# Special Conditions of Contract and Annexure

To be read in conjunction with Australian Standard® General Conditions of Contract for Consultants AS4122-2010

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

Contents

[Special Conditions of Contract and Annexure 1](#_Toc121833304)

[CONDITIONS OF CONTRACT 4](#_Toc121833305)

[1. GENERAL 4](#_Toc121833306)

[2. INTERPRETATION 4](#_Toc121833307)

[SPECIAL CONDITIONS OF CONTRACT 5](#_Toc121833308)

[1. DEFINITION AND INTERPRETATION 5](#_Toc121833309)

[2. CONSULTANT TO PERFORM SERVICES 7](#_Toc121833310)

[3. CLIENT TO PAY 7](#_Toc121833311)

[4. STANDARD OF CARE 7](#_Toc121833312)

[5. SCOPE 7](#_Toc121833313)

[6. CLIENT’S REPRESENTATIVE AND CONSULTANT’S REPRESENTATIVE 7](#_Toc121833314)

[7. INFORMATION 7](#_Toc121833315)

[8. DIRECTIONS 8](#_Toc121833316)

[9. VARIATIONS 8](#_Toc121833317)

[10. PAYMENT 8](#_Toc121833318)

[11. GST 8](#_Toc121833319)

[12. TIME 10](#_Toc121833320)

[13. LAW AND APPROVALS 10](#_Toc121833321)

[14. CONSULTATION AND MEETINGS 10](#_Toc121833322)

[15. REVIEW AND ACCEPTANCE 10](#_Toc121833323)

[16. ADVERSE EVENT 11](#_Toc121833324)

[17. COOPERATION WITH OTHERS 11](#_Toc121833325)

[18. KEY PERSONNEL 11](#_Toc121833326)

[19. CONFLICT OF INTEREST 11](#_Toc121833327)

[20. SUBCONTRACTING AND ASSIGNMENT 12](#_Toc121833328)

[21. COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS 13](#_Toc121833329)

[22. MORAL RIGHTS 13](#_Toc121833330)

[23. CONFIDENTIALITY 13](#_Toc121833331)

[24. SUSPENSION BY THE CLIENT 14](#_Toc121833332)

[25. SUSPENSION BY THE CONSULTANT 14](#_Toc121833333)

[26. TERMINATION WITHOUT CAUSE 14](#_Toc121833334)

[27. TERMINATION DUE TO DEFAULT BY EITHER PARTY 14](#_Toc121833335)

[28. INDEMNITY 14](#_Toc121833336)

[29. LIMITATION OF LIABILITY 15](#_Toc121833337)

[30. INSURANCE 15](#_Toc121833338)

[31. INSOLVENCY 15](#_Toc121833339)

[32. DISPUTE RESOLUTION 15](#_Toc121833340)

[33. SERVICE OF NOTICES 15](#_Toc121833341)

[34. SURVIVAL OF TERMINATION 15](#_Toc121833342)

[35. GOVERNING LAW 15](#_Toc121833343)

[36. STANDARD FORM NATURE OF CONTRACT 16](#_Toc121833344)

[37. INFORMATION PRIVACY 16](#_Toc121833345)

[38. QUEENSLAND CHARTER FOR LOCAL CONTENT 17](#_Toc121833346)

[39. QUEENSLAND PROCUREMENT POLICY 17](#_Toc121833347)

[40. EXECUTION 17](#_Toc121833348)

[41. RECORDS AND ACCESS TO RECORDS 18](#_Toc121833349)

[ANNEXURE 20](#_Toc121833350)

[ANNEXURE PART A 20](#_Toc121833351)

[ANNEXURE PART B 23](#_Toc121833352)

[ANNEXURE PART C 24](#_Toc121833353)

[ANNEXURE PART D 26](#_Toc121833354)

[ANNEXURE PART E 29](#_Toc121833355)

[ANNEXURE PART F 31](#_Toc121833356)

[ANNEXURE PART G 35](#_Toc121833357)

## CONDITIONS OF CONTRACT

### GENERAL

The Conditions of Contract will be the Australian Standard General Conditions of Contract for Consultants (AS4122-2010) incorporating all amendments published as at the date of acceptance of offer as amended by the Special Conditions of Contract.

### INTERPRETATION

In the event of conflict or inconsistency between the provisions of the Australian Standard General Conditions of Contract for Consultants (AS4122-2010) incorporating all amendments published as at the date of acceptance of offer and the Special Conditions of Contract, the Special Conditions of Contract will take precedence.

References to an “Annexure” in AS4122-2010 must be read as reference to the corresponding Annexure attached to the Special Conditions of Contract.

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

## SPECIAL CONDITIONS OF CONTRACT

### DEFINITION AND INTERPRETATION

* 1. Definitions

Add the following after the definition of *Approvals*:

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

Delete the definition of *Business Day* and replace with the following:

“*Business Day* means a day that is not:

* + - * 1. a Saturday or Sunday; or
        2. a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
        3. a day in the period from 22 December in a particular year to 10 January in the following year, both days inclusive;”

Add the following after the definition of *Documents*:

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

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

Add the following after the definition of *Force Majeure*:

“*Government Department or Instrumentality* means

* + - * 1. any government department responsible for compliance with government policy, including without limitation:

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

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

Local Content with the Department of State Development, Infrastructure, Local Government and Planning; and

* + - * 1. any government regulator, including without limitation:

the Queensland Building and Construction Commission;

the Office of Industrial Relations;

the Fair Work Commission;

the Australian Taxation Office;

the Australian Building and Construction Commission; and

the Office of the Federal Safety Commissioner;”

Delete the definition of *GST*.

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

‘*Local Benefits Test*’ means the local benefits test described in the *Queensland Procurement Policy*;”

Add the following after the definition of *Moral Right*:

“*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 from time to time;”

Add the following after the definition of *Services*:

*“subcontractor* means any person engaged by the *Consultant*, including a subconsultant, for the performance of any part of the *Services*;

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

* 1. Interpretation

No amendment

* 1. Contra Proferentem

No amendment

* 1. Joint and Several

No amendment

* 1. Headings

No amendment

Add new subclauses:

“

* 1. Collusive Arrangements

The *Consultant* warrants and represents to the *Client* that:

* + - * 1. it had no knowledge of the offered fees of any other offeror, nor did it communicate with any other offeror in relation to its offered fees, or a price above or below which an offeror may offer (excluding any pricing advised by the *Client*), nor had it entered into any contract, arrangement or understanding with another offeror to the effect that the *Consultant* or another offeror would offer a non-competitive price, for the *Services* under this *Contract*, at the time of submission of the *Consultant’s* offer;
        2. except as disclosed in the *Consultant’s* offer, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade, industry or other association (above the published standard fee) relating in any way to its offer or this *Contract*, nor paid or allowed any such money, nor will it pay or allow any such money;
        3. except by prior agreement with the *Client*, it has not paid or allowed any money or entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to or on behalf of any other offeror for the *Services* under this *Contract*, nor received any money or allowance from or on behalf of any other offeror relating in any way to the *Consultant’s* offer or this *Contract*, nor will it pay or allow or receive any money as aforesaid.

In the event of the *Consultant* paying or allowing any money in breach of this clause 1.6, the *Client* may deduct from payments to the *Consultant* an equivalent sum as an amount due from the *Consultant* to the *Client*, in addition to any other claim, demand, action or proceeding the *Client* may have against the *Consultant* (whether for damages or otherwise).

Without limitation, if the *Consultant* commits a breach of this clause 1.6, the *Client* may at its discretion terminate this *Contract* and claim damages for breach of contract.

* 1. Negation of Employment and Agency

The *Consultant*:

* + 1. must not represent itself or allow itself to be represented as being an employee or agent of the *Client*;
    2. does not by virtue of this Contract be or become an employee or agent of the *Client*.”

### CONSULTANT TO PERFORM SERVICES

No amendment

### CLIENT TO PAY

No amendment

### STANDARD OF CARE

No amendment

### SCOPE

No amendment

### CLIENT’S REPRESENTATIVE AND CONSULTANT’S REPRESENTATIVE

No amendment

### INFORMATION

Amend the current paragraph so that it is numbered clause 7.1.

Add new subclauses:

“

* + 1. The *Right to Information Act 2009* (Qld) (‘*RTI Act*’) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
    2. The *RTI Act* requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest.
    3. Information relating to this *Contract* is potentially subject to disclosure to third parties.
    4. In the assessment of any disclosure required by the *Client* pursuant to the *RTI Act*, the *Consultant* accepts that any information provided by a *Consultant*, including information marked as confidential, will be assessed for disclosure in accordance with the terms of the *RTI Act*.
    5. Without limiting the *Client’s* rights or obligations in connection with disclosure of information, the *Client* may publish on the Queensland Government Marketplace website or by any other means, information including:
       - 1. the name and address of the *Client* and the *Consultant*;
         2. a description of the *Services* to be provided pursuant to this *Contract*;
         3. the date of award of this *Contract* (including the relevant stages of the *Contract*, if any);
         4. this *Contract* value (including the value for each stage, if any, and advice as to whether any non-price criteria were used when evaluating the *Consultant’s* offer);
         5. the procurement method used to engage the *Consultant*; and
         6. if this *Contract* is of a value of $10 million or more, invitation details, summary information in respect of this *Contract* between the *Client* and the *Consultant* and/or reasons for non-disclosure of procurement results (if applicable).”

### DIRECTIONS

No amendment

### VARIATIONS

Amend clause 9.1 by adding to the end of the first sentence the words “which may include the omission or reduction of any part of the *Services*”.

Add new subclause:

“

* + 1. The *Client* may have any part of the *Services* omitted or reduced pursuant to this clause 9 carried out by another party.”

### PAYMENT

Amend clause 10.4 by deleting subclause 10.4(c), and replace it with:

“

* + - * 1. include a supporting statement, if required, in accordance with the *BIF Act*.”

Amend clause 10.4 by inserting the following paragraph at the end of the clause:

“The *Consultant* must provide sufficient detail to enable the *Client* to assess that the amount claimed is due and payable including the provision of any additional information reasonably requested by the *Client*.”

Amend clause 10.5 by adding to the end of subclause 10.5(b):

“which may include the correction of any errors made by the *Client*, in payments made by the *Client*, in respect of previous payment claims.”

Amend clause 10.6 by inserting the following sentence as the first sentence of the clause:

“The *Client* is only required to pay for *Services* carried out to the date of the claim for payment and in accordance with this *Contract*.”

Amend clause 10.6 by deleting “30 calendar days” in the second line and inserting in its place “15 *Business Days*”.

### GST

Amend the clause heading to “GOODS AND SERVICES TAX (GST) AND PAY AS YOU GO (PAYG)”

Delete/Insert:

“

* 1. Definitions

For the purposes of this clause:

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

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

* 1. Payment of GST

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

* + - * 1. any *amount* which the *Contract* provides:

is to be the *amount* of the *consideration*;

is to (or may) be used to calculate the *amount* of the *consideration* (and the *amount* of the *consideration* so calculated); or

is included (provisionally or otherwise) in the *consideration*,

will be taken to include *GST* payable in connection with the *taxable supply* unless the *amount* is specifically stated to exclude *GST*;

* + - * 1. where, despite paragraph (a) of this clause 11.2, any *consideration* to be provided for a *taxable supply* is exclusive of *GST*, the party providing the *consideration* must also pay the *GST* payable in respect of the *taxable supply*, when the *consideration* is provided; and
        2. no other provision of the *Contract* will apply to give the *Consultant* any claim in connection with *GST*.
  1. Liability Net of GST

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

* 1. Notification of GST Registration Status
     + - 1. The *Consultant* warrants to the *Client* that:

the Consultant is registered for GST; and

the *Consultant’s* *ABN* stated in the *Contract* (or otherwise notified by the *Consultant* to the *Client*) is correct.

* + - * 1. The *Consultant* must notify the *Client* immediately if it ceases to be *registered* for *GST* at any time.
  1. Tax Withholding
     + - 1. Whenever the *Consultant* does not have an *ABN* or the *Client* becomes aware that the *Consultant’s* *ABN* notified to it is incorrect or the *Client* otherwise reasonably considers itself bound by *PAYG Law* to do so, the *Client* will be entitled to withhold from any payment otherwise due to the *Consultant* under or in connection with the *Contract*, *amounts* calculated and to be withheld in accordance with the *PAYG Law*.
         2. Subject to paragraph (c) of this clause 11.5, each time the *Consultant* makes a claim for any payment under or in connection with the *Contract*, the *Consultant* will be taken to warrant to the *Client* that it is an *Australian resident* for the purposes of the foreign resident withholding provisions in Subdivision 12-FB of the *Taxation Administration Act 1953* (Cth).
         3. The warranty in paragraph (b) of this clause 11.5 will not apply to the extent the *Consultant* has notified the *Client* in writing that it is not an *Australian resident* before any claim for payment is made.
  2. Tax Invoices

The Alternative stated in *Item 12A* applies.

***Alternative 1***

* + - * 1. A party making a *taxable supply* must issue to the other a *tax invoice* or *adjustment note* (as the case may require) within 5 *Business Days* after each of the following occurring in relation to that *taxable supply*:

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

the *Client* issuing a statement under clause 10.5 for an *amount* for payment different to the *amount* claimed;

the *amount* for payment being otherwise determined to be different to the *amount* claimed or (if applicable) the subject of a statement under clause 10.5.

* + - * 1. For the purposes of *GST* legislation, upon the occurrence of any of the events specified in paragraph (a)(i), (ii) or (iii), the *Client* will be taken to have requested the *Consultant* to provide to the *Client* the *tax invoice* or *adjustment note* referred to in paragraph (a).

***Alternative 2***

* + - * 1. *Tax invoices* and *adjustment notes* required by *GST* legislation for any *taxable supplies* under the *Contract* will be issued by the *Client* (and not the *Consultant*) unless the *Client*:

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

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

in which case Alternative 1 will then apply.

* + - * 1. The *Consultant* must notify the *Client* immediately it becomes aware of an *adjustment event* occurring.
        2. 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*.”

### TIME

Amend clause 12.1 by inserting the following sentence as the first sentence of the clause:

“The *Consultant* must proceed with the *Services* with due expedition and without delay.”

### LAW AND APPROVALS

No amendment

### CONSULTATION AND MEETINGS

No amendment

### REVIEW AND ACCEPTANCE

No amendment

### ADVERSE EVENT

Amend clause 16 by adding the following sentence to the end of the clause:

“A party affected by a matter which may adversely affect or has adversely affected the performance of the *Services* must act reasonably to mitigate the effects of such adverse event including mitigating any costs or expenses it incurs by reason of an adverse event.”

### COOPERATION WITH OTHERS

Amend the current paragraph so that it is numbered 17.1.

Add new subclauses:

“

* + 1. The *Consultant* must when on the premises occupied by the *Client* and when using the *Client*’s facilities, comply with all directions, procedures and policies relating to occupational health, safety and security requirements which are in effect at those premises and facilities and have been notified to the *Consultant*.
    2. The *Client* must:
       - 1. provide the *Consultant* with such access to premises or sites of the *Client* as are reasonably necessary for the *Consultant* to carry out the *Services*;
         2. ensure that the *Consultant*, when on the *Client*’s premises or sites, and when using the *Client*’s facilities, has been notified of all requirements relating to occupational health and safety, applicable codes of conduct and security which are in effect at those premises, sites and facilities;
         3. when on the *Consultant’s* premises, comply with all directions, procedures and policies relating to occupational health, safety and security requirements which are in effect at those premises and facilities.”

### KEY PERSONNEL

Amend the current paragraph so that it is numbered clause 18.1.

Add the words “at no additional cost to the *Client*” to the end of the final sentence in clause 18.1.

Add new subclause:

“

* + 1. The *Client* may require the *Consultant* to have removed from performing work on or in connection with the *Services* any person performing work on or in connection with the *Services* who, in the reasonable opinion of the *Client*, has acted contrary to law or a policy or procedure of the *Client* that the *Consultant* was required by the *Contract* to comply with. The *Consultant* must promptly remove any such person and arrange a replacement of that person with a person acceptable to the *Client* at no additional cost to *Client*.”

### CONFLICT OF INTEREST

No amendment

### SUBCONTRACTING AND ASSIGNMENT

Amend clause 20.3 by inserting “or sub subcontract” after the words “must not subcontract”.

Add new clauses:

“

* + 1. The obligations of government agencies contained in the *Queensland Procurement Policy* will apply equally to the *Consultant* as though it is a government agency, and the *Consultant* must procure subcontracts in accordance with the requirements of the *Queensland Procurement Policy*.
    2. The *Consultant* must prepare and produce all required copies of the subcontract tender documentation (“Subcontract Tender Documentation”), which:
       - 1. incorporates suitable conditions of contract which reflect the provisions of the *Contract*;
         2. requires subcontract tenderers and *subcontractors* to consent to a relevant *Government Department or Instrumentality* providing information to the *Client* or the *QGP Compliance Branch* about the tenderer’s or *subcontractor’s* compliance with government policies and legislation, including without limitation, commitments made in relation to or required by the *Queensland Procurement Policy*, the *Local Benefits Test*, the *Ethical Supplier Mandate* and the *Ethical Supplier Threshold*;
         3. requires subcontract tenderers and *subcontractors* to acknowledge that the information referred to in clause 20.6(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 *Client* 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;
         4. includes terms that evidence the right of the *Client* and the *QGP Compliance Branch* to exercise the discretion in clause 41.10 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 *Client* or the *Consultant* in relation to that publication;
         5. requires the *subcontractor* to execute a deed poll in favour of the *Client* in the form attached to these Conditions and provide this as part of their tender;
         6. requires the *subcontractor* to make and keep the records referred to in clause 41.1;
         7. provides for evaluation of subcontract tender responses against clear evaluation criteria and weightings; and
         8. incorporates any other documentation or information required for the tendering or the completion of the relevant *Services* under the *Contract*.
    3. The *Consultant* must ensure that all *subcontractors* and any sub subcontractors:
       - 1. for the purposes of the *Queensland Procurement Policy* are:

local suppliers as described in the *Queensland Procurement Policy*, and, if a local supplier is unable to be sourced by the *Consultant* having used its best endeavours to do so, the *Consultant* must seek approval from the *Client* to use a supplier who is not a local supplier and in doing so must provide evidence, satisfactory to the *Client*, of its efforts to source a local supplier;

compliant with the *Ethical Supplier Threshold*; and

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

* + - * 1. are informed of the existence of the BIF Act; and
        2. either:

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

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

will be paid to achieve a specified result or outcome;

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

will be liable for the cost of rectifying any omission in the services performed.

* + 1. The *Consultant* must examine, analyse and evaluate all subcontract tenders received, in accordance with the Subcontract Tender Documentation, and in doing so, the *Consultant* must:
       - 1. ensure evaluation of subcontract tender responses against clear evaluation criteria and weightings;
         2. prepare and retain written records of the evaluation process undertaken, all evaluation findings and recommendations and, if requested, submit these to the *Client* at the completion of each subcontract evaluation.
    2. When seeking approval pursuant to clause 20.3, the *Consultant* must provide to the *Client* a request for approval in the form attached to these Conditions and such other information which the *Client* may reasonably request.
    3. Within 10 business days after a request by the *Consultant* for approval made in accordance with clauses 20.3 and 20.9, the *Client* will approve the request or advise the *Consultant* of any objections. If approval is given to sub subcontract part of the *Services* under the *Contract* the *Consultant* must ensure the requirements of Clause 20 are met.
    4. The *Client* may at any time prior to the completion of the *Services* under the *Contract*, undertake an audit in respect of the *Consultant’s* compliance with clause 20, in accordance with the provisions of clause 41.4.

### COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

Amend the third paragraph of clause 21.3 Alternative 2 by adding the words “, royalty free, worldwide, perpetual and transferable” after the word “irrevocable”, and by adding the words “, which may be sub-licensed by the *Client*,” after the words “licence for the *Client*”.

Amend clause 21.4 by adding the words “, subject to any rights of the *Client* at law including without limitation any right of set-off,” after the words “stated in *Item* 20”.

Amend clause 21.4 by adding the words “, whichever is the later” at the end of the clause.

### MORAL RIGHTS

No amendment

### CONFIDENTIALITY

Add new subclauses:

“

* + 1. The *Consultant* must keep all information treated as confidential in accordance with clause 23.1 confidential as between the *Consultant* and the *Client* and must not use such information or *Client Information* for any purpose other than in the performance of the *Services*.
    2. Upon the expiration or termination of this *Contract*, if requested by the *Client*, the *Consultant* must deliver to the *Client* all information treated as confidential in accordance with clause 23.1, all *Client Information* and *Deliverables* except in that the *Consultant* may keep copies of the *Deliverables* such as it desires for its own records and for use in accordance with clause 21 of these Conditions, and copies of the *Client Information* may be retained by the *Consultant* if required by law, provided that the *Consultant* must keep that information confidential until it is permanently destroyed.
    3. If required by this *Contract* or otherwise requested in writing by the *Client*, the *Consultant* must execute, and procure from each of its employees, officers, agents and *subcontractors* engaged in the performance of the *Services* and having access to information treated as confidential in accordance with clause 23.1, *Client Information* and *Deliverables*, a deed of confidentiality and privacy in the form set out in Annexure Part D.”

### SUSPENSION BY THE CLIENT

Amend clause 24.2 by adding the following sentence to the end of the clause:

“The *Consultant* must act reasonably to mitigate any costs or expenses it incurs by reason of the suspension.”

### SUSPENSION BY THE CONSULTANT

No amendment

### TERMINATION WITHOUT CAUSE

Amend clause 26.2 by adding to the beginning of subclause 26.2(c):

“provided the *Consultant* has acted reasonably to mitigate any of the costs or expenses it incurs by reason of the termination,”

Amend clause 26.2 further by adding the following words to the end of subclause 26.2(c):

“except that if the *Consultant* is re-engaged by a contractor of the *Client*, no such costs and expenses incurred by the *Consultant* by reason of termination will be payable.”

Amend clause 26.3 by adding to the end of the sentence the words “including without limitation for loss of profits”.

Add new subclause:

“

* + 1. The *Client* may have the *Services* the subject of this *Contract* carried out by another party in the event this *Contract* is terminated pursuant to this clause 26.”

### TERMINATION DUE TO DEFAULT BY EITHER PARTY

Amend clause 27.2 by deleting “and” from the end of paragraph (c).

Amend clause 27.2 by deleting the full stop at the end of the clause and replacing it with a semicolon and follow the semicolon with the following further subclauses:

“

* + - * 1. failure of the *Consultant* to comply with the requirements of clause 39; and
        2. providing with a payment claim a supporting statement required by the *BIF Act* which is false or misleading, in breach of clause 13.”

### INDEMNITY

No amendment

### LIMITATION OF LIABILITY

Amend clause 29.2 by adding a new subclause:

“

* + - * 1. deliberate breaches of statute, contract (including this *Contract*) or duty;”

Amend clause 29.2 by deleting the full stop at the end of the clause and replacing it with a semicolon and adding new subclauses:

“

* + - * 1. liability out of which the *Consultant* cannot contract;
        2. liability to the extent that the *Consultant* is or would have been entitled to be paid or indemnified for the liability by an insurer under any policy of insurance effected (or otherwise maintained) for the sums required under clause 30 if:

the Consultant had:

effected and maintained the insurance policy (where it was the *Consultant*'s obligation under this *Contract* to do so);

promptly claimed, and diligently pursued such claim, under the insurance policy; and

complied with the terms and conditions of the insurance policy and the *Consultant’s* obligations under this *Contract* in respect of that insurance policy;

there had been no excess under the insurance policy; and

the insurer had remained solvent and able to pay or indemnify the *Consultant.”*

### INSURANCE

No amendment

### INSOLVENCY

Add new subclause:

“The rights given by this clause 31 are subject to any restrictions on their enforcement under Part 5.1, Part 5.2, or Division 17 of Part 5.3A *Corporations Act 2001* (Cth).”

### DISPUTE RESOLUTION

No amendment

### SERVICE OF NOTICES

Amend clause 33.2 by inserting the words “or given in relation to any dispute or claim in connection with the *Contract* including without limitation claims made pursuant to legislation” after the word “32” in the first line.

### SURVIVAL OF TERMINATION

Amend the clause by inserting after the first word “Clauses” the word “7,”.

### GOVERNING LAW

No amendment

### STANDARD FORM NATURE OF CONTRACT

No amendment

Add new clauses:

“

### INFORMATION PRIVACY

* + 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.

* + 1. If the *Consultant* collects or has access to *Personal Information* in order to perform the *Services* under this *Contract*, the *Consultant* must:
       - 1. if the *Client* 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 this *Contract* as if the *Consultant* was the *Client*;
         2. ensure that *Personal Information* is protected against loss and unauthorised access, use, modification, disclosure or other misuse;
         3. not use *Personal Information* other than in connection with performing the *Services* under this *Contract*, unless required or authorised by law;
         4. not disclose, or transfer outside of Australia, *Personal Information* without the prior written consent of the *Client*, unless required or authorised by law;
         5. ensure that its officers, employees, agents and sub-consultants do not access, use or disclose *Personal Information* other than in connection with performing the *Services* under this *Contract*;
         6. ensure that its *subcontractors* who have access to *Personal Information* comply with obligations the same as those imposed on the *Consultant* under this clause;
         7. fully co-operate with the *Client* to enable the *Client* to respond to applications for access to, or amendment of a document containing an individual’s *Personal Information* and to privacy complaints; and
         8. comply with such other privacy and security measures as the *Client* may reasonably require from time to time.
    2. On request by the *Client*, the *Consultant* must obtain from its employees, officers, agents or *subcontractors* performing the *Services* under this *Contract*, an executed deed of confidentiality and privacy in the form set out in Annexure Part D or some other form as may be acceptable to the *Client*.
    3. The *Consultant* acknowledges that, in accordance with the *Contract*, the *Client* and the *QGP Compliance Branch*:
       - 1. 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 *Client*, the *QGP Compliance Branch* and agents, consultants, or other contractors engaged by the *Client*, but will not be disclosed to any other third party without the *Consultant’s* consent unless authorised or required by law or the *Contract*; and
         2. may collect information containing *Personal Information* for the purposes of determining the *Consultant’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 *Consultant’s* consent unless authorised or required by law or the *Contract*.
    4. *Personal Information* will be handled in accordance with the IPA.
    5. The *Consultant* must immediately notify the *Client* on becoming aware of any breach of clause 37.
    6. This clause will survive the termination or expiry of the Contract.

### QUEENSLAND CHARTER FOR LOCAL CONTENT

This clause applies if specified in the Annexure.

The *Consultant* must, and must ensure its *subcontractors*, in performing the *Services* under this *Contract*:

* + - * 1. comply with the principles of the Queensland Charter for Local Content (Charter) and any requirements under the *Contract* in this regard;
        2. comply with any Statement of Intent or equivalent local content statement under the *Contract*;
        3. complete and submit a Charter for Local Content – Project Outcome Report (available from www.dsdmip.qld.gov.au/charter) to the *Client* at completion of the *Services* and at such other times as reasonably requested by the *Client*, with a copy to qclc@qld.gov.au.

### QUEENSLAND PROCUREMENT POLICY

* + 1. The *Consultant* must, and must ensure its *subcontractors*, in carrying out the *Services* under the *Contract*, comply with:
       - 1. the principles of the *Queensland Procurement Policy* and any requirements under the *Contract* in this regard;
         2. the *Ethical Supplier Threshold*;
         3. the *Ethical Supplier Mandate; and*
         4. the *Supplier Code of Conduct*.
    2. The *Consultant* acknowledges that a failure to comply with government policies and legislation that apply to the *Services* under the *Contract* or the *Consultant’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 *Client* under this *Contract*.
    3. The *Consultant:*
       - 1. consents to a relevant *Government Department or Instrumentality* providing information to the *Client* and the *QGP Compliance Branch*; and
         2. authorises the *Client* and the *QGP Compliance Branch* to obtain information;

about the *Consultant’s* compliance with government policies and legislation, including without limitation the *Queensland Procurement Policy*, the *Local Benefits Test*, the *Ethical Supplier Threshold,* the *Ethical Supplier Mandate* and the *Supplier Code of Conduct*.

### EXECUTION

* + 1. This *Contract* commences from the date of the *Client’s* letter of acceptance accepting the *Consultant’s* offer.
    2. If the Annexure indicates that the execution of a formal instrument of agreement is required, the *Client* will prepare in duplicate a formal instrument of agreement and will forward it to the *Consultant* with a request that it be executed.
    3. Within 15 *Business Days* of receiving the formal instrument of agreement in duplicate from the *Client*, the *Consultant* must properly execute both copies and return them to the *Client*. Within 15 *Business Days* after receiving the executed copies from the *Consultant*, the *Client* will execute both copies and then send one copy to the *Consultant*.
    4. The *Client* may extend the time under this clause by written notice to the parties.
    5. The formal instrument of agreement, when required, must be in the form attached to these Conditions.

### RECORDS AND ACCESS TO RECORDS

* + 1. The *Consultant* must make and keep and must ensure that every *subcontractor* makes and keeps accurate and complete records of:
       - 1. the *Consultant’s* or the *subcontractor’s* offer, including without limitation the preparation and submission of that offer;
         2. offers received by it, whether accepted or not;
         3. the execution and completion of the *Services* under the *Contract* or of the services under the subcontract; and
         4. compliance with commitments made in the *Consultant’s* offer or a *subcontractor’s* offer relating to or required by government policies including but not limited to the *Queensland Procurement Policy*, the *Local Benefits Test*, the *Ethical Supplier Threshold*, the *Ethical Supplier Mandate* and the *Supplier Code of Conduct.*
    2. The records referred to in clause 41.1 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:
       - 1. relate to the *Consultant’s* offer or a *subcontractor’s* offer, including offer preparation, submission, negotiation, evaluation, estimates and calculations;
         2. relate to design, including design calculations, option studies, opinions, reviews and reports;
         3. relate to the execution and completion of the *Services* under the *Contract* or a subcontract, including without limitation labour, subcontracts, *subcontractors*, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
         4. are required to demonstrate compliance with the matters referred to in clause 41.1(d) including without limitation payroll records, management records and time recordings; and
         5. are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications or social media.
    3. The records referred to in clause 41.1 must not be destroyed without the prior written consent of the *Client*.
    4. Without limiting any other rights or obligations under this clause 41, the *Client* and the *QGP Compliance Branch* may, at any time after giving written notice to the *Consultant* that an audit will be undertaken pursuant to this clause, undertake an audit of the *Consultant's* compliance with clause 20. In undertaking the audit, the *Client* and the *QGP Compliance Branch* will have the right to inspect and copy any record referred to in clause 41.1 and to access any of the *Consultant's* systems and processes which are in any way connected with subcontracting. Upon receipt of written notice of the audit pursuant to this clause 41.4, the *Consultant* must promptly and at its own cost provide the *Client* and the *QGP Compliance Branch* with every reasonable facility necessary to undertake the audit, including but not limited to:
       - 1. providing to the *Client* and the *QGP Compliance Branch* or its agent any record requested for inspection or copying pursuant to clause 41.5;
         2. making staff available to the *Client* and the *QGP Compliance Branch* or its agent to access or explain systems, processes or any record referred to in clause 41.1; and
         3. arranging and providing access to the *Consultant's* or *subcontractor’s* workplaces, sites, premises or facilities.
    5. Subject to the *Consultant’s* right to claim legal professional privilege in respect of any record, which is hereby maintained, the *Client* or the *QGP Compliance Branch* will have the right to inspect and to copy at any time any record referred to in clause 41.1. In the case of any records referred to in clause 41.1 stored on a medium other than in writing the *Consultant* must make available forthwith upon request such facilities as may be necessary to enable a legible reproduction thereof to be provided to the *Client* and the *QGP Compliance Branch*.
    6. Where a record referred to in clause 41.1 is created, maintained or stored by the *Consultant* or a *subcontractor* in an electronic format, it must be provided to the *Client* in its native, operable form or such other format as may be reasonably required by or acceptable to the *Client*.
    7. Where a record referred to in clause 41.1 is stored on a medium licensed from a third party, where the *Client* is a party to the communication, the *Consultant* must provide the *Client* with a copy of such records in an external electronic storage device, readable on the *Client*’s information technology system, or such other format as may be reasonably required by the *Client*, each month until the *Consultant* has completed the *Services* in accordance with clause 12.1.
    8. The *Consultant* must comply in all respects with any request made pursuant to clause 41.5 to inspect or copy any record referred to in clause 41.1, or any audit undertaken pursuant to clause 41.4, and will not be entitled to refuse an audit, inspection or copying of any record referred to in clause 41.1 on any basis whatsoever other than on the basis that legal professional privilege attaches to the record.
    9. Records accessed under clause 41.4 or 41.5 may be used to assess the *Consultant’s* or its *subcontractors’* compliance with the *Contract*, the subcontract, the *Queensland Procurement Policy*, the *Local Benefits Test*, the *Ethical Supplier Threshold*, the *Ethical Supplier Mandate* 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*, the *Local Benefits Test*, the *Ethical Supplier Threshold* and the *Ethical Supplier Mandate* and the *Supplier Code of Conduct*.”
    10. The *Client* and the *QGP Compliance Branch* may in their absolute discretion, publish information about the *Consultant’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 *Client* nor give rise to any other right or remedy of the *Consultant* at law or in equity against the *Client* or the *QGP Compliance Branch*.

## ANNEXURE

This Annexure takes the place of the Annexure to the General Conditions of Contract for Consultants (AS4122-2010)

The parties are encouraged to review AS4121-1994, Code of Ethics and procedures for the selection of consultants, prior to completing the Annexure.

ANNEXURE PART A

|  |  |  |
| --- | --- | --- |
| *Item* |  |  |
| *Item* 1  (clause 1.1) | The *Client* is: | The State of Queensland through |
| *Item* 2  (clause 1.1) | The *Consultant* is: | Refer to *Consultant’s* offer/proposal accepted by the *Client* |
| *Item* 3  (clause 1.1) | The *Contract Documents* are: | 1. These Special Conditions of Contract 2. The Australian Standard General Conditions of Contract for Consultants AS4122-2010 incorporating all amendments published as at the date of acceptance of offer 3. The *Scope* 4. [#insert other *Contract Documents*#] |
| *Item* 4  (clause 1.1) | The *Scope* is described in the following *Documents*, or the *Scope* is: |  |
| *Item* 5  (clause 5.1) | The purpose(s) for which the *Services* will be suitable is/are: |  |
| *Item* 6  (clause 6.1) | The *Client’s* representative is: |  |
| *Item* 7  (clause 6.2) | The *Consultant’s* representative is: | Refer to *Consultant’s* offer/proposal accepted by the *Client* |
| *Item* 8  (clause 10.1) | Claims for payment must be made on the following basis: |  |
| *Item* 9  (clause 10.2) | Disbursements for which the *Consultant* may claim payment: |  |
| *Item* 10  (clause 10.3) | Time to claim payment: | (Unless otherwise agreed in writing by the parties, only one payment claim may be made each calendar month) |
| *Item* 11  (clause 10.6) | The time for payment is no later than: | ………*Business Days* after receipt of a claim for payment.  (If nothing stated – 15 Business Days after service of a claim for payment) |
| *Item* 12  (clause 10.9) | The rate of interest on overdue payment is: | (If nothing state – 10% a year) |
| *Item* 12A  (clause 11.6) | Tax Invoice: | Alternative 1/Alternative 2\* (\*Delete one)  (If nothing stated – Alternative 1) |
| *Item* 13  (clause 12.1) | The date or the period after commencement of this *Contract*, by which the *Services* must be completed is: | (If nothing stated – within a reasonable time)  **Guidance note:** Project managers to insert a date or period of time |
| *Item* 14  (clauses 12.2(c) and 12.3(c)) | Other causes of delay for which the *Consultant* may notify an extension of time: | None |
| *Item* 15  (clause 13.2) | The *Approvals* to be obtained by the *Consultant* are: |  |
| *Item* 16  (clause 18) | The key personnel are: | Name & Role to be Performed  (If nothing stated – refer to the Consultant’s offer/proposal accepted by the Client) |
| *Item* 17  (clause 19.2) | Existing conflicts of interest: | (If nothing stated – refer to the Consultant’s offer/proposal accepted by the Client) |
| *Item* 18  (clause 21.3) | Copyright and other *Intellectual Property Rights*, the Alternative that applies: | Alternative 1\* / Alternative 2\* (\*Delete one)  (If nothing stated – Alternative 2) |
| *Item* 19  (clause 21.3, Alternative 2) | List excluded *Intellectual Property Rights*: |  |
| *Item* 20  (clause 21.4, Alternative 2) | The additional amount payable to the *Consultant* for granting of *Intellectual Property Rights* to the *Client* is: | $ |
| *Item* 21  (clause 22.1) | Does clause 22 (*Moral Rights*) apply? | Yes\* / No\* (\*Delete One)  (If nothing stated – Yes applies) |
|  | If yes, the author is: | If yes, the author is the *Consultant* identified in the manner they have identified themselves in their offer/proposal accepted by the *Client*, or as otherwise agreed by the *Client* and the *Consultant* in writing. |
| *Item* 22  (clause 23.1) | The following *Documents* are confidential: |  |
| *Item* 23  (clause 24.4) | Maximum period for which *Client* may suspend the *Services* at any one time, after which the *Consultant* may terminate: | (If nothing stated – three (3) months) |
| *Item* 24  (clause 29.1) | The *Consultant’s* liability is limited to: | $  **Guidance Note:** If this Contract is to be subject to a limitation of liability, the limit should be based on a risk assessment for the consultancy, having regard to the nature of the services to be provided by the Consultant and exclusive of project specific insurances (which are separately carved out from the limitation of liability). The contract fee or a multiple thereof may be a good starting point, if that figure accurately reflects the risks of the procurement. |
| *Item* 25  (clause 30.2) | The amount of public liability insurance is: | $  (If nothing stated – $20 million)  **Guidance Note:** The amount of insurance required should be based on a risk assessment for the consultancy. For building industry consultants, refer to the Department of Energy and Public Works’ Building Policy Framework Policy Advice Note ‘Professional Indemnity and Public Liability Insurances for Building Industry Consultants’ |
| *Item* 26  (clause 30.4) | The amount of professional indemnity insurance is: | $  (If nothing stated – $5 million)  **Guidance Note:** The amount of insurance required should be based on a risk assessment for the consultancy. For building industry consultants, refer to the Department of Energy and Public Works’ Building Policy Framework Policy Advice Note ‘Professional Indemnity and Public Liability Insurances for Building Industry Consultants |
| *Item* 27  (clause 30.4) | The professional indemnity insurance must be maintained for the following period: | 6 years after the date of completion of the *Services* under this *Contract* |
| *Item* 28  (clause 30.7) | The *Client* must effect the following insurances and maintain them for the following periods: | **Guidance Note:** None, unless advice received from QGIF and Contract Services |
| *Item* 29  (clause 33.1) | The address for service of notices is: | *Client*:  *Consultant:* Refer to the *Consultant’s* offer/proposal accepted by the *Client* |
| *Item* 30  (clause 35) | The law governing this *Contract* is: | Queensland |
| *Item* 31  (clause 36) | Has this *Contract* been amended from its original form? | Yes, the Australian Standard General Conditions of Contract for Consultants AS4122-2010 have been amended by these Special Conditions of Contract |
| *Item* 32  (clause 38) | Does the Queensland Charter for Local Content apply? | Yes\* / No\* (\*Delete one)  (If nothing stated – Yes) |
| *Item* 33  (clause 40) | Is a formal instrument of agreement required to be executed by the parties? | Yes / No (\*Delete one)  **Guidance Note:** A Formal Instrument of Agreement is required where the Services to be provided under the Contract are of a value of $5 million or more |

ANNEXURE PART B

#### Deletions, Amendments and Additions

Refer to these Special Conditions of Contract.

ANNEXURE PART C

#### Moral Rights Consent Form – For Employees of the Consultant (clause 22)

To:

Name of Consultant

ABN:

ABN

In relation to the work that I perform for [Consultant’s name] (“you”) in relation to the project for the State of Queensland (“the *Client*”) in the course of my employment, I agree as follows:

1. Unless agreed otherwise in writing, I will not be attributed personally as the author of my work and you may be described as the author of any work I perform and as the author of any product that results from my work.
2. The *Client* may, in its sole discretion, decide on the form of attribution to be given to any specific product of my work and of your work and may decide not to attribute you or I as author of the work in relation to the project.
3. Without notifying or consulting me, you or the *Client* may alter my work in any way that is considered desirable, or necessary.
4. You need not advise me if you are notified of any intended alteration to or demolition of any project, building or structure related to my work.
5. This consent also applies to all work that I have already performed for you.

Signed by the holder of *Moral Rights* on …… day of ………… 20……:

|  |  |
| --- | --- |
|  |  |
| Name of Signatory | Signature |

#### Moral Rights Consent Form - For use by the Consultant with its subcontractors (clause 22)

To:

Name of Consultant

ABN:

insert ABN

Project name:

In relation to any services that we supply to [Consultant’s name] (“you”) in relation to the project named above for the State of Queensland (“the *Client*”), we agree that, given the nature of the work, and the purpose, manner and context of its intended use:

1. Nothing in this consent prevents you being described as an author or the author of the project named above.
2. Unless agreed otherwise in writing, we may not be attributed as an author.
3. The *Client* may, in its sole discretion, decide on the form of attribution to be given to any work carried out in relation to the project named above, including the work we supplied to you.
4. Without notifying or consulting us, you or the *Client* may alter any of work carried out in relation to the project named above in any way that is considered desirable, or necessary.
5. You need not advise me if you are notified of any intended alteration to or demolition of any project, building or structure related to our work.
6. We have the right to give this consent on behalf of our employees and our own subcontractors (if any).
7. We will provide you with copies of such consents within a reasonable time if you request.
8. We consent to this consent and copies of any such consents we provide to you being given to the *Client* for its reliance on the consent given.

Signed by subcontractor on behalf of each holder of Moral Rights by an authorised representative of the subcontractor on …… day of ………… 20……:

|  |  |
| --- | --- |
|  |  |
| Name of Subcontractor including ABN | Name of Signatory |
|  |  |
| Signature |  |

**Guidance Note:** This Deed of Confidentiality and Privacy is only to be completed by the *Consultant* and its employees, agents, *subcontractors* if execution is required under either clause 23 or 37 of the *Contract*.

ANNEXURE PART D

#### DEED OF CONFIDENTIALITY AND PRIVACY

Deed dated the ………… day of ………… 20……

BETWEEN

State of Queensland acting through (“the *Client*”)

AND

[Name of Confidant] (“the *Confidant*”)

##### RECITALS

1. The *Client* engaged ……………………………..………………………………(“the *Consultant*”) to carry out ……………..*……………………………*(“the *Services*”) by letter of acceptance dated …………...
2. In order to carry out the *Services*, the *Client* has or may give the *Consultant* and the *Consultant* has or may give its employees, officers, agents, *subcontractors*, access directly or indirectly to information of a confidential nature including personal information, defined more fully below at the definition of *Confidential Information*.
3. The Confidant has or may be given access directly or indirectly to the Confidential Information in connection with the Services and agrees to be given, treat and use the Confidential Information on the terms and conditions of this Deed.

##### INTERPRETATION

Definition

*Confidential Information* means information, documents and data stored by any means and any information made available in the course of the *Consultant’s* dealings with the *Client* or the *Client’s* employees, agents, consultants or contractors (or any *subcontractors* of consultants or contractors) in connection with the *Services*:

* 1. identified in writing as being confidential;
  2. personal information as defined in the *Information Privacy Act 2009* (Qld); and
  3. information which of its nature is confidential or which the parties ought reasonably know is confidential.

##### NON DISCLOSURE

* 1. The *Confidant* must treat as confidential the *Confidential Information* which the *Confidant* has access to or which is disclosed to the *Confidant* including to only disclose *Confidential Information* to those persons who necessarily require the *Confidential Information* for the purposes of carrying out or assisting the *Confidant* and or the *Consultant* to carry out the *Services*, provided always that any recipient of the *Confidential Information* is subject to the obligations of confidentiality as provided for in this Deed.
  2. The *Client* may require the *Confidant* to obtain the execution of a deed in similar terms to this Deed by any person or persons to whom *Confidential Information* is to be disclosed.
  3. Obligations under this Deed will not be taken to have been breached where disclosure including copying or retention of the *Confidential Information* is:
  4. required by law;
  5. necessary to procure goods or services in connection with the *Services*, provided that the recipient of the *Confidential Information* is subject to an obligation of confidentiality as provided for in this Deed;
  6. agreed in writing by the parties;
  7. where the information is in the public domain otherwise than as a result of a breach of this Deed;
  8. that the information was already in a party’s possession and not subject to an obligation of confidentiality; or
  9. that the information is lawfully received from a third party or independently developed by a party.

##### RESTRICTION ON USE

* 1. The *Client* acknowledges that the *Confidential Information* has been provided for the purposes of the carrying out the *Services* or assisting with the carrying out of the *Services* and agrees, subject to the terms of this Deed, for persons under the control of the *Confidant* to use the *Confidential Information* for such purposes.
  2. The *Confidant* agrees to use the *Confidential Information* and ensure any persons who have access to the *Confidential Information* only use it the purposes of carrying out work in connection with *Services*.
  3. Unless the *Client* authorises otherwise, the *Confidant* agrees that the *Confidential Information* is not to be accessed, disclosed, copied or used by persons outside of the control of the *Confidant* or by persons other than those carrying out work in connection with the *Services* on behalf of the *Confidant*.
  4. The *Confidant* agrees to take all reasonable precautions to prevent unauthorised access to or copying or disclosure of the *Confidential Information* and agrees to ensure persons under its control, including those persons who the *Confidant* has disclosed the information to in connection with carrying out the *Services*, comply with the requirements of this Deed.

##### SURVIVAL

The obligations under this Deed survive the termination or expiry of any contract in connection with the *Services*, and remain operative until each part of the information lawfully becomes part of the public domain or the *Confidential Information* is permanently destroyed, unless otherwise agreed in writing by the Parties.

##### POWERS OF THE CLIENT

* 1. Subject to clause 5.3 of this Deed, immediately upon request by the *Client*, the *Confidant* must deliver to the *Client* all information, documents and data in its possession or control which include in them any *Confidential Information*.
  2. If at the time of such a request pursuant to clause 5.1, documents containing *Confidential Information* are beyond the possession or control of the *Confidant*, then the *Confidant* must provide details of where the information, documents or data are and the identity of the person who has control of them.
  3. Where the *Client* has requested the delivery of *Confidential Information* back to the *Client*, the *Confidant* and any party who has had access to or taken a copy of the *Confidential Information* in accordance with this Deed, will not be in breach of this Deed to the extent that they retain a copy of the *Confidential Information* because it is required by law, provided that the *Confidential Information* must be kept confidential until it is permanently destroyed.
  4. The *Confidant* acknowledges that the *Client* may take legal proceedings against the *Confidant* or third parties if there is any actual, threatened or suspected breaches of this Deed, including proceedings for an injunction to restrain such breach.

##### APPLICABLE LAW

This Deed is governed by and construed according to the law of the State of Queensland and the parties agree to submit to the jurisdiction of the Courts of the State of Queensland.

##### **EXECUTED AS A DEED**

**EXECUTED**

on the ……day of ……… 20…… by

|  |  |
| --- | --- |
|  |  |
| Name of Confidant | 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 Confidant | Signature of Confidant |

In the presence of:

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

**SIGNED, SEALED AND DELIVERED**

on the ……day of ……… 20……

for and on behalf of the *Client* by an authorised officer:

|  |  |
| --- | --- |
|  |  |
| Name of authorised officer | Signature of authorised officer |

In the presence of:

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

ANNEXURE PART E

#### Subcontractor Deed Poll (clause 20.6)

FORM OF DEED POLL

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

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

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

##### RECITALS

1. The *Client* has entered into an agreement with ……………………………………… (the “*Consultant*”) for the provision of ……………………………………. (the “*Services*”) in relation to the ……………………… (the “*Project*”).
2. The *Subcontractor* proposes to enter into an agreement (“the *Subcontract*”) with the *Consultant* or a *subcontractor* of the *Consultant* for the execution and completion of the …………………………………... (the “*Subcontract Works*”) for the *Project*.
3. It is or will be a condition of the *Subcontract* that the *Subcontractor* executes this Deed Poll.

This Deed Poll provides as follows:

1. The *Subcontractor* warrants that:
   1. it will make and keep accurate records of:
   2. its offer, including without limitation the preparation and submission of that offer;
   3. offers received by it, whether accepted or not;
   4. the execution and completion of the work under the *Subcontract*; and
   5. compliance with any commitments made in the Subcontractor’s offer and its obligations under the Subcontract relating to compliance with government policies including but not limited to the Queensland Procurement Policy, the Local Benefits Test contained in the Queensland Procurement Policy, the Ethical Supplier Mandate and the Ethical Supplier Threshold;
   6. 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:
   7. relate to the *Subcontractor’s* offer, including offer preparation, submission, negotiation, evaluation, estimates and calculations;
   8. relate to design, including design calculations, option studies, opinions, reviews and reports;
   9. relate to the execution and completion of the work under the *Subcontract*, including without limitation labour, subcontracts, subcontractors, subconsultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
   10. 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
   11. are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications or social media.
   12. subject to the *Subcontractor’s* right to claim legal professional privilege in respect of any record, which is hereby maintained, permit the *Client* and the *QGP Compliance Branch* to inspect and to copy at any time any records referred to in clause 1.a. or 1.b., 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.
   13. without limiting the previous paragraphs, the *Subcontractor* will permit the *Client* and the *QGP Compliance Branch* to undertake an audit of the records referred to in clause 1.a. and 1.b. for the purposes of verifying the *Subcontractor’s* compliance with any commitments made in the *Subcontractor’s* offer and its obligations under the *Subcontract* relating to compliance with government policies including the Queensland Procurement Policy, the Local Benefits Test contained in the Queensland Procurement Policy, the Ethical Supplier Mandate and the Ethical Supplier Threshold.
2. The *Subcontractor* consents to the *Client* and the *QGP Compliance Branch* disclosing or providing copies of any records which the *Client* and the *QGP Compliance Branch* inspects or copies in accordance with clause 1 of this Deed Poll to the *Consultant*.
3. The *Subcontractor* consents to the *Client* 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 *Client*, 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.
5. 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.
6. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the *Client*.

**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* |

ANNEXURE PART F

#### Formal Instrument of Agreement (clause 40)

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

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

**BETWEEN** insert name, ABN insert of insert address (“**Client**”)

**AND** insert name, ACN insert of insert address (“**Consultant**”)

***RECITALS***

1. Offers were invited by the Client for the provision of [insert description of services (e.g. architect services / consultancy services etc)] (the Services).
2. The Consultant submitted its offer for the Services which was accepted by the Client in the Client’s Letter of Acceptance.
3. The Consultant has, in lodging its offer, represented to the Client that it has the skill and expertise necessary to perform the works under the Contract and deliver the Services and acknowledges that in entering into this agreement the Client has relied upon these representations.
4. The Client has engaged the Consultant to perform the work under the Contract and deliver the Services.
5. The Consultant agrees to perform the work under the Contract and deliver the Services in accordance with the terms of the Contract.

***OPERATIVE PROVISIONS***

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

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

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

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

* 1. Australian Standard General Conditions of Contract for Consultants (AS4122-2010),
  2. the Scope dated [insert] by [insert author] (version: [insert], file format: [insert]) (**Attachment C**); and
  3. Consultant’s Tender as clarified by the Consultant’ and accepted by the Client dated [insert] by [insert author] (version: [insert], file format: [insert]) (**Attachment D**).

1. If any party of the Contract consists of one or more persons and one or more corporations the contract will bind such person or persons and such corporation or corporations (as the case may be) and their respective executors, administrators, successors (in the case of the Consultant) and permitted assigns (in the case of the Client) jointly and severally and the person or persons and/or corporation or corporations included in the term “Consultant” or the term “the Client’ in the Contract will jointly be entitled to the benefit of the Contract and the Contract must be read and construed accordingly.
2. The parties agree that they will do everything reasonably necessary to give effect to the Contract.

**EXECUTED AS A DEED**

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

*Option 1: Corporations Act*

**SIGNED**

on the …….…day of ………..……….… 20….… by

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  | Name of Company – Consultant | ACN |

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

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

**OR**

*Option 2: Representative*

**SIGNED**

on the …….…day of ………..……….… 20….… by

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  | Name of Person – Consultant | Signature of Person – Consultant |

in the presence of:

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

**OR**

*Option 3: Power of Attorney*

**SIGNED SEALED** **AND** **DELIVERED**

on the ….…day of …………………..… 20….… by

|  |  |
| --- | --- |
|  |  |
| Name of Company – Consultant | ACN |

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

|  |  |
| --- | --- |
|  |  |
| Name of Attorney | Signature of Attorney |
|  |  |
| Name of Attorney | Signature of Attorney |

In the presence of:

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

**SIGNED, SEALED AND DELIVERED**

on the ……..…day of …………….…….… 20…..…

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

|  |  |
| --- | --- |
|  |  |
| Name of authorised officer | Signature of authorised officer |

In the presence of:

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

ANNEXURE PART G

#### Request for Approval to Subcontract / Sub subcontract (clause 20)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Contract Name: | |  | | | | |
| Project Number: | |  | | | | |
| Pursuant to clause 20.3 of the Conditions of Contract I request approval to enter into a subcontract for the following part of the *Services* under the *Contract*: | | | | | | |
| Proposed *subcontractor*: | | |  | | | |
| ACN: |  | | | | ABN: |  |
| Address: |  | | | | | |
| Total value of proposed subcontract: | | | | $ | | |

I confirm that:

1. the *Consultant* has complied with the requirements of clause 20 of the Conditions of Contract including, without limitation, the *Consultant’s* obligations to procure the subcontract in accordance with the requirements of the *Queensland Procurement Policy*;
2. the Consultant has provided an original version of the Deed Poll executed by the proposed subcontractor; and
3. the proposed *subcontractor*:
   1. for the purposes of the *Queensland Procurement Policy*:
      1. 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 *Consultant* efforts to source a local supplier; and

* + 1. is compliant with the *Ethical Supplier Threshold*;
    2. is not subject to a current sanction under the *Ethical Supplier Mandate*; and
  1. has been informed of the existence of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) (BIF Act);
  2. for the purposes of the BIF Act:

☐ IS a related entity, as defined by section 10A of the BIF Act, or

☐ IS NOT a related entity, as defined by section 10A of the BIF Act; and

* 1. either:
     1. has a personal services business determination in effect from the Australian Taxation Office under the *Income Tax Assessment Act 1997* (Cth); or
     2. in relation to the work to be performed under the subcontract:

1. will be paid to achieve a specified result or outcome;
2. is required to supply the plant and equipment or tools of trade needed to perform the services; and
3. will be liable for the cost of rectifying any omission in the services performed.

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

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