# Conditions of Contract

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| --- | --- |
| Project Name |  |
| Project Number |  |



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## CONTRACT PARTICULARS

| Item | Clause | Subject | Particulars |
| --- | --- | --- | --- |
|  | 1 | Owner: | The State of Queensland through . |
|  |  | Contact details and address of the Owner: | Phone:  Fax:  Email:  Address: |
|  | 1 | Superintendent: | As per Letter of Acceptance |
|  |  | Contact details and address of the Superintendent: | As per Letter of Acceptance |
|  | 1 | Description of the Works: |  |
|  | 1 | Address of the Land: | Street address:  Lot / RP details: |
|  | 2 | Contract subject to Land Sale Contract: | Yes\* / No\* (\*Delete one) |
|  | 3.4 | Planning approval, building permits and/or statutory consent: | The party responsible for obtaining planning approval, building permits and/or statutory consent is:  Owner\* / Contractor\* (\*Delete one or if both are responsible for parts of the approvals, then specify the relevant approval against each party e.g. Owner: planning approval; Contractor: building permit)  (\*If nothing stated – Contractor)  For the avoidance of doubt, the party responsible for obtaining the Certificate of Classification is the Contractor. |
|  | 4 | Party responsible for Design: | Owner\* / Contractor\* (\*Delete one) |
|  | 4 | Party to obtain Foundations Data: | Owner\* / Contractor\* (\*Delete one) |
|  | 5 | Party to engage the Building Certifier: | Owner\* / Contractor\* (\*Delete one)  *(If nothing stated – Contractor)* |
|  | 8.2 | Occupational Health and Safety Audit: | Applicable  Not applicable *(tick one)*  [GUIDE NOTE: Applicable unless;   1. the Contract Price is less than $500,000 inclusive of GST, or 2. the construction period does not exceed 16 weeks] |
|  | 10 | Indigenous Project: | Yes\* / No\* (\*Delete one)  [GUIDE NOTE: see the definition provided in clause 10.1] |
|  | 14 | Amount of Public Liability Insurance not less than: | $  (If nothing stated – $20 million) |
|  | 14 | Amount of Professional Indemnity Insurance not less than: | $  (If applicable and nothing stated – $500,000) |
|  | 18 | Time for commencement: | within …… business days [of the date of the Contract]\* / [after the Owner issues the settlement notice pursuant to clause 2]\*  *(\*Delete one)* |
|  | 20 | Initial Date for Practical Completion: | within …… weeks [from the date of the Contract] / [from settlement notice issued under clause 2]\*  *(\*Delete one)* |
|  | 23 | Liquidated Damages: | $ ………… per day (GST not applicable)  *(If nothing stated – $50/day)* |
|  | 25 | Defects Liability Period (from Practical Completion): | *(If nothing stated – 12 months)* |
|  | 29 | Time for making payment claims: | \*Time: ……… day of month until the expiration of the Defects Liability Period; or  (If ticked but nothing stated – last day of the month until the expiration of the Defects Liability Period)  \*Payment Claim Stages:   1. Base Stage 2. Frame Stage 3. Enclosed Stage 4. Fixing Stage 5. Practical Completion   [^Note: Subject to additions and deductions under the Contract. Retention moneys will be deducted from the amount payable as per clause 28]  (\*Tick one) |
|  | 29 | Retention moneys to be deducted from progress payments: | 10% of the value of work completed (excl. GST) until 5% of the Contract Price (excl. GST) is held |
|  | 29 | Retention moneys held after Practical Completion: | 2.5% of the Contract Price (excl. GST) |
|  | 29 | Rate of interest on overdue payments: | 15% per annum |
|  | 33 | GST and PAYG: | Alternative 1\* / Alternative 2\* (\*Delete one)  *(If nothing stated – Alternative 1)* |

## CONDITIONS OF CONTRACT

### DEFINITIONS

* + 1. The following definitions apply to the Contract:
       - 1. **Building Certifier** means a Queensland Building and Construction Commission licensed building certifier;
         2. **Base Stage** means the stage when, other than minor omissions or defects, footings, base brickwork, base walls, stumps, piers, columns, formwork and reinforcing for a suspended slab, concrete slab, bearers, joists or flooring (as the case requires) have been completed ready for erection of the walls;
         3. **business day** means a day that is not:

a Saturday or Sunday; or

a public holiday, special holiday or bank holiday in the place where the Works will be situated; or

a day in the period from 22 December in a particular year to 10 January in the following year, both days inclusive;

* + - * 1. **Certificate of Classification** means a certificate of classification issued by a Building Certifier certifying that the Works comply with the *Building Act 1975* (Qld);
        2. **Contract** means the agreement in writing between the Owner and the Contractor for the execution of the work under the Contract, including the Tender Documents;
        3. **Contract Price** means where the Owner accepted a lump sum, the lump sum, including provisional sums, as adjusted in accordance with the Contract;
        4. **Contractor** means the person or company whose tender for the work under the Contract has been accepted and its executors, administrators, successors or permitted assigns;
        5. **Date for Practical Completion** means the date, or last day of the period of time, stated in the Contract Particulars, as adjusted in accordance with the Contract;
        6. **Defects Liability Period** means the period of time stated in the Contract Particulars, which commences on the date that the Works reach Practical Completion;
        7. **Enclosed Stage** means that stage when, other than minor omissions or defects:

external wall cladding is fixed;

the roof is fixed, but without:

soffit linings necessarily having been fixed;

for a tile roof, pointing necessarily having been done; or

for a metal roof, scribing and final screwing off necessarily having been done;

the structural flooring is laid;

the external doors are fixed (even if only temporarily), but if a lockable door separating the garage from the rest of the building has been fixed, without the garage doors necessarily having been fixed; and

the external windows are fixed (even if only temporarily);

* + - * 1. **Ethical Supplier Mandate** means the Queensland Government policy titled “Buy Queensland: Ethical Supplier Mandate” or any policy that replaces that policy;
        2. **Ethical Supplier Threshold** means the Ethical Supplier Threshold described in the Queensland Procurement Policy;
        3. **Frame Stage** means that stage when, other than minor omissions or defects, the building frame is completed including wall and roof frames, and including all tie downs and bracing;
        4. **Fixing Stage** means the stage 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;
        5. **Foundations Data** means the information needed about the Site and the work under the Contract to prepare:

an appropriate footings design for the Site and the work under the Contract and, if appropriate, an appropriate concrete slab design for the Site and the work under the Contract; and

an adequate estimate of the cost of constructing the footings and, if appropriate, concrete slab,

* + - * 1. and that information includes relevant information contained in, or obtainable from, reports, surveys, test results, plans, specifications or calculations;
        2. **Government Department or Instrumentality** means

any government department responsible for compliance with government policy, including without limitation:

the Queensland Government Procurement Compliance Branch within the Procurement Division of the Department of Energy and Climate;

the Queensland Apprenticeship and Traineeship Office within the Department of Employment, Small Business and Training; and

Local Content with the Department of State Development and Infrastructure; and

any government regulator, including without limitation:

the Queensland Building and Construction Commission;

the Office of Industrial Relations;

the Fair Work Commission;

the Australian Taxation Office; and

the Office of the Federal Safety Commissioner;

* + - * 1. **Owner** means the party stated in the Contract Particulars;
        2. **Land** means the land described in the Contract Particulars on which the Works are to be carried out;
        3. **Practical Completion** means the work under the Contract is complete:

in accordance with the Contract, including but not limited to all plans and specifications for the Works and all statutory requirements applying to the work under the Contract;

other than minor omissions and defects which will not, and the rectification of which will not, prevent or impair the normal use and occupation of the Works; and

a Certificate of Classification has been issued;

* + - * 1. **QGP Compliance Branch** means the State of Queensland’s Queensland Government Procurement Compliance Branch within the Department of Energy and Climate;
        2. **Queensland Procurement Policy** means the Queensland Government policy titled “Queensland Procurement Policy” or any policy which replaces that policy;
        3. **Site** means the Land or part of the Land made available to the Contractor by the Owner for the purpose of the Contract;
        4. **Superintendent** means the person nominated by the Owner to exercise the functions of the Superintendent under the Contract who at all times must exercise its functions acting honestly and fairly, act within certain times prescribed under the Contract or where no times, a reasonable time, and arrive at a reasonable measure of value of work, quantities or time. The Superintendent may appoint a representative to exercise any of its powers, duties, discretions, and authorities;
        5. **Supplier Code of Conduct** means the Queensland Government Code titled “Queensland Government Supplier Code of Conduct” or any code that replaces that code;
        6. **work under the Contract** means all the work which the Contractor is or may be required to execute under the Contract including any variations;
        7. **working day** means a day that is Monday to Friday inclusive, excluding public holidays and industry rostered days off;
        8. **Works** means the whole of the work to be executed and completed in accordance with the Contract, including all variations pursuant to the Contract, which is to be handed over to the Owner in accordance with the Contract.
    1. In addition to these definitions, some terms, specific to a clause, are defined in that clause.

### LAND SALE PRECEDENT

* + 1. This clause will apply unless otherwise stated in the Contract Particulars.
    2. For the purposes of this clause:
       - 1. **Land Sale Contract** means the contract entered into by the Owner for the purchase of the Land which does not form part of this Contract;
         2. **Settlement** means the settlement of the Land Sale Contract such that the Owner has become the registered owner of the Land.
    3. The Contract is subject to and conditional upon Settlement of the Land Sale Contract within 40 business days of the date of the Contract or another time agreed to by the Owner and the Contractor (Settlement Period). The Owner will notify the Contractor, within 5 business days when the Land Sale Contract achieves Settlement (settlement notice).
    4. If the Land Sale Contract has not achieved Settlement by the expiry of the Settlement Period for any reason, the Owner may, by notice in writing to the Contractor:

terminate the Contract and, in that event, clause 2.6 applies; or

extend the time for the satisfaction of the requirements in clause 2.3:

by up to a further 40 business days; or

more than 40 business days with the agreement of both parties.

* + 1. If the Land Sale Contract is terminated, or if Settlement of the Land Sale Contract does not occur for any reason, the Owner may, at any time by giving notice in writing, terminate the Contract.
    2. If the Owner terminates the Contract pursuant to clause 2.4 or 2.5, the Contractor is entitled to reimbursement of reasonable costs of work under the Contract done, under the written instruction of the Owner, to the date of termination, including;

for the preparation of any plans and specifications, any engineer’s design and soil test reports, and survey information, unless these have been allowed for in a separate contract or agreement; and

for the cost of materials and equipment reasonably and properly ordered by the Contractor for incorporation into the Works that cannot be returned to the supplier and the Contractor has transferred the ownership to the Owner, but not including an amount for work on the building site for which planning or building approval was not obtained.

### EXECUTION OF WORKS

* + 1. The Contractor must undertake the work under the Contract in accordance with the Contract and any other documents issued by the Owner. Unless otherwise provided, the Contractor is responsible for all things, including items not expressly mentioned in the Contract, necessary for satisfactory completion of the Works. The documents forming the Contract are mutually explanatory and anything contained in one but not in another is equally binding as if contained in all.
    2. If the Contractor discovers any ambiguity or discrepancy in any document forming the Contract, it must notify the Superintendent in writing as soon as practicable. In the event of an ambiguity or discrepancy, the Superintendent will direct the Contractor as to the interpretation to be followed in carrying out the Works. If the direction causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference will be valued under clause 27.
    3. The Contractor must comply with the requirements of all laws and public or other authorities affecting the Works, and unless otherwise specified, give all notices and obtain necessary consents, allow for and pay all fees and charges for the provision of all services, including sewerage, drainage, gas, telephone, and electrical connections, and provision of temporary services including water and power, for work under the Contract.
    4. The party stated in the Contract Particulars is responsible for obtaining any planning approval, building permits and/or statutory consent that is required for the Works.
    5. If a statute, regulation or other law that applies in Queensland:

necessitates:

a change to the Works;

a change, being the provision or expansion of services of a municipal, public or statutory authority in connection with the Works; or

an increase or decrease in a fee or charge or payment of a new fee or charge;

has the effect after the date of the Contract; and

could not reasonably have been anticipated at the date of the Contract,

* + - * 1. then to the extent that such change causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference will be valued as a variation and added to or deducted from the Contract Price as applicable.

### DESIGN

* + 1. This clause will apply unless otherwise stated in the Contract Particulars.
    2. The Contractor will prepare and be responsible for the design of the Works.
    3. The Contractor will:

complete the design and documentation of the Works, including drawings and trade specifications, in accordance with the Contract and all relevant legislative requirements;

ensure the design and documentation of the Works are suitable for the Site and ensure the Works are suitable for their intended purpose; and

ensure that materials and standards of workmanship prescribed in drawings, trade specifications and other documents are suitable, having regard to generally accepted practices or standards applied in the building and construction industry for the materials, or the specifications, instructions or recommendations of manufacturers or suppliers of the materials, for the intended purpose specified in the Contract and are consistent with the nature and character of the Works and in accordance with the Contract.

* + 1. The Contractor warrants to the Owner that:

if the Contract Particulars state that the Contractor must obtain the Foundations Data, before the date of the Contract, it obtained all the Foundation Data it needed to design the work under the Contract in accordance with the requirements of the Contract;

a competent design professional will be engaged and retained and will exercise the degree of skill, care and diligence expected of a competent design professional in carrying out the design and documentation of the work under the Contract;

the design of the Works will comply with the Contract and will in all respects be suitable, having regard to generally accepted practices or standards applied in the building and construction industry, for the intended purpose specified in the Contract;

the completed Works will comply with all requirements of the Contract, all design documents and all legislative requirements and that the Works will be suitable, having regard to generally accepted practices or standards applied in the building and construction industry, for the intended purpose of the Works and suitable for the Site; and

the design and documentation of the Works will not infringe any intellectual property right if used in accordance with the Contract.

* + 1. The Contractor will remain responsible for the design of the Works notwithstanding any:

preliminary design documents provided by or on behalf of the Owner; and

approval or confirmation given under the *Building Act 1975* (Qld), or review or any approval of the design undertaken by or on behalf of the Owner.

* + 1. The Contractor acknowledges that the Owner is relying on the Contractor’s skill and expertise in undertaking the design and construction of the Works.

### BUILDING CERTIFIER

* + 1. A Building Certifier is required to be engaged by the party stated in the Contract Particulars to provide advice on compliance of the Works with the provisions of the *Building Act 1975* (Qld) and, in the performance of the Building Certifier’s duties, must be required to act as an independent party and not as an agent of either party.
    2. If clause 4 is applicable, the Contractor will be responsible for obtaining confirmation of compliance with the *Building Act 1975* (Qld), or if required, approval under the *Building Act 1975* (Qld), in respect of the design of the Works. For this purpose, the Contractor must pay all fees and submit to the Building Certifier all material necessary for obtaining such confirmation or approval.
    3. The Contractor must allow a minimum of 20 business days for confirmation or approvals under the *Building Act 1975* (Qld).
    4. The Contractor will be responsible for providing the plumbing and drainage plans to the relevant authority for review of compliance with the *Plumbing and Drainage Act 2018* (Qld) and ensure the plans are stamped and approved in accordance with the requirements of that legislation at the Contractor’s own cost. During construction of the Works, the Contractor must arrange for the plumbing and drainage installations to be inspected by all relevant authorities and all associated fees must be paid by the Contractor.
    5. Approvals and certificates issued by the Building Certifier and relevant authorities must be provided to the Owner prior to Practical Completion.

### ASSIGNMENT AND SUBCONTRACTING

* + 1. The Contractor must not, without the prior written approval of the Owner, assign the Contract or any benefit thereunder.
    2. The obligations of government agencies contained in the Queensland Procurement Policy will apply equally to the Contractor as though it is a government agency, and the Contractor must procure subcontracts in accordance with the requirements of the Queensland Procurement Policy.
    3. The Contractor must prepare and produce all required copies of the subcontract tender documentation (“Subcontract Tender Documentation”), which:

incorporates suitable conditions of contract which reflect the provisions of the Contract;

requires subcontract tenders and subcontractors to consent to a relevant Government Department or Instrumentality providing information to the Owner 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 Ethical Supplier Mandate, the Ethical Supplier Threshold, the Queensland Government Building and Construction Training Policy (if applicable), the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld);

requires subcontract tenderers and subcontractors to acknowledge that the information referred to in clause 6.3(b), 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 Owner 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;

includes terms that evidence the right of the Owner and the QGP Compliance Branch to exercise the discretion in clause 37.10 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 Owner or the Contractor in relation to that publication;

requires the subcontractor to execute a deed poll in favour of the Owner in the form attached to these Conditions and provide this as part of their tender;

requires the subcontractor to make and keep the records referred to in clause 37.1;

provides for evaluation of subcontract tender responses against clear evaluation criteria and weightings; and

incorporates any other documentation or information required for the tendering or the completion of the relevant work under the Contract.

* + 1. The Contractor must ensure that all subcontractors and any sub subcontractors:

for the purposes of the Queensland Procurement Policy are:

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 must seek approval from the Superintendent to use a supplier who is not a local supplier and in doing so must provide evidence, satisfactory to the Superintendent, of its efforts to source a local supplier;

compliant with the Ethical Supplier Threshold; and

not subject to a current sanction under the Ethical Supplier Mandate;

are informed of the existence of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld); and

either:

have a personal services business determination in effect from the Australian Taxation Office under the Income *Tax Assessment Act 1997* (Cth); or

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

will be paid to achieve a specified result or outcome;

are required to supply the plant and equipment or tools of trade needed to perform the work; and

will be liable for the cost of rectifying any defect in the work performed.

* + 1. The Contractor must examine, analyse and evaluate all subcontract tenders received, in accordance with the Subcontract Tender Documentation, and in doing so, the Contractor must:

ensure evaluation of subcontract tender responses against clear evaluation criteria and weightings;

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.

* + 1. The Contractor must not, without the prior written notice to the Superintendent, subcontract or allow a subcontractor to subcontract any of the work under the Contract. All notices to subcontract or sub subcontract pursuant to this clause must be provided by the Contractor to the Superintendent in the form attached to these Conditions.
    2. The Owner may at any time prior to the issue of the Final Certificate, undertake an audit in respect of the Contractor’s compliance with clause 3, in accordance with the provisions of clause 37.4.

### WORK HEALTH AND SAFETY

* + 1. For the purposes of this clause:
       - 1. **Act** means the *Work Health and Safety Act 2011* (Qld);
         2. **construction project**, **construction work** and **principal contractor** have the same meaning as in the Regulation;
         3. **inspector**, **notifiable incident**, **regulator**, **structure** and **workplace** have the same meanings as in the Act;
         4. **Regulation** means the *Work Health and Safety Regulation 2011* (Qld);
         5. **WHS Laws** means the Act, the Regulation and all other applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards.
    2. In relation to the work under the Contract, the Contractor will:

comply with and discharge all obligations imposed on the Contractor under the WHS Laws;

comply with all lawful instructions given by the Owner or the Superintendent in relation to work health and safety;

if directed by the Superintendent, provide the Owner with a safety management plan. If the Superintendent considers that the safety management plan submitted by the Contractor is not adequate, the Contractor must submit amendments to the safety management plan until the Superintendent has no further comments. If the Contractor is required to provide a safety management plan, the Contractor must not commence work under the Contract until the Superintendent has no further comments in respect of the safety management plan; without limiting clause 8, and subject to clause 7.2(c)(ii):

provide to the Superintendent and the Owner access to the Site to enable any audit, check or observation of the work under the Contract;

where access is granted, the Superintendent and the Owner must, when at the Site, comply with any reasonable work health and safety requirements and lawful directions of the Contractor in relation to the Site;

unless otherwise advised in writing, accept that it is the person having management or control of the workplace at which the work under the Contract is being undertaken;

discharge the duties of a person who conducts a business or undertaking under the WHS Laws; and

without limiting clause 7.2(a), 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.

* + 1. Where the work under the Contract comprises a construction project (i.e. a project that involves construction work of $250,000 or more), from the date of acceptance of tender:

the Owner engages the Contractor to be the principal contractor under the Regulation in relation to the construction project and authorises the Contractor to:

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

discharge the duties of the principal contractor under the Regulation;

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

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.

* + 1. Without limiting any other obligations of the Contractor under the Contract or the WHS Laws, in relation to the work under the Contract, the Contractor will:

consult with the Owner and 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 the risks, so far as is reasonably practicable; and

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 Owner 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.

* + 1. The Contractor will indemnify the Owner against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, the Owner as a result of or in connection with:

any breach of this clause 7 by the Contractor;

any breach by the Contractor of its obligations under the WHS Laws; and

any enforcement of obligations imposed on the Contractor under the WHS Laws.

* + 1. If a notifiable incident occurs at the workplace at which the work under the Contract is being undertaken, the Contractor must:

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;

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;

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

if the Owner wishes to conduct its own investigation, provide the Owner with reasonable assistance (including access to relevant documents and the Contractor's personnel) in investigating any such notifiable incident.

* + 1. 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:

immediately notify the Superintendent; and

comply with all applicable obligations and restrictions imposed by the WHS Laws.

### PROTECTION OF PERSONS AND PROPERTY

###### Protection Measures

* + - * 1. The Contractor must:

take all measures necessary to protect people and property, including the Works, avoid unnecessary interference with passage of people and vehicles, prevent nuisance, unreasonable noise, and disturbance; and

for the purposes of clause 8.1(a), comply with all reasonable directions of the Superintendent.

* + - * 1. If the Contractor damages any property, the Contractor must provide temporary protection for, and repair it at its cost.

###### Occupational Health and Safety Audit

This clause 8.2 will not apply unless stated as applicable in the Contract Particulars.

For the purposes of this clause:

**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).

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.

The cost of performance by the Accredited Auditor (Construction) of the required functions will be reimbursed by the Owner in accordance with the Contract. The reimbursable amount will be a debt due from the Owner to the Contractor.

The Contractor must ensure that the Accredited Auditor (Construction) engaged under clause 8.2(c) has not:

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

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.

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:

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

the Owner may take all necessary urgent action to protect the work under the Contract, and the cost incurred by the Owner will be a debt due from the Contractor.

A direction given under clause 8.2(e)(i) constitutes a direction under clause 17. If such a direction is given, the Contractor must inform the Superintendent in writing immediately upon completion of the corrective actions.

### SITE PERSONNEL REGISTER

* + 1. From the commencement of work under the Contract until Practical Completion, the Contractor must maintain a register in the form attached to these Conditions (‘Site Personnel Register’) of all individuals who carry out work under the Contract on the Site.
    2. The Site Personnel Register must be available for inspection at all times by the Superintendent.
    3. The Contractor must provide statistical information in the form attached to these Conditions (‘Site Personnel Register Summary’) to the Superintendent every 13 weeks and at such other times as the Superintendent may direct.
    4. Failure to comply with this clause constitutes a substantial breach of the Contract.

### TRAINING POLICY

* + 1. This clause applies if the Contract is an Eligible Project.
    2. For the purposes of this clause:
       - 1. **Aboriginal or Torres Strait Islander** means a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he or she lives;
         2. **Apprentice** and **Trainee** have the same meaning as in the *Further Education and Training Act 2014* (Qld);
         3. **Compliance Plan** means the plan developed by the Contractor demonstrating how the Contractor will comply with its obligations under this clause and the Training Policy;
         4. **DTATSIPCA** means the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts;
         5. **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:

Contract Price (including GST) x 0.0006;

* + - * 1. **DESBT** means the Department of Employment, Small Business and Training;
        2. **Eligible Project** means a contract where:

the work under the Contract is carried out in Queensland; and

the Contract Price is $500,000 or greater (including GST);

* + - * 1. **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:

the Contractor;

the Owner; and

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;

* + - * 1. **Indigenous Project** means an Eligible Project, located in:

an Aboriginal or Torres Strait Islander community, or in the township of Weipa, as indicated in the Contract Particulars; or

a part of Queensland not referred to in subparagraph (a) 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 Contract Particulars;

* + - * 1. **Practical Completion Report** means a report prepared by the Contractor demonstrating compliance by the Contractor with this clause and the Training Policy;
        2. **Training Policy** means the Queensland Government policy titled “Queensland Government Building and Construction Training Policy” or any policy which replaces that policy;
        3. **TPAS** means the Training Policy Administration System being the electronic reporting system administered by DESBT for contractor compliance reporting under the Training Policy.
    1. The Contractor must comply with the Training Policy and must:

within 10 working days of the date of acceptance of tender submit the Compliance Plan to DESBT via TPAS, and as soon as possible afterwards provide a copy of the TPAS email notification for the submitted Compliance Plan to the Superintendent;

allocate a minimum of 60% of the Deemed Hours towards the employment of new entrant Apprentices and Trainees, as required by the Training Policy;

for the remaining Deemed Hours not allocated under clause 10.3(b), undertake other workforce training, as required by the Training Policy;

provide the privacy statement in the schedule attached to these Conditions to each participant regarding the collection and use of personal information; and

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 possible afterwards provide a copy of the TPAS email notification for the submitted Practical Completion Report to the Superintendent.

* + 1. If the Contract Particulars state that the Contract is an Indigenous Project, the Contractor must also:

within 10 working days of the date of acceptance of tender submit the IEO Plan as part of the Compliance Plan electronically in TPAS, and as soon as possible afterwards provide a copy to the Superintendent;

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 10.3(c);

allocate an additional amount towards the IEO Plan, which must be a minimum of 3% of the Contract Price including GST; and

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 electronically in TPAS, and as soon as possible afterwards provide a copy of the submitted achievement of outcomes against the IEO Plan to the Superintendent.

* + 1. Nothing in clauses 10.3 or 10.4 limits or alters the Contractor’s obligation to comply with the Training Policy.
    2. The Contractor acknowledges that failure to comply in part or in whole with the requirements of this clause 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.

### CARE OF WORK AND REINSTATEMENT OF DAMAGE

* + 1. The Contractor will be responsible for the care of the work under the Contract.
    2. If loss or damage occurs to the work under the Contract (other than loss or damage caused by any of the Excepted Risks), the Contractor must at the Contractor’s cost rectify such loss or damage.
    3. For the purposes of this clause:
       - 1. **Excepted Risks** means:

any negligent act or omission of the Owner, the Superintendent or the employees, consultants, or agents of the Owner;

any risk specifically excepted in the Contract;

war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law, or confiscation by order of any Government or public authority;

ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor’s employees or agents;

use or occupation by the Owner or the employees or agents of the Owner or other contractors to the Owner (not being employed by the Contractor) of any part of the work under the Contract; and

defects in the design of the work under the Contract other than a design provided by the Contractor.

### INDEMNITY BY THE CONTRACTOR

* + 1. The Contractor indemnifies the Owner against:

loss of or damage to the Owner’s property; and

claims by any person in respect of injury, death, or loss of or damage to any property,

* + - * 1. resulting from or in any way connected with the Contractor carrying out the work under the Contract, but the Contractor’s liability to indemnify the Owner will be reduced proportionally to the extent that an act or omission of the Owner, or its employees or agents, contributed to the loss, damage, death or injury.
    1. The Contractor indemnifies the Owner against any liability arising from an infringement of any intellectual property right contrary to a warranty provided under clause 4, if applicable.

### INSURANCE OF WORKS

* + 1. Before the Contractor commences the work under the Contract, the Contractor must have an insurance policy covering all the things referred to in clause 11.1 against loss or damage resulting from any cause whatsoever until the Contractor ceases to be responsible for their care.
    2. The insurance cover may exclude:

the cost of making good fair wear and tear or gradual deterioration but must not exclude the loss or damage resulting therefrom;

the cost of making good faulty design, workmanship and materials but must not exclude the loss or damage resulting therefrom;

consequential loss of any kind, but must not exclude loss of or damage to the Works;

damages for delay in completing or for the failure to complete the Works;

loss or damage resulting from the Excepted Risks referred to in clause 11.3.

### PUBLIC LIABILITY AND PROFESSIONAL INDEMNITY INSURANCE

* + 1. Before commencing the work under the Contract, the Contractor must have:

public liability insurance for an amount not less than the amount stated in the Contract Particulars, covering the Contractor’s liability to the Owner for loss of or damage to property and death or injury to any person; and

if clause 4 applies, professional indemnity insurance for not less than the amount stated in the Contract Particulars.

* + 1. The Contractor must maintain the insurance policies required by this clause for the duration of the Contract.
    2. Before the Contractor commences the work under the Contract and whenever requested in writing by the Owner, the Contractor must provide to the Owner a certificate of currency in respect of each insurance policy required under this clause showing:

the insurance policy numbers;

the expiry date of each policy; and

the amount of insurance cover required to be held under the Contract.

* + 1. Failure by the Contractor to provide evidence of insurance will constitute a substantial breach of the Contract by the Contractor.

### INSURANCE OF EMPLOYEES

* + 1. Before commencing the work under the Contract, the Contractor must have insurance of persons employed by the Contractor. The Contractor must maintain such insurance for the duration of the Contract and produce evidence of insurance, if requested. The Contractor must ensure that every subcontractor is similarly insured.
    2. Failure by the Contractor to provide evidence of insurance will constitute a substantial breach of the Contract by the Contractor.

### PROVISIONAL SUMS

* + 1. A provisional sum:

is for work under the Contract that the Contractor cannot ascertain a definite price; and

must be a reasonable estimate of the cost for the work under the Contract to be performed.

* + 1. Work under the Contract that is the subject of the provisional sum will not itself be payable by the Owner but where at the direction of the Superintendent the work or item to which the provisional sum relates is performed or supplied then the work or item will be assessed by the Superintendent pursuant to clause 29. The provisional sum will include an amount of 10% for the Contractor’s profit and attendance.

### MATERIALS AND WORKMANSHIP

* + 1. For the purposes of this clause:
       - 1. **Non-Conforming Building Product** has the same meaning as in section 74AB(2) of the *Queensland Building and Construction Commission Act 1991* (Qld).
    2. All materials used in any work under the Contract and the standards of workmanship must be in conformity with the provisions of the Contract. In the absence of such provisions in the Contract the material or standard of workmanship, as the case may be, must be of a kind which is suitable for its purpose and is consistent with the nature and character of the Works. Unless otherwise specified, all materials must be new and workmanship must be in accordance with the relevant manufacturer’s recommendations or, if none, the relevant Australian Standard where applicable.
    3. The Contractor must:

ensure that none of the materials, plant, machinery, equipment, or products used in the Works are a Non-Conforming Building Product; and

promptly notify the Owner if it becomes aware, or reasonably suspects, that any materials, plant, machinery, equipment, or products it has used for incorporation into the Works are a Non-Conforming Building Product for that particular use.

* + 1. Apart from any tests specified, the Superintendent may at any time direct that any materials or work must be examined and/or tested and if necessary, rectified or replaced.
    2. The Contractor must comply with any written direction by the Superintendent to remedy any work not in accordance with the Contract, including but not limited to, defective work, loss or damage to work under the Contract and cleaning of the Site, within the period of time stated in writing by the Superintendent. If the Contractor fails to comply with such a direction to carry out rectification work within the time stated, the Owner may have the rectification work the subject of the direction carried out by others at the Contractor’s expense or may accept the work at a reduced value. The Owner may deduct the cost of rectification work or reduced value from payments or recover the cost or reduced value as a debt due from the Contractor. The Owner may deduct the estimated cost of rectification work from payments until such time as the Owner has incurred the cost of rectification.

### TIME FOR COMMENCEMENT

* + 1. The Contractor must commence work under the Contract by:

if the Contract is not subject to a Land Sale Contract, the time for commencement stated in the Contract Particulars; or

if the Contract is subject to a Land Sale Contract, the time for commencement stated in the Contract Particulars.

* + 1. The Contractor must, unless otherwise permitted, give at least 2 business days’ notice to the Superintendent prior to the commencement of work.
    2. Failure to comply with this clause constitutes a substantial breach of the Contract.

### SUSPENSION

* + 1. The Owner in its absolute discretion and for any reason it thinks fit, may give a written direction to the Contractor to suspend the carrying out of the whole or part of the work under the Contract for such time as the Owner thinks fit, and the Contractor must comply with any such direction. The Contractor must recommence the suspended work under the Contract after receiving a written direction to recommence from the Owner.
    2. Subject to clause 19.3, if the Contractor incurs more or less cost than otherwise would have been incurred, the difference will be assessed by the Superintendent and added to or deducted from the Contract Price, subject to the costs being reasonable and unavoidable, being substantiated by the Contractor to the Superintendent's satisfaction, and the Contractor taking all reasonable steps to mitigate the costs and any delay in achieving Practical Completion as a result of the suspension.
    3. If the Contractor made the suspension of work under the Contract necessary, the Contractor will bear the cost of suspension and the Owner will not be liable in any way for any loss or delay in achieving Practical Completion occasioned by the suspension.

### TIME FOR COMPLETION

* + - * 1. The Contractor must execute the Works to Practical Completion by the Date for Practical Completion or within any extended time agreed in writing by the Superintendent.

### EXTENSION OF TIME FOR PRACTICAL COMPLETION

* + 1. The Contractor will be entitled to an extension of time to the Date for Practical Completion if it is or will be delayed in reaching Practical Completion by the Date for Practical Completion by:

any act, default, or omission of the Owner, the Superintendent or an employee, contractor, or agent of the Owner; or

events occurring on or before the Date for Practical Completion which are beyond the reasonable control of the Contractor excluding acts or omissions of the Contractor (including its employees, agents, and subcontractors).

* + 1. If it becomes evident to a party that:

a cause may delay the work under the Contract; and

the Contractor may have an entitlement to an extension of time under clause 21.1,

* + - * 1. the party must notify the Superintendent and the other party as soon as possible. The party must also provide any additional information in regard to the delay reasonably requested by the Superintendent.
    1. If the Contractor wishes to make a claim for an extension of time, it must submit a claim which:

identifies the extension of time claimed;

includes information sufficient for the Superintendent to assess the claim;

is submitted within 20 business days after the first day that the Contractor could reasonably have been aware of the start of the delay; and

is updated every subsequent 20 business days if the delay continues.

* + 1. Where more than one event causes concurrent delays and the cause of at least one of those events does not entitle the Contractor to an extension of time, then to the extent that the delays are concurrent the Contractor will not be entitled to an extension of time for Practical Completion.
    2. Within 20 business days after receipt of the claim for an extension of time, the Superintendent must grant a reasonable extension of time or give the Contractor the reasons for not granting the extension of time claimed.
    3. The Superintendent may extend the Date for Practical Completion for any reason but is not obliged to exercise this right for the benefit of the Contractor.

### DELAY OR DISRUPTION COSTS

* + 1. Where the Contractor has been granted an extension of the time under clause 21 for any delay or disruption caused by an act, default, or omission of the Owner, the Superintendent or an employee, contractor, consultant, or agent of the Owner (but not including the Contractor), the Owner will pay the Contractor for extra costs for each working day at the daily rate worked out in accordance with the following formula:

6.5% of the Contract Price (exclusive of GST) ÷ (5 x the period of time (in weeks) stated in the Contract Particulars for the Date for Practical Completion)

* + 1. Nothing in this clause will oblige the Owner to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Contract.

### LIQUIDATED DAMAGES

* + - * 1. If the Contractor fails to complete the Works by the Date for Practical Completion together with any extensions of time granted by the Superintendent, the Contractor will be liable to the Owner for liquidated damages in the amount stated in the Contract Particulars for every day after that date until Practical Completion has been achieved or the Contract is terminated, whichever is sooner.

### CERTIFICATE OF PRACTICAL COMPLETION

* + 1. The Contractor must:

give the Superintendent 10 business days’ notice of the date upon which the Contractor anticipates that Practical Completion will be reached; and

request the Superintendent to issue a Certificate of Practical Completion when the Contractor is of the opinion that Practical Completion has been reached.

* + 1. Within 10 business days of the receipt of the request, the Superintendent must:

give to the Contractor and to the Owner a Certificate of Practical Completion certifying the date of Practical Completion; or

notify the Contractor of the reasons for not issuing the Certificate of Practical Completion.

* + 1. Notwithstanding that the Contractor may not have requested the issue of a Certificate of Practical Completion, if the Superintendent is of the opinion that Practical Completion has been reached, the Superintendent may issue a Certificate of Practical Completion.
    2. The issue of a Certificate of Practical Completion does not:

constitute approval of any work or other matter; or

prejudice any claim by the Owner or the Contractor.

### DEFECTS LIABILITY PERIOD

* + - * 1. The Contractor must promptly rectify all defects and omissions notified to the Contractor during the Defects Liability Period. If the Contractor fails to do so, the Owner may have the omission or defect remedied by other persons and the cost so incurred will be a debt due to the Owner which may be deducted from payments or recovered by any other means.

### CLEANING OF SITE

* + - * 1. The Contractor must keep the Site and the Works clean and tidy and regularly remove from the Site rubbish and surplus material arising from the execution of the Works. On completion of the Works the Contractor must clear away and remove from the Site all constructional plant, surplus materials, rubbish and temporary works of every kind.

### VARIATIONS

* + - * 1. The Superintendent may direct in writing a variation to any work under the Contract and the Contractor must promptly comply with that direction. The Contractor must submit to the Superintendent a detailed price for the variation within 10 business days of the direction. The variation will be valued by agreement between the Contractor and the Superintendent or failing agreement, by the Superintendent, and the Contract Price adjusted accordingly. The valuation will include an amount for the Contractor’s profit and attendance of 12.5%. No payment for additional work will be made unless the additional work is authorised in writing by the Superintendent.

### LATENT CONDITIONS

* + 1. If the Contractor discovers physical conditions on the Site or its surroundings, excluding weather conditions, which differ materially from those which should reasonably have been anticipated at the time of tender if it had:

examined all information made available in writing by the Owner to the Contractor for the purpose of tendering;

examined all information available, including Foundations Data, relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and

inspected the Site and its surroundings,

* + - * 1. the Contractor must immediately notify the Superintendent in writing and may request that a variation be directed pursuant to clause 27.
    1. The Superintendent may issue a direction in respect of the latent condition, and the Contractor will be entitled to claim an extension of time for delays, and may be entitled to reimbursement of reasonable costs necessarily incurred as a consequence of the latent condition and directions issued in respect thereof.

### PAYMENT

* + 1. Subject to the prior receipt by the Superintendent of the information required by clause 30, the Contractor may give the Superintendent a detailed payment claim, supported by information the Superintendent may reasonably require:

at the times or stages stated in the Contract Particulars;

upon Practical Completion;

within 20 business days after Practical Completion; and

within 20 business days after the expiration of the Defects Liability Period.

* + 1. Within 10 business days after receipt of a payment claim the Superintendent will assess the payment claim and will issue a payment certificate stating the amount of the payment to be made by the Owner or the Contractor. The Superintendent must set out in a payment certificate the calculations employed to arrive at the amount certified and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference.
    2. Within 15 business days of receipt of the payment claim, the Owner will pay the amount certified by the Superintendent or the amount claimed, if the Superintendent has not so certified.
    3. Payment will take into account the deduction of retention moneys (if any) in accordance with the Contract Particulars and any other amount which the Owner may be entitled to deduct or which is due and payable by the Contractor to the Owner whether under the Contract, any other contract, or independent of contract. If the moneys to be deducted are insufficient to discharge the liability of the Contractor, the Owner may have recourse to retention moneys or unconditional undertakings provided in lieu of retention moneys.
    4. Payment of moneys to the Contractor will not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but will be a payment on account only. The Superintendent may by a later payment certificate correct an error in a previous payment certificate. Nothing in the Contract will oblige the Owner to pay for work that is not in accordance with the Contract, or for plant or materials not incorporated in the Works on the Site.
    5. For the purposes of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld), the Superintendent is authorised to receive payment claims and to issue payment schedules on behalf of the Owner.
    6. If payment is not made in accordance with this clause, interest, applied at the rate stated in the Contract Particulars, is due and payable on the amount outstanding after the date of default in payment.
    7. Retention moneys (if any) are for the purpose of ensuring the due and proper performance of the Contract and the Contractor may at any time provide in lieu of retention moneys, security in the form attached to these Conditions or such other form as approved by the Owner. The form of undertaking attached to these Conditions is approved.
    8. If the Contractor has provided security in lieu of retention moneys, the Owner may at any time convert into money security that does not consist of money whether or not the Owner is then entitled to exercise a right under the Contract in respect of the security. The Owner will not be liable in any way for any loss occasioned by such conversion.
    9. The Owner may have recourse to retention moneys, cash security or to moneys obtained by conversion of security where the Owner 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.
    10. The Owner’s entitlement to retention moneys (if any) will be reduced to the percentage stated in the Contract Particulars when the Contractor has achieved Practical Completion as certified by the Superintendent.
    11. Without limiting the Owner’s rights under any other provision in the Contract and notwithstanding the provisions of or the issue of a payment certificate by the Superintendent under this clause, the Owner may deduct from any moneys due to the Contractor any sum which is payable by the Contractor to the Owner whether or not the Owner’s right to payment arises by way of damages, debt, restitution, or otherwise and whether or not the factual basis giving rise to the Owner’s right to payment arises out of the 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 Owner, the Owner may have recourse to retention moneys (whether or not these are held by the Owner in alternative form pursuant to this clause). Nothing in this clause will affect the right of the Owner to recover from the Contractor the whole of such moneys or any balance that remains owing.
    12. The Superintendent will issue to the Contractor and to the Owner a final payment certificate endorsed ‘Final Certificate’ or a statement of reasons for not issuing the Final Certificate:

within 10 business days after receiving the payment claim under clause 29.1(d); or

if the Contractor has not submitted a payment claim under clause 29.1(d), within 30 business days after the expiration of the Defects Liability Period.

* + 1. In the final payment certificate, the Superintendent must certify the amount which in the Superintendent’s opinion is finally due from the Owner to the Contractor or from the Contractor to the Owner under, or arising out of, the Contract or any alleged breach thereof, including the release to the Contractor of any retention moneys or security then held by the Owner.

### PAYMENT OF WORKERS AND SUBCONTRACTORS

* + 1. At the request of the Contractor and out of moneys payable to the Contractor the Owner may on behalf of the Contractor make payment directly to a worker or subcontractor.
    2. The Contractor must deliver to the Superintendent with each payment claim:

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:

all subcontractors and any sub subcontractor performing work under the Contract have been engaged in accordance with clause 6;

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; and

the Site Personnel Register is current and correct, maintained in accordance with clause 9,

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

either in the statutory declaration required by clause 30.2(a) or by separate document, a supporting statement for the payment claim required by the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

* + 1. The Contractor acknowledges that the Owner may release to a subcontractor, details of payments in percentage terms made by the Owner 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 Owner that all payments due and payable to the subcontractor by the Contractor have been paid.
    2. If a worker or subcontractor obtains a court order in respect of monies unpaid and the subject of a statutory declaration under this clause, and produces to the Owner the court order and a statutory declaration that it remains unpaid, the Owner may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid will be a debt due from the Contractor to the Owner.
    3. After the making of a sequestration order or a winding up order in respect of the Contractor, the Owner must not make any payment to a worker or subcontractor without the concurrence of the official receiver or trustee of the estate of the bankrupt or the liquidator as the case may be.

### DEFAULT OF CONTRACTOR

###### Notice to Show Cause

* + - * 1. Subject to clause 31.3, if the Contractor:

fails to commence the work under the Contract within the time for commencement stated in the Contract Particulars;

fails to proceed with the work under the Contract at a reasonable rate of progress; or

commits any substantial breach of the Contract,

* + - * 1. the Owner may, by written notice, require the Contractor to show cause, by the date stated in the notice, why the Owner should not exercise a right under clause 31.2 (‘Show Cause Notice’).

###### Failure to Show Cause

* + - * 1. If the Contractor fails to show reasonable cause by the date stated by the Owner in the Show Cause Notice, then the Owner will have the power upon notice in writing to the Contractor to:

terminate the Contract; or

suspend payment and take the work remaining to be completed wholly or partly out of the hands of the Contractor,

* + - * 1. without prejudice to any rights of the Owner under the Contract or at common law.

###### Right to Terminate or Take Over

* + - * 1. If the Contractor:

fails to hold or maintain a current licence, if required, to perform the work under the Contract;

becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation;

enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or

has a receiver or a receiver and manager appointed, or a mortgagee goes into possession of any of its assets,

* + - * 1. the Owner may, without giving a Show Cause Notice, exercise a right under clause 31.2, but only when and to the extent that there is no restriction on enforcing that right under the Part 5.1, Part 5.2, or Division 17 of Part 5.3A *Corporations Act 2001* (Cth).

###### Effect of Show Cause Notice

Notwithstanding any other provisions of the Contract, upon the giving of a notice under clause 31.1:

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

the Owner may suspend payments to the Contractor;

* + - * 1. until the earlier of:

the date upon which the Contractor shows reasonable cause;

the date upon which the Owner takes action under clause 31.2; or

the date which is 5 business days after the last day for showing cause in the Show Cause Notice.

###### Take work out of hands of Contractor

* + - * 1. In the event that the Owner takes the work out of the hands of the Contractor, the Owner may itself or by means of other persons, complete the whole or any part of that work and may without payment of compensation take possession of the constructional plant and other things on or in the vicinity of the Site that are owned by the Contractor. If the cost incurred by the Owner in completing the work is greater than the amount which would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due from the Contractor to the Owner, otherwise any difference will be a debt due from the Owner to the Contractor.

### DISPUTES

* + - * 1. Within 10 business days of a dispute arising either party may refer it to the Superintendent. Within 20 business days of receiving notice of dispute the Superintendent will give its written decision to each party. If the Superintendent fails to give the decision, or if either party is dissatisfied with it, the parties must within 10 business days of receipt of the decision, or the date upon which it should have been given, confer at least once to attempt to resolve the dispute.

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

###### Definitions

* + - * 1. For the purposes of this clause:
        2. **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).

###### Treatment of GST

The consideration agreed to be paid for any taxable supplies under the Contract (the Contract Price, as at the date of acceptance of tender) includes any GST.

Any consideration to be paid for any other taxable supply under or in connection with the Contract must have GST added to it, where the amount of the consideration (or amounts used to calculate that amount) are:

provided for by the Contract and stated to exclude GST; or

not provided for by the Contract.

Where a party is obliged to pay an amount calculated by reference to the cost, expense, loss or other liability of the other party, the calculation must be net of input tax credits available to the other party in respect of the cost, expense, loss or other liability.

###### Tax Invoices

#### Alternative 1

A party making a taxable supply must issue to the other a tax invoice or adjustment note (as the case may require) within 5 business days after each of the following occurring in relation to that taxable supply:

the party submitting a claim for payment that is not in the form of a valid tax invoice;

the Superintendent certifying an amount for payment different to the amount claimed;

the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.

For the purposes of GST legislation, upon the occurrence of any of the events specified in paragraph (a), the Owner will be taken to have requested the Contractor to provide to the Owner the tax invoice or adjustment note referred to in paragraph (a).

#### Alternative 2

Tax invoices and adjustment notes required by GST legislation for any taxable supplies under the Contract will be issued by the Owner (and not the Contractor) unless the Owner:

ceases to be entitled to do so under GST legislation; or

gives the Contractor written notice that it does not intend issuing recipient created tax invoices for a taxable supply to the Owner by the Contractor,

in which case Alternative 1 will then apply.

The Contractor must notify the Owner immediately it becomes aware of an adjustment event occurring.

Each party acknowledges it was registered for GST when it entered into the Contract and agrees it will notify the other immediately it becomes aware of it ceasing to be registered for GST.

###### PAYG Withholding

Whenever the Contractor does not have an ABN or the Owner becomes aware that the Contractor’s ABN notified to it is incorrect or the Owner otherwise reasonably considers itself bound by law to do so, the Owner will 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 law.

Subject to clause 33.4(c), each time the Contractor makes a claim for any payment under or in connection with the Contract, the Contractor will be taken to warrant to the Owner 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).

The warranty in clause 33.4(b) will not apply to the extent the Contractor has notified the Owner in writing that it is not an Australian resident before any claim for payment is made.

### INFORMATION PRIVACY

* + 1. For the purposes of this clause:
       - 1. **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.
    2. If the Contractor collects or has access to Personal Information in order to carry out work under the Contract, the Contractor must:

if the Owner 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 Owner;

not use Personal Information other than in connection with carrying out work under the Contract, unless required or authorised by law;

not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Owner, unless required or authorised by law;

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;

ensure that its subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause;

fully co-operate with the Owner to enable the Owner to respond to applications for access to, or amendment of a document containing an individual’s Personal Information and to privacy complaints; and

comply with such other privacy and security measures as the Owner may reasonably require from time to time.

* + 1. On request by the Owner, 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 Owner.
    2. The Contractor must immediately notify the Owner on becoming aware of any breach of this clause.
    3. The Contractor acknowledges that, in accordance with the Contract, the Superintendent, the Owner and the QGP Compliance Branch:

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 Owner, the QGP Compliance Branch and agents, consultants, or other contractors engaged by the Owner, 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

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.

* + 1. Personal Information will be handled in accordance with the IPA.
    2. This clause will survive the termination or expiry of the Contract.

### ANTI-COMPETITIVE CONDUCT, CONFLICT OF INTEREST and CRIMINAL ORGANISATIONS

* + 1. For the purposes of this clause:
       - 1. **Personnel** means officers, directors, employees, agents, and subcontractors;
         2. **Conflict of Interest** includes any actual, reasonably anticipated, or perceived conflict of interest, whether personal, financial, professional, or otherwise.
    2. The Contractor warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, any associated tender or any actual or potential contract with any entity for the Works. In addition to any other remedies available to it under law or contract, the Owner may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has engaged in collusive or anti-competitive conduct.
    3. The Contractor warrants that it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under the Contract, except as disclosed. If the Owner requests, the Contractor must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Owner.
    4. The Contractor warrants that neither it nor its Personnel have been convicted of an offence where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 161P of the *Penalties and Sentences Act 1992* (Qld).
    5. The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Contractor warrants that it will immediately notify the Owner if it becomes aware that any warranty made in this clause was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way. In addition to any other remedies available to it under law or contract, the Owner may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has breached any warranty in this clause.

### QUEENSLAND PROCUREMENT POLICY

* + 1. The Contractor must, and must ensure its subcontractors:

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

for the term of the Contract, comply with the Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct.

* + 1. 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 Owner under the Contract.
    2. The Contractor:

consents to a relevant Government Department or Instrumentality providing information to the Owner and the QGP Compliance Branch; and

authorises the Owner and the QGP Compliance Branch to obtain information;

* + - * 1. about the Contractor’s compliance with government policy and legislation, including without limitation the Queensland Procurement Policy, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct, the Queensland Government Building and Construction Training Policy (if applicable), the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld).
    1. Dumped Goods

For the purposes of this clause:

**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.

The Contractor warrants that:

it will not supply dumped goods or goods suspected of being dumped for the term of the Contract;

it will do business with ethically, environmentally and socially responsible suppliers, and will seek to influence the supply chain in this regard;

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

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.

Notwithstanding clause 36.5.(b) above:

the Contractor shall be responsible for payment of duties (if any) under the *Customs Tariff (Anti-Dumping) Act 1975* (Cth) and any security under the *Customs Act 1901* (Cth) in respect of any duty that might become payable under the *Custom Tariff (Anti-Dumping) Act 1975* (Cth); and

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

* + 1. Failure to comply in any respect with the requirements of this clause 36 will be considered a substantial breach of the Contract.

### MODERN SLAVERY

* + 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.

* + 1. The Contractor warrants that:

it complies with and will continue to comply with all applicable Modern Slavery Laws;

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);

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

it has taken, and will take in the future, all necessary actions and investigations to validate the warranties provided under this clause.

* + 1. Should the Contractor become aware of any:

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

Modern Slavery practices being carried out within its operations or supply chain, it must:

in writing, immediately notify the Principal of those practices and of the remediation action it proposes to take; and

at its cost, take any such additional remediation action required by the Principal (acting reasonably and after due consultation with the Contractor).

* + 1. 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.

### RECORDS AND ACCESS TO RECORDS

* + 1. The Contractor must make and keep and must ensure that every subcontractor makes and keeps accurate and complete records of:

the Contractor’s or a subcontractor’s tender, including without limitation the preparation and submission of that tender;

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

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 Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Queensland Government Building and Construction Training Policy (if applicable).

* + 1. The records referred to in clause 38.1 must 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:

relate to the Contractor’s tender or a subcontractor’s tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;

relate to design, including design calculations, option studies, opinions, reviews, and reports;

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;

are required to demonstrate compliance with the matters referred to in clause 37.1(d) including without limitation payroll records, management records, time recordings and records of project-specific training; and

are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications, or social media.

* + 1. The records referred to in clause 38.1 must not be destroyed without the prior written approval of the Owner.
    2. Without limiting any other rights or obligations under this clause 38, the Owner and the QGP Compliance Branch may, at any time after giving written notice to the Contractor that an audit will be undertaken pursuant to this clause, undertake an audit in respect of the Contractor’s compliance with clause 3. In undertaking the audit, the Owner and the QGP Compliance Branch will have the right to inspect and copy any record referred to in clause 38.1 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 38.4, the Contractor must promptly and at its own cost provide the Owner and the QGP Compliance Branch with every reasonable facility necessary to undertake the audit, including but not limited to:

providing to the Owner and the QGP Compliance Branch any record requested for inspection or copying pursuant to clause 38.5;

making staff available to the Owner and the QGP Compliance Branch to access or explain systems, processes or any record referred to in clause 38.1; and

arranging and providing access to the Contractor’s or subcontractor’s workplaces, sites, premises, or facilities.

* + 1. Subject to the Contractor’s right to claim legal professional privilege in respect of any record, which is hereby maintained, the Owner and the QGP Compliance Branch will have the right to inspect and to copy at any time any record referred to in clause 38.1. In the case of any records referred to in clause 38.1 stored on a medium other than in writing, the Contractor must make available forthwith upon request such facilities as may be necessary to enable a legible reproduction thereof to be provided to the Owner and the QGP Compliance Branch.
    2. Where a record referred to in clause 38.1 is created, maintained or stored by the Contractor or a subcontractor in an electronic format, it must be provided to the Owner in its native, operable form or such other format as may be reasonably required by or acceptable to the Owner.
    3. Where a record referred to in clause 38.1 is stored on a medium licensed from a third party, where the Owner is a party to the communication, the Contractor must provide the Owner with a copy of such records in an external electronic storage device, readable on the Owner’s information technology system, or such other format as may be reasonably required by the Owner, each month until the issuance of the Final Certificate.
    4. The Contractor must comply in all respects with any request made pursuant to clause 38.5 to inspect or copy records referred to in clause 38.1, or any audit undertaken pursuant to clause 37.4, and will not be entitled to refuse audit, inspection or copying of any record referred to in clause 38.1 on any basis whatsoever other than on the basis that legal professional privilege attaches to the record.
    5. Records accessed under clause 38.4 or 38.5 may be used to assess the Contractor’s or its subcontractors’ compliance with the Contract, the subcontract, the Queensland Procurement Policy, Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Queensland Government Building and Construction Training Policy (if applicable) and may be shared with relevant Government Departments or Instrumentalities for the purposes of the making of a recommendation about compliance with the Queensland Procurement Policy, Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct and the Queensland Government Building and Construction Training Policy (if applicable).
    6. The Owner 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 Owner nor give rise to any other right or remedy of the Contractor at law or in equity against the Owner or the QGP Compliance Branch

## SCHEDULES

SCHEDULE 1 – NOTICE TO SUBCONTRACT / SUB SUBCONTRACT

#### Clause 6

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Contract Name: | |  | | | | | |
| Project Number: | |  | | | | | |
| Pursuant to clause 6 of the Conditions of Contract I notify intent 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 6 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:
4. for the purposes of the Queensland Procurement Policy
5. 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;

1. is compliant with the Ethical Supplier Threshold; and
2. is not subject to a current sanction under the Ethical Supplier Mandate;
3. has been informed of the existence of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld); and
4. either:
5. has a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
6. in relation to the work to be performed under the subcontract:
7. will be paid to achieve a specified result or outcome;
8. is required to supply the plant and equipment or tools of trade needed to perform the work; and
9. will be liable for the cost of rectifying any defect in the work performed.

I warrant that the subcontract will be entered into in accordance with the above.

|  |  |  |  |
| --- | --- | --- | --- |
| Signed |  | Date | …/…/…… |
| Contractor |

SCHEDULE 2 – SITE PERSONNEL REGISTER

#### Clause 9.1

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 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 2 (cont’d) – SITE PERSONNEL REGISTER SUMMARY

#### Clause 9.3

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Project Name: | |  | Project Location: |  | |
| Contractor’s Name: | |  | Project Registration Number: |  | |
| Response | | | | | Total |
| 1. Total number that responded Y to the question in column (b)? | | | | |  |
| 1. Total number that responded N to the question in column (b) and Y to the question in column (c)? | | | | |  |
| 1. Total number that responded N to the question in column (b) and N to the question in column (c)? | | | | |  |
| 1. Total number that responded N to the question in column (f) | | | | |  |
| 1. Total number that responded N to the question in column (g) | | | | |  |
| 1. Total number that responded N to the question in column (h) | | | | |  |
| 1. Total number that responded N to the question in column (i) | | | | |  |
|  | | | | | |
| Signed |  | | | | |
| Date | …/…/…… | | | | |

SCHEDULE 3 – TRAINING POLICY PRIVACY STATEMENT

#### Clause 10

**Privacy Statement – Queensland Government Building and Construction Training Policy**

This privacy statement is to be provided to each participant on an eligible Queensland Government funded building 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.

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

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

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

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

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

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

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

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

SCHEDULE 4 – FORM OF UNDERTAKING

#### Clause 29.8

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 Owner as per contract particulars]* (the “Owner”) 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 Owner to a maximum aggregate of $ ( ) (the “Sum”).

The undertaking is to continue:

1. until notification has been received from the Owner that the Sum is no longer required by the Owner; or
2. until this undertaking is returned to the Financial Institution; or
3. until payment to the Owner 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 Owner that the Owner 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 Owner 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 Owner 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 Owner and thereupon the liability of the Financial Institution hereunder shall immediately cease.

The Owner 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 5 – STATUTORY DECLARATION BY CONTRACTOR

#### Clause 30.2

#### Oaths Act 1867

Queensland

To Wit

I, of

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

(the “Owner”) 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. all subcontractors and sub subcontractors performing work under the Contract have been engaged in accordance with clause 6 of the Contract;
4. the Site Personnel Register is current and correct, maintained in accordance with clause 9 of the Contract;
5. 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;
6. 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;

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

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) |  |

SUPPORTING STATEMENT SCHEDULE

Payment Claim No. …………….

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Subcontractor Name** | **Amount still unpaid** | **Details of the unpaid payment claim for the subcontractor** | **Date(s) the subcontractor carried out the construction work or supplied the related goods and services** | **Reasons the amount owed to the subcontractor was not paid in full** |
|  |  |  |  |  |
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SCHEDULE 6 – SUBCONTRACTOR DEED POLL

#### Clause 6

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 “Owner”).

*RECITALS*

1. The Owner has entered into an agreement with: ……………………………………………….…………… (the “Contractor”) for the ………………………………………………………………………... (the “Project”).
2. 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.
3. 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:
   1. it will make and keep accurate and complete records of:
      1. its tender, including without limitation the preparation and submission of that tender;
      2. tenders received by it, whether accepted or not;
      3. the execution and completion of the work under the Subcontract; and
      4. compliance with any commitments made in the Subcontractor’s tender and its obligations under the Subcontract relating to compliance with government policies including but not limited to the Queensland Procurement Policy, the Ethical Supplier Mandate, the Ethical Supplier Threshold and the Queensland Government Building and Construction Training Policy (if applicable);
   2. the records referred to in Clause 1.(a) above must 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:
      1. relate to the Subcontractor’s tender, including tender preparation, submission, negotiation, evaluation, estimates and calculations;
      2. relate to design, including design calculations, option studies, opinions, reviews, and reports;
      3. 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;
      4. are required to demonstrate compliance with the matters referred to in clause 1.(a)(iv) above, including without limitation payroll records, management records, time recordings and records of project-specific training (if applicable); and
      5. are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications, or social media;
   3. subject to the Subcontractor’s right to claim legal professional privilege in respect of any record, which is hereby maintained, permit the Owner 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;
   4. without limiting the previous paragraphs, the Subcontractor will permit the Owner and the QGP Compliance Branch to undertake an audit of the records referred to in Clause 1.(a) or 1.(b) above for the purposes of verifying the Subcontractor’s compliance with any commitments made in the Subcontractor’s tender and its obligations under the Subcontract relating to compliance with government policies including the Queensland Procurement Policy, the Ethical Supplier Mandate, the Ethical Supplier Threshold and the Queensland Government Building and Construction Training Policy (where applicable).
2. The Subcontractor consents to the Owner and the QGP Compliance Branch disclosing or providing copies of any records which the Owner 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 Owner 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 Owner, 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 Owner.

**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 |