of the Trust out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Deed of Guarantee and Indemnity and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement, or transaction related to this Deed of Guarantee and Indemnity.
- 6.6 The parties other than the Trustee may not sue the Trustee in any capacity other than as trustee of the Trust, including seek the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- 6.7 The provisions of this clause 6 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed establishing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- 6.8 It is acknowledged that the manager of the Trust is responsible under the trust deed establishing the Trust for performing a variety of obligations relating to the Trust, including under this Deed of Guarantee and Indemnity. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this Deed of Guarantee and Indemnity) will be considered fraud, negligence or breach of trust of the Trustee for the purpose of clause 6.7 to the extent to which the act or omission was caused or contributed to by any failure by the manager or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the manager or any other person.
- 6.9 No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed of Guarantee and Indemnity has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or breach of trust of the Trustee for the purpose of clause 6.7.
- 6.10 The Trustee is not obliged to do or refrain from doing anything under this Deed of Guarantee and Indemnity (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 6.5 to 6.7.

## **7. GROUP COMPANIES' OBLIGATIONS**

### **7.1. Principal Obligations**

7.1.1 Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that the Group Company's Obligations:

- (a) are principal obligations and not ancillary or collateral to any other obligations; and
- (b) may be enforced against any or all of the Group Companies without a Creditor being required to exhaust any remedy it may have against the Managing Contractor or to enforce any Guarantee or Security Interest it may hold with respect to any of the Managing Contractor's Obligations.

7.1.2 Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that no Creditor is under any obligation to:

- (a) give notice to any Group Company of any amendment of any agreement, Guarantee, Security Interest, or other instrument giving rise to a Debt or to the Managing Contractor's Obligations or of any breach of any such instrument; or
- (b) enforce this Deed of Guarantee and Indemnity against all of the Group Companies but may in its absolute discretion proceed against any or all of them.

### **7.2. Unconditional Nature of Obligations**

Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that the liability of each Group Company under this Deed of Guarantee and Indemnity is not affected by anything which but for this provision might operate to release or otherwise exonerate it from the Group Company's Obligations in whole or in part, including without limitation, any one or more of the following (whether or not done or occurring by or with the consent of the Creditor or with the knowledge or consent of any Group Company):

- (a) the grant to the Managing Contractor, a Group Company or any other person at any time, waiver or other indulgence or the discharge or release of the Managing Contractor, a Group Company, or any other person;
- (b) any transaction or arrangement that may take place between a Creditor and the Managing Contractor, a Group Company, or any other person;
- (c) the winding up or bankruptcy or death of, or appointment of an administrator to, the Managing Contractor, a Group Company, or any other person;
- (d) the fact that a Creditor or any other person takes or fails to take any other Guarantee or Security Interest;
- (e) any other person becoming a guarantor of the Managing Contractor's Obligations or liabilities;
- (f) the fact that a Creditor or any other person exercises or refrains from exercising any other Guarantee or Security Interest or any other rights, powers or remedies against the Managing Contractor, a Group Company, or any other person;
- (g) the amendment, variation (including a variation which increases the Debt or the Managing Contractor's Obligations), replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment, assignment or transfer either in whole or in part of any agreement or document relating to the Managing Contractor's Obligations including any other Guarantee or Security Interest now or in the future held by a Creditor from any person;
- (h) the Managing Contractor's Obligations or a Group Company's Obligations or the obligations of any other person under any agreement or document relating to the Managing Contractor's Obligations or a Group Company's Obligations including any other Guarantee or Security Interest, being or becoming wholly or partly illegal, void, voidable, unenforceable or disclaimed by a liquidator or trustee in bankruptcy;



- (i) the failure or omission by a Creditor to give notice to the Group Companies of any default by the Managing Contractor or any other person;
- (j) any legal limitation, disability, incapacity, or any other circumstance relating to the Managing Contractor, any Group Company, or any other person;
- (k) the fact that any Group Company who is intended to be bound as a guarantor or surety in respect of the Managing Contractor's Obligations does not become bound or, having done so, ceases to be so bound;
- (l) any acquiescence, delay, acts, omissions, or mistake on the part of, or suffered by a Creditor or any other person, in relation to this Deed of Guarantee and Indemnity or any other Guarantee, Security Interest, agreement or negotiable instrument;
- (m) a Creditor becoming a party to any compromise, assignment of property or scheme of arrangement or composition of debts or scheme of reconstruction by or relating to the Managing Contractor or any Group Company or any other person or the acceptance by a Creditor of any dividend or sum of money under such a compromise, assignment or scheme;
- (n) a Creditor obtaining a judgment against the Managing Contractor, any Group Company, or any other person for the payment of any Debt;
- (o) any collateral rights or obligations which may exist between the Managing Contractor and any Group Company and any variation or avoidance of any such collateral rights or obligations;
- (p) the winding up of any Group Company or of any surety of any Group Company;
- (q) if the Managing Contractor or a Group Company is a member of any partnership, any change in the membership of that partnership;
- (r) if the Managing Contractor or a Group Company is a Trustee, any breach of trust or any variation of the terms of the trust, or its determination;
- (s) assent by a Creditor to any assignment to trustees for the benefit of creditors under any scheme or deed or arrangement of the Managing Contractor whether with or without the winding up of the Managing Contractor;
- (t) assent by a Creditor to the appointment of a receiver or administrator of the Managing Contractor; or
- (u) any release, discharge or dealing by a Creditor with any property whether real or personal comprised in any Security Interest held from the Managing Contractor.

### 7.3. Further Waiver

Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that:

- (a) no failure or delay of a Creditor to exercise any right given to it under this Deed of Guarantee and Indemnity, or to insist on strict compliance by the Managing Contractor or any Group Company with any obligation in respect of any Debt or the Managing Contractor's Obligations under this Deed of Guarantee and Indemnity, and no custom or practice of a Creditor or the Managing Contractor or a Group Company at variance with the terms of this Deed of Guarantee and Indemnity, will constitute a waiver or variation of each Creditor's right to demand exact compliance with the terms of this Deed of Guarantee and Indemnity;
- (b) any delay or omission of any Creditor to exercise any right arising from a breach of any obligation by the Managing Contractor will not affect or prejudice any Creditor's rights arising from such breach, or any subsequent breach, or the continuance of any breach;
- (c) no waiver shall be effective against any Creditor unless it is in writing and signed by the Creditor; and
- (d) any waiver by any Creditor of any particular breach by the Managing Contractor of the Managing Contractor's Obligations will not affect or prejudice any Creditor's rights in respect of any subsequent breach of the same or of a different nature.

**7.4. Timing of Payment**

All amounts which a Group Company is liable to pay under this Deed of Guarantee and Indemnity must be paid by the Group Company within 10 business days of demand being made on the Group Company by written notice from the Principal or the Trustee in accordance with clause 12.

**8. REINSTATEMENT OF CREDITOR'S RIGHTS****8.1. Preference**

8.1.1 If, after a Creditor applies any amount against a Debt or the Managing Contractor's Obligations, it is required make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy or winding up:

- (a) the Creditor's rights are to be re-instated and will be the same in respect of that amount, or the relevant part of it as if the application, or the payment or transaction giving rise to it, had not been made; and
- (b) the Group Company shall immediately do anything (including the signing of documents) required by the Creditor to restore to the Creditor any Guarantee or Security Interest to which it was entitled immediately before that application, or the payment or transaction giving rise to it.

8.1.2 If any Security Interest given or payment made to a Creditor by a Group Company or by the Managing Contractor is avoided or reduced by virtue of any law relating to bankruptcy or winding up, the Creditor will then be entitled to recover the value or amount of that Security Interest or payment from each Group Company, despite any prior settlement, discharge or release between the Creditor and any Group Company.

**8.2. Conditional Release**

Any discharge or release between a Creditor and any of the Group Companies is subject to reinstatement of the Creditor's rights in accordance with this clause.

**9. SET-OFF**

All payments made by any Group Company under this Deed of Guarantee and Indemnity shall be free of any set-off or counter claim, and free and clear of, and without any deduction or withholding to the maximum extent permitted by law.

**10. ASSUMPTION DEED**

- 10.1 A further company may be joined as a Group Company to this Deed, by the execution of an Assumption Deed by the company, the Trustee and all of the Group Companies.
- 10.2 Any further company so added by an Assumption Deed will be taken to have assumed liability under this Deed of Guarantee and Indemnity as if that company had executed this Deed of Guarantee and Indemnity.

**11. DEED POLL**

The covenants and obligations under this Deed of Guarantee and Indemnity are repeated in this clause as a separate covenant by way of Deed Poll between each Group Company and each Creditor.

**12. NOTICES**

- 12.1 Any notice or other communication which must be given, served, or made under or in connection with this Deed:
  - (a) will be deemed to have been duly served, given or made in relation to a person if it is delivered or posted by prepaid post to and is received at the address, or sent by telex or facsimile to the number of that person set out in this Deed (or at such other address or number as is notified in writing by that person to the other parties from time to time);

- (b) will be deemed to be served, given, or made:
  - (i) (in the case of prepaid post) when delivered;
  - (ii) (in the case of facsimile) on receipt of a transmission report confirming successful transmission; and
  - (iii) (in the case of delivery by hand) on delivery.
- (c) notices to any of the Group Companies may be given to the address identified in Annexure, Item 1;
- (d) notices to the Managing Contractor may be given to the address identified in Annexure, Item 2; and
- (e) notices to the Trustee may be given to the following address identified in Annexure, Item 3.

### **13. COSTS**

- 13.1 Each Group Company agrees with the Principal and with the Trustee for the benefit of each Creditor that it will indemnify every Creditor against, and shall pay to all Creditors on demand the amount of, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) in connection with:
- (a) the enforcement or preservation of any rights under this Deed of Guarantee and Indemnity; and
  - (b) any amendment to, or any consent, approval, waiver, release, or discharge of or under, this Deed of Guarantee and Indemnity if requested by the Managing Contractor or Group Company.

### **14. LAW AND JURISDICTION**

#### **14.1. Governing Law**

This Deed of Guarantee and Indemnity is governed by and construed in accordance with the laws of the State of Queensland.

#### **14.2. Submission to Jurisdiction**

The parties submit to the non-exclusive jurisdiction of the Courts exercising jurisdiction in the State of Queensland and any Courts that may hear appeals from those Courts in respect to any proceedings in connection with this Deed of Guarantee and Indemnity.

### **15. GENERAL**

#### **15.1. Further Assurance**

Each party shall do, sign, execute and deliver and shall procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and act reasonably required of it or them by notice from another party to effectively carry out and give full effect to this Deed of Guarantee and Indemnity and the rights and obligations of the Creditors under it.

#### **15.2. Severability**

Any provision of this deed, which is illegal, void or unenforceable is only ineffective to the extent of that illegality voidness or unenforceability, without invalidating the remaining provisions.

#### **15.3. Counterparts**

This Deed of Guarantee and Indemnity may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

#### **15.4. Attorneys**

Each attorney who executes this Deed of Guarantee and Indemnity on behalf of a party declares that the attorney has no notice of any revocation, suspension, or variation of the power of attorney under the authority of which the attorney executes this Deed of Guarantee and Indemnity.

**16. LIMITATION OF LIABILITY**

Notwithstanding anything to the contrary in this Deed of Guarantee, the liability of each Group Company under this Deed of Guarantee should be no greater than it would have been if the Group Company were named as party to the Contract, or as applicable, any agreement between the Managing Contractor and a Creditor, in the place of the Managing Contractor.

**ANNEXURE**

<b>Item</b>	<b>Name</b>	<b>ABN</b>	<b>Address for notice</b>
1	The Group Companies	.....	.....
		.....	.....
		.....	.....
		.....	.....
		.....	.....
		.....	.....
2	The Managing Contractor	.....	.....
3	Trustee	.....	.....

**EXECUTED AS A DEED**

**SIGNED**

on the ..... day of ..... 20..... by

.....  
*The Group Companies*

.....  
*ABN*

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

.....  
*Name of Director*

.....  
*Signature of Director*

.....  
*Name of Director / Secretary*

.....  
*Signature of Director / Secretary*

**SIGNED SEALED AND DELIVERED**

on the ..... day of ..... 20..... by

.....  
*Trustee*

.....  
*ABN*

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

.....  
*Name of Director*

.....  
*Signature of Director*

.....  
*Name of Director / Secretary*

.....  
*Signature of Director / Secretary*

**SIGNED, SEALED AND DELIVERED**

on the ..... day of ..... 20.....

for and on behalf of the Principal by an authorised officer:

.....  
*Name of authorised officer*

.....  
*Signature of authorised officer*

in the presence of:

.....  
*Name of Witness*

.....  
*Signature of Witness*

## SCHEDULE 11 – Requirements of the Building Certifier

### Clause 24.6

- 1 In order to comply with the relevant provisions of the *Planning Act 2016* (Qld) and the *Building Act 1975* (Qld), the Managing Contractor shall ensure the Building Certifier is provided with:
  - (a) Completed Approved Forms (Section 282 of the *Planning Act 2016*) being DA Form 2 and where required DA Form 1,
  - (b) Plans, specifications, and other relevant documentation as required by the Building Certifier to enable assessment against Section 30 (building assessment provisions) of the *Building Act 1975* to comply with the information requirements of Chapter 3, parts 1 and 2 of the *Building Act 1975*,
  - (c) Such design, engineering, inspection, and evidence of suitability certificates as are required by the Building Certifier in accordance with the *Building Act 1975* and the *Building Regulation 2006* (Qld), in a form approved by the Building Certifier,
  - (d) Where the assessment requires the Building Certifier to make a discretionary decision, such evidence as the Building Certifier may require to support the exercise of that discretion,
  - (e) Where the compliance solution proposed relies upon the performance requirements of the National Construction Code (NCC) or Queensland Development Code, documents as required by Section 26 of the *Building Act 1975*, to the satisfaction of the Building Certifier,
  - (f) One (1) set of general information documents comprising only the site plan, floor plans and elevations, and
  - (g) Where the building contains Special Fire Services as defined in Schedule 2 of the *Building Act 1975*, such information as the Building Certifier may require for submission to the Queensland Fire and Emergency Services including one (1) copy of all plans, specifications and other relevant documentation relating to the Special Fire Services in electronic (PDF) format.
- 2 The Managing Contractor shall submit the plumbing and drainage plans to the relevant authority for review of compliance with the *Plumbing and Drainage Act 2018* (Qld), obtain a compliance permit prior to the works commencing, arrange with the authority to inspect the works during construction and issue a compliance certificate on completion, and pay the authority all relevant fees.
- 3 The Managing Contractor shall allow a minimum of 14 days for completion of assessments under the *Building Act 1975*. Where referral agency advice/concurrence is also required, the minimum of 14 days shall apply from the date the Building Certifier accepts the referral agency advice.
- 4 If there are fire safety installations installed in the building, the Managing Contractor shall supply to the Building Certifier one (1) electronic copy (in PDF format) of “as constructed” documents providing details as prescribed by the *Building Act 1975*, Section 102.

## SCHEDULE 12 – Formal Instrument of Agreement

### Clause 4

THIS DEED is made on the ..... day of ..... 20.....

BETWEEN: The State of Queensland through ..... in the State of Queensland (hereinafter with its successors in office called the “Principal”) of the one part

AND: ..... (ACN ..... ) of ..... in the State of ..... (hereinafter with its permitted successors and assigns called the “Managing Contractor”) of the other part.

### RECITALS

WHEREAS:

A The Principal invited the submission of tenders by letter of invitation to tender dated the ..... day of ..... 20..... (annexed hereto and marked with the letter “A”) for the provision of:

- (i) design services
- (ii) subcontract construction documentation management services, and
- (iii) construction management services in relation to ..... *[Insert project description]* (hereinafter called the “Project”)

in accordance with the accompanying Tender Documents:

- (iv) Volume 1 Tender Form and Conditions of Tender, and
- (v) Volume 2 Conditions of Contract, and
- (vi) Volume 3 Schedules to the Conditions of Contract, and
- (vii) Volume 4 Project Brief (annexed hereto and marked with the letters “B”, “C”, “D”, “E” respectively) which were subsequently amended or clarified by addenda numbered ..., ..., ..., ... and ... *[Insert Addenda numbers]* (annexed hereto and marked with the letter “F”).

B The Managing Contractor submitted its tender dated the ..... day of ..... 20..... and subsequently clarified or amended its tender by correspondence dated: *[Insert dates of correspondence or delete statement if none]*

- the ..... day of ..... 20.....,
- the ..... day of ..... 20.....,
- the ..... day of ..... 20.....,
- the ..... day of ..... 20.....,

(together referred to as the “Managing Contractor’s Tender” and annexed hereto and marked with the letter “G”), agreeably to the letter of invitation to tender and Tender Documents.

C The Managing Contractor has, in lodging the Managing Contractor’s Tender, warranted, and represented to the Principal, inter alia, that:

- (i) it, and the Consultants have the necessary experience, skill, and expertise to perform and complete the work under the Contract and that it shall maintain that skill and expertise; and
- (ii) it had:
  - (1) carried out all relevant investigations, and



- (2) examined, acquainted, and satisfied itself with all things including the sufficiency of the Project Construction Cost Estimate,

prior to submitting its tender

in accordance with clause 8 of the Conditions of Tender and acknowledges that in entering into this agreement the Principal has relied upon these representations.

- D The Principal by notice dated the ..... day of ..... 20..... (annexed hereto and marked with the letter "H") accepted the Managing Contractor's Tender and authorised the Managing Contractor to proceed with the provision of work under the Contract.
- E The Managing Contractor has deposited with the Principal security to the value of ..... dollars (\$.....) to be held by the Principal:
- (i) firstly, as security for the due and proper performance of the Managing Contractor under this Deed, and
  - (ii) secondly, for the purpose of providing security of payment to the "Subcontractors" (as that term is defined in the Conditions of Contract) of the Managing Contractor.
- F The parties wish to enter into this Deed to accurately record the terms of their agreement.

## OPERATIVE PROVISIONS

- 1 NOW THIS DEED WITNESSES that:
- (a) The Managing Contractor warrants that each of the recitals is true and correct and acknowledges that the Principal has entered into this Deed in reliance thereon.
  - (b) In consideration of the promises on the part of the Principal in this Contract the Managing Contractor:
    - (i) shall provide the materials and perform the work required to complete Stage One in accordance with the Contract;
    - (ii) acknowledges that if the Principal accepts the Managing Contractor's GCS Offer pursuant to clause 11.2.1(a) of the Conditions of Contract, the Contract will include both Stage One and Stage Two and the Managing Contractor shall provide the materials and perform the work required to complete Stage Two; and
    - (iii) 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 Managing Contractor.
  - (c) In consideration of the promises on the part of the Managing Contractor in this Contract the Principal shall make payments to the Managing 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.
- 2 The Managing Contractor acknowledges that, unless and until, the Principal accepts the Managing Contractor's GCS Offer pursuant to clause 11.2.1(a) of the Conditions of Contract, the Contract is for the performance of Stage One only, and there is no guarantee that any Contract for Stage Two will proceed.
- 3 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.
- 4 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 Managing 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 "Managing Contractor" or the term "Principal" in this Contract shall jointly be entitled to the benefit of the Contract and the Contract shall be read and construed accordingly.

- 5 The Contract between the Principal and the Managing Contractor comprises the documents listed in clause (6) below.
- 6 Provided that all ambiguities, discrepancies, and inconsistencies, if any, in or between the documents comprising the Contract shall be interpreted in accordance with the Conditions of Contract, should there be any discrepancy or inconsistency between the documents which constitute the Contract the following order of precedence shall apply:
- (a) This Deed,
  - (b) The Principal's letter of acceptance of the Managing Contractor's Tender,
  - (c) The Tender Documents,
  - (d) The Managing Contractor's Tender as clarified by the Managing Contractor and accepted by the Principal,

with the exception that if the Managing Contractor's GCS Offer, including a GCS Offer Project Brief, is accepted by the Principal, then the accepted GCS Offer Project Brief shall take precedence over the Principal's Project Brief.

## 7 ADMINISTRATIVE PROVISIONS

- (a) The Principal must pay all stamp duty on or arising in connection with this Deed. Each party must bear its own costs and expenses arising directly or indirectly with respect to the preparation, execution, completion, and performance of this Deed.
- (b) This Deed and the documents to which it refers contains the entire understanding of the subject matter of this Deed.
- (c) The obligations contained in this Deed will continue until satisfied in full.
- (d) This Deed will be governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.

## 8 SEVERABILITY

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

## 9 WAIVER

The failure or omission of a party at any time to:

- (a) enforce or require the strict observance of or compliance with any provision of this Deed; or
- (b) exercise any election or discretion under this Deed,

will not operate as a waiver of the rights of a party, whether express or implied, arising under this Deed.

**EXECUTED AS A DEED**

**EXECUTED**

on the .....day of ..... 20..... by

..... <i>Managing Contractor</i>	..... <i>ACN</i>
-------------------------------------	---------------------

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

..... <i>Name of Director</i>	..... <i>Signature of Director</i>
----------------------------------	---------------------------------------

..... <i>Name of Director / Secretary</i>	..... <i>Signature of Director / Secretary</i>
--	---

**SIGNED, SEALED AND DELIVERED**

on the .....day of ..... 20.....

for and on behalf of the Principal by an authorised officer:

..... <i>Name of authorised officer</i>	..... <i>Signature of authorised officer</i>
--	---

in the presence of:

..... <i>Name of Witness</i>	..... <i>Signature of Witness</i>
---------------------------------	--------------------------------------

### SCHEDULE 13 – Site Personnel Register

**Clause 41.6.1**

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

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

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

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

## SCHEDULE 13 (cont'd) – Site Personnel Register Summary

**Clause 41.6.3**

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

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

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

Signed: .....

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

## SCHEDULE 14 – Requirements for GCS Offer

### Clause 11.1

**Guide note: Delete this guide note**

**Project Team to include requirements as appropriate. The following is a guide only and may not be applicable for the specific project.**

The GCS Offer to be submitted by the Managing Contractor during Stage One must include:

- 1 a guaranteed construction sum which must not be greater than the Project Construction Cost Estimate;
- 2 the period of time for Practical Completion, from which the Date for Practical Completion will be determined;
- 3 documentation identifying the design upon which the Guaranteed Construction Sum is based, including a revised Project Brief whereby any changes from the original Project Brief are clearly shown;
- 4 an elemental cost plan in accordance with the Australian Institute of Quantity Surveyors' Australian Cost Management Manual 2000 Volume 1, Appendix A1;
- 5 the Managing Contractor's proposed trade package break up and budget for each trade package, including without limitation details of any preferred subcontractors for particular trade packages and such further information as may be reasonably required by the Principal or the Principal's Representative; and
- 6 List of Performance Warranties to be obtained from suppliers or manufacturers as per Clause 12.4 of the Contract.

## SCHEDULE 15 – Activities to be Carried out during Stage One

### Clause 3

**Guide note: Delete this guide note**

**Project Team to include activities as appropriate. The following is a guide only and may not be applicable for the specific project.**

- 1 It is expected that, during Stage One, the Managing Contractor will:
  - (a) work with the Principal and the Principal's consultants (if any) in a cooperative and collaborative manner;
  - (b) demonstrate an open and transparent approach to the sharing of information;
  - (c) provide information to the Principal in a timely manner; and
  - (d) act in good faith.
  
- 2 The Managing Contractor shall manage the design and costing process during Stage One, including but not limited to carrying out the following activities:
  - (a) DESIGN MANAGEMENT AND DELIVERY
 

The Managing Contractor will be responsible for managing all aspects of the design process. The process will include:

    - Managing the design consultants and the design process;
    - Facilitating value management workshops as necessary;
    - Providing expert advice on buildability and staging issues;
    - Chairing and minuting design meetings and producing monthly status reports to the Principal; and
    - Managing the design of the Works so that the Works as designed can be constructed within the Principal's Project Construction Cost Estimate.

As part of the above process the Managing Contractor will be required to prepare a Project Design Plan (PDP) which will include the following:

    - Flowchart of design process;
    - Documentation requirements;
    - Identification of roles and responsibilities;
    - Nomination of design meetings including attendees, frequency, location, and agenda;
    - Description of design management and cost planning procedures;
    - Proposed control of non-performance;
    - Format of monthly reports.
  - (b) CONSTRUCTION PLANNING
 

As part of the design process the Managing Contractor will be required to prepare a site-specific staging and management plan for the project during construction. In addition to a detailed staging plan for the Works, the plan will include guidelines on the implementation of goals relating to time, cost, communications, security, procurement, risk assessment, reporting, quality, safety, and the environment.

### (c) COST PLANNING

Cost planning is an integral part of the design process and is used to constantly review costs against budgets. The Managing Contractor is required to manage and coordinate all aspects of the cost planning process to ensure that the cost plan is continuously updated and is aligned at all times with the Principal's Project Construction Cost Estimate as provided in the Project Brief.

The Managing Contractor is responsible for ensuring that the Works to be constructed in accordance with the Contract can be constructed within the Principal's Project Construction Cost Estimate and the Guaranteed Construction Sum included in the Managing Contractor's GCS Offer must be no higher than the Principal's Project Construction Cost Estimate.

As part of its cost planning obligations, within 3 weeks of the Date of Acceptance of Tender, the Managing Contractor is required to submit for the Principal's review, a priced cost plan (the 'initial cost plan'), in a format provided by the Principal's Representative or to be agreed by the parties, setting out the initial estimated construction costs for the Works. The Managing Contractor's cost plan will form the basis for the fortnightly cost planning reviews to be carried out during Stage One.

Following submission of the Managing Contractor's initial cost plan, the Managing Contractor is required on a fortnightly basis, to undertake a review, with the Principal's quantity surveyor or nominee, as to the progress of the Stage One obligations and the alignment of the progressive design of the Works with the Project Construction Cost Estimate, ensuring that the Guaranteed Construction Sum to be included in the Managing Contractor's GCS Offer will not be greater than the Project Construction Cost Estimate.

The Managing Contractor must submit a report to the Principal ('cost plan report'), within 2 business days of the review, detailing the outcomes of the review undertaken including an analysis of the design of the Works in comparison to the Project Construction Cost Estimate and the expected Guaranteed Construction Sum figure as at that time. Any failure by the Managing Contractor to provide the initial cost plan or the fortnightly cost plan report during Stage One will constitute a substantial breach of contract.

Where the Managing Contractor seeks trade package market testing, the detailed cost break ups of individual trades tested shall be provided to the Principal when received by the Managing Contractor.

### (d) TIME MANAGEMENT AND PROGRAMMING

Whilst an indicative program has been prepared it is intended as a preliminary guide only.

The Managing Contractor will be required to prepare a detailed program for the design stages of the project and, based on the best information available, a draft program to completion of construction including proposed staging of the works.

The Managing Contractor will work closely with the Principal when formulating the proposed time for completion of the project and if a different time is proposed to the Principal's estimated time for completion contained in the Project Brief, the Managing Contractor must demonstrate reasons for such difference.

The Managing Contractor will be responsible for managing the design process to ensure adherence to the agreed program including:

- Monitoring actual performance against planned achievement, and
- Taking corrective action as necessary to achieve agreed objectives.

### (e) VALUE ADDING

The Managing Contractor is expected to participate in and/or undertake a variety of "value-adding" activities (such as conducting value management workshops).

- 3 The Managing Contractor shall undertake any Early Works Packages directed by the Principal's Representative under the Contract.



# SCHEDULE 16 – Subcontractor Deed Poll

## Clause 21.2

### FORM OF DEED POLL

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

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

IN FAVOUR OF: The State of Queensland through .....

(hereinafter with its successors in office, nominated agents and the Queensland Government Procurement Compliance Branch within the Department of Energy and Climate (‘QGP Compliance Branch’) called the “Principal”).

### RECITALS

- A The Principal has entered into an agreement with ..... (the “Managing Contractor”) for the provision of design services, subcontract construction documentation management services and construction management services in relation to the ..... (the “Project”).
- B The Subcontractor proposes to enter into an agreement (the “Subcontract”) with the Managing Contractor or a subcontractor of the Managing Contractor for the execution and completion and/or supply of the ..... (the “Subcontract Works”) for the Project.
- C It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

This Deed Poll provides as follows:

- 1 The Subcontractor warrants that:
  - (a) it will make and keep accurate and complete records of:
    - (i) its tender, including without limitation the preparation and submission of that tender;
    - (ii) tenders received by it, whether accepted or not;
    - (iii) the execution and completion of the work under the Subcontract; and
    - (iv) compliance with any commitments made in the Subcontractor’s tender and its obligations under the Subcontract relating to compliance with government policies including but not limited to the Queensland Procurement Policy, the local benefits test contained in the Queensland Procurement Policy, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the Building and Construction Training Policy, the Best Practice Principles and the Best Practice Industry Conditions (as defined in the Subcontract) (where applicable);
  - (b) the records referred to in clause 1(a) above shall include records that are required to be created or provided, or that are otherwise referred to, under the Subcontract, as well as other records including but not limited to those that:
    - (i) relate to the Subcontractor’s tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;
    - (ii) relate to design, including design calculations, option studies, opinions, reviews, and reports;
    - (iii) relate to the execution and completion of the work under the Subcontract, including without limitation labour, subcontracts, subcontractors, consultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost, and cost to complete;

- (iv) are required to demonstrate compliance with the matters referred to in clause 1(a)(iv) above, including without limitation payroll records, management records, time recordings and records of project-specific training; and
- (v) are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications, or social media;
- (c) subject to the Subcontractor’s right to claim legal professional privilege in respect of any record, which is hereby maintained, permit the Principal, including the QGP Compliance Branch, to inspect and to copy at any time any records referred to in clause 1(a) or 1(b) above, provide electronic copies of such records in native format and provide any access to the Subcontractor’s sites, premises or facilities necessary for an inspection referred to in this clause;
- (d) without limiting any other rights or obligations herein, the Subcontractor shall permit the Principal, including the QGP Compliance Branch, to undertake an audit of the records referred to in clause 1(a) or 1(b) above for the purposes of verifying the Subcontractor’s compliance with any commitments made in the Subcontractor’s tender and its obligations under the Subcontract relating to compliance with government policies including the Queensland Procurement Policy, the local benefits test contained in the Queensland Procurement Policy, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the Building and Construction Training Policy, the Best Practice Principles, and the Best Practice Industry Conditions (as defined in the Subcontract) (where applicable).

- 2 The Subcontractor consents to the Principal, including the QGP Compliance Branch, disclosing or providing copies of any records which the Principal, including the QGP Compliance Branch, inspects or copies in accordance with clause 1 of this Deed Poll to the Managing Contractor.
- 3 The Subcontractor consents to the Principal, including the QGP Compliance Branch, in its absolute discretion, publishing information about the Subcontractor’s compliance with the Ethical Supplier Mandate, including but not limited to any sanctions or penalties imposed, and warrants that it will not exercise any right at law, including in contract, at common law or in equity, against the Principal, including the QGP Compliance Branch, in relation to that publication.
- 4 This Deed Poll is governed by and construed in accordance with the laws of Queensland. The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- 5 This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.

**EXECUTED as a DEED POLL**

on the .....day of ..... 20..... by

.....	.....
<i>Name of Company – Subcontractor</i>	<i>ACN</i>

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

.....	.....
<i>Name of Director</i>	<i>Signature of Director</i>

.....	.....
<i>Name of Director / Secretary</i>	<i>Signature of Director / Secretary</i>

**OR**

.....	.....
<i>Name of Person – Subcontractor</i>	<i>Signature of Person – Subcontractor</i>

In the presence of:

.....	.....
<i>Name of Witness</i>	<i>Signature of Witness</i>

## **SCHEDULE 17 – Best Practice Industry Conditions**

*Clauses 3.2, 21.2, 41.7, 58.2 and 64*

*[To be inserted by project team]*