

# Standard Terms and Conditions

## SECTION A: PRELIMINARY

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### A1. Defined terms

Unless the context otherwise requires, the following terms have the meanings given when used in the Contract.

**Applicable Codes and Standards** means the codes, standards, regulations and requirements expressed or implied in any Relevant Law, Government Consent, the Scope of Supply, and in the event of an inconsistency or conflict between any of the above, the more rigorous performance standard applies.

**Authority** means any Federal, State or Local Government, or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity or administrative, fiscal or judicial authority of such government.

**Background IP** means any material including procedures, processes, data, systems, know-how and methodologies and any subject matter capable of protection by Intellectual Property Rights:

- (a) which is pre-existing or developed other than in performing the Contract;
- (b) made available by a party to the other party for the purposes of the Contract; and
- (c) whether owned by the party making it available or a third party.

**Business Day** means any day other than a Saturday, Sunday or public holiday in Queensland, Australia, or the location of the relevant Site.

**Completion** means when the Goods have been delivered to the Site and comply with the terms of this Contract and the Services have been performed in accordance with this Contract (as applicable).

**Contract** means:

- (a) these Standard Terms and Conditions;
- (b) the agreed Scope of Supply;
- (c) the Purchase Order; and
- (d) any other document stated in the Contract to be part of the Contract.

**Contract Price** means the price agreed between the parties for the Supply, which is exclusive of GST but inclusive of all other taxes, costs and charges.

**Contractor's Personnel** means the Contractor's employees, agents, authorised representatives, directors, officers and Subcontractors, and any other person for whom the Contractor is responsible, and employees, agents, authorised representatives, directors, officers and contractors of the Subcontractors.

**Date for Completion** means the date specified in the Purchase Order or otherwise agreed between the parties for completion of the Supply, as adjusted under the Contract.

**Date of Completion** means the date the Supply achieved Completion under clause D1.

**Defects Liability Period** means 1 year.

**Environmental Law** includes all environment Related Law, directions or notices issued by any relevant Authority and Applicable Codes and Standards, as relevant and applicable to the Supply and includes:

- (a) *Environmental Protection Act 1994* (Qld) and any associated regulations;
- (b) *Planning Act 2016* (Qld) and any associated regulations;
- (c) *Nature Conservation Act 1992* (Qld) and any associated regulations;
- (d) *Environment Protection and Biodiversity Conservation Act 1999* (Cth); and
- (e) *National Greenhouse and Energy Reporting Act 2007* (Cth).

**Ethical Supplier Threshold** means the Ethical Supplier Threshold in paragraph 2.3 of the Queensland Procurement Policy.

**Existing Contract** means any written contract signed by both Queensland Rail and the Contractor for the supply of Goods and Services identified in the Purchase Order, including a contract which sets up a process for ordering the Goods and Services by separate order form.

**Goods** means the items (if any) referred to in the Purchase Order and the Scope of Supply and includes Variations.

**Government Consent** means an approval, consent, waiver, authorisation, permit, clearance, certificates, licence or other precondition required under Relevant Law or from an Authority in relation to the performance of the Supply or the use of the Goods.

**Intellectual Property Rights** means all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include:

- (a) all rights in all applications to register these rights; and
- (b) all renewals and extensions of these rights.

**Losses** means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

**PPSA** has the meaning given in clause L4.

**Purchase Order** means the document titled 'Purchase Order' being a request from Queensland Rail for the Contractor to supply the Goods and perform the Services and which may specify details including the quantity and specification of Goods or Services, the Site and the Date for Completion.

**Queensland Procurement Policy** means the policy of that name issued by the Queensland Government and available at: <http://www.forgov.qld.gov.au/search-procurement-resources/queensland-procurement-policy-2021> or any policy that replaces that policy.

**Queensland Rail** means Queensland Rail Limited.

**Queensland Rail's Corporate Policies** means the following policies available from the 'Our policies' page on Queensland Rail's website (<https://www.queenslandrail.com.au/aboutus/rli/our-policies>) or from Queensland Rail on request, as amended from time to time and as relevant to the Supply including:

- (a) Code of Conduct;
- (b) Conflicts of Interest;

- (c) Gifts, Benefits and Entertainment;
- (d) Public Interest Disclosures;
- (e) Trading in Securities;
- (f) Rail Safety Worker Fatigue, Drug and Alcohol requirements.

**Rail Authority** means the authority established under section 6 of the Rail Authority Act.

**Rail Authority Act** means the Queensland Rail Transit Authority Act 2013 (Qld).

**Relevant Law** includes orders and awards of any Authority, Acts, ordinances, rules, guidelines, regulations, by-laws and proclamations that may be applicable to the Supply.

**Scope of Supply** means the scope of the Supply agreed between the parties to be performed by the Contractor.

**Security Interest** has the meaning give in clause L4.

**Services** means the services (if any) referred to in the Purchase Order and the Scope of Supply and includes Variations.

**Site** means the areas specified in the Scope of Supply for the performance of the Supply (including delivery of any Goods) or as otherwise advised by Queensland Rail to the Contractor from time to time.

**Subcontract** means an agreement between the Contractor and a Subcontractor.

**Subcontractor** means any person engaged by the Contractor to perform any part of the Supply.

**Supplier** means the person, firm or corporation to who or to which the Purchase Order is addressed.

**Supplier Reference Document** means a delivery document, dispatch note, time sheet, claim form or such other document which evidences the performance of the Supply.

**Supply** means all obligations, duties and responsibilities of the Contractor under the Contract and any incidental work that can be reasonable inferred as necessary or appropriate to:

- (a) perform the Services;
- (b) supply the Goods,

(as applicable) in accordance with the Contract.

**Variation** has the meaning given in clause F1.

**WHS Laws** means all safety related Relevant Law, directions on safety or notices issued by any relevant Authority and Applicable Codes and Standards, as relevant and applicable to the Supply and includes:

- (a) *Rail Safety National Law (Queensland) Act 2017* (Qld);
- (b) *Work Health and Safety Act 2011* (Qld);
- (c) *Work Health and Safety Regulation 2011* (Qld);
- (d) *Electrical Safety Act 2002* (Qld);
- (e) *Electrical Safety Regulation 2013* (Qld); and
- (f) *Heavy Vehicle National Law Act 2012* (Qld) and any associated regulations.

## **SECTION B: DOCUMENTATION**

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### **B1. Documents**

#### **B1.1 Entire Agreement**

- (a) If there is an Existing Contract between the parties, and a Purchase Order is issued in respect of that Existing Contract:
  - (i) the Existing Contract will apply to the Supply made under that Purchase Order; and
  - (ii) these Standard Terms and Conditions will not apply to, amend or vary any part of the Existing Contract.
- (b) Subject to clause B1.1(a), this Contract constitutes the entire agreement between the parties and supersedes all prior arrangements, letters of intent, memorandums of understanding, purchase orders, representations, quotations and documents (if any) relating to the Supply or the Contract.
- (c) To the extent the Contractor's terms and conditions are supplied with the Goods and Services (including as printed on a Supplier Reference Document or any other documents), those terms and conditions will be of no legal effect and will not constitute part of this Contract (even if a representative of Queensland Rail signs those terms and conditions or annexes the terms and conditions to the Purchase Order).

#### **B1.2 Precedence**

In the event of any inconsistency between the documents comprising the Contract, the following order of precedence will apply to the extent necessary to resolve the inconsistency:

- (a) the Purchase Order;
- (b) these Standard Terms and Conditions;
- (c) the agreed Scope of Supply; and
- (d) any other document stated in the Contract to be part of the Contract.

### **B2. Intellectual property**

#### **B2.1 Ownership of Intellectual Property Rights**

The parties agree that:

- (a) each party retains its Background IP; and
- (b) all Intellectual Property Rights in any documents, plans, specifications, designs, drawings, sketches, reports or other material created or produced in connection with the Supply vests in Queensland Rail on creation and Queensland Rail grants to the Contractor an irrevocable, royalty free, non-exclusive licence for the term of the Contract to use that material in connection with the Supply.

The Contractor must obtain all necessary copyright and other Intellectual Property Rights permissions before making any third party material available as part of the Background IP, including it in any material produced for or in connection with the Supply or otherwise using it for the purposes of this Contract.

## B2.2 Licence to use Contractor's Background IP

- (a) The Contractor grants to Queensland Rail a non-exclusive, royalty-free, irrevocable, perpetual and fully assignable licence to use all Background IP provided by the Contractor in relation to the Supply, to receive the full benefit of the Contract and for any future use or development, including repair, renovation, alteration, addition to, replacement of parts and upkeep of the Goods and Services.
- (b) The Contractor warrants that it has procured the grant and otherwise has the right and authority to grant the licence mentioned in clause B2.2(a) and any use of the Background IP as permitted by this Contract will not infringe the Intellectual Property Rights of any person.

## B3. Confidentiality

### B3.1 Definitions

For the purposes of this clause B3:

**Confidential Information** means all Intellectual Property Rights, Background IP, proprietary know-how and trade-secrets; and any information about the Contractor's rates, price build-up, component prices or prices for specific services, and profit margin, and Queensland Rail information provided to Contractor for the purposes of this Contract, which was disclosed or communicated by or on behalf of the Disclosing Party to the Recipient for the Purpose, and all material derived directly or indirectly from that information.

For clarity, **Confidential Information** does not include any information which:

- (a) is or becomes part of the public domain, other than by a breach of a confidentiality obligation;
- (b) is lawfully known to the Recipient before the date of this agreement and is not the subject of a confidentiality obligation;
- (c) is or becomes available to the Recipient from another person on a non-confidential basis except through a breach of a confidentiality obligation.

**Conflict of Interest** means having an interest, affiliation or relationship, or owing an obligation (whether personal, financial, professional or otherwise), which conflicts, may reasonably have the potential to conflict or may reasonably be perceived as conflicting with the ability of the Contractor to perform its obligations under this Contract fairly and objectively.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Data Breach** has the meaning given in any applicable Privacy Legislation and includes any unauthorised access to or disclosure or modification of, any misuse or loss of, any interference with, any event that causes denial of access to, or any accidental or unlawful destruction of, any Personal Information.

**Disclosing Party** means the party disclosing Confidential Information.

**Manage** means collect, hold, use, disclose, process, store, transfer, access, correct, deal with or handle.

**Personal Information** has the meaning as defined in any applicable Privacy Legislation.

**Privacy Legislation** means the *Privacy Act 1988* (Cth), the *Information Privacy Act 2009* (Qld) and any relevant law governing privacy or Personal Information or the Managing of information about individuals, whether in Australia or elsewhere that is applicable, including any codes,

principles or lawful requirement or direction arising from or through such relevant law and any published privacy policy of Queensland Rail.

**Purpose** means any activity in connection with:

- (a) an expression of interest, invitation to offer, request for quote or negotiation regarding a potential Supply; or
- (b) compliance with the Recipient's obligations under this Contract.

**Queensland Rail Personal Information** means any Personal Information which is Managed by or on behalf of the Contractor in connection with this Contract.

**Recipient** means the party receiving Confidential Information.

**Rail Authority** means the authority established under section 6 of the Rail Authority Act.

**Rail Authority Act** means the *Queensland Rail Transit Authority Act 2013* (Qld).

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Specified Person** means:

- (a) a Related Body Corporate of the Recipient;
- (b) a consultant, contractor, auditor or adviser of the Recipient or a Related Body Corporate of the Recipient; or
- (c) an officer or employee of any entity referred to in paragraphs (a) and (b) above.

**Sunset Date** means 20 Business Days after the expiry or earlier termination of this Contract.

## **B3.2 Confidentiality obligations**

The Recipient must:

- (a) hold the Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of, the Confidential Information, except as permitted under this Contract;
- (b) keep the Confidential Information secure and protected from loss and any use, disclosure, modification or access which is inconsistent with this Contract;
- (c) promptly notify the Disclosing Party if it suspects, or becomes aware of, any:
  - (i) Conflict of Interest in relation to any Confidential Information; or
  - (ii) loss or any unauthorised use, storage, copying or disclosure of the Confidential Information;
- (d) only access and use the Confidential Information for the Purpose;
- (e) not make use of the Confidential Information to the commercial, financial or competitive disadvantage of the Disclosing Party;
- (f) only create, or cause or permit to be created, anything which reproduces, is based on, utilises or relates to Confidential Information if that creation is solely for, and is necessary for, the Purpose; and
- (g) only disclose Confidential Information:
  - (i) subject to clause B3.5, to a Specified Person solely for the Purpose and where such disclosure is necessary for the Purpose;
  - (ii) where required to by law, and the Recipient must inform the Discloser of the obligation to disclose;

- (iii) with the prior written consent of the Disclosing Party; or
- (iv) if the Recipient is Queensland Rail, to:
  - (A) any responsible Minister (as defined in the Rail Authority Act);
  - (B) the Rail Authority;
  - (C) the Rail Authority's board members, chief executive officer, finance officer and other senior executives (as those terms are defined under the Rail Authority Act) and other employees;
  - (D) a department or agency of the State of Queensland; and
  - (E) the extent required or recommended by Queensland Rail's procurement policy.

### **B3.3 Return and destruction of Confidential Information**

- (a) By the Sunset Date, the Contractor must immediately return to Queensland Rail, or destroy, delete, and erase, all original documents and copies which:
  - (i) are or contain Confidential Information; and
  - (ii) reproduce, are based on, utilise, or relate to Confidential Information.
- (b) If requested by Queensland Rail, the Contractor must provide written confirmation of its compliance with clause B3.3(a).
- (c) The return, destruction, deletion, erasure, or retention of Confidential Information of any of the Confidential Information does not relieve the Contractor from any of its other obligations under this Contract.
- (d) This clause B3.3 does not apply to Confidential Information which:
  - (i) is required to be retained as a matter of good corporate governance, including without limitation, information contained in the Contractor's management submissions, board papers or minutes and audit reports, to the extent that such papers and minutes contain a level of detail consistent with normal practices of the Contractor;
  - (ii) is contained within documents that are created or retained by any legal advisers of the Contractor for the purposes of any relevant professional standards, practices, codes or insurances policies applicable to the provision of advice to the Contractor; or
  - (iii) the Contractor cannot practically return, destroy, delete or erase because it is stored electronically as a result of the Contractor's archiving and data back-up procedures in accordance with the ordinary practices of the Contractor, provided that the Recipient makes no attempt to access such Confidential Information and complies with any reasonable directions of the Queensland Rail in relation to its storage, use or access.

### **B3.4 Acknowledgement**

The Recipient acknowledges and agrees that:

- (a) the Confidential Information is secret and highly confidential to the Disclosing Party and its Related Bodies Corporate;



- (b) disclosure of Confidential Information in breach of this Contract could cause considerable commercial and financial detriment to the Disclosing Party and its Related Bodies Corporate; and
- (c) damages may be inadequate compensation for breach of this Contract and, subject to the court's discretion, the Disclosing Party and its Related Bodies Corporate may seek specific performance, injunctive relief or similar remedy as a remedy for any conduct or threatened conduct which is or would be a breach of this Contract in addition to any other remedies available at law or in equity under or independently of this agreement.

### **B3.5 Recipient to ensure compliance by Specified Persons**

- (a) The Recipient must:
  - (i) inform each Specified Person of the Recipient's obligations under this Contract;
  - (ii) procure that each Specified Person strictly observes all of the Recipient's obligations under this Contract as if those obligations were imposed on that person; and
  - (iii) ensure that no officer, employee, adviser or agent of the Recipient does anything which, if done by the Recipient, would be inconsistent with this Contract.
- (b) If Queensland Rail requests, the Contractor must obtain from Specified Persons to whom it proposes to disclose Confidential Information a signed confidentiality deed in a form acceptable to Queensland Rail (acting reasonably).

### **B3.6 Contractor's obligations with respect to Personal Information**

The Contractor:

- (a) acknowledges that Queensland Rail is required to comply with Privacy Legislation;
- (b) must establish effective measures to:
  - (i) safeguard Queensland Rail Personal Information from unauthorised access, modification, use, interference, loss or disclosure;
  - (ii) ensure that any Queensland Rail Personal Information is Managed in a manner consistent with Privacy Legislation;
  - (iii) ensure accurate and complete records are kept of the Contractor's Management of Queensland Rail Personal Information; and
  - (iv) ensure its compliance with this clause B3;
- (c) must Manage Queensland Rail Personal Information:
  - (i) only for the purpose of performing this Contract or as required by law;
  - (ii) with only such of Contractor's Personnel as may be necessary for the purposes of performing this Contract; and
  - (iii) in accordance with Queensland Rail's reasonable directions.

### **B3.7 Data Breach**

- (a) If the Contractor suspects or has reasonable grounds to believe that a Data Breach has occurred with respect to Queensland Rail Personal Information, the Contractor must:
  - (i) notify Queensland Rail without undue delay of the Data Breach;



- (ii) conduct an assessment of the Data Breach and determine if serious harm is likely to any affected individual and, if requested by Queensland Rail, allow Queensland Rail to participate in that assessment;
- (iii) take all reasonable steps to:
  - (A) contain and remedy the Data Breach;
  - (B) mitigate against the adverse effect and harm arising from the Data Breach; and
  - (C) prevent a similar Data Breach in the future; and
- (iv) provide Queensland Rail with all information it reasonably requests about the assessment of the Data Breach or the Queensland Rail Personal Information affected by the Data Breach.

### **B3.8 Media releases and photography**

The Contractor must not, without the prior approval of Queensland Rail:

- (a) issue any information, publication, document or article for publication concerning the Supply in any media;
- (b) advertise at the Site;
- (c) participate in a media interview that mentions or refers to the Supply; or
- (d) take photographs or make sketches of the Supply or any part of Queensland Rail's operations except for the purposes of the Contract.

### **B3.9 Emergencies**

The restrictions imposed by this clause B3 do not prohibit activities necessary to organise emergency assistance for the Site.

### **B3.10 Survival**

This clause will continue to apply after expiration or termination of this Contract.

## **B4. Audits and records**

### **B4.1 Books and records**

The Contractor must maintain full and accurate books, records and accounts (including electronic records, correspondence, instructions, plans, drawings, receipts, timesheets and invoices) (**Verification Accounts**) to enable Queensland Rail to verify amounts claimed by or paid to the Contractor in relation to the Supply, in accordance with clause B4.2.

### **B4.2 Audit rights**

Queensland Rail may request or audit the Contractor's Verification Accounts at any time during the:

- (a) performance of the Supply; and
- (b) period of two years after the end of the Contract.

### B4.3 Refunds

If an audit of Verification Accounts reveals costs charged to or paid by Queensland Rail that are not in accordance with the Contract, the Contractor must refund the amounts to Queensland Rail.

## SECTION C: PERSONNEL

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### C1. Contractor's workforce

#### C1.1 Supply of personnel

- (a) The Contractor must:
  - (i) supply all labour, supervisory and other personnel necessary for the performance of the Supply in accordance with the Contract; and
  - (ii) if requested by Queensland Rail, provide the names and a copy of certifications supporting the current qualifications and licences of Contractor's Personnel.
- (b) Queensland Rail may at any time direct the Contractor to remove from the Site, not to permit on the Site or to remove from any activity connected with the Supply, any person engaged in connection with the Supply.
- (c) If any of the Supply includes labour hire services (as defined in the *Labour Hire Licensing Act 2017* (Qld)), the Contractor must maintain (and ensure that its labour hire service providers maintain) a current licence to provide those labour hire services.
- (d) For the avoidance of doubt, the Contractor is not entitled to a Variation, extension of time or compensation as a result of a direction under clause C1.1(b).

#### C1.2 Contractor Personnel employment terms

- (a) The Contractor acknowledges that the Queensland Rail Enterprise Agreement notified by Queensland Rail to the Contractor is relevant to the Supply (**Relevant EA**) (if any) and that the Relevant EA contains the following term (the **EA Clause**):

*To the extent permitted by law, in respect of work that is covered by the Relevant EA, Queensland Rail must ensure that employees of contractors are afforded terms which are no less favourable than the terms which would apply if the work was done by employees of Queensland Rail. Contractor Employees carrying out the Supply pursuant to this Contract must receive terms which are no less favourable than the terms contained in the Relevant EA which would apply if the Supply was being performed by employees of Queensland Rail.*
- (b) If the EA Clause or compliance with it in accordance with paragraph C1.2(a) is established to be or becomes void, unlawful, unenforceable or invalid for any reason, Queensland Rail must notify the Contractor that it is no longer required to comply with paragraph C1.2(a).
- (c) For the purpose of this clause C1.2, **Contractor Employee** means a person employed directly by the Contractor as a Pay As You Go/PAYG employee, but specifically excludes any person retained by the Contractor as a Subcontractor (either as an individual or through a company).

## C2. Assignment and subcontracting

- (a) Queensland Rail may assign, novate, or transfer the Contract to a government agency or government owned corporation of the same or similar standing as Queensland Rail (or delegate or otherwise deal with the Contract or any right, obligation, duty or responsibility under it) in the event of a restructure of Queensland Rail or as a result of a direction by government without the prior written approval of the Contractor.
- (b) The Contractor must not subcontract the performance of or assign or novate the Contract or any part thereof, without Queensland Rail's prior written approval. Such approval will not be unreasonably withheld.

## C3. Key Personnel

- (a) For the purposes of this clause C3, **Key Personnel** means the personnel identified by Queensland Rail that are required to undertake the Supply.
- (b) The Contractor must ensure that the Key Personnel perform the part of the Supply required of their designated positions, unless the Contractor obtains Queensland Rail's prior approval to replace the person or alter the part of the Supply the person is to perform.
- (c) When a designated person is replaced, the Contractor must (unless the person being replaced has died or become ill or incapacitated) ensure that there is a thorough 'handover' which will require the designated person and the replacement person to work together for at least 4 weeks.

# SECTION D: TIME

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## D1. Completion

- (a) The Contractor must carry out the Supply with due expedition and without delay and achieve Completion before the Date for Completion, unless an extension of time is approved by Queensland Rail in writing.
- (b) The Contractor must notify Queensland Rail when it considers that the Supply has achieved Completion.
- (c) Within 10 Business Days of a notice from the Contractor under clause D1(b), Queensland Rail may notify the Contractor whether the Supply has achieved Completion, and if Queensland Rail fails to do so, the Supply is deemed to have achieved Completion.
- (d) If Queensland Rail notifies the Contractor under clause D1(c) that the Supply has not achieved Completion:
  - (i) Queensland Rail's notice must include reasons and may include a direction under clause D2.1 in respect of any part of the Supply which Queensland Rail finds to be defective; and
  - (ii) this clause D1 will apply when the Contractor has completed the rectification activities or otherwise considers that the Supply has achieved Completion.
- (e) The Contractor must deliver to Queensland Rail, within five Business Days of the Date of Completion, documents and other information required under the Contract or essential for the use, operation and maintenance of the Supply, including all documents and approvals issued by Authorities in relation to the Supply.

- (f) Notwithstanding any other provision of the Contract:
  - (i) Queensland Rail is not obliged to pay amounts owing to the Contractor until the Contractor has complied with clause D1(e); and
  - (ii) neither payment for the Supply nor notice of Completion (or deemed Completion) under clause D1(c) constitutes acceptance of a Supply that does not comply with the Contract or affects the power of Queensland Rail to exercise its rights under clause D2.

## **D2. Defects liability and warranties**

### **D2.1 Rectification of the Supply**

- (a) The Defects Liability Period will commence on Completion.
- (b) Without limiting or excluding any of its other rights, Queensland Rail may in its discretion:
  - (i) require the Contractor to promptly remove, rectify, replace, repair or re-supply (**rectification activities**) any part of the Supply which Queensland Rail finds to be defective at any time from the commencement of the Supply until the expiry of the Defects Liability Period; or
  - (ii) elect to accept the Supply and claim damages for the Contractor's failure to comply with the Contract.
- (c) The Contractor:
  - (i) must, at its expense, perform the rectification activities identified by Queensland Rail;
  - (ii) is responsible for any damage to other parts of the Supply or the property of Queensland Rail resulting directly or indirectly from any rectification activities;
  - (iii) must carry out all rectification activities at times and in a manner so as to minimise the inconvenience to Queensland Rail and any other occupants or users of the Site and its surrounding areas; and
  - (iv) must replace any parts (at its own cost) required to complete the rectification activities or for the purpose of testing or commissioning prior to expiration of the Defects Liability Period.
- (d) Unless notified otherwise by Queensland Rail, the Defects Liability Period for any part, component or item which has been the subject of rectification activities will be extended for that part, component or item for a period equal to the Defects Liability Period, save that the total Defects Liability Period will never exceed 36 months from Completion.
- (e) Without limiting or excluding other rights of Queensland Rail, if Goods are determined by Queensland Rail to be materially non-compliant with the Contract:
  - (i) Queensland Rail may return the Goods to the Contractor at the Contractor's risk and expense;
  - (ii) Queensland Rail may procure replacements for the returned Goods from an alternative source; and
  - (iii) the Contractor will be indebted to Queensland Rail for:
    - (A) the Contract Price paid by Queensland Rail for the returned Goods (if paid);

- (B) the costs incurred by Queensland Rail in connection with the delivery and return of the returned Goods; and
- (C) additional costs incurred by Queensland Rail to procure the Goods from an alternative source.

## **D2.2 Access to rectify**

- (a) Queensland Rail will notify the Contractor with the times it may access the Site to perform the rectification activities in accordance with clause D2.1.
- (b) The Contractor must access the Site in accordance with this Contract, including in accordance with the requirements set out in G1.

## **D2.3 Failure to rectify**

If Queensland Rail considers that the Contractor has not performed the rectification activities within the time specified by Queensland Rail, or, if no time is specified, a reasonable time after receiving notice under clause D2.1(b), Queensland Rail may, without prejudice to any other rights of Queensland Rail, take any action considered necessary to perform the rectification activities and costs incurred by Queensland Rail in doing so will be a debt due from the Contractor to Queensland Rail.

# **SECTION E: PERFORMANCE OF SUPPLY**

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## **E1. Scope of the Contract**

The Contractor must, as an independent contractor:

- (a) carry out the Supply; and
- (b) at the Contractor's own cost, supply all labour, materials, services, goods, plant, equipment or other things necessary to provide the Goods or Services (whether or not expressly described in the Contract) or comply with its obligations under the Contract.

## **E2. Laws and regulations**

### **E2.1 Compliance with the law and other requirements**

The Contractor must:

- (a) comply with:
  - (i) all Relevant Laws and Government Consents applicable to the Supply;
  - (ii) policies, regulations, rules, schemes or plans issued by Queensland Rail governing Site activities, industrial relations, construction, safety and the environment and Queensland Rail's Corporate Policies; and
  - (iii) applicable Queensland Government policies, including as detailed in clause L2(a) (The Queensland Code) and clause L4 (Queensland Rail Supplier Code of Conduct and Ethical Supplier Threshold);
- (b) obtain and maintain all Government Consents in connection with the Supply; and
- (c) pay any fees, charges, levies and taxes imposed by an Authority in relation to the Supply.

The cost of complying with this clause E2.1 is included in the Contract Price.

## **E2.2 DDA Act compliance**

Without limiting clause E2.1, the Contractor:

- (a) acknowledges Queensland Rail is required to comply with the *Disability Discrimination Act 1992* (Cth) (**DDA Act**); and
- (b) must ensure the Supply is compliant with the DDA Act.

## **E3. Quality of materials and Goods used in the Supply**

All materials and Goods supplied by the Contractor must:

- (a) be of merchantable quality and fit for the purpose for which Materials and Goods of the same kind are commonly supplied and any other purpose made known (either expressly or impliedly) to the Contractor;
- (b) be free from all defects and imperfections affecting performance;
- (c) be of current manufacture, appropriate grade and suitable capacity; and
- (d) comply with the Scope of Supply.

## **E4. Quality of workmanship**

### **E4.1 Contractor's warranty**

The Contractor warrants that:

- (a) it will at all times be suitably qualified and experienced to perform the Supply;
- (b) the Supply will be performed in accordance with the Contract and to best practice standards of diligence, skill, care and efficiency expected of a competent contractor performing work of a similar nature to the Supply; and
- (c) the Goods and Services (as applicable) when completed will:
  - (i) comply with all the requirements of the Contract, Relevant Law, Government Consents and Applicable Codes and Standards and will be free from all defects and imperfections affecting performance; and
  - (ii) be fit for their intended purpose.

## **SECTION F: VARIATIONS AND ADJUSTMENTS**

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### **F1. Variations**

- (a) The Contractor will not vary the Supply unless the parties agree in writing to vary the Supply in accordance with this clause F1 (**Variation**).
- (b) Either party may propose a variation to the Supply by written notice to the other party.
- (c) The Contractor must detail in writing to Queensland Rail (either with the Contractor's proposal under clause F1(b) or within 5 Business Days of a proposal by Queensland Rail), the costs or time which the Contractor will incur or save as a result of the proposed variation, using the schedule of rates (if any is included in the Contract), otherwise using reasonable rates and prices.

- (d) Queensland Rail may either accept, reject or further negotiate with the Contractor the proposed variation.
- (e) The parties must record in writing the details of any Variation agreed by the parties under this clause.
- (f) If a Variation arises from an act, omission or default of the Contractor, its Subcontractors or their employees or agents, the Contractor will have no claim for any additional costs or extension of time.
- (g) If the Contractor considers that a direction by Queensland Rail is a direction to carry out a variation, then the Contractor must within 5 Business Days of receiving the direction, submit a notice under clause F1(c), and the process in the preceding paragraphs of clause F1 apply.

## **SECTION G: SAFETY, ENVIRONMENT SITE REQUIREMENTS**

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### **G1. Health, safety and environment**

#### **G1.1 General obligations**

- (a) Without limiting clause E2, the Contractor must comply with all duties under WHS Laws and Environmental Laws, safety and Site access conditions and requirements notified by Queensland Rail and Queensland Rail's Corporate Policies whilst carrying out the Supply.
- (b) All costs associated with complying with the duties under this clause, including attending inductions, briefings and training will be met by the Contractor.
- (c) The Contractor must do all things necessary to enable Queensland Rail to comply with its consultation duties under the WHS Laws.
- (d) The Contractor must not do anything to interfere with Queensland Rail's effective management and control of all Railway Operations (as defined in the *Rail Safety National Law (Queensland) Act 2017* (Qld) and any associated regulations).
- (e) The Contractor must provide Queensland Rail with copies of all notices and correspondence of whatsoever nature concerning the WHS Laws or Environmental Laws within five Business Days of the dispatch and/or receipt by the Contractor of any such notice or correspondence.
- (f) The Contractor must immediately comply with all lawful directions on health, safety and environment issued by:
  - (i) any relevant Authority; or
  - (ii) Queensland Rail's personnel.
- (g) The Contractor must immediately, upon demand by Queensland Rail, provide Queensland Rail with access to the Contractor's Personnel, premises, the relevant workplace area, equipment and records in order for Queensland Rail to undertake monitoring and inspection activities under Queensland Rail's policies relating to workplace health and safety and the environment.

#### **G1.2 Incident response**

The Contractor must:



- (a) notify Queensland Rail of any work related illness, injury, death, dangerous event or environmental incident which occurs on the Site immediately after becoming aware; and
- (b) following a notification under paragraph G1.2(a):
  - (i) do all things necessary to facilitate the conduct of an investigation by Queensland Rail, including:
    - (A) providing Queensland Rail's investigation team with access to the Site;
    - (B) providing Queensland Rail's investigation team with copies of any relevant documents; and
    - (C) taking all steps necessary to facilitate interviews or meetings with the Contractor's employees for the purposes of investigating the incident; and/or
  - (ii) prepare a detailed incident investigation report and provide a copy of it to Queensland Rail within 10 Business Days of the request being made and provide copies of all documents and records lawfully requested by Queensland Rail relevant to the incident.

The notification provided to Queensland Rail by the Contractor must include sufficient information to enable Queensland Rail to meet any notification or other requirements that apply to Queensland Rail under WHS Laws or Environmental Laws.

## **SECTION H: RISK, INSURANCE AND INDEMNIFICATION**

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### **H1. Passing of title and risk**

#### **H1.1 Clear title**

The Contractor warrants that title to the Goods and materials supplied by the Contractor, when they pass to Queensland Rail under clause H1.2, will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances.

#### **H1.2 Passing of title**

Title to any part of the Services or Goods under the Contract passes to Queensland Rail upon the earlier of:

- (a) payment for the Services or Goods (in each case including any materials) by Queensland Rail;
- (b) delivery of the Goods or the incorporation of the materials (as applicable) into the physical manifestation of the Services.

Upon title in Goods or materials passing to Queensland Rail, the Contractor must clearly mark those Goods or materials (as applicable) as the property of Queensland Rail.

Risk in the Goods and materials and the physical manifestation of the Services will pass to Queensland Rail on Completion.

#### **H1.3 Risk in the Goods and Services**

- (a) Notwithstanding clause H1.2, from and including the earlier of:
  - (i) the date of commencement of the Supply; and

- (ii) the date on which the Contractor is given possession of the Site,  
the Contractor is responsible for the care of the Supply and any materials until 5.00pm on the Date of Completion.
- (b) Without limiting the generality of the Contractor's obligations, the Contractor must:
  - (i) comply with all directions of Queensland Rail in relation to unloading, safe storage and safe keeping of the items in clause H1.3(a);
  - (ii) segregate all Goods stored off-Site from other items not related to the Contract;
  - (iii) protect the Goods and physical manifestation of the Services and those parts of the Site where the Supply is being performed;
  - (iv) provide all things and take all steps necessary to protect people and property on Site;
  - (v) avoid unnecessary interferences with the passage of people and vehicles; and
  - (vi) prevent nuisance and unreasonable noise and disturbance.
- (c) After 5.00 pm on the Date of Completion, the Contractor will remain responsible for the care of outstanding work and items to be removed from the Site by the Contractor and will be liable for damage occasioned by the Contractor in the course of completing outstanding work or complying with obligations under clause D2.

## **H2. Insurance**

The Contractor must effect and maintain the appropriate insurance policies including:

- (a) public liability insurance cover for a limit of not less than \$20 million per occurrence; and
- (b) if the Supply relates to the provision of professional services (which may include provision of professional advice), professional indemnity insurance for a limit of not less than \$5,000,000, to be maintained for a period of seven (7) years after Completion of the Supply.

Upon request by Queensland Rail, the Contractor must provide the certificate of currency evidencing this cover to Queensland Rail.

## **SECTION I: PAYMENT**

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### **I1. Invoices**

#### **I1.1 Submission of Invoices**

The Contractor must submit invoices to Queensland Rail at the end of each month.

#### **I1.2 Pre-conditions to payment**

- (a) Queensland Rail does not have any obligation to pay the Contractor for any part of the Supply until Queensland Rail has been given a correctly rendered invoice. All invoices must:
  - (i) identify the Goods or Services, purchase order number and contract number to which the invoice relates;

- (ii) provide sufficient detail to enable Queensland Rail to assess progress against the program (if any) and verify that the invoice is payable;
  - (iii) where the Contract Price for the Supply is to be calculated on a schedule of rates basis, be supported by records of time spent (if rates are hourly rates) or volumes delivered by the Contractor's Personnel or Subcontractors, verified by Queensland Rail and in a format determined by Queensland Rail; and
  - (iv) be in the form of, or accompanied by, a valid tax invoice for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Queensland Rail may request the Contractor to provide a statutory declaration attesting that all Subcontractors and employees of the Contractor have been paid all moneys due and payable to them in respect of the Supply described in the invoice.

### **I1.3 Payment**

Queensland Rail must pay the Contractor within 30 days from the end of the month in which the Contractor lodges its invoice, or earlier if required by any Relevant Law. Payment is on account only and is not evidence that the Supply has been performed satisfactorily.

## **I2. GST**

### **I2.1 GST exclusive amounts**

All amounts used in the Contract, including amounts and variables in formulas, are exclusive of GST unless it is clearly stated that they are intended to be GST inclusive. If a party makes a supply under or in connection with the Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause I2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

## **I3. Right to set-off**

### **I3.1 Queensland Rail's rights**

Queensland Rail may at any time, deduct from any amount due to the Contractor under the Contract to meet:

- (a) any debts and amounts due from the Contractor to Queensland Rail under or in connection with the Contract (including any liquidated damages amount); and
- (b) the amount of any bona fide claims or liens that Queensland Rail has against the Contractor under or in connection with the Contract.

### **I3.2 Notice of amount deducted**

Queensland Rail must notify the Contractor in writing of any amounts deducted under clause I3.1 and the basis for the deduction, at the time that the deducted amount would otherwise be due to the Contractor.

## SECTION J: SUSPENSION, TERMINATION AND DEFAULT

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### J1. Suspension of the Supply

#### J1.1 Suspension by Queensland Rail

- (a) Queensland Rail may, at any time and from time to time and for any reason, suspend performance of the Supply or any part of it, by notice to the Contractor.
- (b) On receipt of a suspension notice, the Contractor must suspend the relevant part of the Supply until directed to recommence the Supply by Queensland Rail, comply with any directions issued by Queensland Rail and take all reasonable steps to protect and secure the Supply and mitigate the costs and delays resulting from the suspension.

#### J1.2 Consequences of suspension

Subject to the Contractor complying with its obligations to mitigate under clause J1.1, Queensland Rail must reimburse the Contractor the actual direct costs incurred by the Contractor as a result of standby and remobilisation activities required by the suspension, except that the Contractor is not entitled to recover any costs if Queensland Rail has directed the suspension due to the negligence of or a breach of Contract or Relevant Law by the Contractor or Contractor's Personnel.

### J2. Termination

#### J2.1 Insolvency

- (a) If either party becomes insolvent or bankrupt, the other party may terminate the Contract immediately by written notice to the other party or the person in whom the Contract is vested as a result of the insolvency or bankruptcy.
- (b) If the insolvent party is the Contractor, Queensland Rail may give to any person in whom the Contract is vested as a result of the insolvency or bankruptcy, the option to perform the Supply in accordance with the Contract, provided that person provides security satisfactory to Queensland Rail for the proper and timely performance of the Contractor's outstanding obligations under the Contract.

#### J2.2 Default by Contractor

- (a) If the Contractor fails to perform or comply with any of its obligations under the Contract including if the Contractor:
  - (i) without reasonable cause, wholly or substantially suspends performance of the Supply; or
  - (ii) fails or refuses to comply with any direction given by Queensland Rail,

**(Contractor Default)** then Queensland Rail may serve a notice on the Contractor specifying the Contractor Default, the reasonable time within which the Contractor Default is to be remedied and requiring the Contractor to remedy it.
- (b) If, within the time specified in a notice served under clause J2.2(a), the Contractor fails to:
  - (i) take all reasonable steps to prevent recurrence of a Contractor Default that is not capable of remedy and agree to compensate Queensland Rail for its losses (if any) arising out of the Contractor Default; or
  - (ii) remedy the Contractor Default to the satisfaction of Queensland Rail,

then Queensland Rail may in its absolute discretion and without prejudice to any other rights of Queensland Rail terminate the Contract by 5 days written notice to the Contractor.

### **J2.3 Default by Queensland Rail**

- (a) Subject to Queensland Rail's rights under the Contract to deduct and withhold amounts owing to the Contractor, if Queensland Rail fails to make a payment due to the Contractor that is not the subject of a dispute between the parties (**QR Default**) then the Contractor may serve a notice on Queensland Rail specifying the QR Default, the time within which the QR Default is to be remedied (which must not be less than 14 days) and requiring Queensland Rail to remedy the QR Default.
- (b) If, within the time specified in a notice served under clause J2.3(a), Queensland Rail fails to remedy the QR Default to the satisfaction of the Contractor, then the Contractor may suspend performance of the Supply until the QR Default is remedied. Queensland Rail must pay any costs incurred by the Contractor as a result of the suspension and any subsequent resumption of performance of the Supply, in addition to all other amounts payable under the Contract at the time of the suspension.
- (c) If Queensland Rail has not remedied a QR Default within 14 days after the commencement of a suspension under clause J2.3(b), the Contractor may terminate the Contract by 5 days written notice to Queensland Rail.
- (d) If the Contractor terminates the Contract under J2.3(c) the Contractor may recover from Queensland Rail (as the Contractor's sole entitlement (whether under the Contract, at law or in equity)) the amounts described in clause J2.3(c).

### **J2.4 Termination for convenience**

- (a) In addition to any other rights that Queensland Rail may have under the Contract, Queensland Rail may at any time, in its absolute discretion and without cause, terminate the Contract in whole or in part by written notice to the Contractor.
- (b) Queensland Rail may engage another contractor to perform any part of the Supply in respect of which the Contract is terminated, without being in breach of the Contract.
- (c) If the Contract is terminated under clause J2.4(a), then subject to Queensland Rail's rights under the Contract to deduct and withhold amounts owing to the Contractor, Queensland Rail must pay the Contractor, as the Contractor's sole remedy in relation to the termination:
  - (i) all amounts due and payable to the Contractor for the Supply at the date of termination;
  - (ii) the cost of materials properly ordered for the Supply for which the Contractor has paid, or is legally bound to pay, provided that:
    - (A) the Contractor cannot use the materials on other works or supply the materials to a third party to recover the cost of the materials; and
    - (B) title to those materials will vest in Queensland Rail when payment is made by Queensland Rail under this clause J2.4; and
  - (iii) to the extent not covered under paragraph J2.4(c)(i) or J2.4(c)(ii), cancellation payments or similar amounts which the Contractor has paid, or is legally bound to pay, to Subcontractors on account of the termination of their Subcontracts as a consequence of Queensland Rail's termination of the Contract.

- (d) Notwithstanding the foregoing provisions of this clause J2.4, the Contractor must continue to perform any part of the Supply in respect of which the Contract is not terminated.

## **J2.5 Preservation of other rights**

If a party breaches or repudiates the Contract, nothing in this clause J2 will prevent the other party to recover damages or to exercise any other right.

# **SECTION K: DISPUTES**

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## **K1. Dispute resolution**

- (a) Unless otherwise expressly stipulated in the Contract, a party must not commence court proceedings (except proceedings seeking urgent interlocutory relief) in respect of any dispute under the Contract unless it has complied with this clause K1.
- (b) If a party considers that a dispute exists in connection with the Contract, that party may give the other party written notice detailing the nature of the dispute (**Notice of Dispute**).
- (c) Within 10 Business Days after the service of a Notice of Dispute, Queensland Rail and the Contractor must confer at least once to attempt to resolve the dispute.
- (d) If the dispute has not been resolved during a conferral under clause K1(c), then within 10 Business Days of the first conferral:
  - (i) the chief executive officers of the parties; or
  - (ii) delegates of the chief executive officers, who have not been directly involved in the management of the Contract,must confer at least once to attempt to resolve the dispute and, failing resolution of the dispute, either party may, by notice in writing delivered by hand or sent by registered post to the other party, refer such dispute to litigation.
- (e) If a dispute has not been resolved within 20 Business Days after notice is served under clause K1(b), either party may refer the dispute to a court of competent jurisdiction.
- (f) Notwithstanding the existence of a dispute, the parties must continue to perform the Contract.

# **SECTION L: GENERAL**

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## **L1. Anti-Corruption**

### **L1.1 Receipt of benefits**

For the purposes of this clause L1, **Anti-Corruption Laws** means Chapter 4, Division 70 of the *Australian Criminal Code Act 1995* (Cth) any other Relevant Law which prohibits the offering of any gift, payment or other benefit to any person or any officer, employee, agent or adviser of such person and is applicable in the jurisdiction in which Queensland Rail or the Contractor are registered or conduct business or in which activities relevant to the Supply are to be performed.

A director, employee or agent of the Contractor must not:

- (a) give or receive any commission, fee, rebate, gift or entertainment of significant value from;  
or
- (b) enter into any business agreement with,  
  
any director, employee or agent of Queensland Rail other than as a representative of Queensland Rail or in the ordinary and proper course of business between any of those parties.

### **L1.2 Compliance with Anti-Corruption requirements**

The Contractor must not undertake any activity, or allow any activity to be undertaken in connection with the Supply, that may constitute a breach of any provision of the Anti-Corruption Laws or cause Queensland Rail to be in breach of any Anti-Corruption Laws.

### **L1.3 Conflict of interest**

The Contractor represents that at the date of issue of the Purchase Order, there is no relationship between it and Queensland Rail, between any of the Contractor's directors or employees and Queensland Rail or between the Contractor and a director or employee of Queensland Rail that gives rise to an actual or potential conflict of interest.

The Contractor must immediately notify Queensland Rail upon becoming aware that any such relationship exists. The Contractor must take reasonable steps to eliminate or overcome the conflict of interest without in any way adversely affecting its continued performance of its obligations under the Contract.

## **L2. Anti-Slavery**

- (a) For the purposes of this clause L2, **Anti-Slavery Laws** means any Relevant Law which has as its objective the prohibition of exploitation of workers, human trafficking, slavery, slavery-like behaviour, servitude, forced labour, child labour, debt bondage or deceptive recruiting for labour or services (or similar types of conduct) and is applicable or otherwise in force in the jurisdiction in which Queensland Rail or the Contractor are registered or conduct business or in which activities relevant to the Supply are to be performed.
- (b) The Contractor must ensure (and must ensure that the Contractor's Personnel) when performing its obligations under this Contract, comply with all applicable Anti-Slavery Laws.
- (c) Without limiting the Contractor's obligations, the Contractor must establish, maintain and implement policies and procedures (including training and ensuring it maintains accurate and complete records of attendance at training) to ensure that the Contractor and the Contractor's Personnel comply with the obligations in this clause L2.
- (d) The Contractor must provide Queensland Rail with any information it reasonably requires to enable it to comply with its obligations under the *Modern Slavery Act 2018* (Cth).
- (e) The Contractor must ensure its Subcontracts:
  - (i) include obligations on the relevant Subcontractors that are equivalent to the obligations in this clause L2; and
  - (ii) permit termination of such relationships where the Contractor has reasonable grounds to believe there has been, or is likely to be a breach of any applicable Anti-Slavery Laws by the Subcontractors.



## **L3. The Queensland Code**

### **L3.1 Definitions**

If applicable, in addition to terms defined in this document, terms used in this clause L2(a) have the same meaning as is attributed to them in the Queensland Government's Queensland Code of Practice for the Building and Construction Industry (the **Queensland Code**). The Queensland Code is available at <https://www.oir.qld.gov.au/industrial-relations/building-and-construction-code-practice-2000>.

### **L3.2 Primary obligation**

- (a) The Contractor must comply with, and meet any obligations imposed by, the Queensland Code.
- (b) Where the Contractor is authorised to engage a Subcontractor and it does so, the Contractor must ensure that any Subcontract imposes on the Subcontractor equivalent obligations to those in this clause L2(a), including that the Subcontractor must comply with, and meet any obligations imposed by, the Queensland Code.
- (c) The Contractor must not appoint or engage another party in relation to the Supply where that appointment or engagement would breach a sanction imposed on the other party in relation to the Queensland Code.

### **L3.3 Access and information**

- (a) The Contractor must maintain adequate records of compliance with the Queensland Code by it, its Subcontractors and related entities.
- (b) The Contractor must allow, and take reasonable steps to facilitate, Queensland Government authorised personnel (including personnel of Queensland Rail) to:
  - (i) enter and have access to sites and premises controlled by the Contractor, including any Site at which the Supply is being carried out;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the Supply;
  - (v) have access to personnel; and
  - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code by the Contractor, its Subcontractors and related entities.
- (c) The Contractor, and its related entities, must agree to, and comply with, a request from Queensland Government authorised personnel (including personnel of Queensland Rail) for the production of specified documents by a certain date, whether in person, by post or electronic means.

### **L3.4 Sanctions**

The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the Queensland Code that would have precluded it from tendering for work to which the Queensland Code applies.

### **L3.5 Compliance**

- (a) The cost of ensuring the Contractor's compliance with the Queensland Code must be borne by the Contractor. The Contractor is not entitled to make a claim for reimbursement or an extension of time from Queensland Rail or the State of Queensland for such costs.
- (b) Compliance with the Queensland Code does not relieve the Contractor from responsibility to perform the Supply and any other obligation under the Contract, or from liability for any defect in the Supply or from any other legal liability, whether or not arising from its compliance with the Queensland Code.
- (c) Where a change in the Contract or the Supply is proposed, and that change would, or would be likely to, affect compliance with the Queensland Code, the Contractor must immediately notify Queensland Rail (or nominee) of the change, or likely change and specify:
  - (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the Queensland Code will, or is likely to be, affected by the change; and
  - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change,

and Queensland Rail will direct the Contractor as to the course it must adopt within five Business Days of receiving notice.

### **L4. Supplier Code of Conduct, ethical supplier and product requirements**

- (a) Without limiting the Contractor's other obligations under this Contract, the Contractor must, in connection with the Supply:
  - (i) consider workplace policies and practices aimed at addressing domestic and family violence as part of supplier evaluation and selection;
  - (ii) support the purchase of textile, clothing or footwear products from ethical manufacturers and suppliers where possible;
  - (iii) avoid the purchase of dumped goods;
  - (iv) procure paper products that comply with the relevant standard under the "Responsible Wood Certification Scheme" (being, the forest certification scheme available at <https://www.responsiblewood.org.au/responsible-wood/responsible-wood-certification-scheme/>, as updated from time to time);
  - (v) comply with all expectations contained in the Queensland Rail Supplier Code of Conduct; and
  - (vi) comply with the Ethical Supplier Threshold and the Ethical Supplier Mandate.
- (b) The Contractor must notify Queensland Rail, in writing, within 10 [Business Days](#) if the Contractor ceases to be compliant with clause L4(a)(v) or L4(a)(vi).
- (c) Queensland Rail reserves the right, at its sole and absolute discretion, to require the Contractor to provide confirmation of its compliance with clause L4(a)(v) or L4(a)(vi).
- (d) The Contractor acknowledges and agrees that:

- (i) Queensland Rail may, from time to time, update or amend the Queensland Rail Supplier Code of Conduct;
  - (ii) the Contractor is solely responsible for informing itself and ensuring compliance with any updated or amended Queensland Rail Supplier Code of Conduct; and
  - (iii) Queensland Rail is under no obligation to inform the Contractor of any updates or amendments to the Queensland Rail Supplier Code of Conduct; and
- (e) The Contractor acknowledges that a failure to comply with Queensland Rail's policies that apply to the Supply or the Contractor's obligations under the Contract, including this clause L4, can result in the imposition of a demerit or sanction under the Ethical Supplier Mandate, in addition to any other remedies available to Queensland Rail under this Contract.
- (f) The Contractor authorises Queensland Rail and its nominated agent to obtain information about the Contractor relevant to assessing the Contractor's compliance with the Queensland Rail Supplier Code of Conduct, the Ethical Supplier Threshold and the Ethical Supplier Mandate, that may be held by any Government Department or instrumentality.
- (g) The Contractor acknowledges and agrees that Queensland Rail may refer matters of non-compliance with the Ethical Supplier Mandate to the Queensland Government Procurement Compliance Branch within the Department of Energy and Public Works (or such other relevant Queensland Government entity), who may publish information about sanctions imposed on the Contractor under the Ethical Supplier Mandate.
- (h) In this clause L4:
  - (i) **Ethical Supplier Mandate** means the Queensland Government policy titled "Ethical Supplier Mandate 2021" or any policy that replaces that policy;
  - (ii) **Queensland Rail Supplier Code of Conduct** means the code of that name issued by Queensland Rail and available at:  
<https://www.queenslandrail.com.au/business/Contractors/Pages/Contractors.aspx>  
or any code that replaces that code.

## **L5. Personal property securities**

- (a) In this clause, terms have the meanings given to them in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
- (b) The Contractor:
  - (i) must not perfect or seek to perfect against Queensland Rail under the PPSA a Security Interest in any personal property;
  - (ii) agrees that Queensland Rail may, but is not obliged to, perfect under the PPSA a Security Interest in any personal property including in respect of any Queensland Rail supplied materials in the possession of the Contractor;
  - (iii) must do everything, and must ensure that its employees and agents do everything, that Queensland Rail may reasonably require to perfect any such Security Interest held by Queensland Rail under the PPSA; and
  - (iv) if, in breach of clause L5(b)(i), it has perfected or sought to perfect under the PPSA against Queensland Rail it must take all steps as necessary to reverse the perfection of the Security Interest including by fully discharging any financing statement registered by the Contractor against Queensland Rail.

## **L6. Miscellaneous provisions**

### **L6.1 Interpretation**

In the Contract unless the contrary intention appears:

- (a) a party includes its executors, administrators, successors and permitted assigns;
- (b) where a party is more than one person the Contract binds all of them separately and each of them together;
- (c) the words '*include*' and '*including*' are to be construed without limitation; and
- (d) if the due date for anything to be done under the Contract falls on a day that is not a Business Day, then it must be done on the next Business Day.

### **L6.2 Governing law**

The Contract is governed by and must be construed and enforced in accordance with the laws of Queensland, Australia and the parties unconditionally submit to the exclusive jurisdiction of the courts of Queensland, Australia (and courts of appeal from them).

### **L6.3 Severability**

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

### **L6.4 Non-waiver**

A waiver of any provision of or right under the Contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in the written waiver.

### **L6.5 Amendment**

The Contract may be altered only in writing signed by both parties.

### **L6.6 No other relationship**

Nothing contained in the Contract is to be construed as constituting a joint venture, agency or partnership between the Contractor and Queensland Rail.

### **L6.7 Survival of provisions**

All provisions of the Contract which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of the Contract will survive the rescission, termination or expiration of the Contract.