



## Special Conditions of Contract and Annexure – Modular

To be read in conjunction with Australian Standard® General conditions of contract for design and construct AS4300-1995.

Project Name

.....

Project Number

.....

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## CONDITIONS OF CONTRACT

### 1. GENERAL

The Conditions of Contract shall be the Australian Standard® General conditions of contract for design and construct (AS4300-1995) as amended by the Special Conditions of Contract.

### 2. INTERPRETATION

In the event of conflict or inconsistency between the provisions of the Australian Standard® General conditions of contract for design and construct (AS4300-1995) and the Special Conditions of Contract, the Special Conditions of Contract shall take precedence.

References to “Annexures” to AS4300-1995 shall be read as reference to Annexures attached to the Special Conditions of Contract.

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

## SPECIAL CONDITIONS OF CONTRACT

To be read in conjunction with Australian Standard® General conditions of contract for design and construct AS4300-1995.

### 1. CONSTRUCTION OF CONTRACT

No amendment

### 2. INTERPRETATION

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

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

‘business day’ means a day that is not:

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

‘Certificate as to Title’ means a certificate provided by the Contractor (in a form acceptable to the Principal) pursuant to which the Contractor certifies that it has unencumbered title to the items the subject of the certificate and to which is annexed a PPSA Clear Search Certificate;”

Add the following after the definition of 'Constructional Plant':

“Construction Site’ means the site on which the Modular Buildings are to be installed and any other area depicted or described as the construction site by the Superintendent;”

Add the following after the definition of 'direction':

“Ethical Supplier Mandate’ means the Queensland Government policy titled “Buy Queensland: Ethical Supplier Mandate” or any policy that replaces that policy;

‘Ethical Supplier Threshold’ means the Ethical Supplier Threshold described in the Queensland Procurement Policy;”

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

“Government Department or Instrumentality’ means:

- (a) any government department responsible for compliance with government policy, including without limitation:
  - (i) the Queensland Government Procurement Compliance Branch within the Department of Energy and Climate;
  - (ii) the Queensland Apprenticeship and Traineeship Office within the Department of Employment, Small Business and Training; and
  - (iii) Local Content with the Department of State Development and Infrastructure; and
- (b) any government regulator, including without limitation:
  - (i) the Queensland Building and Construction Commission;
  - (ii) the Office of Industrial Relations;

- (iii) the Fair Work Commission;
- (iv) Australian Taxation Office; and
- (v) Office of the Federal Safety Commissioner;

'Holding Rate' is a rate for storing the Modular Building or relevant Modules set out in the Schedule of Provisional Quantities contained in the Tender Form;

'Identification Number' means a unique identification number affixed to the Modular Building or Module in a permanent, indelible and conveniently visible manner;

'Installation Work' means the transport to and installation of the Modular Building at the Construction Site;

'Installation Work Lump Sum' is a fixed lump sum to be paid to the Contractor for the Installation Works where the Principal accepts a proposed Installation Work Lump Sum pursuant to Clause 11A(c)(i);

'Installation Work Lump Sum Notice' has the meaning given in Clause 11A(a)(iii);"

Add the following after the definition of 'Legislative Requirements':

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

'Module' means any component of the Modular Building that is designed to be prefabricated and transported to the Construction Site as a separate unit for incorporation into the Works as part of the Installation Works;

'Modular Building' means the building which the Contractor is required to wholly or substantially prefabricate in a factory and then transport to, and install on, the Construction Site (whether as a single unit or as various Modules which together comprise the Modular Building);

'Modular Building Fixing Stage' means, subject to compliance with clauses 42.10(c) and (d) and clauses 42.11(c)(i) and (d), the stage of the in-factory prefabrication of the Modular Building when, other than minor omissions or defects, all internal linings, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves and built-in cabinets and built-in cupboards are fitted and fixed in position of the Modular Building (except to the extent that these work under the Contract are, with the consent of the Principal, to be completed on the Construction Site);

'Modular Building Frame Stage' means, subject to compliance with clauses 42.10(c) and (d) and clauses 42.11(c)(i) and (d), that stage of the in-factory prefabrication of the Modular Building when, other than minor omissions or defects, the Modular Building frame is completed including wall and roof frames, with no further structural work being required to be undertaken to the frame;

'Modular Building Lockup Stage' means, subject to compliance with clauses 42.10(c) and (d) and clauses 42.11(c)(i) and (d), the stage of the in-factory prefabrication of the Modular Building when the Modular Building's external wall cladding and roof covering are fixed, the flooring is laid and external doors and external windows are fixed (except to the extent that these work under the Contract cannot be undertaken by reason of the circumstance that a component or Module of the Modular Building is to be assembled on the Construction Site as part of the Installation Works);"

Add the following after the definition of 'person':

"'PPSA' means the *Personal Property Securities Act 2009* (Cth);

'PPSA Clear Search Certificate' means a certificate generated by the Personal Property Securities Register (as a search result for the purposes of section 174 of the PPSA) which does not show the existence of any Security Interest or other registration kind registered against the relevant Modular Building or Module;"

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

"'Provisional Delay Allowance' means the amount set out in the Schedule of Agreed Damages for Delay contained in the Tender Form, or if no Provisional Delay Allowance is set out, the amount calculated according to the formula set out in the Schedule of Agreed Damages for Delay contained in the Tender Form, which amount is deemed to be included in the Contract Sum;"

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

“QGP Compliance Branch’ means the State of Queensland’s Queensland Government Procurement Compliance Branch within the Department of Energy and Climate and any successor administrative unit;

‘Queensland Procurement Policy’ means the Queensland Government policy titled “Queensland Procurement Policy” or any policy which replaces that policy;

‘Relevant Personal Property’ has the meaning given in Clause 42.12(b)(i)(C);”

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

“Security Interest’ means a mortgage, charge, lien, pledge, security interest, title retention, preferential right, trust arrangement, encumbrance and contractual right of set off and includes a security interest within the meaning of the PPSA;”

Delete the definition of 'Site' and replace with:

“Site’ means the lands and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract, including the Construction Site;”

Add the following after the definition of 'Site':

“Stage’ means Modular Building Frame Stage, Modular Building Fixing Stage and the Modular Building Lockup Stage;”

Delete the definition of 'subcontractor' and replace with:

“subcontractor’ includes Consultant;”

Add the following after the definition of 'Superintendent's Representative':

“Supplier Code of Conduct’ means the Queensland Government Code titled “Queensland Government Supplier Code of Conduct” or any code that replaces that code;”

Add the following after the definition of 'work under the contract':

“Working Day’ means a day stated as such in the Annexure;

‘Working Hours’ means the hours stated as such in the Annexure;”

### **3. NATURE OF CONTRACT**

#### **3.1. Performance and Payment**

No amendment

#### **3.2. Quantities**

No amendment

#### **3.3. Adjustment for Actual Quantities – Schedule of Rates**

Add new paragraph at the end of Clause 3.3:

“This Clause does not apply to any Provisional Delay Allowance included in the Contract and the Contractor’s entitlement (if any) for payment in respect of delays or for payment of any amount forming part of the Provisional Delay Allowance is governed by Clause 36.”

Add new subclauses:

“

### 3.4. Variations in Rates of Exchange and Duty

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

the value of such difference shall, upon application in writing to the Superintendent by the Contractor or upon notification in writing to the Contractor by the Superintendent, be taken into account in determining the final Contract Sum.

The value of such difference shall be calculated in accordance with the entire example calculation included in the schedule attached to these Conditions.

For the purposes of this Clause 3.4 and the example calculation included in the schedule attached to these Conditions, the evaluation of such difference shall be based upon:

- (iii) the selling exchange rate for the appropriate foreign currency as published by the Reserve Bank of Australia at the closing of business on the 14th day prior to the closing of tenders,
  - (iv) the selling exchange rate for the appropriate foreign currency as published by the Reserve Bank of Australia as applied at the time of payment of the invoice by the Contractor for the material, machinery, or other goods,
  - (v) the rate of duty payable at the closing of business on the 14th day prior to the closing of tenders, and
  - (vi) the rate of duty paid at the time of payment of the invoice by the Contractor for the material, machinery, or other goods.
- (b) In the case of an application to the Superintendent by the Contractor, the provisions of subclause (a) shall apply only to those goods listed by the Contractor in the schedule attached to these Conditions, properly completed and submitted within 10 business days after acceptance of tender, or, in the case of goods required by a variation to the Contract, to those listed on the schedule attached to these Conditions submitted at the time of submission of the Contractor's price for the variation.

### 3.5. Customs Tariff (Anti-Dumping) Legislation

- (a) For the purposes of this Clause 3.5:
- 'dumped goods' means goods resulting from a practice where a supplier exports goods to another country at a price below the price charged in the country of manufacture or below the cost of manufacturing the goods.
- (b) The Contractor warrants that:
- (i) it will not supply dumped goods or goods suspected of being dumped for the term of the Contract;
  - (ii) it will do business with ethically, environmentally and socially responsible suppliers, and will seek to influence the supply chain in this regard;
  - (iii) it has put into place all necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this Clause at all relevant times; and



- (iv) should the Contractor become aware of any risk of breaching this warranty, it shall immediately notify the Principal of such risk and the remediation action it proposes to take.
- (c) Notwithstanding Clause 3.4 and 3.5(b) above:
  - (i) the Contractor shall be responsible for payment of duties (if any) under the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) ('*CT(AD) Act*') and any security under the *Customs Act 1901* (Cth) in respect of any duty that might become payable under the *CT(AD) Act*;
  - (ii) the lump sum or rates accepted by the Principal for the work under the Contract shall include for all amounts payable under this Clause 3.5 and omissions in Schedules of Rates to specifically identify items in respect of such amounts shall not constitute an error under Clause 3.3 and the Contractor shall not be entitled to any additional remuneration whatsoever in respect of any such amounts that are payable or that may become payable; and
  - (iii) the Contractor shall indemnify the Principal in respect of any payments that are payable or that may become payable under the *CT(AD) Act* or in respect of any security that is payable or may become payable under the *Customs Act 1901* (Cth) for duty that might become payable under the *CT(AD) Act*.

### 3.6. Sale of Goods Legislation

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

## 4. WARRANTIES

### 4.1. Contractor's Warranties

#### 4.1 (b)

Delete/Insert:

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

### 4.2. Warranties Unaffected

No amendment

Add new subclause:

"

### 4.3. Additional Performance Warranties

The Contractor provides the warranties, covenants and indemnities in relation to the Modular Building set out in Schedule 11.

The warranties, covenants and indemnities provided by the preceding paragraph shall not be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the Contractor, whether under the other provisions of the Contract or otherwise in respect of the Modular Building or the Works, and the Contractor must discharge the Contractor's obligations under the Contract in relation to the work under the Contract, the Works and any defects in the Works, despite the Principal having the benefit of the warranties, covenants and indemnities in Schedule 11."

## 5. SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

### 5.1. Purpose

Add at the end of Clause 5.1, the words:

"and for the purpose of providing security of payment to subcontractors of the Contractor as these terms are defined in the BIF Act."

## 5.2. Provision of Security

No amendment

## 5.3. Form of Security

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

Delete/Insert the last sentence of the second paragraph:

“The form of undertaking attached to these Conditions is approved.”

## 5.4. Time for Provision of Security

Delete “28 days” and insert in its place “10 business days”.

## 5.5. Retention Moneys

No amendment

## 5.6. Conversion of Security and Recourse to Retention Moneys

Delete/Insert:

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

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

## 5.7. Substitution of Security for Retention Moneys

Delete/Insert:

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

The form of undertaking attached to these Conditions is approved.

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

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

**5.8. Reduction of Security and Retention Moneys**

Delete “14 days” in the second line of the fourth paragraph and insert in its place “10 business days”.

Delete “14 days” in the first line of the fifth paragraph and insert in its place “10 business days”.

**5.9. Release of Security and Retention Moneys**

Delete “14 days” in the fourth line of the first paragraph and insert in its place “10 business days”.

**5.10. Holding of and Interest on Cash Security and Retention Moneys**

No amendment

**5.11. Deed of Guarantee, Undertaking and Substitution**

Delete “7 days” in the second of the first paragraph and insert in its place “5 business days”.

Delete “14 days” in the third of the first paragraph and insert in its place “10 business days”.

**6. EVIDENCE OF CONTRACT****6.1. Contract in Absence of Formal Instrument of Agreement**

No amendment

**6.2. Formal Instrument of Agreement**

Delete/Insert the first paragraph:

“If the Annexure indicates that the execution of a Formal Instrument of Agreement is required, the Principal shall prepare in duplicate a Formal Instrument of Agreement and shall forward it to the Contractor with a request that it be executed.”

Delete “14 days” in the first line of the second paragraph and insert in its place “10 business days”.

Delete “14 days” in the first line of the third paragraph and insert in its place “10 business days”.

Add new paragraph at the end of Clause 6.2:

“The Formal Instrument of Agreement, when required, shall be in the form attached to these Conditions.”

Add new subclauses:

“

**6.3. Collusive Arrangements**

The Contractor warrants and represents to the Principal that:

- (a) it had no knowledge of the tender price of any other tenderer, nor did it communicate with any other tenderer in relation to its tender price, or a price above or below which a tenderer may tender (excluding any pricing advised by the Principal), nor had it entered into any contract, arrangement or understanding with another tenderer to the effect that the Contractor or another tenderer would tender a non-competitive price, for the work under the Contract, at the time of submission of the Contractor’s tender;
- (b) except as disclosed in the Contractor’s tender, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade, industry or other association (above the published standard fee) relating in any way to its tender or this Contract, nor paid or allowed any such money, nor will it pay or allow any such money;
- (c) except by prior agreement with the Principal, it has not paid or allowed any money or entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to or on behalf of any other tenderer for the work under the Contract, nor received any money or allowance from or on

behalf of any other tenderer relating in any way to the Contractor's tender or this Contract, nor will it pay or allow or receive any money as aforesaid.

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

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

#### **6.4. Parties to the Contract**

If any party to this Contract consists of one or more persons this Contract shall bind such persons and their respective executors, administrators, successors (in the case of the Contractor) and permitted assigns (in the case of the Principal) jointly and severally and this Contract must be read and construed accordingly."

### **7. SERVICE OF NOTICES**

No amendment

### **8. CONTRACT DOCUMENTS**

#### **8.1. Discrepancies**

No amendment

#### **8.2. Dimensions**

No amendment

#### **8.3. Supply of Documents by Principal**

No amendment

#### **8.4. Supply of Documents by Contractor**

Delete "14 Days" in the fourth and fifth line of the second paragraph and insert in its place "10 business days".

Delete "14 Days" in the third line of the fifth paragraph and insert in its place "10 business days".

#### **8.5. Availability of Documents**

No amendment

#### **8.6. Confidential Information**

No amendment

#### **8.7. Media Releases**

Delete the words:

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

### **9. ASSIGNMENT AND SUBCONTRACTING**

#### **9.1. Assignment**

Delete/Insert:

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

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

The Contractor must not, without the prior written approval of the Principal, and except on such terms and conditions as are determined in writing by the Principal, assign the Contract or any payment or other right, benefit or interest under or in respect of the Contract.”

## 9.2. Subcontracting (including Work Performed by Consultants)

Delete/Insert:

“

- (a) The obligations of government agencies contained in the Queensland Procurement Policy shall apply equally to the Contractor as though it is a government agency, and the Contractor shall procure subcontracts in accordance with the requirements of the Queensland Procurement Policy.
- (b) The Contractor shall prepare and produce all required copies of the subcontract tender documentation (“Subcontract Tender Documentation”), which:
  - (i) incorporates suitable conditions of contract which reflect the provisions of the Contract;
  - (ii) requires subcontract tenders and subcontractors to consent to a relevant Government Department or Instrumentality providing information to the Principal or the QGP Compliance Branch about the tenderer’s or subcontractor’s compliance with government policies and legislation, including without limitation, commitments made in relation to or required by the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the Queensland Government Building and Construction Training Policy, the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld);
  - (iii) requires subcontract tenderers and subcontractors to acknowledge that the information referred to in Clause 9.2(b)(ii), which includes without limitation payroll records, management records, time recordings and records of project-specific training that may be held by any Government Department or Instrumentality, may be obtained by or made available to the Principal and the QGP Compliance Branch, for its information and verification of the subcontract tenderer’s or subcontractor’s compliance with commitments made in relation to or required by government policies and legislation;
  - (iv) includes terms that evidence the right of the Principal and the QGP Compliance Branch to exercise the discretion in Clause 49(j) to publish any information relevant to the Ethical Supplier Mandate, including but not limited to information about the subcontractor’s compliance with the Ethical Supplier Threshold and Ethical Supplier Mandate, and prohibits the subcontractor from exercising any rights at law, including in contract, at common law or in equity, against the Principal or the Contractor in relation to that publication;
  - (v) requires the subcontractor to submit statutory declarations in the form attached to these Conditions, if requested by the Superintendent under Clause 43.1(c);
  - (vi) requires the subcontractor to execute a deed poll in favour of the Principal in the form attached to these Conditions and provide this as part of their tender;
  - (vii) requires the subcontractor to make and keep the records referred to in Clause 49(a);
  - (viii) provides for evaluation of subcontract tender responses against clear evaluation criteria and weightings; and
  - (ix) incorporates any other documentation or information required for the tendering or the completion of the relevant work under the Contract.

- (c) The Contractor must ensure that all subcontractors and any sub subcontractors:
- (i) for the purposes of the Queensland Procurement Policy are:
    - (A) local suppliers as described in the Queensland Procurement Policy, and if a local supplier is unable to be sourced by the Contractor having used its best endeavours to do so, the Contractor shall seek approval from the Superintendent to use a supplier who is not a local supplier and in doing so shall provide evidence, satisfactory to the Superintendent, of its efforts to source a local supplier;
    - (B) compliant with the Ethical Supplier Threshold; and
    - (C) not subject to a current sanction under the Ethical Supplier Mandate;
  - (ii) are informed of the existence of the BIF Act; and
  - (iii) either:
    - (A) have a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
    - (B) in relation to the work to be performed under the subcontract (or sub subcontract):
      - (I) will be paid to achieve a specified result or outcome;
      - (II) are required to supply the plant and equipment or tools of trade needed to perform the work; and
      - (III) will be liable for the cost of rectifying any defect in the work performed.
- (d) The Contractor shall examine, analyse and evaluate all subcontract tenders received, in accordance with the Subcontract Tender Documentation, and in doing so, the Contractor shall:
- (i) ensure evaluation of subcontract tender responses against clear evaluation criteria and weightings;
  - (ii) prepare and retain written records of the evaluation process undertaken, all evaluation findings and recommendations and, if requested, submit these to the Superintendent at the completion of each subcontract evaluation.
- (e) The Contractor must not, without the prior written approval of the Superintendent which shall not be unreasonably withheld, subcontract or allow a subcontractor to subcontract any of the work under the Contract. When seeking approval pursuant to this Clause, the Contractor shall provide to the Superintendent a request for approval in the form attached to these Conditions and such other information which the Superintendent may reasonably request.
- (f) Within 10 business days after a request by the Contractor for approval made in accordance with Clause 9.2(e), the Superintendent shall approve the request or advise the Contractor of any objections. If approval is given to sub subcontract part of the work under the Contract, the Contractor must ensure the requirements of Clause 9.2 are met.
- (g) The Principal may at any time prior to the issue of the Final Certificate, undertake an audit in respect of the Contractor's compliance with Clause 9.2, in accordance with the provisions of Clause 49(d)."

### 9.3. Contractor's Responsibility

No amendment

### 9.4. Selected Subcontract Work

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

**9.5. Provisions Applying Generally to Selected Subcontract Work**

No amendment

**9.6. Termination of Selected Subcontract**

No amendment

**10. NOVATION**

Add after the words “or the Selected Subcontractor” in the third line of the second paragraph, the words “or Consultant”.

**11. PROVISIONAL SUMS**

Add new paragraph at the end of Clause 11:

“This Clause does not apply to:

- (a) the provisional sum(s) for the Installation Work; or
- (b) any Provisional Delay Allowance included in the Contract and the Contractor’s entitlement (if any) for payment in respect of delays, or for payment of any amount forming part of the Provisional Delay Allowance is governed by Clause 36.”

Add new Clause:

“

**11A. INSTALLATION WORK PROVISIONAL SUM LUMP SUM OFFER**

- (a) If the Tender Form requires an Installation Work Lump Sum Offer component, the Contractor must within the time stated in the Annexure:
  - (i) inspect the Construction Site and undertake any testing of the Construction Site it considers necessary to ascertain the extent of work under the Contract required to complete the Installation Work;
  - (ii) after such inspection and testing of the Construction Site, develop a proposed Installation Work Lump Sum for the performance of the Installation Works, and where necessary, any proposed new provisional sums to be included in the Installation Work Lump Sum; and
  - (iii) notify the Superintendent of the proposed Installation Work Lump Sum and any proposed new provisional sums (an Installation Work Lump Sum Notice).
- (b) An Installation Work Lump Sum Notice shall be in the form, and contain the information required by, Schedule 12.
- (c) On receipt of an Installation Work Lump Sum Notice, the Principal will review and consider the Contractor’s proposed Installation Work Lump Sum and any proposed new provisional sums, following which it may, in its absolute discretion, either:
  - (i) accept the proposed Installation Work Lump Sum or any proposed new provisional sum contained in the Installation Notice Lump Sum Notice; or
  - (ii) not accept the proposed Installation Work Lump Sum.
- (d) The Principal will use its reasonable endeavours to notify the Contractor in writing of its decision pursuant to Clause 11A(c) within the time set out in the Annexure. A failure of the Principal to notify its decision within that time is not a breach of the Contract but it will be considered a delay caused by the Principal pursuant to a 35.5(b)(i) (subject to otherwise meeting the requirements of Clause 35.5).
- (e) Where the Principal elects not to accept the Contractor’s proposed Installation Work Lump Sum, the Principal may, in its absolute discretion, proceed to discuss and negotiate amendments to the

proposed Installation Work Lump Sum, or any proposed new provisional sum, with the Contractor. Following such discussions and negotiations, the Principal may request the Contractor to issue a new Installation Work Lump Sum Notice within a timeframe specified by the Principal. If such a request is made, the Contractor must issue a new Installation Work Lump Sum Notice in the specified timeframe and clauses 11A(b) to (i) will apply to that notice.

- (f) Where the Principal elects not to accept the Contractor's proposed Installation Work Lump Sum and Clause 11A(e) does not apply, the Installation Works will no longer form part of the work under the Contract and the Contract Sum will be adjusted by deleting the provisional sums for the Installation Works.
- (g) The Principal may in its absolute discretion and at any time, by notice in writing to the Contractor, elect to not proceed with the provisional sum items, including the Installation Works. The Contractor shall have no entitlement to any payment, fees, costs or damages on any basis in relation to the provisional sums not proceeding or a proposed Installation Work Lump Sum or new provisional sum not being accepted under this Clause. Any provisional sum items the Principal elects not to proceed with under this Clause 11A(g) will no longer form part of the work under the Contract and the Contract Sum will be adjusted by deleting the provisional sums for those items.
- (h) If a proposed Installation Work Lump Sum is accepted by the Principal pursuant to Clause 11A(c)(i), the Contract Sum is adjusted by:
  - (i) deducting the provisional sum included in the Construct Sum for the Installation Works; and
  - (ii) adding the Installation Work Lump Sum accepted by the Principal as a lump sum component of the Contract Sum.
- (i) If as part of the process in this Clause 11A, a new provisional sum is proposed by the Contractor and accepted by the Principal pursuant to Clause 11A(c)(i):
  - (i) the new provisional sum will be administered in accordance with Clause 11; and
  - (ii) if the new provision sum is not included in the Installation Work Lum Sum, then the Contract Sum will be adjusted by:
    - (A) deducting any provisional sum replaced by the new provisional sum; and
    - (B) adding the new provisional sum."

## 12. LATENT CONDITIONS

### 12.1. Definition

Delete the word "the" as appearing before the word "Contractor" in the third line of paragraph (a) and insert in its place the words "a competent and experienced".

### 12.2. Notification

No amendment

### 12.3. Extension of Time and Cost

No amendment

### 12.4. Time Bar

Delete "28 days" in the third line of the paragraph and insert in its place "20 business days".

## 13. PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

No amendment



## 14. LEGISLATIVE REQUIREMENTS

### 14.1. Complying with Legislative Requirements

Add new paragraphs at the end of Clause 14.1:

“Unless otherwise specified in the Annexure, the Contractor shall obtain confirmation of compliance with the *Building Act 1975* (Qld) or, if required, approval under the *Building Act 1975* (Qld), in respect of the design, from a Queensland Building and Construction Commission licensed Building Certifier.

The Contractor shall remain responsible for the design notwithstanding any approval or confirmation of compliance given under or in connection with the *Building Act 1975* (Qld), nor any review or approval of the design undertaken on behalf of the Principal.”

### 14.2. Changes in Legislative Requirements

No amendment

Add new subclause:

“

### 14.3. Work Health and Safety

(a) For the purposes of this Clause:

‘Act’ means the *Work Health and Safety Act 2011* (Qld);

‘construction project’, ‘construction work’ and ‘principal contractor’ have the same meaning as in the Regulation;

‘inspector’, ‘notifiable incident’, ‘regulator’, ‘structure’ and ‘workplace’ have the same meanings as in the Act;

‘Regulation’ means the *Work Health and Safety Regulation 2011* (Qld);

‘WHS Laws’ means the Act, the Regulation and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards.

(b) Where the work under the Contract comprises a construction project (i.e. a project that involves construction work of \$250,000 or more), and if the Annexure indicates that the Contractor is the nominated party for the purposes of this clause, then from the Date of Acceptance of Tender:

(i) the Principal engages the Contractor to be the principal contractor under the Regulation in relation to the work under the Contract and authorises the Contractor to:

(A) have management and control of the workplace at which the work under the Contract is being undertaken including the Site; and

(B) discharge the duties of the principal contractor under the Regulation.

(ii) the Contractor accepts the engagement as principal contractor from the Principal and agrees to fulfil all requirements and give effect to that engagement prior to commencing any of the work under the Contract;

(iii) the Contractor will comply with and discharge all obligations imposed on the Contractor, as principal contractor, as a person who conducts a business or undertaking and otherwise, by the WHS Laws;

(iv) the Contractor will consult with the Principal and will consult with the designers of the whole or any part of a structure to be constructed under the Contract, about how to ensure that risks to health and safety arising from the design are eliminated during construction of the work under the Contract or, if it is not reasonably practicable to eliminate the risks, minimise, so far as is reasonably practicable;

- (v) the Contractor will, in performing its obligations under the Contract, take into account and take appropriate action having regard to any information given to the Contractor by the Principal or any other person, about hazards and risks at or in the vicinity of the workplace where the work under the Contract is being carried out, and
  - (vi) without limiting paragraph (b)(iii), the Contractor will ensure its officers, workers and agents, subcontractors, and its subcontractors' officers, workers, and agents, discharge their respective duties under the WHS Laws in connection with the work under the Contract.
- (c) The Contractor will indemnify the Principal against any claim, action, demand, loss, damage, cost, or expense which may be brought against, or suffered or incurred by, the Principal as a result of or in connection with:
- (i) any breach of this Clause 14.3 by the Contractor;
  - (ii) any breach by the Contractor of its obligations under the WHS Laws; and
  - (iii) any enforcement of obligations imposed on the Contractor under the WHS Laws.
- (d) If a notifiable incident occurs at the workplace at which the work under the Contract is being undertaken, the Contractor must:
- (i) immediately notify the regulator and the Superintendent of the notifiable incident and provide copies of any communications, notices or reports provided to or received from the regulator or any Authority regarding the notifiable incident to the Superintendent;
  - (ii) take all reasonably practicable steps to secure the Site where the notifiable incident occurred until an inspector arrives at the Site or any earlier time that an inspector directs;
  - (iii) conduct a thorough investigation in relation to the root cause and contributing factors of the notifiable incident and provide a copy of the written investigation report within 10 business days of the Superintendent's request; and
  - (iv) if the Principal wishes to conduct its own investigation, provide the Principal with reasonable assistance (including access to relevant documents and the Contractor's personnel) in investigating any such notifiable incident.
- (e) Without limiting any other obligation of the Contractor under the Contract, or the WHS Laws, if material which might contain asbestos or other hazardous substance is discovered, the Contractor must:
- (i) immediately notify the Superintendent; and
  - (ii) comply with all applicable obligations and restrictions imposed by the WHS Laws.
- (f) If the Contractor is not the nominated party for the purposes of this clause, the Contractor shall comply with all work health and safety requirements of the principal contractor appointed for the construction site while completing any construction work under the project at the construction site.
- (g) Notwithstanding and without limiting Clause 14.3(a) to (e) above, the Principal may at any time advise the Contractor, in writing, that it is not engaged as the principal contractor for the whole or any part of the work under the Contract and the Contractor acknowledge that it will be subject to the workplace health and safety requirements of the principal contractor on the Site.”

## 15. PROTECTION OF PEOPLE AND PROPERTY

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

Add new subclauses:

“

### 15.2. Occupational Health and Safety Audit

- (a) This Clause 15.2 will apply unless otherwise stated in the Annexure.

- (b) For the purposes of this Clause 15.2:  
 ‘Accredited Auditor (Construction)’ means a person accredited by Workplace Health and Safety Queensland as an occupational health and safety auditor to undertake auditing pursuant to the *Work Health and Safety Act 2011* (Qld).
- (c) Within 10 Working Days of the Date of Acceptance of Tender, the Contractor must engage an Accredited Auditor (Construction) to perform the functions specified in the Contract.
- (d) The cost of performance by the Accredited Auditor (Construction) of the required functions will be reimbursed by the Principal in accordance with the Contract. The reimbursable amount will be a debt due from the Principal to the Contractor.
- (e) The Contractor must ensure that the Accredited Auditor (Construction) engaged under Clause 15.2(c) has not:
- (i) in the two years prior to the Date of Acceptance of Tender, had a business or employment relationship with the Contractor including without limitation where the Accredited Auditor (Construction) has, either personally or as an employee or an agent of another person or entity, been involved in the development and/or maintenance of the Contractor’s occupational health and safety management system in any capacity other than by reason of having been engaged as an Accredited Auditor (Construction); or
  - (ii) been engaged by the Contractor as an Accredited Auditor (Construction) more than three times within a 12-month period to perform the functions specified in the Contract.
- (f) The Contractor must provide copies of all reports and any corrective action notices received from the Accredited Auditor (Construction) to the Superintendent within 3 Working Days of receipt. In relation to corrective action notices, in addition to any other avenues available under the Contract:
- (i) the Superintendent may direct the Contractor, by written notice, to carry out any required corrective action within the time specified in the Superintendent’s notice; or
  - (ii) the Principal may take action under Clause 39.
- (g) A direction given under Clause 15.2(f)(i) constitutes a direction under Clause 30.3. If such a direction is given, the Contractor must inform the Superintendent in writing immediately upon completion of the corrective actions.

### 15.3. Work Health and Safety Accreditation Scheme

- (a) If stated in the Annexure, this Clause 15.3 will apply.
- (b) For the purposes of this Clause:  
 ‘builder’, ‘building work’ and ‘WHS Accreditation Scheme’ have the same meanings as in the *Federal Safety Commissioner Act 2022* (Cth).
- (c) The builder must maintain accreditation under the WHS Accreditation Scheme while building work is carried out.
- (d) The builder must comply with all conditions of the WHS Accreditation Scheme accreditation.”

## 16. CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

### 16.1. Care of the Work Under the Contract

Delete the first paragraph and insert:

“Except as provided in Clause 16.3, the Contractor shall be responsible for:

- (a) the care of the whole of the work under the Contract from and including the date of commencement of the work under the Contract to 4:00 pm on the Date of Practical Completion, at which time, the

responsibility for the care of the Works (except to the extent provided in Clauses 16.1(b) and (c)) shall pass to the Principal;

- (b) where Clause 16.4(a) applies, the care of the Modular Building from 4.00pm on the Date of Practical Completion until the Principal is deemed to take possession of the Modular Building or each Module, as applicable, pursuant to Clause 16.4(c), at which time, the responsibility for the care of the Modular Building or each Module, as applicable, shall pass to the Principal; and
- (c) the care of outstanding work and items to be removed from the Site by the Contractor after 4:00 pm on the Date of Practical Completion until completion of outstanding work or compliance with the Contractor's obligations under Clauses 30, 31 and 37."

Add new paragraph at the end of Clause 16.1:

"The Contractor acknowledges and agrees that the work under the Contract relates to works performed at the Construction Site and works performed at the facility where the Modular Building or any Module is constructed, and that the obligations of the Contractor to care for the work under the Contract pursuant this Clause applies to work under the Contract performed at the Construction Site, the facility where the Modular Building or any Module is constructed, and the transportation of any of the work under the Contract, including the Modular Building and any Module, between the facility where the Modular Building or any Module is constructed, the Construction Site and, where applicable, the nominated holding site for the Modular Building or any Module."

#### 16.2. Reinstatement

Delete the first paragraph and insert:

"If loss or damage occurs to the work under the Contract, the Modular Building or relevant Module, as applicable, during the period for which the Contractor is responsible for the care thereof (other than loss or damage caused by any of the Excepted Risks referred to in Clause 16.3), the Contractor shall, at the Contractor's cost, rectify such loss or damage so that the work under the Contract, Modular Building or relevant Module, as applicable, conforms in every respect with the provisions of the Contract."

#### 16.3. Excepted Risks

No amendment

Add new subclause:

"

#### 16.4. Storage of Modular Building after Practical Completion

- (a) Where, pursuant to Clause 11A, the Installation Works will no longer form part of the work under the Contract, the Principal must either:
  - (i) within a reasonable period after the issue of the Certificate of Practical Completion (not exceeding 20 Business Days), take possession of and remove the Modular Building or relevant Modules from the possession of the Contractor; or
  - (ii) at any time up to 20 Business Days after the issue of the Certificate of Practical Completion, issue a written notice to the Contractor requiring the Contractor to store the Modular Building or any Modules for a period of up to 12 months after the Date of Practical Completion, following which the Principal will take possession of and remove the Modular Building or any relevant Modules from the possession of the Contractor.

A delay by the Principal in taking possession of the Modular Building or any Module does not affect the timing of the passing of risk pursuant to Clause 16.1(b) and 16.2 or the responsibility of the Contractor to maintain insurance pursuant to Clause 19A until possession is deemed to have passed to the Principal pursuant to Clause 16.4(c).

- (b) Where Clause 16.4(a) applies:
- (i) for the storage of the Modular Building or relevant Modules after the Date of Practical Completion, the Principal will pay to the Contractor the Holding Rate, for which the Contractor may issue separate monthly payment claims pursuant to Clause 42 solely for the purpose of claiming the Holding Rate;
  - (ii) where the Principal issues a notice under Clause 16.4(a)(ii) nominating a storage period of less than 12 months from the Date of Practical Completion, the Principal may issue further written notices extending the period of storage for up to a total storage period of 12 months after the Date of Practical Completion;
  - (iii) until the Principal takes possession of the Modular Building or relevant Modules, the Contractor must:
    - (A) store the Modular Building or relevant Modules at a facility that meets the requirements of the Contract and that is otherwise acceptable to Principal;
    - (B) continue to comply with Clause 42.10(d); and
    - (C) take steps to ensure the Modular Building or relevant Modules are kept in “as new” condition; and
  - (iv) unless directed otherwise by the Principal, the Contractor must at its own cost provide cranes to load the Modular Building or relevant Modules onto the transport provided by the Principal.
- (c) The Modular Building or each relevant Module is deemed to come into the possession of the Principal:
- (i) if the Contractor undertakes the loading of the Modular Building or Modules onto the Principal’s transport, upon completion of the loading of the Modular Building or of each Module; or
  - (ii) if the Principal gives notice pursuant to Clause 16.4(b)(iv) that the Principal is to take responsibility for the loading of Modular Building or relevant Modules, upon commencement of the loading of the Modular Building or of each Module.”

Add new Clause:

“

## 16A. HEAVY VEHICLE NATIONAL LAWS

- (a) For the purposes of this Clause:
- ‘COR Laws’ means any section of the Heavy Vehicle National Law under which the Contractor is “a party in the chain of responsibility” (within the meaning given to that term under the Heavy Vehicle National Law);
- ‘COR Systems’ means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with the COR Laws;
- ‘Heavy Vehicle National Laws’ means the following legislation to the extent it applies in the jurisdiction in which the works under the Contract are being carried out:
- (i) *Heavy Vehicle National Law Act 2012* (Qld);
  - (ii) *Heavy Vehicle National Law (NSW) within the meaning of that term under the Heavy Vehicle (Adoption of National Law) Act 2013* (NSW); or
  - (iii) *Heavy Vehicle National Law (Victoria) within the meaning of that term under the Heavy Vehicle National Law Application Act 2013* (Vic),
- and related:
- (iv) regulations;

- (v) codes of practice;
  - (vi) other compliance codes;
  - (vii) directions on safety or notices issued by any relevant Authority; and
  - (viii) standards,
    - relevant and applicable to any part of the work under the Contract; and
- terms which are defined in the Heavy Vehicle National Law have the meanings given in the Heavy Vehicle National Law.
- (b) Without limiting the Contractor's obligations under the Contract, the Contractor warrants that it is familiar with and has the capability and resources to comply with the Heavy Vehicle National Laws.
  - (c) The Contractor acknowledges that, save where the Principal arranges its own transportation of the Modular Building or any Module pursuant to Clause 16.4, the Contractor is the primary duty holder under the COR Laws with responsibility for developing COR Systems;
  - (d) The Contractor must:
    - (i) ensure that:
      - (A) any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits and are appropriately secured;
      - (B) operators carrying freight containers have a valid container weight declaration; and
      - (C) drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements; and
    - (ii) undertake any audits or monitoring as requested by the Superintendent to demonstrate compliance with this Clause 16A.
  - (e) The Contractor must, and must ensure that all subcontractors, for the duration of the works under the Contract, comply with their obligations under the Heavy Vehicle National Laws and upon request provide the Principal with evidence of compliance with their obligations, including:
    - (i) fatigue and speed management requirements;
    - (ii) proper maintenance of heavy vehicles requirements; and
    - (iii) mass, dimension and loading requirements relating to heavy vehicles.
  - (f) The Contractor agrees to co-operate with and do all things necessary to assist the Principal in discharging its obligations under the Heavy Vehicle National Laws, including:
    - (i) co-operating fully with any monitoring activities undertaken by the Principal to satisfy itself that the Heavy Vehicle National Laws have been complied with and will continue to be complied with; and
    - (ii) ensuring the Principal is provided with any information or assistance the Principal may reasonably require to comply with any duties, obligations or requirements it may have under the Heavy Vehicle National Laws.
  - (g) The Contractor must immediately inform the Principal upon becoming aware of any non-conformance by it or any subcontractor of the Heavy Vehicle National Laws, whether the subject of regulatory investigation or not.
  - (h) The Contractor must ensure the non-conformance is investigated and must cooperate with the Principal in relation to the investigation of the non-conformance, and where appropriate, will take steps to ensure the immediate rectification of the non-conformance."

**17. DAMAGE TO PERSONS AND PROPERTY**

No amendment

**18. INSURANCE OF THE WORK UNDER THE CONTRACT**

Delete from the first sentence of the last paragraph of Alternative 1 the words and punctuation “be in joint names of the Principal and the Contractor, and shall cover” and insert in their place the words “shall provide cover as insured parties to”.

**19. PUBLIC LIABILITY INSURANCE**

Delete from the first sentence of Alternative 1 the words “in the joint name of the Principal and the Contractor”.

Insert in the first sentence of Alternative 1 the words “as insured parties” after the words “which covers”.

Add new Clause:

“

**19A. INDUSTRIAL SPECIAL RISKS INSURANCE**

Where Clause 16.4(a) applies, on and from the Date of Practical Completion, the Contractor shall effect an industrial special risks policy or other type of policy acceptable to the Principal that lists the Principal as an insured in relation to the Modular Building or relevant Modules, as applicable, which covers the Principal and the Contractor for their respective rights and interests in relation to the Modular Building or relevant Modules, as applicable,. The insurance must cover the Contractor’s liabilities to the Principal arising under Clause 16.1(b) and 16.2 in relation to the Modular Building or relevant Modules, as applicable.

The policy of insurance required by this Clause 19A shall be for an amount in respect of any one occurrence not less than the sum stated in Annexure Part A and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal which approvals shall not be unreasonably withheld. The policy shall be maintained until the Principal is deemed to take possession of the Modular Building or the last relevant Module, as applicable, pursuant to Clause 16.4(c).”

**20. INSURANCE OF EMPLOYEES**

No amendment

**21. PROFESSIONAL INDEMNITY INSURANCE**

No amendment

**22. INSPECTION AND PROVISIONS OF INSURANCE POLICIES****22.1. Proof of Insurance**

No amendment

**22.2. Failure to Produce Proof of Insurance**

Delete the reference to “Clause 18, 19 or 20” and insert “Clause 18, 19, 19A or 20”.

Delete the reference to “Clauses 18, 19, 20 and 21” and insert “Clauses 18, 19, 19A, 20 and 21”.

**22.3. Notices from or to the Insurer**

Delete the reference to “Clause 18 or 19” and insert “Clause 18, 19 or 19A”.

**22.4. Notices of Potential Claims**

Delete the reference to “Clause 18 or 19” and insert “Clause 18, 19 or 19A”.

**22.5. Settlement of Claims**

Add the following new paragraph at the end of Clause 22.5:

“Upon settlement of a claim under the insurance required by Clause 19A, if the Contractor has not completed reinstatement of the Modular Building or relevant Modules, as applicable, moneys received shall, if requested by either party, be paid into a bank agreed upon by the parties (and where agreement is not reached in a reasonable time, a bank nominated by the Principal acting reasonably) in an account in the joint names of the Contractor and the Principal. As the Contractor proceeds to reinstate the loss or damage to the Modular Building or relevant Modules, as applicable, the Superintendent shall certify against the joint account for the cost of reinstatement.”

**22.6. Cross Liability**

Delete and insert the following new Clause:

“Any insurance required to be effected in accordance with the Contract by the Contractor in joint names or that is required to list the Principal as an insured, shall include a cross liability Clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term ‘insured’ as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).”

**23. SUPERINTENDENT**

Add new paragraph at the end of Clause 23:

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

**24. SUPERINTENDENT’S REPRESENTATIVE**

No amendment

**25. CONTRACTOR’S REPRESENTATIVE**

No amendment

**26. CONTROL OF CONTRACTOR’S EMPLOYEES AND SUBCONTRACTORS**

No amendment

**27. SITE****27.1. Access to and Possession of the Site**

No amendment

**27.2. Access for the Principal and Others**

No amendment

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

No amendment

**27.4. Use of the Site by the Contractor**

No amendment

**27.5. Finding of Minerals, Fossils and Relics**

No amendment



Add new subclause:

“

## 27.6. Extra Land Required by Contractor

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

## 28. SETTING OUT THE WORKS

No amendment

## 29. MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

### 29.1. Provision of Materials, Labour and Constructional Plant

No amendment

Add new subclauses:

“

#### 29.1A Training Policy

- (a) For the purposes of Clause 29.1A:

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

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

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

‘DTATSIPCA’ means the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts;

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

- (i) for building projects, except for Major building projects – Contract Sum (including GST) x 0.0006; and
- (ii) for Major building projects – Contract Sum (including GST) x 0.0009;

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

‘Eligible Project’ means a contract where:

- (i) the work under the Contract is carried out in Queensland; and
- (ii) the Contract Sum is \$500,000 or greater (including GST);

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

- (i) the Contractor;

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

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

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

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

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

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

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

- (b) Clause 29.1A applies if the Contract is an Eligible Project.
- (c) The Contractor must comply with the Training Policy and must:
  - (i) within 10 Working Days of the Date of Acceptance of Tender submit the Compliance Plan electronically in TPAS, and as soon as possible afterwards provide a copy of the TPAS email notification for the submitted Compliance Report to the Superintendent;
  - (ii) allocate a minimum of 60% of the Deemed Hours towards the employment of new entrant Apprentices and Trainees, as required by the Training Policy;
  - (iii) for the remaining Deemed Hours not allocated under Clause 29.1A(c)(ii), undertake other workforce training, as required by the Training Policy;
  - (iv) provide the privacy statement contained in the schedule attached to these Conditions to each Apprentices or Trainees regarding the collection and use of personal information; and
  - (v) within 15 Working Days of the date of Practical Completion, or, if there is more than one, the last occurring date of Practical Completion, submit the Practical Completion Report electronically in TPAS, and as soon as possible afterwards provide a copy of the TPAS email notification for the submitted Practical Completion Report to the Superintendent.
- (d) If the Annexure states that the Contract is an Indigenous Project, the Contractor must also:
  - (i) within 10 Working Days of the Date of Acceptance of Tender submit the IEO Plan as part of the Compliance Plan electronically in TPAS, and as soon as possible afterwards provide a copy of the TPAS email notification for the submitted IEO Plan as part of the Compliance Plan to the Superintendent;
  - (ii) prioritise the employment of Aboriginal or Torres Strait Islander Apprentices and Trainees, and local Aboriginal and Torres Strait Islander workers to meet the Deemed Hours requirement under Clause 29.1A(c)(ii);
  - (iii) allocate an additional amount towards the IEO Plan, which must be a minimum of 3% of the Contract Sum including GST; and
  - (iv) within 15 Working Days of the Date of Practical Completion, or if there is more than one the last occurring Date of Practical Completion, submit the achievement of outcomes against the IEO

Plan as part of the Practical Completion Report submitted electronically in TPAS, with a copy of the TPAS email notification to the Superintendent.

- (e) For Major building projects, the Contractor must also:
  - (i) develop a skills development plan;
  - (ii) deliver training linked to occupational outcomes in applicable national accredited training packages; and
  - (iii) employ a training coordinator to ensure the implementation of the skills development plan.
- (f) Nothing in Clauses 29.1A(c), 29.1A(d) or 29.1A(e) limits or alters the Contractor's obligation to comply with the Training Policy generally.
- (g) The Contractor acknowledges that failure to comply in part or in whole with the requirements of Clause 29.1A and non-compliance with the Training Policy will be considered in any review of a contractor's eligibility to tender for future Queensland Government contracts in addition to any other sanctions that may apply.

### 29.1B Queensland Charter for Local Content

This Clause applies if specified in the Annexure.

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

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

### 29.1C Queensland Procurement Policy

- (a) The Contractor must, and must ensure its subcontractors:
  - (i) in carrying out the work under the Contract, comply with the principles of the Queensland Procurement Policy and any requirements under the Contract in this regard; and
  - (ii) for the term of the Contract, comply with the Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct.
- (b) The Contractor acknowledges that a failure to comply with government policies and legislation that apply to the work under the Contract or the Contractor's obligations under the Contract can result in the imposition of a penalty under the Ethical Supplier Mandate, in addition to any other remedies available to the Principal under this Contract.
- (c) The Contractor:
  - (i) consents to a relevant Government Department or Instrumentality providing information to the Principal and the QGP Compliance Branch; and
  - (ii) authorises the Principal and the QGP Compliance Branch to obtain information;
 

about the Contractor's compliance with government policies and legislation, including without limitation the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct, the Queensland Government Building and Construction Training Policy, the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld).

**29.2. Removal of Materials and Constructional Plant**

No amendment

**29.3. Manufacture and Supply of Materials**

No amendment

Add new subclause:

“

**29.4. Site Personnel Register**

- (a) From the commencement of work under the Contract until Practical Completion, the Contractor must maintain a register in the form attached to these Conditions ('Site Personnel Register') of all individuals who carry out work under the Contract on the Site.
- (b) The Site Personnel Register must be available for inspection at all times by the Superintendent.
- (c) The Contractor must provide statistical information in the form attached to these Conditions ('Site Personal Register Summary') to the Superintendent every 13 weeks and at such other times as the Superintendent may direct.”

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

No amendment

**30.2. Quality Assurance**

No amendment

**30.3. Defective Material or Work**

Delete “8 days” in the fourth line of the third paragraph and insert in its place “5 Working Days”.

Add to the end of the subclause:

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

**30.4. Variations due to Defective Material or Work**

No amendment

**30.5. Acceptance of Defective Material or Work**

No amendment

**30.6. Generally**

No amendment

**31. EXAMINATION AND TESTING**

No amendment

**32. WORKING HOURS**

Amend the Clause heading to “32. WORKING HOURS AND WORKING DAYS”

Delete/Insert:

“The Working Hours and Working Days shall not be varied without the prior approval of the Superintendent except when in the interests of safety of the work under the Contract or to protect life or property the Contractor finds it necessary to carry out work outside the Working Hours or on other than the Working Days. In such cases the Contractor shall notify the Superintendent in writing of the circumstances as early as possible.

In approving a variation to the Working Hours or Working Days the Superintendent may attach conditions. Such conditions may include but are not limited to a prohibition of or restriction on the performance of work which requires inspection and may also include a requirement that the Contractor meets the costs of contract administration including but not limited to costs of inspections by or on behalf of the Principal, of work during times approved by the Superintendent that are outside of the permitted Working Hours.”

### **33. PROGRESS AND PROGRAMMING OF THE WORKS**

No amendment

### **34. SUSPENSION OF THE WORKS**

#### **34.1. Suspension by the Superintendent**

No amendment

#### **34.2. Suspension by the Contractor**

No amendment

#### **34.3. Recommencement of Work**

No amendment

#### **34.4. Cost of Suspension**

Add to the end of the subclause:

“The amount to which the Contractor is entitled under this Clause 34.4 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, a suspension under Clause 34.1 or 34.2, and the Contractor may not make any claim against the Principal arising out of, or in any way in connection with, a suspension under Clause 34.1 or 34.2, other than for any amount payable under this Clause 34.4 and an extension of time under Clause 35.5.”

#### **34.5. Effect of Suspension**

No amendment

### **35. TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION**

#### **35.1. Commencement**

No amendment

#### **35.2. Time for Practical Completion**

No amendment

#### **35.3. Separable Portions**

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

Delete the second paragraph and insert in its place:

“The amount of security, retention moneys, liquidated damages or delay costs applicable to a Separable Portion shall be the respective amounts applicable to such proportion of those items applicable to the whole

of the work under the Contract as the value of the Separable Portion bears to the value of the whole of the work under the Contract, unless the Contract expressly nominates some other specific amount in respect of the particular separable portion.”

#### 35.4. Use of Partly Completed Works

No amendment

#### 35.5. Extension of Time for Practical Completion

Delete “28 days” in the second line of the third paragraph and insert in its place “20 business days”.

Delete subclause (b)(ii).

Delete “period of” in the third line of the eighth paragraph and insert in its place “number of Working Days”.

Delete “28 days” in the second line of the ninth paragraph and insert in its place “20 business days”.

Delete “number of days” in the second line of the ninth paragraph and insert in its place “number of Working Days”.

Delete “28 days” in the third line of the ninth paragraph and insert in its place “20 business days”.

Delete “28 days” in the fifth line of the ninth paragraph and insert in its place “20 business days”.

Delete “28 days” in the second line of the twelfth paragraph and insert in its place “20 business days”.

#### 35.6. Liquidated Damages for Delay in Reaching Practical Completion

No amendment

#### 35.7. Limit on Liquidated Damages

Delete

#### 35.8. Bonus for Early Practical Completion

Delete

### 36. DELAY OR DISRUPTION COSTS

Amend the Clause heading to read “36. DELAY COSTS”.

Express the existing provisions as “Alternative 1”.

Delete the words “or disruption” in the second and third paragraphs.

Insert new paragraph after the second paragraph:

“Notwithstanding the previous paragraph, the Contractor is not entitled to delay costs under this Clause 36 by reason of a suspension under Clause 34.1 or 34.2, but the Contractor may be entitled to costs for a suspension in accordance with Clause 34.4.”

Add new subclauses:

“

#### ***Alternative 2 (includes Clauses 36.1, 36.2 and 36.3)***

#### 36.2. Definitions

For the purposes of Clause 36:

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

'Delay Day' means each Working Day for which the Contractor has been granted an extension of time in respect of a Compensable Delay;

'Delay Rate' means the rate set out in the Schedule of Agreed Damages for Delay contained in the Tender Form, or if no Delay Rate is set out, the rate calculated according to the formula set out in the Schedule of Agreed Damages for Delay contained in the Tender Form;

'Provisional Number of Delay Days' means the 'Provisional Number of Delay Days' set out in the Schedule of Agreed Damages for Delay contained in the Tender Form.

### 36.3. Entitlement

- (a) Except as provided by this Clause or by Clause 40.5, the Contractor is not entitled to recover any additional payment for costs, losses or expenses or any damages or other compensation for delay or disruption in the execution or completion of the work under the Contract, however that delay or disruption may have been caused.
- (b) Where the Contractor has been delayed in reaching Practical Completion by a Compensable Delay, the Contractor shall only be entitled to recover from the Principal the amounts payable by way of agreed damages determined in accordance with Clause 36.3.
- (c) Notwithstanding Clause 36.2(b), the Contractor is not entitled to agreed damages under this Clause 36 by reason of a suspension under Clause 34.1 or 34.2, but the Contractor may be entitled to costs for a suspension in accordance with Clause 34.4.

### 36.4. Amount Payable

The agreed damages payable under Clause 36.2 shall be calculated as follows:

- (a) for each Delay Day up to and including twice the Provisional Number of Delay Days stated in the Schedule of Agreed Damages for Delay contained in the Tender Form, the Delay Rate; and
- (b) for each Delay Day in excess of twice the Provisional Number of Delay Days stated in the Schedule of Agreed Damages for Delay contained in the Tender Form, the higher of the Delay Rate and the rate calculated in accordance with the formula contained in that schedule.

The amount payable by the Principal to the Contractor under this Clause 36 is a limitation upon any liability which the Principal may have to the Contractor pursuant to the Contract, for breach of the Contract or otherwise according to law arising in connection with all and any delay howsoever caused or encountered by the Contractor in the execution of work under the Contract.

### 36.5. Adjustment of Contract Sum

If the total amount payable by the Principal to the Contractor pursuant to Clause 36.2 is greater or less than the Provisional Delay Allowance, the amount of such difference shall be added to or deducted from the Contract Sum, as the case may require and included in payment certificates issued by the Superintendent pursuant to Clause 42."

## 37. DEFECTS LIABILITY

Add to the end of the fourth paragraph:

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

## 38. CLEANING UP

Delete "14 days" in the first line of the second paragraph and insert in its place "10 business days".

## 39. URGENT PROTECTION

No amendment

## 40. VARIATIONS

### 40.1. Variations to the Work under the Contract

Add new paragraph at the end of Clause 40.1:

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

### 40.2. Proposed Variations

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

Delete paragraph (b) and replace with:

“

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

Delete the last sentence and replace with:

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

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

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

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

### 40.3. Pricing the Variation

Delete/Insert:

“Not Used”

### 40.4. Variations for the Convenience of the Contractor

No amendment



Add new subclause:

“

#### 40.4A Innovation

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

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

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

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

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

#### 40.5. Valuation

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

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

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

Delete paragraph (ii) and replace with the following:

“

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

Delete/insert the last paragraph:

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

**41. DAYWORK**

No amendment

**42. CERTIFICATES AND PAYMENTS****42.1. Payment Claims, Certificates, Calculations and Time for Payment**

Delete “14 days” in the first line of the fourth paragraph and insert in its place “10 business days”.

Delete “14 days” in the third line of the fifth paragraph and insert in its place “10 business days”.

Delete “28 days” in the first line of the sixth paragraph and insert in its place “15 business days”.

Delete “14 days” in the second line of the sixth paragraph and insert in its place “5 business days”.

Delete “14 days” in the third line of the sixth paragraph and insert in its place “5 business days”.

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

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

**42.2. Unfixed Plant and Material**

No amendment

**42.3. Certificate of Practical Completion**

Delete “14 days” in the first line of the first paragraph and insert in its place “10 business days”.

Delete “14 days” in the third line of the second paragraph and insert in its place “10 business days”.

**42.4. Effect of Certificates**

No amendment

**42.5. Final Payment Claim**

Delete “28 days” in the first line of the first paragraph and insert in its place “20 business days”.

**42.6. Final Certificate**

Delete “14 days” in the first line of the first paragraph and insert in its place “10 business days”.

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

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

Delete “21 days” in the second line of the second paragraph and insert in its place “15 business days”.

Delete the final paragraph and insert:

“Subject to the Principal’s rights to set-off pursuant to Clause 42.8 and to have recourse to security and retention pursuant to Clause 5.6, within 20 business days of the issuance of a Final Certificate which certifies a balance owing by the Principal to the Contractor, and later of:

- (i) the finalisation of any dispute that has been commenced in accordance with Clause 47; and
- (ii) the finalisation of any claim, adjudication or proceeding commenced pursuant to or in connection with the BIF Act, including proceedings commenced by the Principal to recover an amount the subject of a payment claim pursuant to the BIF Act,

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

**42.7. Interest on Overdue Payments**

No amendment

**42.8. Set Offs by the Principal**

Amend the subclause heading to “General Right of Set Off”

Delete/Insert:

“Without limiting the Principal’s rights under any other provision in the Contract and notwithstanding the provisions of or the issue of a certificate by the Superintendent under Clause 42.1 and 44.6, the Principal may deduct from any moneys due to the Contractor any sum which is payable by the Contractor to the Principal whether or not the Principal’s right to payment arises by way of damages, debt, restitution or otherwise and whether or not the factual basis giving rise to the Principal’s right to payment arises out of this Contract, any other contract, or is independent of any contract. If the moneys payable to the Contractor are insufficient to discharge the liability of the Contractor to pay such sum to the Principal, the Principal may have recourse to retention moneys (whether or not these are held by the Principal in alternative form pursuant to Clause 42.1, and if they are insufficient, to security provided under Clause 5.2 of the Contract. Nothing in this Clause shall affect the right of the Principal to recover from the Contractor the whole of such moneys or any balance that remains owing.”

**42.9. Recourse for Unpaid Moneys**

No amendment

Add new subclauses:

“

**42.10. Passing of Property and Risk in Modular Buildings**

- (a) Property in the Modular Building, whether partially or fully constructed, passes from the Contractor to the Principal upon the earlier of:
- (i) the time or circumstances provided for in the Contract (if any);
  - (ii) payment has been made by the Principal in respect of any part of the Modular Building;
  - (iii) the materials have or the component has become affixed to the Modular Building in respect of which property has passed to the Principal;
  - (iv) the Modular Building has been delivered to the Construction Site; or
  - (v) the time provided for in the *Goods Act 1958 (Vic)*, *Sale of Goods Act 1896 (Qld)* or the *Sale of Goods Act 1923 No 1 (NSW)* as applicable (as if the parties had not expressed an intention in respect of the passing of property).
- (b) If property in the Modular Building is not able to pass to the Principal as provided for in Clause 42.10(a), the Contractor must do all things necessary to procure the passing of property in the Modular Building to the Principal as soon as possible after the time required by Clause 42.10(a).
- (c) If requested by the Principal or the Superintendent, the Contractor must provide evidence of the ability of the Contractor to pass property to the Principal in accordance with this Clause 42.10 as a precondition to the completion of each Stage for the Modular Building.
- (d) Upon property passing to the Principal in the Modular Building and as a precondition to the completion of each Stage for the Modular Building, the Contractor must, to the satisfaction of the Principal:
- (i) store the Modular Building separately from other modular buildings that are not being constructed for the Principal under the Contract or another contract; and
  - (ii) prominently affix to the Modular Building and each Module a durable notice that the Modular Building is the property of the Principal and maintain that notice.
- (e) The Contractor must allow the Principal access to the location where the Modular Building is located whenever requested by the Principal to confirm compliance with the Clause 42.10(d).

- (f) Risk in the Modular Building, and any materials or components to be used for work under the Contract or the Works, remains with the Contractor, notwithstanding the passing of property, until the expiration of the period during which the Contractor is responsible for the care of the work under the Contract under Clause 16.

#### 42.11. Clear Personal Property Security Act Certificate

- (a) For the purposes of this Clause terms have the meanings given to them in the PPSA.
- (b) The Contractor:
- (i) must not seek to perfect a security interest in any property that is to be incorporated into the Works (including the Modular Building, any Module and any components thereof and whether partially or fully constructed) to which the PPSA applies (PPS Property);
  - (ii) agrees that the Principal may, but is not obliged to, perfect a security interest in any PPS Property under the PPSA;
  - (iii) must provide to the Principal all information and assistance to enable the Principal to register any financing statement or financing change statement (within the meaning of the PPSA);
  - (iv) must do everything, and must ensure that its employees and agents do everything, that the Principal may reasonably require to perfect any such security interest under the PPSA; and
  - (v) grants the Principal a charge over the Modular Building, any Module and any components thereof and whether partially or fully constructed in respect of which the Contractor has made a claim for payment under Clause 42.1.
- (c) The Contractor is obliged to provide a PPSA Clear Search Certificate (generated no more than 2 business days prior to the relevant payment claim) and a Certificate as to Title:
- (i) as a precondition to the completion of each Stage in respect of the Modular Building; and
  - (ii) with payment claims for the Modular Building (including for any of the payment stages for the Modular Building set out in the Annexure) by the Contractor made pursuant to Clause 42.
- (d) As a precondition to the completion of each Stage in respect of the Modular Building, the Contractor is also obliged to affix an Identification Number to the Modular Building and each Module to be the subject of a payment claim. The relevant Identification Numbers must be set out in any relevant Certificate as to Title and payment claim.

#### 42.12. Principal's Security Interest

- (a) For the purposes of this Clause 42.12:
- 'financing statement', 'financing change statement', 'personal property', 'registration', 'secured party' and 'verification statement' each have the meaning given to those terms in the PPSA.
- (b) The Contractor acknowledges and agrees that:
- (i) the Principal may:
    - (A) immediately upon the passing of property in the Modular Building or any Module to the Principal under Clause 42.10; and
    - (B) at any other time if and to the extent that the Principal forms a belief on reasonable grounds that the Principal is, or will become, a secured party arising out of or in connection with the Contract,at the Contractor's expense, take all steps that the Principal considers advisable to:
  - (C) perfect, protect, record, register, amend or remove the registration of, the Principal's Security Interest in any Modular Building, relevant Module or other personal property that is the subject of this Security Interest (Relevant Personal Property); and

- (D) better secure the Principal's position in respect of Relevant Personal Property under the PPSA;
  - (ii) it will do all things reasonably necessary to assist the Principal to take the steps described in Clause 42.12(b)(i);
  - (iii) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Principal in Relevant Personal Property;
  - (iv) if, and only if, the Principal is or becomes a secured party in relation to Relevant Personal Property, and to the extent only that Chapter 4 of the PPSA would otherwise apply to an enforcement of a Security Interest in Relevant Personal Property, the Contractor and the Principal agree that, pursuant to section 115 of the PPSA, the following provisions of the PPSA do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115: section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
  - (v) subject to section 275(7) of the PPSA, it will not disclose the contents of the Contract; the amount or performance obligation secured by the Principal's Security Interest in Relevant Personal Property and the other information mentioned in section 275(1) of the PPSA pursuant to section 275(4) of the PPSA;
  - (vi) it must immediately notify the Principal if it becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to Relevant Personal Property; and
  - (vii) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal's interest in Relevant Personal Property.
- (c) The Contractor must indemnify the Principal on demand from any claims against, or loss suffered or incurred by the Principal, arising out of or in connection with any breach by the Contractor of its obligations under Clause 42.12."

### 43. PAYMENT OF WORKERS AND SUBCONTRACTORS

Delete/Insert:

“

#### 43.1. Payment Claim Requirements

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

- (a) a statutory declaration, in the form attached to these Conditions, signed by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts, attesting that:
  - (i) all subcontractors and any sub subcontractors performing work under the Contract have been engaged in accordance with Clause 9.2;
  - (ii) the Site Personnel Register is current and correct, maintained in accordance with Clause 29.4;
  - (iii) the Contractor has fulfilled or complied with any commitments made in the Contractor's tender for the work under the Contract relating to the Local Benefits Test;
  - (iv) all the Contractor's workers who at any time have been engaged on work under the Contract by the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of a payment claim, in respect of their engagement on the work under the Contract;

- (v) if a project trust account is required for the Contract under the BIF Act, all subcontractors have been paid via the project trust account to the extent required by the BIF Act, and all withdrawals from the project trust account have been made in accordance with the BIF Act; and
- (vi) if required by the BIF Act, all retention moneys in relation to subcontractors have been paid into the Contractor's retention trust account and all withdrawals from the retention trust account have been made in accordance with the BIF Act; and

if requested in writing, reasonable supporting documentary evidence thereof;

- (b) either in the statutory declaration required by Clause 43.1(a) or by separate document, a supporting statement for the payment claim required by the BIF Act; and
- (c) if previously requested by the Superintendent, a signed statutory declaration in the form attached to these Conditions completed by any subcontractor, or where the subcontractor is a corporation, by a representative of the subcontractor who is in a position to know the facts, attesting that:
  - (i) all workers who have been engaged by a subcontractor of the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Contractor of a payment claim in respect of their engagement on the work under the Contract;
  - (ii) all subcontractors of the subcontractor have been paid all that is due and payable to such subcontractors up to the date of submission by the Contractor of a payment claim in respect of the work under the Contract; and
  - (iii) the subcontractor has fulfilled or complied with any commitments made in its tender for the subcontract works relating to the Local Benefits Test; and

if requested in writing, reasonable supporting documentary evidence thereof.

#### 43.2. Provision of Information to Subcontractor

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

#### 43.3. Principal Payment to Worker or Subcontractor

- (a) Unless under the BIF Act a project trust account is required for the Contract, at the request of the Contractor and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor make payment directly to a worker or subcontractor.
- (b) Unless under the BIF Act a project trust is required for the Contract, if a worker or subcontractor obtains a court order in respect of moneys unpaid and the subject of a statutory declaration under Clause 43.1, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

#### 43.4. Project Trusts

- (a) Terms defined by the BIF Act as relevant to the operation of Chapter 2 of the BIF Act and used (without separate definition) in this Clause 43.4, shall have the meaning given to them by the BIF Act.
- (b) If:
  - (i) at the time of entry into this Contract, a project trust is not required; and
  - (ii) the Contract later becomes a contract for which a project trust is required,

the Contractor must give the Superintendent and Principal written notice of that change promptly (and within 5 business days) of the date on which the Contract becomes a contract for which a project trust is required.

- (c) If a project trust is required for the Contract:
  - (i) the Contractor must open and maintain a project trust account and retention trust account in accordance with the BIF Act; and
  - (ii) if a notice is required by the BIF Act to be given to the Principal in respect of or relating to the project trust or project trust account, the Contractor shall give that notice in writing to the Superintendent and Principal at the address stated in the Contract or last communicated in writing to the Contractor.
- (d) Nothing in this Clause affects the requirements of Clause 9.2.
- (e) The Contractor must ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the BIF Act.”

## 44. DEFAULT OR INSOLVENCY

### 44.1. Preservation of Other Rights

No amendment

### 44.2. Default by the Contractor

Delete “and” at the end of paragraph (g).

Delete paragraph (h).

Add the following paragraphs:

“

- (h) failing to lodge a Deed of Guarantee Undertaking and Substitution in breach of Clause 5.11;
- (i) failing to comply with or breaching in any respect the requirements of Clause 6.3;
- (j) failing to comply in any respect with the requirements of Clause 9.2;
- (k) failing to maintain all necessary licences that are required for the Contractor to perform all of its obligations under the Contract, in breach of Clause 14.1;
- (l) failing to establish a project trust account as required by the BIF Act, in breach of Clause 14.1 and Clause 43.4;
- (m) failing to establish a retention trust account as required by the BIF Act, in breach of Clause 14.1;
- (n) failing to comply with an obligation of the Contractor set out in Part 2, Divisions 4 and 5 of Chapter 2 of the BIF Act, in breach of Clause 14.1;
- (o) failing to comply with an obligation of the Contractor set out in Part 3, Divisions 4 and 5 of Chapter 2 of the BIF Act, in breach of Clause 14.1;
- (p) providing with a payment claim a supporting statement required by the BIF Act, which is false or misleading, in breach of Clause 14.1;
- (q) failing to comply in any respect with the requirements of Clause 15.2;
- (r) failing to comply in any respect with the requirements of Clause 3.5, Clause 29.1A or Clause 29.1C;
- (s) failing to comply in any respect with the requirements of Clause 29.4;
- (t) failing to comply with any requirement or request made pursuant to the requirements of Clause 43;
- (u) providing a statutory declaration pursuant to Clause 43 which is false, misleading, or deceptive in any respect; and/or
- (v) committing an act of insolvency as defined by Clause 44.11.”

**44.3. Requirements of a Notice by the Principal to Show Cause**

Delete from subclause (d) the words and punctuation:

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

**44.4. Rights of the Principal**

Replace the second paragraph with the following:

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

(c) the Contractor is not entitled to make a claim for payment; and

(d) the Principal may suspend payments to the Contractor

until the earlier of:

(i) the date upon which the Contractor shows reasonable cause;

(ii) the date upon which the Principal takes action under Clause 44.4(a) or (b); or

(iii) the date which is 5 business days after the last day for showing cause in the notice under Clause 44.2.”

**44.5. Procedure when the Principal Takes Over Work**

Delete/Insert:

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

If the Principal takes possession of Constructional Plant or other things, the Principal shall maintain the Constructional Plant, and subject to Clause 44.6, on completion of the Works the Principal shall return to the Contractor the Constructional Plant and any things taken under this Clause which are surplus.”

**44.6. Adjustment on Completion of the Work Taken Out of the Hands of the Contractor**

No amendment

**44.7. Default of the Principal**

Delete “14 days” in the third line of paragraph (f) and insert in its place “10 business days”.

**44.8. Requirements of a Notice by the Contractor to Show Cause**

Delete “7 clear days” in the second line of paragraph (d) and insert in its place “5 business days”.

**44.9. Rights of the Contractor**

Delete “28 days” in the second line of the second paragraph and insert in its place “20 business days”.

**44.10. Rights of the Parties on Termination**

No amendment

**44.11. Insolvency**

Delete/Insert:

“If:

(a) the Contractor informs the other party in writing or creditors generally that the Contractor is insolvent, or it is financially unable to proceed with the Contract;



- (b) execution is levied against the Contractor by a creditor;
- (c) the Contractor, being an individual person, or a partnership including an individual person, and that person:
  - (i) commits an act of bankruptcy;
  - (ii) has a bankruptcy petition presented against it;
  - (iii) presents a debtor's petition or a declaration of an intention to present a debtor's petition to the Official Receiver;
  - (iv) is made bankrupt;
  - (v) under Part IX of the *Bankruptcy Act 1966* (Cth):
    - (A) makes a written proposal for a debt agreement; and
    - (B) the proposal becomes a debt agreement; or
  - (vi) makes a proposal for a deed of assignment, deed of arrangement or a composition; or
  - (vii) under Part X of the *Bankruptcy Act 1966* (Cth):
    - (A) has a deed of assignment or deed of arrangement made;
    - (B) accepts a composition;
    - (C) is required to present a debtor's petition, or
    - (D) has a sequestration order made; or
- (d) the Contractor is a corporation and:
  - (i) a notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (ii) the Contractor enters a deed of company arrangement with creditors;
  - (iii) a controller or administrator is appointed;
  - (iv) a meeting of creditors is called with a view to:
    - (A) entering a scheme of arrangement or composition with creditors; or
    - (B) appointing a controller or administrator to the party;
  - (v) a receiver of the property or part of the property of the Contractor is appointed;
  - (vi) the Contractor takes or commences or has taken, commenced or instituted against it any process, action or proceeding, whether voluntary or compulsory, which has an object or may result in the winding up of the company, other than a voluntary winding up by members for the purpose of reconstruction or amalgamation, or a controller or administrator is appointed or enters into a compromise or other arrangement with its creditors or a receiver or receiver and manager is appointed to carry on the Contractor's business for the benefit of the creditors or any of them;
  - (vii) a winding up order is made; or
  - (viii) execution is levied by creditors, debenture holders or trustees or under a floating charge;

then the Principal may, without giving a notice to show cause, exercise the rights under Clause 44.4(a) or 44.4(b).

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

Add new subclause:

“

#### 44.12. Stay on Rights

The rights given by this Clause 44 are subject to any restrictions on their enforcement under Part 5.1, Part 5.2, or Division 17 of Part 5.3A *Corporations Act 2001* (Cth).”

### 45. TERMINATION BY FRUSTRATION

No amendment

### 46. NOTIFICATION OF CLAIMS

#### 46.1. Communication of Claims

No amendment

#### 46.2. Liability for Failure to Communicate

No amendment

#### 46.3. The Prescribed Notice

No amendment

#### 46.4. Superintendent’s Decision

Delete “28 days” in the first line of the first paragraph and insert in its place “20 business days”.

Delete “56 days” in the first line of the second paragraph and insert in its place “40 business days”.

Delete “28 days” in the third line of the second paragraph and insert in its place “20 business days”.

#### 46.5. Time for Disputing Superintendent’s Direction

Delete “28 days” in the last line of the paragraph and insert in its place “20 business days”.

### 47. DISPUTE RESOLUTION

#### 47.1. Notice of Dispute

No amendment

#### 47.2. Further Steps Required Before Proceeding

##### *Alternative 1*

Delete “14 days” in the first line of the first paragraph and insert in its place “10 business days”.

Delete “28 days” in the first line of the second paragraph and insert in its place “20 business days”.

##### *Alternative 2*

Delete “28 days” in the second line of the first paragraph and insert in its place “20 business days”.

Delete “42 days” in the first line of the second paragraph and insert in its place “30 business days”.

Delete “14 days” in the first line of the second paragraph and insert in its place “10 business days”.

Delete “14 days” in the third line of the third paragraph and insert in its place “10 business days”.

Delete “14 days” in the fourth line of the third paragraph and insert in its place “10 business days”.

Delete “28 days” in the first line of the fourth paragraph and insert in its place “20 business days”.

**47.3. Arbitration**

No amendment

**47.4. Summary Relief**

No amendment

**48. WAIVER OF CONDITIONS**

No amendment

Add new Clauses:

“

**49. RECORDS AND ACCESS TO RECORDS**

(a) The Contractor shall make and keep and shall ensure that every subcontractor makes and keeps accurate and complete records of:

- (i) the Contractor's or a subcontractor's tender, including without limitation the preparation and submission of that tender;
- (ii) tenders received by it, whether accepted or not;

the execution and completion of the work under the Contract or of the work under the subcontract; and

- (iii) compliance with commitments made in the Contractor's tender or a subcontractor's tender relating to or required by government policies including but not limited to the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Queensland Government Building and Construction Training Policy.
- (b) The records referred to in Clause 49(a) shall include records that are required to be created or provided, or that are otherwise referred to, under the Contract or under the subcontract, as well as other records including but not limited to those that:
- (i) relate to the Contractor's tender or a subcontractor's tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;
  - (ii) relate to design, including design calculations, option studies, opinions, reviews, and reports;
  - (iii) relate to the execution and completion of the work under the Contract or a 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 49(a)(iv) 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) The records referred to in Clause 49(a) shall not be destroyed without the prior written approval of the Principal.
- (d) Without limiting any other rights or obligations under this Clause 49, the Principal and the QGP Compliance Branch may, at any time after giving written notice to the Contractor that an audit shall be undertaken pursuant to this Clause, undertake an audit in respect of the Contractor's compliance with Clause 9.2. In undertaking the audit, the Principal and the QGP Compliance Branch, shall have the right to inspect and copy any record referred to in Clause 49(a) and to access any of the Contractor's

systems and processes which are in any way connected with subcontracting. Upon receipt of written notice of the audit pursuant to this Clause 49(d), the Contractor shall promptly and at its own cost provide the Principal and the QGP Compliance Branch with every reasonable facility necessary to undertake the audit, including but not limited to:

- (i) providing to the Principal and the QGP Compliance Branch any record requested for inspection or copying pursuant to Clause 49(e);
  - (ii) making staff available to the Principal and the QGP Compliance Branch to access or explain systems, processes or any record referred to in Clause 49(a); and
  - (iii) arranging and providing access to the Contractor's or subcontractor's workplaces, sites, premises, or facilities.
- (e) Subject to the Contractor's right to claim legal professional privilege in respect of any record, which is hereby maintained, the Principal and the QGP Compliance Branch shall have the right to inspect and to copy at any time any record referred to in Clause 49(a). In the case of any records referred to in Clause 49(a) stored on a medium other than in writing, the Contractor shall make available forthwith upon request such facilities as may be necessary to enable a legible reproduction thereof to be provided to the Principal and the QGP Compliance Branch.
- (f) Where a record referred to in Clause 49(a) is created, maintained or stored by the Contractor or a subcontractor in an electronic format, it shall be provided to the Principal in its native, operable form or such other format as may be reasonably required by or acceptable to the Principal.
- (g) Where a record referred to in Clause 49(a) is stored on a medium licensed from a third party, where the Principal is a party to the communication, the Contractor must provide the Principal with a copy of such records in an external electronic storage device, readable on the Principal's information technology system, or such other format as may be reasonably required by the Principal, each month until the issuance of the Final Certificate.
- (h) The Contractor shall comply in all respects with any request made pursuant to Clause 49(e) to inspect or copy records referred to in Clause 49(a), or any audit undertaken pursuant to Clause 49(d), and shall not be entitled to refuse audit, inspection or copying of any record referred to in Clause 49(a) on any basis whatsoever other than on the basis that legal professional privilege attaches to the record.
- (i) Records accessed under Clause 49(d) or 49(e) may be used to assess the Contractor's or its subcontractors' compliance with the Contract, the subcontract, the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Queensland Government Building and Construction Training Policy and may be shared with relevant Government Departments or Instrumentalities for the purposes of the making of a recommendation about compliance with the Queensland Procurement Policy, the Local Benefits Test, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Queensland Government Building and Construction Training Policy.
- (j) The Principal and the QGP Compliance Branch may in their absolute discretion, publish information about the Contractor's or a subcontractor's compliance with the Ethical Supplier Mandate, including but not limited to any sanctions or penalties imposed, and the parties acknowledge and agree that to do so will not constitute a breach of this Contract by the Principal nor give rise to any other right or remedy of the Contractor at law or in equity against the Principal or the QGP Compliance Branch.

## 50. INFORMATION PRIVACY

- (a) For the purposes of this Clause:

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

- (b) If the Contractor collects or has access to Personal Information in order to carry out work under the Contract, the Contractor must:
- (i) if the Principal is an ‘agency’ within the meaning of the *Information Privacy Act 2009* (Qld) (“IPA”), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Contractor was the Principal;
  - (ii) not use Personal Information other than in connection with carrying out work under the Contract, unless required or authorised by law;
  - (iii) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law;
  - (iv) ensure that its officers, employees, agents, and subcontractors do not access, use, or disclose Personal Information other than in connection with carrying out work under the Contract;
  - (v) ensure that its subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this Clause;
  - (vi) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual’s Personal Information and to privacy complaints; and
  - (vii) comply with such other privacy and security measures as the Principal may reasonably require from time to time.
- (c) On request by the Principal, the Contractor must obtain from its employees, officers, agents, or subcontractors carrying out work under the Contract, an executed deed of privacy in a form acceptable to the Principal.
- (d) The Contractor must immediately notify the Principal on becoming aware of any breach of Clause 50.
- (e) The Contractor acknowledges that in accordance with the Contract, the Superintendent, the Principal and the QGP Compliance Branch:
- (i) will collect information for the purposes of administering the Contract that may contain Personal Information, which will be used in accordance with the Contract and may be disclosed to the Superintendent, the Principal, the QGP Compliance Branch and agents, consultants, or other contractors engaged by the Principal, but will not be disclosed to any other third party without the Contractor’s consent unless authorised or required by law or the Contract; and
  - (ii) may collect information containing Personal Information for the purposes of determining the Contractor’s compliance with the Ethical Supplier Threshold and the Ethical Supplier Mandate which may be disclosed to the Tripartite Procurement Advisory Panel for compliance purposes, but will not be disclosed to any other third party without the Contractor’s consent unless authorised or required by law or the Contract.
- (f) Personal Information will be handled in accordance with the IPA.
- (g) This Clause will survive the termination or expiry of the Contract.

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

### 51.1. Definitions

For the purposes of this Clause:

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

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

**51.2. Payment of GST**

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

- (a) any amount which the Contract provides:
  - (i) is to be the amount of the consideration;
  - (ii) is to (or may) be used to calculate the amount of the consideration (and the amount of the consideration so calculated); or
  - (iii) is included (provisionally or otherwise) in the consideration,shall be taken to include GST payable in connection with the taxable supply unless the amount is specifically stated to exclude GST;
- (b) where, despite Clause 51.2(a), any consideration to be provided for a taxable supply is exclusive of GST, the party providing the consideration must also pay the GST payable in respect of the taxable supply, when the consideration is provided; and
- (c) no other provision of the Contract shall apply to give the Contractor any claim in connection with GST.

**51.3. Liability Net of GST**

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

**51.4. Notification of GST Registration Status**

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

**51.5. Tax Withholding**

- (a) Whenever the Contractor does not have an ABN or the Principal becomes aware that the Contractor's ABN notified to it is incorrect or the Principal otherwise reasonably considers itself bound by PAYG Law to do so, the Principal shall be entitled to withhold from any payment otherwise due to the Contractor under or in connection with the Contract, amounts calculated and to be withheld in accordance with the PAYG Law.
- (b) Subject to Clause 51.5(c), each time the Contractor makes a claim for any payment under or in connection with the Contract, the Contractor shall be taken to warrant to the Principal that it is an Australian resident for the purposes of the foreign resident withholding provisions in Subdivision 12-FB of the *Taxation Administration Act 1953* (Cth).
- (c) The warranty in Clause 51.5(b) shall not apply to the extent the Contractor has notified the Principal in writing that it is not an Australian resident before any claim for payment is made.

**51.6. Principal Created Tax Invoices**

Except to the extent the Principal at any time gives to the Contractor written notice that it does not intend issuing recipient created tax invoices for any taxable supplies to the Principal by the Contractor under or in connection with the Contract:

- (a) the Principal shall issue tax invoices and adjustment notes in respect of those supplies;

- (b) the Contractor shall not issue tax invoices or adjustment notes in respect of those supplies;
- (c) the Principal acknowledges that it was registered for GST when it entered into the Contract and that it will notify the Contractor if it ceases to be registered; and
- (d) the Contractor must notify the Principal immediately it becomes aware of an adjustment event occurring in respect of those supplies.

#### 51.7. Tax Invoices

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

- (a) A party making a taxable supply the subject of the notice must issue to the other a tax invoice or adjustment note (as the case may require) within 3 business days after each of the following occurring in relation to that taxable supply:
  - (i) the party submitting a claim for payment;
  - (ii) the Superintendent certifying an amount for payment different to the amount claimed;
  - (iii) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.
- (b) For the purposes of GST Law, upon the occurrence of each of the events specified in Clause 51.7(a), the Principal shall be taken to have requested the Contractor to provide to the Principal the tax invoice or adjustment note referred to in Clause 51.7(a).
- (c) Until the Principal notifies the Contractor otherwise, the Superintendent is authorised to provide to or receive from the Contractor tax invoices or adjustment notes (as the case may be) on the Principal's behalf.

## 52. MODERN SLAVERY

52.1 For the purposes of this Clause:

'Modern Slavery' has the meaning given to it in the *Modern Slavery Act 2018* (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons;

'Modern Slavery Laws' means the *Modern Slavery Act 2018* (Cth) and any other applicable legislation addressing similar subject matter.

52.2 The Contractor warrants that:

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

52.3 Should the Contractor become aware of any:

- (a) Modern Slavery risks in its supply chain or operations, it must notify the Principal of those risks and advise the Principal of the steps it is taking to eliminate or minimise those risks; or

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

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



## ANNEXURE

This Annexure takes the place of Annexure Part A to the General conditions of contract for design and construct (AS4300-1995)

### Item

- |           |  |   |          |   |     |           |   |     |
|-----------|--|---|----------|---|-----|-----------|---|-----|
| 1         | Law applicable is that of the State or Territory of (Clause 1):  | Queensland  |          |   |     |           |   |     |
| 2         | Payments under the Contract shall be made at (Clause 1):   | Brisbane  |          |   |     |           |   |     |
| 3         | Name of the Principal (Clause 2):  | The State of Queensland through .....   |          |   |     |           |   |     |
| 4         | Address of the Principal:  | .....   |          |   |     |           |   |     |
| 5         | Name of the Superintendent (Clause 2):   | As per Letter of Acceptance   |          |   |     |           |   |     |
| 6         | Address of the Superintendent:   | As per Letter of Acceptance   |          |   |     |           |   |     |
| 7         | Address of the Site (Clause 2):  | .....   |          |   |     |           |   |     |
| 8         | The Date for Practical Completion (Clause 2):  | .....   |          |   |     |           |   |     |
| 9         | The Dates for Practical Completion of each Separable Portion (Clause 2):   | .....   |          |   |     |           |   |     |
| 10        | Preliminary Design (Clause 2):   | A Preliminary Design [is included]* / [is not included]* in the Principal's Project Requirements. <i>(*Delete one)</i><br>If a Preliminary Design is included in the Principal's Project Requirements, the documents stating the Preliminary Design are:<br>..... |          |   |     |           |   |     |
| 11        | The Principal's Project Requirements are described in the following documents (additional to those listed in the Annexure item for Preliminary Design) (Clause 2): | <i>Preliminary Design (if included in Annexure)</i><br>.....  |          |   |     |           |   |     |
| 12        | Limits of accuracy applying to quantities for which the Principal accepted a rate or rates (Clause 3.3(b)):  | 25%   |          |   |     |           |   |     |
| 13        | The amount of security (Clause 5.2):   | Nil   |          |   |     |           |   |     |
| 14        | Retention moneys shall be deducted progressively as follows (Clauses 5.5 and 42.1):  | 10% of the amount payable (excluding GST) until 5% of the Contract Sum, minus GST, is held  |          |   |     |           |   |     |
| 15        | The percentage to which the entitlement to security and retention moneys is reduced (Clause 5.8):  | <table border="0"> <tr> <td style="padding-right: 10px;">Security</td> <td style="padding-right: 10px;">-</td> <td>Nil</td> </tr> <tr> <td>Retention</td> <td>-</td> <td>50%</td> </tr> </table>  | Security | - | Nil | Retention | - | 50% |
| Security  | -  | Nil   |          |   |     |           |   |     |
| Retention | -  | 50%   |          |   |     |           |   |     |
| 16        | Holding of and interest on cash security and retention moneys - the alternative applying (Clause 5.10):  | Alternative 2   |          |   |     |           |   |     |
| 17        | Execution of a Formal Instrument of Agreement required (Clause 6.2):   | Yes* / No* <i>(*Delete one)</i><br><i>(If nothing stated – No)</i>  |          |   |     |           |   |     |

- 18 Number of copies to be supplied by the Principal (Clause 8.3): (5) Five hard copies\* / 1 electronic format PDF\* (\*Delete one)
- 19 Documents, number of copies, and the times or design stages at which they are to be supplied by the Contractor (Clause 8.4):
- |  | <u>DOCUMENTS</u> | <u>NO. OF COPIES</u> | <u>TIME/DESIGN STAGE</u> |
|--|------------------|----------------------|--------------------------|
|  | .....            |                      |                          |
|  | .....            |                      |                          |
- 20 The time within which the Superintendent must give a direction as to the suitability and return the Contractor’s copies (Clause 8.4): .....business days  
*[GUIDE NOTE: Project Managers must determine the appropriate amount based on the risk assessment of approval timeframes for the project.]*
- 21 Subcontractors or Selected Subcontractors whose contracts the Principal may direct to be novated (Clause 10): .....
- 22 Percentage for profit and attendance (Clause 11(b)): 7½%
- 23 The time within which the Contractor must submit an Installation Work Lump Sum Notice (Clause 11A): .....weeks from the Date of Acceptance of Tender.
- 24 The time within which the Principal is to notify its decision in relation to the Installation Lump Sum Notice (Clause 11A(d)):
- .....business days after receipt of the Installation Work Lump Sum Notice.  
*[GUIDE NOTE: Project Managers must determine the appropriate amount based on the risk assessment of approval timeframes for the project.]*
- 25 Intellectual property rights granted to the Principal – the alternative applying (Clause 13.2): Alternative 2
- 26 Legislative Requirements not required to be satisfied by Contractor (Clause 14.1): .....
- 27 Party nominated as principal contractor for the purposes of compliance with WHS Laws (Clause 14.3) Contractor\* / Other party (another party appointed or to be appointed as principal contractor for the Construction Site)\* (\*Delete one)  
*[GUIDE NOTE: Where the Modular Building is to be installed on a Construction Site where another party has been or will be appointed as principal contractor under WHS Laws, the Contractor under this Contract should NOT be nominated above.]*
- 28 Occupational Health and Safety Audit (Clause 15.2): Applicable\* / Not Applicable\* (\*Delete one)  
*[GUIDE NOTE: Applicable unless the Contract Sum is less than \$500,000 including GST, the construction period does not exceed 16 weeks, or the Contract is not a for a government building project, under the Building Policy Framework.]*
- 29 Work Health and Safety Accreditation Scheme (Clause 15.3 and Conditions of Tender Clause 21): Applicable\* / Not applicable\* (\*Delete one)  
*[GUIDE NOTE: Where Australian Government funding MEETS the threshold for the Work Health and Safety Accreditation Scheme accreditation, delete 'Not Applicable'. Where Australian Government funding DOES NOT meet the threshold for the Work Health and Safety Accreditation Scheme accreditation, delete 'Applicable'. For further guidance please refer to the Notice to Tenderers document.]*
- 30 Insurance of the work under the Contract – the alternative applying (Clause 18): Alternative 1
- If Alternative 1 applies:
- (a) The assessment for insurance purposes of the costs of demolition and removal of debris (Clause 18(ii)): 2½% of the Contract Sum
- (b) The assessment for insurance purposes of consultants’ fees (Clause 18(iii)): 5% of the Contract Sum

- (c) The value of materials to be supplied by the Principal (Clause 18(iv)): .....
- (d) The additional amount or percentage (Clause 18(v)): Nil
- 31 Public Liability Insurance – the alternative applying (Clause 19): Alternative 1
- 32 The amount of Public Liability Insurance shall be not less than (Clause 19): \$ .....  
*(If nothing stated – \$20 million)*  
**[GUIDE NOTE: Project Managers must determine the appropriate amount based on a risk assessment of the project]**
- 33 The amount of Industrial Special Risks Insurance shall be not less than (Clause 19A): \$ .....  
*(If nothing stated – the replacement value of the Modular Building or relevant Modules)*
- 34 Amount of Contractor’s professional indemnity insurance shall be not less than (Clause 21): \$ .....  
*(If nothing stated – \$1,000,000)*
- 35 Period for which Contractor’s professional indemnity insurance shall be maintained after issue of the Final Certificate (Clause 21): .....  
*(If nothing stated – 5 years after Defects Liability Period)*
- 36 Categories of Consultants and amounts of Consultants’ professional indemnity insurance (Clause 21): N/A
- 37 Period for which each Consultant’s professional indemnity insurance shall be maintained after issue of the Final Certificate (Clause 21): .....  
*(If nothing stated – 5 years after Defects Liability Period)*
- 38 The time by which access to the Site shall be given (Clause 27.1): Upon acceptance of tender
- 39 The time for giving possession of the Site to enable commencement of further work (Clause 27.1): .....
- 40 Indigenous Project (Clause 29.1A): Yes\* / No\* *(\*Delete one)*
- 41 Queensland Charter for Local Content (Clause 29.1B): Applicable\* / Not Applicable\* *(\*Delete one)*
- 42 Working Hours and Working Days (Clause 32): .....  
*If nothing stated – ‘Working Hours’ include 9 hours per day worked between the hours of 6:00 am and 6:00 pm on Working Days and ‘Working Days’ are Monday to Friday inclusive, excluding public holidays and industry rostered days off*
- 43 The times by, or periods within which the Superintendent is to furnish information, materials, documents, or instructions to the Contractor (Clause 33.1): INFORMATION, MATERIALS TIME/PERIOD  
DOCUMENTS OR INSTRUCTIONS  
.....  
.....
- 44 Events causing delay:  
Industrial conditions (Clause 35.5(a)(i)): Applicable  
Inclement weather (Clause 35.5(a)(ii)): Applicable
- 45 Rate of liquidated damages (Clause 35.6): \$ ..... / per day (GST not applicable)
- 46 Rate of liquidated damages per day for each Separable Portion (Clause 35.6): \$ ..... / per day (GST not applicable)

- 47 Delay Costs – the alternative applying (Clause 36): .....  
 (If nothing stated – Alternative 2)
- 48 Defects Liability Period (Clause 37): .....  
 (If nothing stated – 12 months)
- 49 Charge for overheads, profit, etc. for Daywork (Clause 41(f)): 12½%
- 50 Times for payment claims (Clause 42.1): Time: ..... day of month\* /  
 Stages:\*
- |   |
|---|
| Design Stage – monthly payment claims   |
| Completion of Modular Building Frame Stage  |
| Completion of Modular Building Fixing Stage   |
| Completion of Modular Building Lockup Stage   |
| Installation Works – monthly payment claims until the Date of Practical Completion. |
- (\*Delete One)  
 Note: Subject to additions and deductions under the Contract. Retention moneys will be deducted from the amount payable as per Clause 5.  
 (If nothing stated – last day of the month.)
- 51 Unfixed Plant or Materials for which payment claims may be made notwithstanding that they are not incorporated in the Works (Clause 42.2): Modular Building
- 52 The amount of additional security for unfixed plant and materials (Clause 42.2): ..... % of the part of the Contract Sum comprising the lump sum(s) relevant to the construction of the Modular Building (i.e. excluding the Installation Works)  
**GUIDE NOTE:** Project Managers to determine the appropriate percentage based on a risk assessment
- 53 Rate of interest on overdue payments (Clause 42.7): 10% per annum + the rate comprising the annual rate, as published from time to time by the Reserve Bank of Australia for 90-day bills current at the date the payment became due.
- 54 The delay in giving access to the Site which shall be a substantial breach (Clause 44.7(c)): 13 weeks
- 55 The delay in giving possession of the Site which shall be a substantial breach (Clause 44.7(d)): 13 weeks
- 56 Further steps required before proceedings (dispute resolution) – the alternative applying (Clause 47.2): Alternative 2
- 57 The person to nominate an arbitrator (Clause 47.3): .....  
 (If nothing stated – the Chair of the Resolution Institute)
- 58 Location of arbitration (Clause 47.3): Brisbane

## SCHEDULES

### SCHEDULE 1 – VARIATIONS IN RATES OF EXCHANGE AND DUTY

#### Clause 3.4

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

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

Signed .....

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

#### EXAMPLE CALCULATION

A	B	C	D	E
Description of goods obtained from overseas	Cost free on board at overseas port from which 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 14 days prior to closing of tenders AUD\$1 = £0.3800

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

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

#### The Calculation

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

**SCHEDULE 2 – FORM OF UNDERTAKING**

**Clauses 5.3, 5.7 and 42.2**

CONTRACT for [insert description as per letter of acceptance] ..... (the “Contract”) at the request of [insert Contractor as per letter of acceptance] ..... ACN ..... (the “Contractor”) and in consideration of [insert Principal as per 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 Contractor and notwithstanding any notice given by the Contractor not to pay same.

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

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

Dated at .....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 – FORMAL INSTRUMENT OF AGREEMENT****Clause 6.2**

***Drafting note: The date of the FIA is to be completed by the Principal.***

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

**BETWEEN** [insert name], ABN [insert] of [insert address] (“Principal”)

**AND** [insert name], ACN [insert] of [insert address] (“Contractor”)

**RECITALS**

- A. Tenders were invited by the Principal for the Works.
- B. The Contractor submitted its tender for the Works which was accepted by the Principal in the Principal’s Letter of Acceptance.
- C. The Contractor has, in lodging its tender, represented to the Principal that it has the skill and expertise necessary to perform the work under the Contract and deliver the Works and acknowledges that in entering into this agreement the Principal has relied upon these representations.
- D. The Principal has engaged the Contractor to perform the work under the Contract and deliver the Works.
- E. The Contractor agrees to perform the work under the Contract and deliver the Works in accordance with the terms of the Contract.

**OPERATIVE PROVISIONS**

1. By executing this Formal Instrument of Agreement, the Contractor warrants that each of the recitals is true and correct and acknowledges that the Principal has entered into the Contract in reliance on those warranties.
2. The documents listed in Clause 3. below constitutes the entire agreement between the parties in respect of the Works and this Contract supersedes all previous agreements, undertakings, and communications, whether written or oral, relating to the subject matter of the Contract.

For the avoidance of doubt, the Contract was initially formed upon the Principal issuing the Letter of Acceptance dated ..... and this Formal Instrument of Agreement is intended to formalise the Contract.

3. Notwithstanding any other provision of the Contract, should there be any actual discrepancy or inconsistency between the documents which constitute the Contract, the following order of precedence will apply to resolve the same:
  - a. this Formal Instrument of Agreement (excluding attachments);
  - b. Principal’s Letter of Acceptance dated [insert] (**Attachment A**);
  - c. Special Conditions of Contract and Annexures (**Attachment B**);

***[Drafting note: If any of the following documents are to be delivered electronically (as opposed to being printed when this FIA is executed), complete the following information (as applicable) to clearly identify the documents being referenced.]***

- d. Australian Standard General conditions of contract for design and construct (AS4300-1995);
- e. Principal’s Project Requirements dated [insert] by [insert author] (version: [insert], file format: [insert]) (**Attachment C**);

***[Drafting note: If the technical requirements have not been confirmed based on agreed amendments / departures from the Contractor’s tender, then you may need to consider whether the Contractor’s Tender (or certain parts) should be given higher priority than the PPR to capture such amendments / departures.]***

- f. Drawings listed in the Register of Drawings dated [insert] by [insert author] (version: [insert], file format: [insert]) (**Attachment D**); and
  - g. Contractor’s Tender as clarified by the Contractor and accepted by the Principal dated [insert] by [insert author] (version: [insert], file format: [insert]) (**Attachment E**).
4. The parties agree that they will do everything reasonably necessary to give effect to the Contract.

**EXECUTED AS A DEED**

**Drafting note: Please select and date one of the below execution options:**

**Option 1: Corporations Act**

**SIGNED**

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

Name of Company – 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
------------------------------	-----------------------------------

**OR**

**Option 2: Representative**

**SIGNED**

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

Name of Person – Contractor	Signature of Person – Contractor
-----------------------------	----------------------------------

in the presence of:

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

**OR**



**Option 3: Power of Attorney**

**SIGNED SEALED AND DELIVERED**

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

.....  
Name of Company – Contractor ACN

by its attorneys who declare that they have received no notice of revocation of the Power of Attorney dated insert under which this document is signed:

.....  
Name of Attorney Signature of Attorney

.....  
Name of Attorney Signature of Attorney

In the presence of:

.....  
Name of Witness Signature of Witness

**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 – REQUEST FOR APPROVAL TO SUBCONTRACT****Clause 9.2**

Contract Name: .....

Project Number: .....

Pursuant to Clause 9.2(e) of the Conditions of Contract I request approval to enter into a subcontract for the following part of the works under the Contract: .....

Proposed subcontractor: .....

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

Address: .....

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

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

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

I confirm that:

1. the Contractor has complied with the requirements of Clause 9.2 of the Conditions of Contract including, without limitation, the Contractor's obligations to procure the subcontract in accordance with the requirements of the Queensland Procurement Policy;
2. the Contractor has provided an original version of the Deed Poll executed by the proposed subcontractor; and
3. the proposed 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 Contractor's efforts to source a local supplier;
    - ii. is compliant with the Ethical Supplier Threshold; and
    - iii. is not subject to a current sanction under the Ethical Supplier Mandate;
  - b. has been informed of the existence of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (BIF Act);
  - c. if a project trust is required at the time of this request, has been given a notice of project trust as required by the BIF Act;
  - d. for the purposes of the BIF Act:
    - 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
  - e. either:
    - i. has a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
    - ii. in relation to the work to be performed under the subcontract:
      - A. will be paid to achieve a specified result or outcome;
      - B. is required to supply the plant and equipment or tools of trade needed to perform the work; and
      - C. will be liable for the cost of rectifying any defect in the work performed.

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

Signed ..... Date .../.../.....  
Contractor

**SCHEDULE 5 – SUBCONTRACTOR DEED POLL****Clause 9.2**

## 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 (‘QGP Compliance Branch’) called the “Principal”).

**RECITALS**

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

This Deed Poll provides as follows:

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

**EXECUTED as a DEED POLL**

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

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

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

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

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

OR

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

In the presence of:

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

**SCHEDULE 6 – REQUEST FOR APPROVAL TO SUB SUBCONTRACT****Clause 9.2**

Contract Name: .....

Project Number: .....

Subcontract: .....

Subcontractor: .....

Pursuant to Clause 9.2(e) 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 subcontractor has complied and will continue to comply with the requirements of Clause 9.2 of the Conditions of Contract when procuring and entering into the sub subcontract; and
2. 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 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); 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.

Signed .....

Date .....

Contractor

Subcontractor

**SCHEDULE 7 – TRAINING POLICY PRIVACY STATEMENT****Clauses 29.1A****Privacy Statement – The Queensland Government Building and Construction Training Policy**

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

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

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

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

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

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

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

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

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

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

**SCHEDULE 8 – SITE PERSONNEL REGISTER**

**Clause 29.4**

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

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

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

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

**SCHEDULE 8 (cont'd) – SITE PERSONNEL REGISTER SUMMARY**

**Clause 29.4**

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

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 9 – STATUTORY DECLARATION BY CONTRACTOR****Clause 43.1***Oaths Act 1867*

Queensland

To Wit

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

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

..... (the “Principal”) and  
 ..... (the “Contractor”) for  
 ..... (the “Contract”),

1. I hold the position of ..... I am in a position to know the facts contained herein and to bind the Contractor by the terms of this declaration, and I am duly authorised by the Contractor to make this declaration on its/their behalf;
2. this statutory declaration is made in support of the Contractor's Payment Claim No. .... (“Payment Claim”);
3. in this declaration, the words “project trust account”, “retention trust account” and “subcontractor” have the meaning given to them in the *Building Industry Fairness (Security of Payment) Act 2017* (“BIF Act”);
4. all subcontractors and sub subcontractors performing work under the Contract have been engaged in accordance with Clause 9.2 of the Contract;
5. the Site Personnel Register is current and correct maintained in accordance with Clause 29.4 of the Contract;
6. the Contractor has fulfilled or complied with any commitments made in its tender for the work under the Contract relating to the Local Benefits Test contained in the Queensland Procurement Policy;
7. all the Contractor's workers who at any time have been engaged on work under the Contract by the Contractor have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission of the Payment Claim;
8. except for those subcontractors listed in the Schedule below (if any), all subcontractors of the Contractor in respect of work under the Contract have been paid the full amount owed to them by the Contractor at the date of the Contractor's submission of the Payment Claim. If no subcontractors are listed in the Schedule, all subcontractors of the Contractor in respect of work under the Contract have been paid all amounts owed to them by the Contractor at the date of the Contractor's submission of the Payment Claim;
9. where required by the BIF Act, all subcontractors of the Contractor have been paid via the project trust account in respect of the work under the Contract;
10. where required by the BIF Act, all retention moneys in relation to subcontractors of the Contractor have been paid into the retention trust account in respect of the work under the Contract; and
11. 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:**

.....  
*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 10 – STATUTORY DECLARATION BY SUBCONTRACTOR**

**Clause 43.1**

*Oaths Act 1867*

Queensland

To Wit

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

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

..... (the "Principal") and  
..... (the "Contractor") for  
..... (the "Contract"),  
..... (the "Subcontractor")

is a Subcontractor to the Contractor for part of the work under the Contract, namely: .....

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

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

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

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

**Signed and declared by:**

.....  
*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 11 – ADDITIONAL PERFORMANCE WARRANTIES****Clause 4.3**

Pursuant to Clause 4.3, the Contractor provides the warranties, covenants and indemnities set out in this Schedule 11.

1. The Contractor hereby warrants to the Principal:
  - a. that the Modular Building shall be in accordance with the quality and/or standard stipulated by the specification described at Annexure, Item 3 and 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 1 with respect to the Modular Building.

The above warranties shall be in addition to and shall not derogate from any warranty in other provisions of the Contract or implied by law in respect of the Modular Building.
2. The Contractor covenants with the Principal to replace and/or make good to the reasonable satisfaction of the Principal but at the expense of the Contractor, so much of the Modular Building as within the period described in Annexure, Item 2 shall be found to be of a lower quality or standard than that referred to in Clause 1 of this Schedule 11 or shall show deterioration to such extent that in the opinion of the Principal the Modular Building 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.
3. The Contractor further covenants with the Principal to meet the cost of any work necessary to any part of the Modular Building to enable the requirements of Clause 1 of this Schedule 11 to be carried out and/or necessary to make good the Modular Building afterwards.
4. The decision of the Principal as to:
  - a. the Modular Building 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 2 of this Schedule 11shall be notified in writing to the Contractor.
5. The Contractor further covenants that, within a reasonable time after written notification to the Contractor of a decision of the Principal as to work required as aforesaid, the Contractor will replace and/or make good the Modular Building or parts or components thereof and/or meet the cost of any work required by Clause 2 of this Schedule 11, whether or not any dispute or difference exists between the parties about the Principal's decision, and the Contractor hereby agrees to indemnify and keep indemnified the Principal 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 Contractor howsoever arising.
6. If, within the time prescribed in Clause 5 of this Schedule 11 (and the Principal's decision as to what is a reasonable time in any case shall be final and binding upon the parties), the Contractor shall fail to fully and properly carry out the work, the Principal may carry out such work, or cause the same to be carried out, and the Contractor hereby agrees to indemnify and keep indemnified 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 Principal as a result of the Contractor's failure as aforesaid.

**ADDITIONAL PERFORMANCE WARRANTIES ANNEXURE**

Item 1 Detailed Warranty (Clause 1): .....  
.....

Item 2 Period of Years (Clause 2): ... years from the Date of Practical Completion  
*(if nothing stated, 2 years)*

Item 3 Details of Specification (Clause 1): .....  
.....  
.....  
.....  
.....  
.....  
.....  
*(if nothing stated, the Principal's Project Requirements)*

**[GUIDE NOTE: The Annexure to Schedule 11 is to be completed by the Principal in the Tender version of the Contract.]**

**SCHEDULE 12 – FORM OF INSTALLATION WORK LUMP SUM NOTICE****Clause 11A****Installation Work Lump Sum Notice**

Breakdown of proposed Installation Work Lump Sum

Schedule of provisional sum allowances proposed to be included in the Installation Work Lump Sum*:	\$
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Additional Work (no relevant item in Schedule of Rates or provisional sums):

[details of the additional work]	\$
----------------------------------	----

[details of the additional work]	\$
----------------------------------	----

[details of the additional work]	\$
----------------------------------	----

[details of the additional work]	\$
----------------------------------	----

<b>Total Proposed Installation Work Lump Sum</b>	<b>\$</b>
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<b>Total Proposed Installation Work Lump Sum inclusive of GST</b>	<b>\$</b>
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*\*The Contractor must attach a priced break up of each provisional sum for the Installation Works and such further information as may be reasonably required by the Principal or Superintendent.*