

## Conditions of Contract

Project Name

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Project Number

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This standard contract document has been developed by Contract Services, Department of Energy and Public Works, in accordance with the Capital Works Management Framework.

Modified for use by Griffith University February 2023.

## CONDITIONS OF CONTRACT

### 1. DEFINITIONS

#### 1.1 The following definitions apply to the Contract:

'Building Certifier' means a Queensland Building and Construction Commission licensed building certifier;

'business day' means a day that is not:

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

'Contract' means the agreement in writing between the Principal and the Contractor for the execution of the work under the Contract, including the tender documents;

'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;

'Date for Practical Completion' means the date, or last day of the period of time, stated in the Annexure;

'Defects Liability Period' means the period of time stated in the Annexure, which commences on the date that the Works reach Practical Completion;

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

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

'Government Department or Instrumentality' means

- ( ) any government department responsible for compliance with government policy, including without limitation:
  - (i) the Queensland Government Procurement Compliance Branch within the Procurement Division of the Department of Energy and Public Works;
  - (ii) the Queensland Apprenticeship and Traineeship Office within the Department of Employment, Small Business and Training;
  - (iii) Local Content with the Department of State Development, Infrastructure, Local Government and Planning;
- (a) any government regulator, including without limitation:
  - (i) the Queensland Building and Construction Commission;
  - (ii) the Office of Industrial Relations;
  - (iii) the Fair Work Commission;
  - (iv) the Australian Taxation Office;
  - (v) the Australian Building and Construction Commission; and
  - (vi) the Office of the Federal Safety Commissioner;

'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;

- (a) 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;

'Principal' means the person identified as the Principal in the Annexure;

'QGP Compliance Branch' means the State of Queensland's Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works;

'Queensland Procurement Policy' means the Queensland Government policy titled "Queensland Procurement Policy" or any policy which replaces that policy;

'Site' means the land and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract;

'Superintendent' means the person nominated by the Principal 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;

'Supplier Code of Conduct' means the Queensland Government Code titled "Queensland Government Supplier Code of Conduct" or any code that replaces that code;

'work under the Contract' means all the work which the Contractor is or may be required to execute under the Contract including any variations;

'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 Principal in accordance with the Contract.

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

## 2. EXECUTION OF WORKS

- 2.1 The Contractor must undertake the work under the Contract in accordance with the Contract and any other documents issued by the Principal. 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.
- 2.2 The Contractor must comply with the requirements of all laws and public or other authorities affecting the Works, and unless otherwise specified pay all fees, give all notices and obtain necessary consents.

## 3. ASSIGNMENT AND SUBCONTRACTING

- 3.1 The Contractor must not, without the prior written approval of the Principal, assign the Contract or any benefit thereunder.
- 3.2 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.
- 3.3 The Contractor must prepare and produce all required copies of the subcontract tender documentation ("Subcontract Tender Documentation"), which:
- (a) incorporates suitable conditions of contract which reflect the provisions of the Contract;
  - (b) requires subcontract tenders and subcontractors to consent to a relevant Government Department or Instrumentality providing information to the Principal or the QGP Compliance Branch about the tenderer's or subcontractor's compliance with government policies and legislation including, without limitation, commitments made in relation to or required by the Queensland Procurement Policy, the Ethical Supplier Mandate, the Ethical Supplier Threshold, the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld);
  - (c) requires subcontract tenderers and subcontractors to acknowledge that the information referred to in clause 3.3(b), which includes without limitation payroll records, management records and time recordings that may be held by any Government Department or Instrumentality, may be obtained by or made available to the Principal and the QGP Compliance Branch, for its

information and verification of the subcontract tenderer's or subcontractor's compliance with commitments made in relation to or required by government policies and legislation;

- (d) includes terms that evidence the right of the Principal and the QGP Compliance Branch to exercise the discretion in clause 26.10 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 Principal or the Contractor in relation to that publication;
- (e) requires the subcontractor to execute a deed poll in favour of the Principal in the form attached to these Conditions and provide this as part of their tender;
- (f) requires the subcontractor to make and keep the records referred to in clause 26.1;
- (g) provides for evaluation of subcontract tender responses against clear evaluation criteria and weightings; and
- (h) incorporates any other documentation or information required for the tendering or the completion of the relevant work under the Contract.

3.4 The Contractor must ensure that all subcontractors and any sub subcontractors:

- (a) for the purposes of the Queensland Procurement Policy are:
  - (i) 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;
  - (ii) compliant with the Ethical Supplier Threshold; and
  - (iii) not subject to a current sanction under the Ethical Supplier Mandate;
- (b) are informed of the existence of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld); and
- (c) either:
  - (i) have a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
  - (ii) in relation to the work to be performed under the subcontract (or sub subcontract):
    - (A) will be paid to achieve a specified result or outcome;
    - (B) are required to supply the plant and equipment or tools of trade needed to perform the work; and
    - (C) will be liable for the cost of rectifying any defect in the work performed.

3.5 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:

- (a) ensure evaluation of subcontract tender responses against clear evaluation criteria and weightings;
- (b) 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.

3.6 The Contractor must not, without the prior written approval of the Superintendent which shall not be unreasonably withheld, subcontract or allow a subcontractor to subcontract any of the work under the Contract. When seeking approval pursuant to this clause, the Contractor must provide to the Superintendent a request for approval in the form attached to these Conditions and such other information which the Superintendent may reasonably request.

3.7 Within 10 business days after a request by the Contractor for approval made in accordance with clause 3.6 the Superintendent will approve the request or advise the Contractor of any objections. If approval is given to sub subcontract part of the work under the Contract, the Contractor must ensure the requirements of clause 3 are met.

- 3.8 The Principal may at any time prior to the expiration of the Defects Liability Period, undertake an audit in respect of the Contractor's compliance with clause 3, in accordance with the provisions of clause 26.4.

#### 4. WORK HEALTH AND SAFETY

- 4.1 For the purposes of this clause:

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

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

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

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

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

- 4.2 In relation to the work under the Contract, the Contractor will:

- (a) comply with and discharge all obligations imposed on the Contractor under the WHS Laws;
- (b) 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;
- (c) discharge the duties of a person who conducts a business or undertaking under the WHS Laws; and
- (d) without limiting clause 4.2(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.

- 4.3 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:

- (a) the Principal engages the Contractor to be the principal contractor under the Regulation in relation to the construction project and authorises the Contractor to:
  - (i) have management and control of the workplace at which the work under the Contract is being undertaken including the Site; and
  - (ii) discharge the duties of the principal contractor under the Regulation;
- (b) the Contractor accepts the engagement as principal contractor from the Principal and agrees to fulfil all requirements and give effect to that engagement prior to commencing any of the work under the Contract; and
- (c) the Contractor will comply with and discharge all obligations imposed on the Contractor, as principal contractor, as a person who conducts a business or undertaking and otherwise, by the WHS Laws.

- 4.4 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:

- (a) consult with the Principal 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
- (b) in performing its obligations under the Contract, take into account and take appropriate action having regard to any information given to the Contractor by the Principal or any other person, about hazards and risks at or in the vicinity of the workplace where the work under the Contract is being carried out.

- 4.5 The Contractor will indemnify the Principal against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, the Principal as a result of or in connection with:

- (a) any breach of this clause 4 by the Contractor;

- (b) any breach by the Contractor of its obligations under the WHS Laws; and
- (c) any enforcement of obligations imposed on the Contractor under the WHS Laws.

4.6 If a notifiable incident occurs at the workplace at which the work under the Contract is being undertaken, the Contractor must:

- (a) immediately notify the regulator and the Superintendent of the notifiable incident and 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;
- (b) take all reasonably practicable steps to secure the Site where the notifiable incident occurred until an inspector arrives at the Site or any earlier time that an inspector directs;
- (c) 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
- (d) if the Principal wishes to conduct its own investigation, provide the Principal with reasonable assistance (including access to relevant documents and the Contractor's personnel) in investigating any such notifiable incident.

4.7 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:

- (a) immediately notify the Superintendent; and
- (b) comply with all applicable obligations and restrictions imposed by the WHS Laws.

## **5. PROTECTION OF PERSONS AND PROPERTY**

5.1 The Contractor must:

- (a) 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
- (b) for the purposes of clause 5.1(a), comply with all reasonable directions of the Superintendent.

5.2 If the Contractor damages any property, the Contractor must provide temporary protection for, and repair it at its cost.

## **6. CARE OF WORK AND REINSTATEMENT OF DAMAGE**

6.1 The Contractor will be responsible for the care of the work under the Contract.

6.2 If loss or damage occurs to the work under the Contract, the Contractor must at the Contractor's cost rectify such loss or damage except loss or damage caused by the negligent act or omission of the Principal, or employees or agents of the Principal, or caused by defects in the design of the work under the Contract where the Contractor was not responsible for such design under clause 23.

## **7. INDEMNITY BY THE CONTRACTOR**

7.1 The Contractor indemnifies the Principal against:

- (a) loss of or damage to the Principal's property; and
- (b) claims by any person in respect of injury, death or loss of or damage to any property,

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 Principal will be reduced proportionally to the extent that an act or omission of the Principal, or its employees, or agents, contributed to the loss, damage, death or injury.

7.2 The Contractor indemnifies the Principal against any liability arising from an infringement of any intellectual property right contrary to a warranty provided under clause 23, if applicable.

## 8. PUBLIC LIABILITY INSURANCE

- 8.1 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 Annexure, covering the Contractor's liability to the Principal for loss of or damage to property and death or injury to any person.
- 8.2 The Contractor must maintain the insurance policies required by this clause for the duration of the Contract and produce evidence of insurance, if requested.

## 9. INSURANCE OF EMPLOYEES

Before commencing the work under the Contract, the Contractor must have insurance of persons employed by the Contractor. Where the Contractor is a self-employed person, the Contractor must maintain an equivalent insurance policy for itself. 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.

## 10. MATERIALS AND WORKMANSHIP

- 10.1 For the purposes of this clause, 'Non-Conforming Building Product' has the same meaning as in section 74AB(2) of the *Queensland Building and Construction Commission Act 1991* (Qld).
- 10.2 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.
- 10.3 The Contractor must:
- (a) ensure that none of the materials, plant, machinery, equipment, or products used in the Works are a Non-Conforming Building Product; and
  - (b) promptly notify the Principal 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.
- 10.4 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.
- 10.5 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 Principal 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 Principal 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 Principal may deduct the estimated cost of rectification work from payments until such time as the Principal has incurred the cost of rectification.

## 11. TIME FOR COMMENCEMENT

The Contractor must commence work under the Contract within the time stated in the Annexure and must, unless otherwise permitted, give at least 2 business days' notice to the Superintendent prior to the commencement of work.

## 12. TIME FOR COMPLETION

- 12.1 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.
- 12.2 When it becomes evident to a party that anything, including an act or omission of the Principal, or employees or agents of the Principal, has or will delay the work under the Contract, the party must promptly notify the Superintendent in writing with details of the delay and the cause.

- 12.3 The Contractor is not entitled to an extension of time for delays caused by it whether occurring before or after the Date for Practical Completion, nor for delays due to inclement weather or industrial conditions occurring after the Date for Practical Completion.
- 12.4 In determining a reasonable extension of time for an event causing delay, the Superintendent must have regard to whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.
- 12.5 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.
- 12.6 Except where such a claim is expressly permitted in other provisions of the Contract, the Contractor will not be entitled to any additional payment because of the granting of an extension of time.

### **13. LIQUIDATED DAMAGES**

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 Principal for liquidated damages in the amount stated in the Annexure for every day after that date until Practical Completion has been achieved or the Contract is terminated, whichever is sooner.

### **14. DEFECTS LIABILITY PERIOD**

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 Principal may have the omission or defect remedied by other persons and the cost so incurred will be a debt due to the Principal which may be deducted from payments or recovered by any other means.

### **15. CLEANING OF SITE**

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.

### **16. VARIATIONS**

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 sum 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.

### **17. LATENT CONDITIONS**

- 17.1 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:

- (a) examined all information made available in writing by the Principal to the Contractor for the purpose of tendering; and
- (b) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
- (c) inspected the Site and its surroundings,

the Contractor must immediately notify the Superintendent in writing and may request that a variation be directed pursuant to clause 16.

- 17.2 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.



**18. PAYMENT**

- 18.1 At the times stated in the Annexure, upon Practical Completion and upon the expiration of the Defects Liability Period, the Contractor may give the Superintendent a detailed payment claim supported by information the Superintendent may reasonably require.
- 18.2 Within 10 business days after receipt of a payment claim, the Superintendent will assess the payment claim and, if the Superintendent determines that the amount to be paid is other than the claimed amount, will issue a payment certificate stating the amount of the payment to be made by the Principal or the Contractor and the reasons for the difference from the claimed amount.
- 18.3 Subject to the Contract, payment will be made within 15 business days of receipt of a valid payment claim.
- 18.4 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 Principal 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.
- 18.5 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 Principal.
- 18.6 Payment will take into account the deduction of retention moneys (if any) and any other amount which the Principal may be entitled to deduct or which is due and payable by the Contractor to the Principal 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 Principal may have recourse to retention moneys or unconditional undertakings provided in lieu of retention.
- 18.7 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 provided for in the Contract or such other form as approved by the Principal. The form of undertaking attached to these Conditions is approved.
- 18.8 If the Contractor has provided security in lieu of retention moneys, the Principal may at any time convert into money security that does not consist of money whether or not the Principal is then entitled to exercise a right under the Contract in respect of the security. The Principal will not be liable in any way for any loss occasioned by such conversion.
- 18.9 The Principal's entitlement to retention moneys (if any) will be reduced to the percentage stated in the Annexure when the Contractor has achieved Practical Completion as certified by the Superintendent.

**19. DEFAULT OF CONTRACTOR**

- 19.1 Subject to clause 19.3, if the Contractor:
- (a) fails to commence the work under the Contract within the time for commencement stated in the Annexure;
  - (b) fails to proceed with the work under the Contract at a reasonable rate of progress; or
  - (c) commits any substantial breach of the Contract,
- the Principal may, by written notice, require the Contractor to show cause by the date stated in the notice, why the Principal should not exercise a right under clause 19.2 ('Show Cause Notice').
- 19.2 If the Contractor fails to show reasonable cause by the date stated by the Principal in the Show Cause Notice, then the Principal will have the power upon notice in writing to the Contractor to:
- (a) terminate the Contract; or
  - (b) suspend payment and take the work remaining to be completed wholly or partly out of the hands of the Contractor,
- without prejudice to any rights of the Principal under the Contract or at common law.
- 19.3 If the Contractor:
- (a) fails to hold or maintain a current licence, if required, to perform the work under the Contract;
  - (b) 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;

- (c) 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
- (d) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets,

the Principal may, without giving a Show Cause Notice, exercise a right under clause 19.2, 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).

- 19.4 In the event that the Principal takes the work out of the hands of the Contractor, the Principal 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 Principal 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 Principal, otherwise any difference will be a debt due from the Principal to the Contractor.

## 20. DISPUTES

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.

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

### 21.1. Definitions

For the purposes of this clause:

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

### 21.2. GST Included in Price

Payments for any taxable supplies under the Contract include GST.

### 21.3. Tax Invoices

#### **Alternative 1\***

The Contractor must issue to the Principal 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:

- (a) the Contractor submitting a claim for payment that is not in the form of a valid tax invoice;
- (b) the Superintendent certifying an amount for payment different to the amount claimed;
- (c) the amount for payment being otherwise determined to be different to the amount claimed or (if applicable) certified.

#### **Alternative 2\***

Tax invoices and adjustment notes required will be issued by the Principal (and not the Contractor).

The Contractor must notify the Principal 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.

### 21.4. PAYG Withholding

Whenever the Principal reasonably considers itself bound by law to do so, the Principal will be entitled to withhold from any payment otherwise due to the Contractor, amounts calculated and to be withheld in accordance with the law.

## 22. INFORMATION PRIVACY

22.1 For the purposes of this clause:

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

22.2 If the Contractor collects or has access to Personal Information in order to carry out work under the Contract, the Contractor must:

- (a) if the Principal is an 'agency' within the meaning of the *Information Privacy Act 2009* (Qld) ("IPA"), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Contractor was the Principal;
- (b) not use Personal Information other than in connection with carrying out work under the Contract, unless required or authorised by law;
- (c) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Principal, unless required or authorised by law;
- (d) ensure that its officers, employees, agents and subcontractors do not access, use, or disclose Personal Information other than in connection with carrying out work under the Contract;
- (e) ensure that its subcontractors who have access to Personal Information comply with obligations the same as those imposed on the Contractor under this clause;
- (f) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- (g) comply with such other privacy and security measures as the Principal may reasonably require from time to time.

22.3 On request by the Principal, the Contractor must obtain from its employees, officers, agents or subcontractors carrying out work under the Contract, an executed deed of privacy in a form acceptable to the Principal.

22.4 The Contractor must immediately notify the Principal on becoming aware of any breach of this clause.

22.5 The Contractor acknowledges that, in accordance with the Contract, the Superintendent, the Principal and the QGP Compliance Branch:

- (a) will collect information for the purposes of administering the Contract that may contain Personal Information which will be used in accordance with the Contract and may be disclosed to the Superintendent, the Principal, the QGP Compliance Branch and agents, consultants, or other contractors engaged by the Principal, but will not be disclosed to any other third party without the Contractor's consent unless authorised or required by law or the Contract; and
- (b) 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.

22.6 Personal Information will be handled in accordance with the IPA.

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

## 23. DESIGN RESPONSIBILITY

23.1 If stated in the Annexure, this clause is included in the Contract.

### 23.2. Design

- (a) The Contractor will prepare and be responsible for the design of the Works.
- (b) The Contractor will:
  - (i) complete the design and documentation of the Works, including drawings and trade specifications, in accordance with the Contract and all relevant legislative requirements; and

- (ii) ensure that materials and standards of workmanship prescribed in drawings, trade specifications and other documents are fit for the purpose specified in the tender documents and are consistent with the nature and character of the Works and in accordance with the Contract.
- (c) The Contractor warrants to the Principal that:
  - (i) the Contractor will exercise the degree of skill, care and diligence expected of a competent design professional in carrying out the design and documentation of the Works; and
  - (ii) the design of the Works will comply with the Contract and will in all respects be fit for the purpose specified in the tender documents.
- (d) The Contractor will remain responsible for the design of the Works notwithstanding any approval or confirmation given under the *Building Act 1975* (Qld) or any review or approval of the design undertaken by or on behalf of the Principal.
- (e) The Contractor acknowledges that the Principal is relying on the Contractor's skill and expertise in undertaking the design and construction of the Works.

### 23.3. Building Certifier

- (a) A Building Certifier is required to be engaged by the party stated in the Annexure 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 the Principal.
- (b) The Contractor will be responsible for obtaining confirmation of compliance with the *Building Act 1975* (Qld), or if required, Building Act 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. The Contractor must allow a minimum of 20 business days for confirmation or approvals under the *Building Act 1975* (Qld).
- (c) 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.
- (d) Approvals and certificates issued by the Building Certifier and relevant authorities must be provided to the Principal for Practical Completion.

### 23.4. Professional Indemnity Insurance

- (a) Before commencing the work under the Contract, the Contractor must have professional indemnity insurance for not less than the amount stated in the Annexure.
- (b) Professional indemnity insurance must be maintained for 6 years after the completion of the Contract.
- (c) Before the Contractor commences the work under the Contract and whenever requested in writing by the Principal, the Contractor must provide to the Principal a certificate of currency in respect of each insurance policy required under this clause showing:
  - (i) the insurance policy numbers;
  - (ii) the expiry date of each policy; and
  - (iii) the amount of insurance cover required to be held under the Contract.
- (d) Failure by the Contractor to provide evidence of insurance will constitute a substantial breach of the Contract by the Contractor.

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

### 24.1 For the purposes of this clause:

'Personnel' means officers, directors, employees, agents and subcontractors;

'Conflict of Interest' includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

- 24.2 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 Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has engaged in collusive or anti-competitive conduct.
- 24.3 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 Principal requests, the Contractor must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Principal.
- 24.4 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).
- 24.5 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 Principal 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.
- 24.6 In addition to any other remedies available to it under law or contract, the Principal may, in its absolute discretion, immediately terminate the Contract if it believes the Contractor has breached any warranty in this clause.

## 25. QUEENSLAND PROCUREMENT POLICY

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

- (a) the principles of the Queensland Procurement Policy and any requirements under the Contract in this regard;
- (b) the Ethical Supplier Threshold;
- (c) the Ethical Supplier Mandate; and
- (d) the *Queensland Government Supplier Code of Conduct* and the *Griffith University Supplier Code of Conduct*.

*Griffith University Supplier Code of Conduct available at the following link:*

[Supplying to Griffith](#)

- 25.2 The Contractor acknowledges that a failure to comply with government policies and legislation that apply to the work under the Contract or the Contractor's obligations under the Contract can result in the imposition of a penalty under the Ethical Supplier Mandate, in addition to any other remedies available to the Principal under the Contract.
- 25.3 The Contractor:
- (a) consents to a relevant Government Department or Instrumentality providing information to the Principal and the QGP Compliance Branch; and
  - (b) authorises the Principal and the QGP Compliance Branch to obtain information;
- 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 *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld).
- 25.4 Failure to comply in any respect with the requirements of the Queensland Procurement Policy will be considered a substantial breach of the Contract.

## 26. RECORDS AND ACCESS TO RECORDS

- 26.1 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;

- (a) tenders received by it, whether accepted or not;
  - (b) the execution and completion of the work under the Contract or of the work under the subcontract; and
  - (c) 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 and the Ethical Supplier Mandate and the Supplier Code of Conduct.
- 26.2 The records referred to in clause 26.1 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;
  - (a) relate to design, including design calculations, option studies, opinions, reviews, and reports;
  - (b) 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;
  - (c) are required to demonstrate compliance with the matters referred to in clause 26.1 including without limitation payroll records, management records and time recordings; and
  - (d) are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications, or social media.
- 26.3 The records referred to in clause 26.1 must not be destroyed without the prior written approval of the Principal.
- 26.4 Without limiting any other rights or obligations under this clause 26, the Principal 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 26.4, undertake an audit in respect of the Contractor's compliance with clause 3. In undertaking the audit, the Principal and the QGP Compliance Branch will have the right to inspect and copy any record referred to in clause 26.1 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 26.4, the Contractor must promptly and at its own cost provide the Principal and the QGP Compliance Branch with every reasonable facility necessary to undertake the audit, including but not limited to:
- ( ) providing to the Principal and the QGP Compliance Branch any record requested for inspection or copying pursuant to clause 26.5;
  - (a) making staff available to the Principal and the QGP Compliance Branch to access or explain systems, processes or any record referred to in clause 26.1; and
  - (b) arranging and providing access to the Contractor's or subcontractor's workplaces, sites, premises, or facilities.
- 26.5 Subject to the Contractor's right to claim legal professional privilege in respect of any record, which is hereby maintained, the Principal and the QGP Compliance Branch will have the right to inspect and to copy at any time any record referred to in clause 26.1. In the case of any records referred to in clause 26.1 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 Principal and the QGP Compliance Branch.
- 26.6 Where a record referred to in clause 26.1 is created, maintained or stored by the Contractor or a subcontractor in an electronic format, it must be provided to the Principal in its native, operable form or such other format as may be reasonably required by or acceptable to the Principal.
- 26.7 Where a record referred to in clause 26.1 is stored on a medium licensed from a third party, where the Principal is a party to the communication, the Contractor must provide the Principal with a copy of such records in an external electronic storage device, readable on the Principal's information technology system, or such other format as may be reasonably required by the Principal, each month until the expiration of the Defects Liability Period.
- 26.8 The Contractor must comply in all respects with any request made pursuant to clause 26.5 to inspect or copy records referred to in clause 26.1, or any audit undertaken pursuant to clause 26.4, and will not be entitled to refuse audit, inspection or copying of any record referred to in clause 26.1 on any basis whatsoever other than on the basis that legal professional privilege attaches to the record.

- 26.9 Records accessed under clauses 26.4 or 26.5 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 and the Supplier Code of Conduct 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 and the Supplier Code of Conduct.
- 26.10 The Principal and the QGP Compliance Branch may in their absolute discretion, publish information about the Contractor's or a subcontractor's compliance with the Ethical Supplier Mandate, including but not limited to any sanctions or penalties imposed, and the parties acknowledge and agree that to do so will not constitute a breach of this Contract by the Principal nor give rise to any other right or remedy of the Contractor at law or in equity against the Principal or the QGP Compliance Branch.



## ANNEXURE

Item		
1	The Principal (clause 1):	The State of Queensland through .....
2	The address of the Principal:	.....
3	The Superintendent (clause 1):	As per Letter of Acceptance
4	The address of the Superintendent:	As per Letter of Acceptance
5	Address of the Site (clause 1):	.....
6	Quality system (Conditions of Tender clause 23):	.....
7	Amount of public liability insurance (clause 8):	\$ ..... (If nothing stated – \$20 million)
8	Time for commencement (clause 11):	*within .....business days of acceptance or *.../.../20... (*Delete one)
9	Date for Practical Completion (clause 12):	*within .....weeks from acceptance or *.../.../20... (*Delete one)
10	Liquidated damages (clause 13):	\$..... per day (GST not applicable)
11	Defects Liability Period (from Practical Completion) (clause 14):	..... (If nothing stated – 6 months)
12	Time for making payment claims (clause 18):	..... (If nothing stated – Monthly)
13	Retention moneys deducted from progress payments (clause 18):	10% of the value of work completed (excl. GST) until 5% of the contract sum (excl. GST) is held
14	Retention moneys held after Practical Completion (clause 18):	2.5% of the contract sum (excl. GST)
15	GST and PAYG (clause 21.3):	Alternative 1* / Alternative 2* (*Delete one) (If nothing stated – Alternative 1)
16	Design responsibility (clause 23):	*Applicable / *Not applicable (*Delete one) [GUIDE NOTE: Where the Contractor IS to prepare and be responsible for the design of the Works (or part thereof), delete 'Not Applicable'. Where the Contractor IS NOT required to prepare or be responsible for the design of the Works (or part thereof) (i.e. the design and documentation of all of the Works has been carried out by the Principal), delete 'Applicable'.]
17	Party to engage the Building Certifier (clause 23.3):	*Not Applicable/*Principal/*Contractor (*Keep one) (If applicable, and nothing stated – Contractor)
18	Amount of professional indemnity insurance (clause 23.4):	\$ ..... (If applicable, and nothing stated – \$1 million)



## SCHEDULES

### SCHEDULE 1 – REQUEST FOR APPROVAL TO SUBCONTRACT / SUB SUBCONTRACT

#### Clause 3

Contract Name: .....

Project Number: .....

Pursuant to clause 3 of the Conditions of Contract I request approval to enter into a subcontract for the following part of the works under the Contract: .....

Proposed subcontractor: .....

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

Address: .....

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

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

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

I confirm that:

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

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

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

Contractor

**SCHEDULE 2 – SUBCONTRACTOR DEED POLL****Clause 3****FORM OF DEED POLL**

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

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

IN FAVOUR OF: The State of Queensland through .....  
..... (hereinafter with its  
successors in office, nominated agents and the Queensland Government Procurement Compliance Branch (‘QGP  
Compliance Branch’) called the “Principal”).

**RECITALS**

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

This Deed Poll provides as follows:

1. The Subcontractor warrants that:
- a. it will make and keep accurate and complete records of:
    - i. its tender, including without limitation the preparation and submission of that tender;
    - ii. tenders received by it, whether accepted or not;
    - iii. the execution and completion of the work under the Subcontract; and
    - iv. 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 and the Ethical Supplier Threshold;
  - b. 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:
    - i. relate to the Subcontractor’s tender, including tender preparation, submission, negotiation, evaluation, estimates and  
calculations;
    - ii. relate to design, including design calculations, option studies, opinions, reviews, and reports;
    - iii. relate to the execution and completion of the work under the Subcontract, including without limitation labour, subcontracts,  
subcontractors, consultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing,  
compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
    - iv. are required to demonstrate compliance with the matters referred to in 1.a.iv above, including without limitation payroll  
records, management records and time recordings; and
    - v. are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications, or  
social media;
  - c. subject to the Subcontractor’s right to claim legal professional privilege in respect of any record, which is hereby maintained,  
permit the Principal and the QGP Compliance Branch to inspect and to copy at any time any records referred to in Clause 1.a.

or 1.b. above, provide electronic copies of such records in native format and provide any access to the Subcontractor's sites, premises, or facilities necessary for an inspection referred to in this paragraph;

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

#### EXECUTED as a DEED POLL

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

.....  
Name of Company – Subcontractor ACN

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

.....  
Name of Director Signature of Director

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

OR

.....  
Name of Person – Subcontractor Signature of Person – Subcontractor

In the presence of:

.....  
Name of Witness Signature of Witness

### SCHEDULE 3 – FORM OF UNDERTAKING

#### Clause 18.7

CONTRACT for [insert description as per letter of acceptance] ..... (the "Contract") at the request of [insert Contractor as per letter of acceptance] ..... ACN ..... (the "Contractor") and in consideration of [insert Principal as per annexure] ..... (the "Principal") accepting this undertaking [insert the financial institution's details] ..... ACN ..... (the "Financial Institution") unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the

Principal to a maximum aggregate of \$ ..... ( ..... )  
(the "Sum").

The undertaking is to continue:

1. until notification has been received from the Principal that the Sum is no longer required by the Principal; or
2. until this undertaking is returned to the Financial Institution; or
3. until payment to the Principal by the Financial Institution of the whole of the Sum.

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

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

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

Dated at .....this.....day of ..... 20.....

SIGNED for and on behalf of

.....  
*Financial Institution*

By its Attorney(s)

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

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

.....  
*Signature of Attorney*

In the presence of

.....  
*Name of Witness*

.....  
*Signature of Witness*

Branch of Issue:

.....  
Telephone: .....