

Conditions of Contract for Short Form Consultancy Services

DEFINITIONS

In the Contract

'Business Day' means a day which is not:

- (a) a Saturday or Sunday;
- (b) a public holiday, bank holiday or special holiday in the place in the Gold Coast, Queensland; or
- (c) a day occurring on or within the period of 22 December to 10 January.

'Claim' means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Contract, the Services or either party's conduct under the Contract before it came into force, whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence), including any claim, notice, demand, debt, account, lien, liability, action, proceeding or suit:

- (a) for the payment of money (including damages);
- (b) for an adjustment to the Fee; or
- (c) for delay, disruption, acceleration or other time-based claim.

'Client' means the Gold Coast City Council ABN 84 858 548 460 of 8 Karp Court, Bundall Queensland 4217.

'Client Information' means any information (whether documented or otherwise) supplied or made available to the Consultant by or on behalf of the Client before or after the date of accepting the offer (even where such documents have been included in the Scope, which have been included for identification purposes only). Client Information does not include information in documents forming part of the Contract in accordance with the Quotation Form.

'Client's Nominated Representative' means either the Superintendent or the Council Contract Representative, as specified in the Quotation Form.

'Commencement Date' means:

- (a) the date or dates specified in the Quotation Form; or
- (b) the date agreed in writing between the parties.

'Completion' means the stage of the Services when:

- (a) all Services have been completed in accordance with the Contract; and
- (b) all applicable conditions required by the Contract to be satisfied before Completion have been satisfied.

'Completion Date' means the date or dates specified in the Quotation Form, if any, by which:

- (a) the Services must achieve Completion; or
 - (b) a nominated part of the Services must achieve Completion,
- as may be adjusted by Clause A.12.

'Conditions of Contract' means these Conditions of Contract Minor Consultancy Services, copies of which can be located on the Client's website at cityofgoldcoast.com.au.

'Conflict of Interest' means a commercial or professional interest of interest, either real, perceived, anticipated or identified as a risk or as a possibility of arising, identified by either Party in respect to the carrying out of the Services (either under obligations and rights arising under the Contract or any other arrangement or agreement, with the Consultant or with others, either past, current or in the future).

'Consequential Loss' means, to the extent that the loss is an indirect loss, any loss of revenue, loss of profit, loss of business opportunity, loss of contract, loss of opportunity to earn profit or revenue, loss arising from damage to goodwill or reputation, loss of anticipated savings, loss arising from business interruption or loss arising from credit rating.

'Consultant' means the party stated in the Quotation Form (initially referred to as the 'Tenderer') and responsible for carrying out and completing the Services in accordance with the Contract.

'Contract' means the legally binding agreement between the Client and the Consultant, comprising the documents specified in the Quotation Form.

'Contract Term' means, subject to earlier termination of the Contract in accordance with Clause A.26:

- (a) the term specified in the Quotation Form (if any); and
- (b) any extension of that term under Clause A.2.2.

'Council Contract Representative' means the Client's Nominated Representative specified in the Quotation Form (if any) to exercise the functions of the Client relating to the Contract or other person from time to time appointed in writing by the Client to be the Council Contract Representative and Notified as such to the Consultant by the Client.

'Deliverables' means those documents and things required under this Contract to be handed over to the Client by the Consultant.

'Direction' means any agreement, approval, assessment, authorisation, decision, determination, explanation, instruction, order, permission, rejection, request or requirement given or made by the Client.

'EOT' means extension of time.

'Existing Contract Material' means any material or document that:

- (a) exists at the Commencement Date; or
- (b) is produced after the Commencement Date, independently of the Contract.

'Fee' means the money payable under this Contract for the performance of the Services as adjusted in accordance with this Contract as stated in the Quotation Form.

'Good Industry Practice' means the standards (including any relevant Australian Standard), practices, policies, methods, acts and procedures generally followed or approved by relevant industries and consultants in Australia with respect to the Services, and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a prudent, experienced, competent and skilled consultant for a project of a similar nature to the Services.

'Insolvency Event' means any of the following events:

- (a) the Consultant makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that the Consultant is insolvent;
- (b) the Consultant stops or suspends payment of all or a class of its debts, or threatens to stop or suspend payment of all or a class of its debts;
- (c) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the Consultant;
- (d) the Consultant is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth), or is presumed to be insolvent under the *Corporations Act 2001* (Cth);
- (e) an application or order is made for the liquidation of the Consultant or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Consultant, otherwise than for the purpose of an amalgamation or reconstruction;
- (f) the Consultant ceases to carry on business;
- (g) the Consultant or the Consultant's property or undertaking becomes subject to a personal insolvency arrangement under Part X of the *Bankruptcy Act 1966* (Cth) or a debt agreement under Part IX of the *Bankruptcy Act 1966* (Cth); or
- (h) any thing analogous to the events described in paragraphs (a) to (g) occurs.

'Intellectual Property Rights' means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks and any other right in respect of intellectual property.

'Legislative Requirements' includes

- (a) acts, ordinances, regulations, by-laws, local laws, orders, awards and proclamations of the Commonwealth, the State or Territory or local government relevant to the subject matter of the Contract, the Services or where any part thereof is being carried out;
- (b) certificates, licences, consents, permits, codes, standards, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Contract;
- (c) Australian Standards and any other relevant standards; and
- (d) fees and charges payable in connection with the foregoing.

'Milestone' means those parts of the Services (if any) that are nominated in the Quotation Form.

'Milestone Amount' means the amount specified for each Milestone as nominated in the Quotation Form for the relevant Milestone.

'Milestone Completion' of a Milestone is achieved when the Milestone has been fully completed in accordance with the Contract (without defects), as certified by the Client's Nominated Representative.

'Milestone Completion Acceptance Notice' has the meaning given to it in Clause A.11.2(f).

'Milestone Partial Acceptance Notice' has the meaning given to it in Clause A.11.2(e).

'Milestone Payment Amounts' has the meaning given to it in Clause A.11.2(d).

'Moral Rights Owner' means an owner of moral rights under the *Copyright Amendment (Moral Rights) Act 2000* (Cth) in relation to the Services.

'New Contract Material' means any material or document that is created, written or otherwise brought into existence by or on behalf of the Consultant in the course of carrying out the Services, and in which there are newly created Intellectual Property Rights, and which specifically excludes Existing Contract Material.

'Notice' means a notice, consent or communication given in accordance with Clause A.38.

'Payment Claim' has the meaning given to in Clause A.9.1, and includes a 'payment claim' for the purposes of the Security of Payment Act.

'Payment Claim Date' means the later of the date worked out as follows:

- (a) the last Business Day of each month for Services done to the 25th day of that month; and
- (b) the date of satisfaction of the last preconditions to be satisfied under Clause A.9.11.

'Personnel' means any officer, employee, agent, subcontractor, supplier or consultant of a party, but the Client's Personnel do not include the Consultant or the Consultant's Personnel and the Consultant's Personnel do not include the Client or the Client's Personnel.

'Policies and Plans' means all requirements, policies, procedures, guidelines, rules and plans of the Client as may be from time to time, including any Policies and Plans set out or referenced in the Quotation Form.

'Quality Assurance System' means the Consultant's system which establishes the qualities and performance of the Services including, all quality manuals, plans, management structures and responsibility statements, techniques for identification and management of non-conforming or disputed Services and audit and other critical issues relating to quality assurance.

'Quotation Form' means the completed Short Form Consultancy Services Quotation Form which is executed by the parties to the Contract.

'Response Period' means the period:

- (a) 10 Business Days; or
- (b) where the Payment Claim is made by the Consultant under the Security of Payment Act, any longer period permitted for the service of a corresponding payment schedule under the Security of Payment Act.

'Scope' means the specifications or documents referred to in the Quotation Form detailing the description of the Client's requirements under the Contract.

'Security Interest' has the meaning given in the *Personal Property Securities Act 2009* (Cth).

'Security of Payment Act' means the *Building and Construction Industry Payments Act 2004* (Qld) or the *Building Industry Fairness (Security of Payment) Act 2017* (Qld), as the case may be.

'Services' means the services described in or reasonably inferred from the Scope.

'Services Program' means the program for the performance of the Services as described in Clause A.22.

'Superintendent' means the Client's Nominated Representative specified in the Quotation Form to be the Superintendent (if any) for the purposes of the Contract or any other person from time to time appointed in writing by the Client to be the Superintendent and Notified as such in writing to the Consultant by the Client.

'Variation' means a change to the Services whether or not it is a change to the Scope.

INTERPRETATION

In the Contract, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) headings are, in the interpretation of the Contract, to be disregarded;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the Contract and references to this Contract include any schedules or annexures;
- (d) a reference to a party to the Contract or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to the Contract) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (h) if any day on or by which a person must do something under the Contract is not a Business Day, then the person must do it on or by the next Business Day;
- (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (j) wherever the words 'include', 'included' or 'including' (or similar expressions) are used in the Contract, those words will be interpreted in all cases as if they were proceeded by the further words 'but not limited to' or the appropriate grammatical derivative;
- (k) no provision of the Contract is to be construed against the interests of the Client because the Client prepared or relies on the Contract; and
- (l) the review, perusal, comment by the Client of any document or information submitted by the Consultant does not relieve the Consultant of any of its obligations or liabilities, including responsibility for the correctness of information submitted by the Consultant.

If the Consultant finds any ambiguity, discrepancy or inconsistency between or within any document comprising the Contract, it must immediately Notify the Client describing the ambiguity, discrepancy or inconsistency. If the order of precedence in the Quotation Form cannot resolve the ambiguity, discrepancy or inconsistency, the Client will then Notify the Consultant of the interpretation to be followed, the Consultant must comply with any such Direction and the Consultant will not be entitled to Claim as a result of any ambiguity, discrepancy or inconsistency in the Contract or any Notification by the Client.

A. CONDITIONS OF CONTRACT

A.1 GOVERNING LAW

The Contract will be governed by and construed in accordance with the law of Queensland. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.

A.2 TIMEFRAMES

- A.2.1 If the Quotation Form states that the Consultant is to perform the Services for a Contract Term, then the Consultant must commence the Services on the Commencement Date and, subject to Clause A.2.2, cease the Services on the last day of the Contract Term.
- A.2.2 The Client may, in its absolute discretion, extend the Contract Term for the period stipulated in the Quotation Form by giving Notice to the Consultant prior to the expiry of the Contract Term. If the Contract Term is extended in accordance with this Clause A.2.2, then the terms and conditions of the Contract will continue to apply during the extended Contract Term.
- A.2.3 If the Quotation Form sets out one or more Completion Dates, then the Consultant must achieve Completion of the relevant part of the Services by the applicable Completion Date.
- A.2.4 The Contract applies to any of the Services that the Consultant carried out before the Quotation Form was executed by the parties.

A.3 PERFORMANCE OF SERVICES

- A.3.1 The Consultant must perform the Services in accordance with the Contract to the standard of skill, care and diligence expected of a skilled and competent professional practising in the particular fields relevant to the Services, or such higher standard as the Consultant has represented in writing to the Client in relation to this Contract.
- A.3.2 Without limiting any other obligation under the Contract, the Consultant represents and warrants to the Client that:
 - (a) it has carefully examined and acquired actual knowledge of any information made available by the Client (including the documents forming the Contract and Client Information);
 - (b) it has carefully considered what is required for the Services before entering into the Contract and it will maintain at all times the necessary experience and qualifications to carry out the Services;
 - (c) it has made its own investigation and assessment of the work, risks, contingencies and other circumstances involved in performing the Services and has made its own enquiries as to the difficulties of carrying out the Services (and has made full allowance for those difficulties);
 - (d) it has satisfied itself that the Fee covers the cost of complying with all the obligations under the Contract;
 - (e) it has the necessary authority and power to enter into the Contract and to perform the Services under it;
 - (f) the information supplied by the Consultant prior to the Client's entry into the Contract was not false or misleading or deceptive;
 - (g) it will carry out the Services so that when completed they comply with all requirements of the Contract (including the Scope), all Legislative Requirements, codes and standards, Australian Standards, Policies and Plans and any applicable licences, permits and Directions given by the Client (including Variations); and
 - (h) the Services will be fit for the purposes for which the Client intends to use them for as stated in the Scope (or, if no express purpose is stated in the Scope, the purpose which can reasonably be inferred from the Contract).
- A.3.3 The representations and warranties set out in Clause A.3.2 survive the expiry or termination of the Contract and the Consultant acknowledges that the Client relied on the representations and warranties when it entered into the Contract.
- A.3.4 The Consultant must:
 - (a) carry out the Services with Good Industry Practice and in compliance with all Legislative Requirements;
 - (b) supply all labour and other property the Consultant requires to fulfil its obligations under the Contract;
 - (c) if it learns of anything that may affect, or has affected, the Scope or suitability of the Services, then it must promptly Notify the Client of that as soon as possible, and to the extent possible include in the Notice details of the relevant matter and its cause;
 - (d) use reasonable endeavours to liaise, cooperate and confer with the Client and the Personnel of the Client in order to coordinate its Services with the services of those Personnel;
 - (e) carry out the Services with due expedition and without delay;
 - (f) Notify the Client if the Consultant believes that anything may delay the progress of the Services (such Notice to include details of the estimated extent of the delay and the cause);
 - (g) without limiting its other obligations under the Contract, apply Good Industry Practice to avoid, mitigate and overcome the effects of any delays to the carrying out of the Services;
 - (h) perform the Services in accordance with the Directions of the Client and Client's Nominated Representative;
 - (i) ensure that, in the course of performing the Services, no damage is caused to the property of any party (including the Client's property); and
 - (j) consult regularly with the Client and attend meetings and briefings reasonably required by the Client in connection with the Services.

- A.3.5 The Consultant's liability and obligations under or in connection with the Contract are no way affected by the Client's comment on or approval of any aspect of the Services (or any failure to do so).
- A.3.6 The Consultant must:
- comply with sections 199 and 200 of the *Local Government Act 2009* (Qld);
 - at all times act in the best interests of the Client; and
 - must not do or cause or allow to be done any act or thing that would cause the Client to be in breach of, or be subject to any statutory penalty under, any Legislative Requirements.
- A.3.7 The Consultant must liaise, cooperate and confer with the Client and the Personnel of the Client in order to coordinate its Services with the services of those Personnel and to produce the Deliverables.
- A 4 FEE**
- A.4.1 In consideration of the completion of the Services in accordance with the Contract, the Client will pay the Consultant the Fee in the manner provided for in the Contract.
- A.4.2 Without limitation, this Contract applies to all work carried out by the Consultant in connection with the Services before the Contract was executed and this work is included in the Fee.
- A 5 CLIENT'S NOMINATED REPRESENTATIVE AND CONSULTANT'S REPRESENTATIVE**
- A.5.1 The Client's Nominated Representative is:
- the primary liaison and point of contact between the Client and the Consultant in relation to the administration of the Contract;
 - responsible for monitoring and evaluating the Consultant's performance under the Contract and otherwise ensuring the Consultant's compliance with all applicable Legislative Requirements; and
 - not authorised either actually or ostensibly to amend or vary the Contract or enter into any contract on behalf of the Client.
- A.5.2 If a Council Contract Representative is specified to be the Client's Nominated Representative in the Quotation Form:
- the Council Contract Representative is:
 - authorised to act on behalf of the Client in discharging the Client's functions under the Contract (including acting as the assessor, valuer or certifier in respect of any matter under the Contract which requires an assessment, valuation or certification by the Client), except to the extent expressly provided otherwise in the Contract or in any Notice issued by the Client; and
 - an agent of the Client and carries out all functions as such; and
 - the Consultant must:
 - liaise with and report to the Council Contract Representative about the Services;
 - attend all meetings with, or provide briefings to, the Council Contract Representative, as required by the Client from time to time;
 - give any Notice that the Consultant is required to give to the Client under the Contract to the Council Contract Representative; and
 - promptly comply with any request or Direction given by the Council Contract Representative, in accordance with the Contract, about the Services.
- A.5.3 If a Superintendent is specified to be the Client's Nominated Representative in the Quotation Form:
- the Client will ensure that at all times there is a Superintendent for the purposes of the Contract;
 - the Superintendent is authorised to act on behalf of the Client in discharging the Client's functions under the Contract;
 - the Client will endeavour to ensure that the Superintendent performs reasonably and in good faith its assessment, valuation or certification functions; and
 - the Superintendent carries out all of its functions, other than its assessment, valuation or certification functions, as an agent of the Client.
- A.5.4 The Client will Notify the Consultant of any change in the identity of the Client's Nominated Representative.
- A 6 CLIENT INFORMATION**
- A.6.1 The Client must promptly provide the Consultant with Client Information sufficient to enable the Consultant to perform the Services.
- A.6.2 The Consultant agrees:
- unless the Client expressly agrees otherwise in writing, any Client Information:
 - has been or will be provided only for the Consultant's convenience; and
 - has not been and will not be relied upon by the Consultant for any purpose (including entering into the Contract or performing its obligations under the Contract);
 - the Client does not:
 - assume any responsibility or duty of care in respect of, or
 - warrant, guarantee or make any representation as to, the Client Information (including its accuracy, completeness or adequacy for the purposes of the Contract); and
 - the Client will not be liable to the Consultant in contract, tort, equity, under statute or otherwise arising from or in connection with the Client Information, the provision of the Client Information or the non-provision of any other information by the Client.
- A.6.3 After commencement of work on the Deliverables, the Consultant must promptly (and within 3 Business Days after receipt of the Client Information and otherwise before such Client Information is relied on or used) Notify the Client if and to the extent the Consultant becomes aware that any Client Information contains an ambiguity, error, omission, discrepancy, insufficiency or inconsistency or is otherwise insufficient to enable the Consultant to perform the Services.
- A.6.4 If the Consultant gives Notice under Clause A.6.3, the Client must either:
- Direct an appropriate amendment to the Scope; or
 - Direct the Consultant to proceed notwithstanding its advice.
- A.6.5 The Consultant is entitled to an adjustment to the Fee and/or time for performing the Services in relation to a Direction under Clause A.6.4:
- where the Consultant has given Notice under Clause A.6.3;
 - if the Client Information was first provided after the date of this Contract; and
 - it was not reasonably practicable for the Consultant to identify any ambiguity, error, omission, discrepancy, insufficiency or inconsistency necessitating amendment to the Scope prior to commencement of work on the Deliverables.
- A 7 DIRECTIONS**
- A.7.1 The Client may give Directions to the Consultant at any time.
- A.7.2 If a Direction is given to the Consultant by a representative (including employee or agent) of the Client other than the Client's Nominated Representative, the Consultant must promptly confirm the Direction with the Client's Nominated Representative before acting upon it unless:
- the Direction is for urgent action;
 - the Direction relates to the Client exercising other rights of the Client under the Contract; or
 - the Client has provided the Direction in writing and notified that confirmation with the Client's Nominated Representative is not required.
- A.7.3 A Direction may be given orally except where this Contract otherwise provides.
- A.7.4 The Client must give the Consultant Directions necessary for the performance of the Services in a timely manner.
- A.7.5 Subject to Clause A.7.2, the Consultant must comply with all Directions given under this Contract.
- A 8 VARIATIONS**
- A.8.1 The Client and Client's Nominated Representative may Direct the Consultant to perform a Variation.
- If the Consultant considers any Direction requires a Variation, but the Direction is not in writing or does not specify that it Directs a Variation, then the Consultant must promptly (and within 3 Business Days of receipt of the Direction and otherwise before the Consultant proceeds with the Direction) Notify the Client setting out why the Consultant considers the Direction requires a Variation. In that case the Consultant must not comply with the Direction unless the Consultant receives a written:
- Direction specifying a Variation; or
 - Notice that the Client disagrees, stating its reasons.
- If a Notice is issued under Clause A.8.1(b), the Consultant must comply with the Direction but may, within 20 Business Days, dispute the Notice under Clause A.8.1(b) by Notice given under Clause A.32.
- A.8.2 The Fee must be adjusted for each Variation. Where the parties have not already agreed on the value of a Variation, the Client's Nominated Representative will determine (acting reasonably) the value of the Variation as follows:
- if the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices will be used; and
 - to the extent that the preceding Clause A.8.2(a) does not apply, reasonable rates or prices will be used.
- A.8.3 The Consultant is not obliged to perform a Variation that is outside the general Scope of the Services.
- A.8.4 The Consultant must not vary any part of the Services except as Directed in writing by the Client or Client's Nominated Representative or approved in writing by the Client or Client's Nominated Representative in accordance with Clause A.8.1.
- A.8.5 Except as provided in this Clause A.8, the Consultant has no Claim against the Client arising out of or in connection with any Variation.
- A.8.6 Despite any other provision of the Contract, the Consultant will not be entitled to any Claim, if a Direction is given or a Variation Directed which results from:

- (a) performance of incidental tasks or tasks that can be reasonably inferred as necessary to safely and effectively complete the Services;
 - (b) any Services that do not comply with the requirements of the Contract;
 - (c) the Consultant being in breach of the Contract; or
 - (d) any negligence or default of the Consultant or its Personnel.
- A.8.7 For the avoidance of doubt, the Consultant may only Claim in connection with a valuation which is to be made under this Clause A.8, subject to and in accordance with this Contract (including Clauses A.8.2 and A.39 if applicable), as part of a Payment Claim.
- A.9 PAYMENT**
- A.9.1 The basis for payment to the Consultant is stated in the Quotation Form.
- A.9.2 The Consultant must submit to the Client's Nominated Representative at the address in the Quotation Form, on the Payment Claim Date, its Payment Claims.
- A.9.3 The Payment Claim must be for parts of the Services properly completed since the last Payment Claim Date, less any amounts to which the Client may deduct, withhold or set-off and less any amounts not due and payable under the Contract, which must be in the form of a valid tax invoice and include:
- (a) the Contract number;
 - (b) the details of Services carried out and claimed in the Payment Claim;
 - (c) the name of the Client's Nominated Representative;
 - (d) the calculations substantiating the amount which it claims (and if the Fee for the Services is based on hourly rates, details of the hours spent by the Consultant's Personnel in performing the Services);
 - (e) any discounts that are provided by the Consultant; and
 - (f) any other information which the Client may reasonably require.
- A.9.4 The Client will be entitled to specify the format of Payment Claims.
- A.9.5 The Client's Nominated Representative will assess the Payment Claim and issue the Consultant a payment schedule stating the amount of the Payment Claim which in the opinion of the Client's Nominated Representative (having regard to Clauses A.9.10 and A.9.11), is payable by the Client (**Payment Schedule**) within the Response Period from the receipt of a Payment Claim. The Payment Schedule must also state:
- (a) the Payment Claim to which the Payment Schedule applies; and
 - (b) if the amount in the Payment Schedule is less than that in the Payment Claim, the reasons why.
- A.9.6 Subject to Clauses A.9.10 and A.9.11, the Client will pay the Consultant, or the Consultant will pay to the Client, as the case may be, the amount of the Payment Schedule within 5 Business Days of the date of the Payment Schedule. Any payment by the Client is on account only, and is not evidence of any part of the Services having been carried out in accordance with the requirements of the Contract.
- A.9.7 Payment by the Client is on account and is not evidence of the value of the work completed, an admission of liability nor evidence that the Services have been executed satisfactorily.
- A.9.8 If the Client fails to make the payment that is due and payable in accordance with Clause A.9.6, the Consultant may Notify the Client that it shall suspend performance of the Services, after expiry of at least 5 Business Days Notice to the Client. Unless the payment has been made, the Consultant may suspend performance of the Services at any time after expiration of the Notice period. The Consultant must promptly lift the suspension after the Client has made the payment.
- A.9.9 If the Client fails to make the payment that is due and payable in accordance with Clause A.9.6, the Consultant may Notify the Client that interest is payable on any overdue payments at the rate stated in the Quotation Form from the date of the Notice. If so, the Consultant must promptly issue an amended tax invoice and the Fee must be adjusted to include the amount of interest paid.
- A.9.10 The Client may set off against and deduct from any monies due to the Consultant, any debt, costs, damages, loss or expense due to or claimed by the Client from the Consultant whether or not the debt, costs, damages, loss or expense arises by way of contract, tort, damages, debt, restitution or otherwise, and whether or not the factual basis giving rise thereto arises out of the Contract, any other contract, or is independent of any contract.
- A.9.11 Without limiting the Client's other rights, a Payment Claim Date will not occur unless the Consultant has:
- (a) returned a signed copy of the Quotation Form;
 - (b) fully complied with its obligations to provide security (if any) under Clause A.20;
 - (c) provided certificates of currency in accordance with Clause A.28.2; and
 - (d) provided the Client with a statutory declaration (in a form required by the Client), 1 Business Day prior to the date for submission of the Payment Claim, which states that no wages or other monies are due and owing by the Consultant to its Personnel up to and including the date of the statutory
- declaration and which is not misleading or deceptive in any way.
- A.9.12 Nothing in this Clause A.9 limits the Client's rights under Clause A.26.
- A.10 GST**
- A.10.1 In this Clause A.10, terms defined by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and used (without separate definition), will have the meaning given to them by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- A.10.2 The consideration for a Supply made under or in connection with the Contract includes GST (including the Fee).
- A.10.3 If the Quotation Form has been completed to confirm that this Clause A.10.3 applies, the parties agree that for a Taxable Supply made by the Consultant as Supplier under the Contract, the Recipient will issue a Recipient Created Tax Invoice.
- A.10.4 If the Quotation Form has been completed to confirm that Clause A.10.3 applies, the Consultant and the Recipient confirm that:
- (a) both parties are registered for GST;
 - (b) if either party deregisters for GST, they will Notify the other party immediately;
 - (c) the Recipient will issue a Recipient Created Tax Invoice in respect of the Supply made by the Consultant; and
 - (d) the Consultant will not issue a Tax Invoice in respect of the Supply made by the Consultant.
- A.10.5 If the Quotation Form has been completed to confirm that Clause A.10.3 applies, the Recipient agrees to comply with the applicable requirements imposed by the Australian Taxation Office for it to be able to issue a Recipient Created Tax Invoice for that Supply.
- A.10.6 If a Supply made under or in connection with the Contract is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- (a) the Recipient must pay the Consultant an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under the Contract for that Supply; and
 - (b) if:
 - (i) the Quotation Form has been completed to confirm that Clause A.10.3 applies, the Recipient must give the Consultant a Recipient Created Tax Invoice; or
 - (ii) otherwise, the Consultant must give the Recipient a Tax Invoice for the Supply.
- A.10.7 For clarity, the GST payable under Clause A.10.6 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Supplier is liable, however caused.
- A.10.8 Where a Tax Invoice is given by the Consultant, the Consultant warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- A.10.9 Where a Supply is made under or in connection with the Contract is a Progressive or Periodic Supply, Clause A.10.6 applies to each component of the progressive or periodic Supply as if it were a separate Supply.
- A.10.10 Where the Client is obliged under any Legislative Requirements to withhold any amount on account of tax or other imposts from any amount payable to the Consultant under or in connection with the Contract unless certain conditions are satisfied, the Client may withhold the amount required to be withheld under the Legislative Requirement until the Client is satisfied in its reasonable opinion that all the relevant conditions have been satisfied.
- A.10.11 The parties agree to exchange with each other such information as may be necessary to enable each party to accurately assess its rights and obligations under this Clause A.10.
- A.11 MILESTONES**
- A.11.1 Clause A.11 will only apply if the Quotation Form has been completed to confirm that Clause A.11 applies.
- A.11.2 The parties agree that:
- (a) the Fee includes all of the Milestone Amounts;
 - (b) the Milestone Amount is the only amount able to be claimed by the Consultant in respect of the Services and the Services comprising the relevant Milestone;
 - (c) the Milestone Amounts are only payable in accordance with this Clause A.11;
 - (d) despite anything in the Contract to the contrary:
 - (i) each Milestone has only two milestone payments (each being a '**Milestone Payment Amount**') that, together, total to the Milestone Amounts:
 - (A) the first Milestone Payment Amount equals 80% of the relevant Milestone Amount; and
 - (B) the second Milestone Payment Amount equals 20% of the relevant Milestone Amount;
 - (ii) to the extent that a Variation directly affects the Services comprising a Milestone, the Client Nominated Representative must adjust the Milestone Amount by the amount priced for the Variation and payable in

accordance with the Contract but only to reflect the extent that the Variation directly affects the Milestone;

- (iii) the Consultant must separately itemise in a Payment Claim each Milestone and the amount claimed in respect of such Milestone; and
- (iv) except to the extent expressly provided for in paragraphs (e) and (f) below, achieving Milestone Completion for a Milestone is a condition precedent to the Consultant's entitlement to submit a Payment Claim, and to be paid, for the Services comprising the relevant Milestone;

- (e) if the Consultant notifies the Client Nominated Representative in writing that it has completed no less than 80% of the Services comprising a Milestone and the Client Nominated Representative, in its sole and unfettered discretion, accepts in writing that the Consultant has achieved that level of completion for the Milestone ('**Milestone Partial Acceptance Notice**'), then the Consultant is entitled to deliver a Payment Claim in accordance with Clause A.9 claiming the payment of the first Milestone Payment Amount for the relevant Milestone; and
- (f) if the Consultant notifies the Client Nominated Representative in writing that it has achieved Milestone Completion of a Milestone and the Client Nominated Representative, in its sole and unfettered discretion, accepts in writing that the Consultant has achieved Milestone Completion for a Milestone ('**Milestone Completion Acceptance Notice**'), the Consultant is entitled to deliver a Payment Claim in accordance with Clause A.9 claiming payment of the second Milestone Payment Amount for the relevant Milestone.

A 12 DELAYS AND EXTENSIONS OF TIME

- A. 12.1 Clauses A. 12.2 to A. 12.9 (inclusive) will only apply if the Quotation Form sets out one or more Completion Dates.
- A. 12.2 The Consultant will only be entitled to an EOT to the Completion Date where:
 - (a) the Services are delayed by a cause listed in Clause A. 12.3 which will prevent the Consultant from achieving Completion by the Completion Date;
 - (b) the Services are not concurrently delayed (in whole or to the extent of any part) by a cause that is not listed in Clause A. 12.3;
 - (c) within 5 Business Days after the commencement of the cause set out in Clause A. 12.3, the Consultant gives Notice to the Client setting out the cause of the delay, the particular activities that are delayed and the EOT to the Completion Date that is claimed; and
 - (d) if the delay continues beyond the EOT claimed by the Consultant under Clause A. 12.2(c), the Consultant gives the Client an updated Notice every 5 Business Days that satisfies the requirements in Clause A.12.2(c) until the delay ends.
- A. 12.3 The qualifying causes are:
 - (a) a delay caused by any act, default or omission of the Client or the Client's Personnel (who are not employed by the Consultant) in the Client's capacity as a party to the Contract; or
 - (b) any cause stated in the Quotation Form that is outside the reasonable control of the Consultant and its Personnel and occurring prior to the relevant Completion Date.
- A. 12.4 Provided that the requirements of Clause A. 12.2 and A. 12.3 are satisfied, the Client will determine (acting reasonably) the period of the delay to the Services referred to in a Notice given by the Consultant under Clause A. 12.2 and extend the Completion Date by that period. If an EOT is granted, the Client will Notify the Consultant of the revised Completion Date.
- A. 12.5 The Client may (without being obliged to do so) at any time and for any reason it thinks fit, extend the Completion Date. This right is solely for the benefit of the Client and may be exercised in its absolute discretion, even if the Consultant is not entitled to an EOT or has not Claimed an EOT.
- A. 12.6 If the Consultant does not make any Claim for an EOT within the time or in the form specified in Clause A. 12.2, the Consultant is not entitled to an EOT, or to later Claim an EOT, for that delay.
- A. 12.7 Any principle of law or equity (including those which might otherwise entitle the Consultant to relief and the "prevention principle") which might otherwise cause the Completion Date to be set at large and make liquidated damages unenforceable, will not apply.
- A. 12.8 For the avoidance of doubt, a delay caused by any act or omission of the Client or the Client's Personnel or any failure by the Client to comply with this Clause A. 12 will not cause the Completion Date to be set at large.
- A. 12.9 Notwithstanding any delays to the carrying out of the Services or any EOT granted, nothing in this Clause A.12 extends the Contract Term or will entitle the Consultant to an extension of the Contract Term.

A 13 LEGISLATIVE REQUIREMENT

- A. 13.1 If a new Legislative Requirement, or a change in a Legislative Requirement:
 - (a) occurs after agreement of the Fee or execution of the Contract, whichever is later;
 - (b) causes the Consultant to incur more or less cost or time than otherwise would have been incurred or expended; and

- (c) could not have been reasonably anticipated by the Consultant exercising the standard of care in Clause A.3 as at the later of:
 - (i) the date the Fee was submitted to the Client (or, if the Fee was amended after it was submitted, the date of that amendment) prior to the 15th Business Day before agreement of the Fee; and
 - (ii) the date of the execution of the Contract,

then the difference in cost will be valued as a Variation and an EOT may be granted in accordance with Clause A. 12.

A 14 KEY PERSONNEL

- A. 14.1 The Consultant must provide the key Personnel (if any) stated in the Quotation Form to perform the Services. If any key person is not available due to circumstances beyond the reasonable control of the Consultant, the Consultant must promptly notify the Client and arrange a replacement approved by the Client (such approval not to be unreasonably withheld or delayed).
- A. 14.2 The Client may by Notice Direct the Consultant to have removed, within a stated time, from the site or from any activity in respect to the Services, any of the Consultant's Personnel employed on the Services (including key Personnel) who, in the Client's opinion, is incompetent, negligent or guilty of misconduct or for any other reason notified to the Consultant by the Client.

A 15 ASSIGNMENT AND SUBCONTRACTING

- A. 15.1 The Consultant must not, without the prior written approval of the Client, and except on such terms and conditions as are determined in writing by the Client, novate the Contract or assign, in whole or in part, the Contract or any payment or other right, benefit or interest under or in respect of the Contract.
- A. 15.2 The Client may, at any time, by giving Notice to the Consultant, novate the Contract or assign, in whole or in part, the Contract or other right, benefit or interest under or in respect of the Contract to any person identified in the Notice.
- A. 15.3 If Clause A.15.2 applies:
 - (a) the Consultant must execute any document reasonably required by the Client to affect its rights under Clause A. 15.2 (including a deed of assignment in the form provided by the Client), and return it to the Client within 5 Business Days of receiving the relevant document; and
 - (b) the Consultant acknowledges and agrees that from the date of any Notice given by the Client pursuant to Clause A.15.2, any assignment by the Client takes effect as if the assignee had been originally named as a party to the Contract in place of the Client.
- A. 15.4 The Consultant must not subcontract any part of the Services without the prior written approval of the Client (which must not be unreasonably withheld or delayed). In granting the approval the Client may impose reasonable conditions.
- A. 15.5 Subcontracting does not relieve the Consultant of any obligation under this Contract.
- A. 15.6 The Client may impose conditions on any approval given under Clause A. 15.4. No approval given by the Client will relieve the Consultant from any of its liabilities or obligations under the Contract and the Consultant will be vicariously liable to the Client for the acts, defaults and omissions of subcontractors, and employees and agents of subcontractors, as if they were those of the Consultant.

A 16 INTELLECTUAL PROPERTY RIGHTS

- A. 16.1 The Client licenses to the Consultant such Intellectual Property Rights in the Client Information as are necessary to enable the Consultant to perform the Services in accordance with this Contract.
- A. 16.2 Title to, and ownership of, Intellectual Property Rights in all New Contract Material will, upon its creation, vest in the party specified in the Quotation Form, or, if not so specified, then the Client.
- A. 16.3 If title to, and ownership of, Intellectual Property Rights in the New Contract Material vests in the Client:
 - (a) the Client grants to the Consultant a paid up, non-exclusive, irrevocable licence to use the New Contract Material for the carrying out of the Services;
 - (b) the Consultant must ensure that the New Contract Material is used, copied, supplied or reproduced only for the purposes of carrying out of the Services; and
 - (c) upon the expiry or termination of the Contract (or some earlier date if required by the Client), the Consultant must provide the Client, in a format specified by the Client, all New Contract Material (including copies).
- A. 16.4 If title to, and ownership of, Intellectual Property Rights in the New Contract Material vests in the Consultant:
 - (a) the Consultant grants to the Client, and must ensure that the person legally entitled to do so grants to the Client, and must do all reasonable things necessary to give effect to the grant to the Client of, no less than a paid-up, non-exclusive, fully assignable, irrevocable, perpetual licence (including the right to sub-licence) to use and copy the New Contract Material (from the time it is first prepared or used) for any purpose in connection with:

- (i) the Client's use, exploitation, modification or maintenance of the Services; or
 - (ii) the Client's use or exploitation (whether commercially or otherwise) for any other purpose, if specified in the Quotation Form; and
- (b) the licence will continue after, and for the avoidance of doubt survives, the termination of the Contract (and whether the termination is for the default of either Party, for convenience or for any other reason).
- A.16.5 The Contract does not affect Intellectual Property Rights in Existing Contract Material, but the Consultant grants to the Client, and must ensure that the person legally entitled to do so grants to the Client, and must do all reasonable things necessary to give effect to the grant to the Client of, no less than a paid up, non-exclusive, fully assignable, irrevocable, perpetual licence (including the right to sub-licence) to use and copy the Existing Contract Material for any purpose in connection with:
- (a) the Client's use, exploitation, modification or maintenance of the Services; or
 - (b) the Client's use or exploitation (whether commercially or otherwise) for any purpose, if specified in the Quotation Form.

The licence will continue after, and for the avoidance of doubt survives, the termination of the Contract (and whether the termination is for the default of either Party, for convenience or for any other reason).

A 17 MORAL RIGHTS

- A.17.1 This Clause applies if the Quotation Form states that it applies.
- A.17.2 The Consultant must procure that each Moral Rights Owner irrevocably and in a legally binding manner consents to acts or omissions of the Client in relation to the Services (including the product of the Services) which might otherwise infringe the Moral Rights Owner's rights under the *Copyright Amendment (Moral Rights) Act 2000* (Cth). The form of any consent which the Consultant proposes to obtain in accordance with this Clause A.17.2 must first be approved by the Client.
- A.17.3 The Consultant must provide all reasonable assistance requested by the Client in relation to any communication between the Client and a Moral Rights Owner in relation to the Moral Rights Owner's consent referred to in Clause A.17.2.
- A.17.4 The Consultant releases and indemnifies the Client against all claims and any costs, expenses, losses, damages, liabilities and other amounts of any kind whatsoever suffered or incurred by the Client arising out of any failure by the Consultant to obtain the consent of a Moral Rights Owner as required under Clause A.17.2.

A 18 CONFIDENTIALITY

- A.18.1 The Consultant must not:
- (a) disclose to any person; or
 - (b) use for any purpose other than the carrying out of the Services, the contents of the Contract and any other document or information obtained by the Consultant in the course of or in connection with the carrying out of the Services (including any business related information, data or application systems, code and documentation) (**Confidential Information**):
 - (c) without the prior written consent of the Client; or
 - (d) unless required by law.
- A.18.2 The Consultant must immediately Notify the Client if the Consultant becomes aware of any unauthorised disclosure or use of the Confidential Information.
- A.18.3 The Consultant must return any Confidential Information (including copies) on the written request of the Client.

A 19 SUSPENSION

Suspension by Client

- A.19.1 The Client may suspend the performance of the Services at any time by Notice to the Consultant.
- A.19.2 Unless the suspension has been Directed due to the Consultant's wrongful conduct, the Client must pay the Consultant any costs and expenses reasonably incurred by the Consultant as a result of the suspension.
- A.19.3 The Consultant must recommence the Services when reasonably Directed to do so by the Client.
- A.19.4 The Client is not liable to the Consultant for any indirect or consequential loss suffered or incurred as a result of the exercise by the Client of its rights under this Clause A.18.1.

Suspension by Consultant

- A.19.5 If a risk to the health or safety to any person arises where the Services are being performed (other than at any premises owned or controlled by the Consultant), the Consultant may suspend the performance of the Services to the extent necessary to protect affected persons.
- A.19.6 The Consultant must give prompt Notice to the Client of the suspension, the reason for the suspension and, if known by the Consultant, its likely duration.
- A.19.7 The Consultant must recommence the Services as soon as possible and give prompt Notice to the Client.

A 20 SECURITY

- A.20.1 Clause A.20 will only apply if the Quotation Form has been completed to confirm that Clause A.20 applies.
- A.20.2 The Consultant must provide the Client with a security, which will be in the form set out in the Quotation Form and will be either:
- (a) retention moneys; or
 - (a) an unconditional undertaking (subject to approval and acceptance by the Principal), in an amount equal to 5% of the contract sum, or as approved by the Superintendent, and must be provided to the Principal within five Business Days of the execution of the Quotation Form.
- A.20.3 If the security is in the form of unconditional and irrevocable undertakings, the undertakings must be in a form and issued by a financial institution approved by the Client.
- A.20.4 The retention moneys or undertakings (as the case may be) will be held by the Client as security for the due and proper performance of all the obligations of the Consultant under the Contract.
- A.20.5 The Client may have recourse to the security (including to moneys obtained by conversion of the security where applicable):
- (a) where the Client has express right of recourse under the Contract or at law;
 - (b) for any amount due which remains unpaid at the time for payment, or where there is no time for payment specified, remains unpaid after 5 Business Days after demanding payment; or
 - (c) for any amount bona fide claimed by the Client under or in connection with the Contract (whether liquidated or otherwise) which remains unpaid after 5 Business Days after demanding payment.
- A.20.6 If the Client has recourse to the security at any time, the Consultant must, within 10 Business Days of the Client having recourse to the security, reinstate the security to the amount specified in the Quotation Form or, if not so specified, then the amount specified by the Client under Clause A.20.2.
- A.20.7 If the security is in the form of unconditional and irrevocable undertakings, the Consultant must not take any steps to injunct or otherwise restrain any issuer of the security from paying the Client pursuant to the security or the Client from taking any steps for the purposes of making a demand under the security (including any retention moneys) or receiving payment under the security.
- A.20.8 The Consultant agrees that the Client, whilst exercising its rights in accordance with this Clause A.20, will have no liability to the Consultant of any nature (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Consultant.
- A.20.9 Subject to any rights it may have under the Contract, the Client will release the security to the Consultant where the Consultant has fully performed and discharged all of its obligations under the Contract or upon termination of the Contract in accordance with Clause A.26.
- A.20.10 All charges incurred by the Consultant in obtaining, maintaining and releasing the security in accordance with this Clause A.20 must be met by the Consultant.
- A.20.11 If the security provided in accordance with this Clause A.20 is in the form of unconditional and irrevocable undertakings which will expire prior to the date upon which the Client is required to release the security, the Consultant must give to the Client, at least 10 Business Days before the expiry date of that security, a substitute security (stamped if required by law) in exactly the same form and terms and for the same amount as the security which is to expire, except that:
- (a) the expiry date on the substitute security must not be before the date that is 12 months from the date of issue of the substitute security; and
 - (b) if an amount has been drawn under the expiring security, for an amount of the remaining balance of that security.
- A.20.12 Clause A.20.11 will separately apply (and will continue to apply) if the substitute security will expire prior to the date upon which the Client is required to release the security, except in circumstances where the security expires due to the fact that the approved financial institution has paid the aggregate amount or the balance of the security outstanding to the Client. If the Consultant does not comply with Clause A.20.11 or this Clause A.20.12, the Consultant agrees that, without limiting the Client's other rights under the Contract, the Client may immediately call on and have recourse to the security provided in accordance with this Clause A.20.

A 21 WORK HEALTH AND SAFETY

- A.21.1 In this Clause A.21, the terms:
- (a) 'Act' means the *Work Health and Safety Act 2011* (Qld); and
 - (b) 'Regulation' means the *Work Health and Safety Regulation 2011* (Qld).
- A.21.2 The Consultant must:
- (a) carry out the Services in a safe manner;
 - (b) comply with all Legislative Requirements relating to workplace health and safety (including the Act and Regulations);
 - (c) comply with all Policies and Plans relating to health and safety;

- (d) cooperate with and do all of the things that are necessary to enable the Client to comply with all Legislative Requirements relating to workplace health and safety (including the Act and Regulations);
- (e) ensure at a minimum where required the following Personal Protective Equipment (PPE) is provided and worn at all times while performing the Service on the Client's site:
- (i) long sleeved high visibility shirt, or a long sleeved shirt with a high visibility vest;
 - (ii) full length trousers;
 - (iii) broad brimmed hat and/or safety helmet with broad brim;
 - (iv) fluorescent and/or reflective PPE during low light and night time works; and
 - (v) any other items set out in the Principal's Requirements.
 - (vi) In addition to the above, when working within any Water and Waste operational and construction Sites:
 - (A) safety helmet with broad brim
 - (B) ankle length lace up or zip up safety boots
 - (C) safety glasses
 - (D) gloves when conducting manual tasks.
- (f) ensure all Personnel whilst engaged in the provision of the Service on the Client's site:
- (i) maintain a Breath Alcohol Concentration (BrAC) reading of 0.00%; and
 - (ii) maintain levels not in excess of those prescribed by AS 4760 for drugs including but not limited to opiates, cannabis, cocaine, amphetamine and benzodiazepines;
- ensure all Personnel participate in a random Alcohol and Other Drug (AOD) test when requested and cease work and leave the site if:
- (i) refusal to submit a sample for testing purposes;
 - (ii) a non-negative drug test result is returned; or
 - (iii) a positive alcohol test is returned.
- where a non-negative drug or positive alcohol test is returned, provide evidence of a confirmed negative test result prior to personnel returning to the site;
- (g) attend any inductions or such other safety meetings required by the Client; and
- (h) comply with all lawful Directions issued by any person with control of the applicable part of the site pursuant to any Legislative Requirements relating to workplace health and safety.
- A.21.3 The Consultant must, at its cost, when carrying out work at the Client's site:
- (a) prevent damage to property on or near the site;
 - (b) prevent harm to any persons on or near the site;
 - (c) avoid unnecessary interference with the passage of people and vehicles on or near the site; and
 - (d) prevent nuisance and unreasonable noise and disturbance on or near the site.
- A.22 PROGRAMMING**
- A.22.1 Clause A.22 will only apply if the Quotation Form has been completed to confirm that Clause A.22 applies.
- A.22.2 A Services Program will not limit or affect the rights of the Client under any other provision of this Contract.
- A.22.3 The Consultant must:
- (a) prepare a program for the performance of the Services in accordance with Clause A.22.5 and that conforms with any program submitted by the Consultant prior to execution of this Contract and is consistent with the Consultant meeting the time requirements of the Contract;
 - (b) submit the program to the Client, within 5 Business Days of the Commencement Date for the Client's approval;
 - (c) make any amendments to the program, as required, to ensure there is an approved Service Program in place within 10 Business Days of the Commencement Date; and
 - (d) thereafter, review and revise the Service Program at the Consultant's cost and submit it to the Client for approval:
 - (i) whenever the Consultant falls 3 Business Days behind any date, time or period as described in the last approved Services Program; and
 - (ii) when requested by the Client.
- A.22.4 The Client may at any time request that the Consultant provide more information in respect of the Services Program or any part of a Services Program and the receipt of such information may be a condition precedent to any approval of a program or a revised Services Program.
- A.22.5 Whenever the Consultant is required to provide the Client with a Services Program, the Consultant must submit the Services Program in an electronic form approved by the Client and issue in hard copy to the Client's Nominated Representative and must meet the following criteria:
- (a) the network must accurately represent the Consultant's activities for carrying out the Services;
 - (b) it shows the total resources required for the execution of Services at all times within the level of resources which it can provide and that it identifies those resources (including resource logic dependencies), in each case identifying:
 - (i) the Personnel, key Personnel and subcontractors to be employed; and
 - (ii) the hours and availability of the Personnel, key Personnel and subcontractors to be employed;
 - (c) it shows all Milestone Dates (if any); and
 - (d) it shows the completion of the Services occurring prior to the Completion Date (if applicable).
- A.22.6 Without limiting Clauses A.22.1 to A.22.5, no acceptance, approval or Direction as to use of, nor any other comment or Direction by the Client regarding the suitability of, or any change to any Services Program, or a revised Services Program, submitted under the Contract will:
- (a) relieve, limit or exclude any of the Consultant's liabilities or obligations under the Contract, including, without limitation, its obligations and responsibility for all planning, scheduling, sequences, methods and techniques necessary for the due performance of the Services and its obligations under the Contract;
 - (b) constitute a Direction to accelerate, disrupt, prolong or vary any or all of the Consultant's activities or Services or any part of it;
 - (c) constitute the granting of an EOT or relief from its requirements to perform any obligation or achieve any Milestone; or
 - (d) affect the time for performance by the Client of any of its obligations or oblige it to do anything earlier than is necessary to enable the Consultant to complete the Services.
- A.22.7 If at any time the progress of the Services has fallen behind that shown in the Services Program or otherwise is not in accordance with this Contract, the Consultant must at its own cost take the necessary corrective action so as to ensure that progress is maintained in accordance with this Contract and the Services Program.
- A.22.8 The Client may Direct the Consultant to provide details of the corrective action it plans to take under Clause A.22.7, and the Consultant must promptly, and in any event within 3 Business Days, provide detail of its proposed corrective action (including a revised Services Program) for approval under Clause A.22.3.
- A.22.9 If the Consultant fails to take corrective action, or the Consultant fails to issue a response under Clause A.22.8 which satisfies the Client, then the Client may Direct the Consultant as to the required corrective action and the Consultant must comply with that Direction at its own cost. The Consultant has no right to claim for complying with this Clause A.22.
- A.23 LIQUIDATED DAMAGES**
- A.23.1 Clauses A.23.1 to A.23.3 (inclusive) will only apply if:
- (a) the Quotation Form sets out one or more Completion Dates; and
 - (b) the Quotation Form specifies a rate for liquidated damages.
- A.23.2 If the Consultant fails to achieve Completion by the Completion Date, the Consultant will be liable to the Client for liquidated damages at the rate stated in the Quotation Form (if any), for every day after the Completion Date up to and including the date that Completion is achieved by the Consultant (as determined by the Client acting reasonably) or the date that the Contract is terminated pursuant to Clause A.26, whichever is sooner.
- A.23.3 The Client and the Consultant agree that all liquidated damages which may be payable by the Consultant to the Client pursuant to this Clause A.23:
- (a) are a genuine pre-estimate of the damages likely to be suffered by the Client if the Consultant does not achieve Completion by the Completion Date;
 - (b) do not limit the Client's other rights under the Contract or at law for any other breach of the Contract; and
 - (c) do not relieve the Consultant from any of its obligations or liabilities under the Contract, including its obligations to achieve Completion.
- A.23.4 If the Quotation Form does not provide for any liquidated damages, or the liquidated damages are for any reason found to be void or unenforceable, the Consultant indemnifies the Client for damages at common law or the Consultant's failure to achieve Completion by the Completion Date.
- A.24 NON-COMPLIANT SERVICES**
- A.24.1 If the Client is not satisfied that the Services comply in all respects with the requirements of the Contract, the Client may, at its option:
- (a) require the Consultant to, within a reasonable time, take such steps as are necessary to ensure the Services comply with the Contract and the Consultant agrees that no Fee will be payable to the Consultant by the Client for any work done to rectify the non-compliance;

- (b) Notify the Consultant that the Client rejects the Services which do not comply with the Contract and the Consultant agrees to refund the Client any payments made by the Client in respect of the Services which do not comply with the Contract; or
- (c) subject to paragraph (a), rectify, either itself or by others, the Services which do not comply with the Contract and the Consultant agrees to reimburse the Client for any costs, losses, expenses or damages the Client incurs in rectifying any Services which do not comply with the Contract, which costs, losses, expenses or damages are deemed a debt due by the Consultant to the Client.
- A.24.2 The Client's rights under this clause do not in any way change or affect the Consultant's obligations under this Contract or affect the Client's rights to claim for any damage or loss the Client may suffer because of the Consultant's failure to fulfil its obligations under this Contract or to exercise any rights under this Contract.
- A.25 PRIOR DESIGN**
- A.25.1 The parties acknowledge and agree that design work has been undertaken for the project as described in the Quotation Form prior to the commencement of the Contract (**Prior Design**).
- A.25.2 To the extent the Consultant incorporates or uses in the performance of the Services any design or information provided by the Consultant or related entity (including the Prior Design) then the Consultant warrants and represents:
- (a) the design or other information (including the Prior Design) is suitable, appropriate and fit for purpose, including as required by Clause A.3.2(h);
- (b) the performance of the Services remains solely its responsibility, and the Consultant incorporates or uses the design or information, including the Prior Design, at its own risk; and
- (c) the incorporation or use of that design or information (including the Prior Design):
- (i) does not limit or affect any warranties or obligations (express or implied) given by the Consultant (including without limitation ensuring Services are fit for purpose including as required by Clause A.3.2(h)); and
- (ii) does not limit or affect the responsibilities of the Consultant at law and pursuant to the Contract.
- A.25.3 The parties acknowledge and agree that this Contract in no way derogates from or limit the rights of the Client under any other contract in connection with the Prior Design.
- A.26 DEFAULT AND TERMINATION**
- A.26.1 **Termination without cause**
- (a) This Contract may be terminated:
- (i) at any time by mutual agreement; or
- (ii) by the Client for any reason after giving 5 Business Days Notice to the Consultant.
- (b) If this Contract is terminated under Clause A.26.1(a):
- (i) if the Consultant:
- (A) is subject to an Insolvency Event;
- (B) has not provided a statutory declaration in accordance with Clause A.26.4; or
- (C) has provided a statutory declaration which the Consultant is required to provide in accordance with the Contract and such statements are determined by the Client (acting reasonably) to be untrue, false or misleading (as applicable),
- the Client will not be required to make any further payment to the Consultant; or
- (ii) in all other circumstances, the Client must pay to the Consultant:
- (A) the applicable portion of the Fee for the Services performed prior to the date of termination;
- (B) all disbursements incurred by the Consultant prior to the date of the termination which would have been payable had the Contract not been terminated; and
- (C) any costs and expenses reasonably incurred by the Consultant by reason of termination.
- (c) The Client is not liable to the Consultant under this Clause A.26 for any amount greater than the amount that the Client would have paid to the Consultant had the Contract been completely performed.
- (d) The Client is not liable to the Consultant for any indirect or consequential loss arising out of the termination under Clause A.26.1(a).
- A.26.2 **Immediate termination**
- (a) The Client may, without limiting its rights at law, immediately terminate the Contract by Notice to the Consultant if the Consultant:
- (i) breaches any part of Clause A.21 or Clause A.28;
- (ii) is subject to an Insolvency Event;
- (iii) fails to provide a statutory declaration or documentary evidence required under the Contract;
- (iv) provides a statutory declaration or documentary evidence required under the Contract which contains a statement that is untrue, misleading or deceptive;
- (v) breaches any applicable Legislative Requirements;
- (vi) is unable to perform any of the Services which requires a licence under a Legislative Requirement because it has failed, refused or been unable to obtain a licence of the appropriate class under the Legislative Requirement, or its licence has been cancelled or suspended;
- (vii) fails to comply with a written Notice from the Client, or any other Direction properly given, within the timeframe required by the Client;
- (viii) breaches a term of the Contract and that breach cannot be remedied; or
- (ix) breaches any term of the Contract and fails to remedy that breach within 5 Business Days of being Directed by Notice to do so by the Client.
- (b) If the Client exercises its rights under Clause A.26.2(a), the Client will not be liable to make any further payment to the Consultant for the Services.
- A.26.3 **Rights on termination**
- (a) Upon termination of the Contract under this Clause A.26, the Consultant must immediately, or on such later date as specified in the Notice of termination cease all further work and deliver to the Client all Deliverables and all documents which, on completion, would be Deliverables.
- (b) Termination of the Contract will not affect or prejudice any rights or liabilities of the parties that accrued prior to termination.
- A.26.4 **Statutory declaration**
- (a) The Consultant agrees that:
- (i) at any time, the Client's Nominated Representative may request the Consultant to provide a completed and signed statutory declaration (in a form and containing such detail as reasonably required by the Client's Nominated Representative) from a representative of the Consultant who is in a position to know the facts confirming that the Consultant is solvent and not subject to any Insolvency Event; and
- (ii) the Consultant must provide such completed and signed statutory declaration within 2 Business Days of the request from the Client's Nominated Representative.
- A.26.5 **Termination not valid**
- (a) If the Client terminates, or purports to terminate, under this Clause A.26 or otherwise at law and it is subsequently held to be invalid, void or otherwise unenforceable then the Client will be deemed to have terminated without cause under Clause A.26.1 as at the same date and time as the original Notice of termination.
- (b) The Consultant waives any Claim the Consultant have or would have had, but for this Clause A.26.5, arising out of or in connection with any termination, or purported termination, by the Client under this Clause A.26, or otherwise at law being subsequently held to be invalid, void or otherwise unenforceable.
- A.26.6 **Termination reference date**
- (a) Notwithstanding anything else in this Contract to the contrary or which would otherwise limit the operation of this Clause A.26.6 (including termination of the Contract), in the event of termination of the Contract for any reason, the Consultant is entitled to make a single Payment Claim in accordance with Clause A.9 (whether or not the Consultant has satisfied the preconditions to be satisfied under Clause A.9.11 which would otherwise apply in respect of that Payment Claim) on and from the termination date, such termination date being considered a 'reference date' for the purposes of the Security of Payment Act (**'Termination Reference Date'**).
- (b) For the avoidance of doubt, nothing prevents the Client's Nominated Representative setting off or withholding any amount arising out of, or in connection with, the Consultant's failure to satisfy any preconditions to be satisfied under Clause A.9.11, where such failure is also a breach of the Contract or results in any other Claim of the Client against the Consultant.
- (c) The Consultant may only include in the Payment Claim contemplated by this Clause A.26.6 (such Claim to be assessed in accordance with the Contract, including being subject to Clause A.39), any amount which is due and payable to the Consultant under the Contract in respect of the Services properly undertaken prior to or on the Termination Reference Date.
- (d) Unless instructed otherwise by the Client, the Client's Nominated Representative must not assess any other amounts and the Client shall have no obligation to pay another amount,

including additional amounts contemplated under Clause A.26, until such time as the Payment Claim contemplated by this Clause A.26.6 has been made and assessed in a payment schedule by the Client's Nominated Representative (or the time for making such a Payment Claim has elapsed under the Security of Payment Act).

- (e) The parties acknowledge and agree that where the Contract is terminated for any reason the Termination Reference Date will be the sole and final 'reference date' under the Security of Payment Act to survive beyond termination.
- (f) At any time following a termination, including after the submission and assessment of any Payment Claim contemplated by this Clause A.26.6, the Client may request the Client's Nominated Representative to issue a payment schedule, including to assess any amounts owing either to the Client from the Consultant, or to the Consultant from the Client, as the case may be. Within 15 Business Days of receipt of such a request, the Client's Nominated Representative must issue a payment schedule to the Client and the Consultant. Any amount owing under the payment schedule must be paid by the Consultant to the Client, or the Client to the Consultant, as the case may be, within 15 Business Days of the date of the payment schedule.

A.27 RISK AND INDEMNITY

A.27.1 To the extent permitted by law, the Consultant indemnifies the Client from and against all liability, losses, damages, costs and expenses (including legal expenses), due to:

- (a) loss of, damage to, or destruction of any property (including the Deliverables);
- (b) personal injury (including psychological injury) or death; and
- (c) infringement of any Intellectual Property Right, including any patent, registered design, trade mark or name, copyright or other protected right,

caused or contributed to by act or omission of the Consultant or its Personnel in connection with the Contract.

A.27.2 Clause A.27.1 does not apply to the extent that:

- (a) the liability, loss, damage, cost or expense is contributed to by any breach of the Contract by the Client or the negligent or unlawful act or omission of the Client or the Client's Personnel; or
- (b) the Client fails to act reasonably to mitigate the liability, loss, damage, cost or expense.

A.27.3 Clauses A.27.1 and A.27.2 do not exclude any other right of the Client at law.

A.28 INSURANCE

A.28.1 Before commencing any of the Services, the Consultant must, at its cost, take out and maintain the following insurances from the date of the Contract until the Completion Date or the expiry of the Contract Term (as the case may be):

- (a) public liability insurance for the amount not less than that specified in the Quotation Form;
- (b) workers' compensation insurance (Workcover) as required by law;
- (c) professional indemnity insurance for an amount not less than that specified, and maintained for a period not less than that specified, in the Quotation Form. The policy must include provision for one automatic reinstatement of the sum insured; and
- (d) any other insurance specified, and for the amounts and durations of time specified, in the Quotation Form.

A.28.2 The Consultant must provide a certificate of currency for each insurance policy required under Clause A.28.1 prior to commencing any of the Services and at any time upon request by the Client.

A.28.3 Without limiting the Consultant's other obligations under this Contract, if the Consultant fails to promptly provide evidence when required under Clause A.28.2, the Client may give the Consultant Notice requiring the Consultant to provide the evidence required within a specified period of not less than 5 Business Days from when the Notice is served and specifying the Client's intent to exercise its rights under this Clause A.28.3 if the Consultant does not comply. If the Consultant does not comply, the Client may effect and maintain the insurance, pay the premiums and deduct these payments from moneys due or to become due to the Consultant from the Client or otherwise treat the failure as a breach of contract.

A.28.4 The Consultant may, at its own cost, effect any additional insurance it considers necessary in connection with the Services.

A.28.5 The Consultant warrants to the Client that, if it is a participating member of a scheme approved under the *Professional Standards Act 2004* (Qld), it will take out and maintain the minimum level of insurance as specified in the Quotation Form.

A.28.6 The Consultant warrants that any exclusions and deductibles that may be applicable to the insurance required under Clause A.28 will not impact on the Consultant's ability to meet any claim or otherwise prejudice the Client's rights under the Contract.

A.28.7 If any insurance policy required by Clause A.28 is materially modified or cancelled, the Consultant must immediately Notify the Client.

A.28.8 The Consultant must pay any excesses and deductibles for claims made under any policy of insurance effected by the Client or the Consultant, which relate to the Consultant or the Services.

A.29 LIMITATION OF LIABILITY

A.29.1 This clause applies if the Quotation Form states that it applies.

A.29.2 Subject to Clause A.29.4, the Consultant's total aggregate liability to the Client under the Contract is limited to the sum set out in the Quotation Form.

A.29.3 Subject to Clause A.29.4, in no event will either party be liable to the other (in contract, under an indemnity, for debt, in tort including negligence, under statute or otherwise according to law or in equity) for any Consequential Loss arising out of or in any way in connection with the Contract, the Services or the Parties' conduct (including breach of contract and any other acts or omissions, whether before, on or after the date the Quotation Form is signed by both Parties).

A.29.4 Clauses A.29.2 and A.29.3 do not limit the Consultant's liability:

- (a) arising under or pursuant to an indemnity provided by the Consultant in Clause A.27 or elsewhere in the Contract;
- (b) in respect of liability which:
 - (i) cannot be limited at law;
 - (ii) is due to the Consultant's deliberate breach of the Contract, wilful misconduct, fraud or criminal conduct by it or any of its Personnel; or
 - (iii) arises in connection with the Consultant's abandonment of its obligations under the Contract;
- (c) for any breach of Clauses A.30, A.33 and A.16;
- (d) for loss of or damage to third party property and claims by any third party against the Client in respect of personal injury or death or loss of, or damage to, any other property arising out of or as a consequence of the carrying out the Services;
- (e) to the extent the Consultant is paid or indemnified, or is entitled to be paid or indemnified, for the liability by an insurer under an insurance policy required by the Contract;
- (f) to the extent the Consultant would have been entitled to be indemnified for that liability by an insurer under an insurance policy required by the Contract, but for a failure by the Consultant to effect and maintain the insurance policy as required by the Contract; and
- (g) to the extent that (ignoring the application of Clauses A.29.2 and A.29.3), the Consultant is entitled to recover that liability from any other third party, or would have been entitled to recover that liability but for any act or omission of the Consultant;

and those liabilities will not be included in any calculation of the Consultant's total aggregate liability under Clause A.29.2.

A.30 PRIVACY AND PERSONAL INFORMATION

A.30.1 If the Consultant collects or has access to Personal Information (as defined in the *Information Privacy Act 2009* (Qld) (**IPA**)) in order to perform the Services, the Consultant must:

- (a) if the Client is an 'agency' within the meaning of the IPA, comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the Contract as if the Consultant was the Client;
- (b) not use Personal Information other than in connection with the performance of the Services, unless required or authorised by law;
- (c) not disclose, or transfer outside of Australia, Personal Information without the prior written consent of the Client, unless required or authorised by law;
- (d) ensure that its Personnel do not access, use or disclose Personal Information other than in connection with the performance of the Services;
- (e) ensure that its Personnel who have access to Personal Information comply with obligations the same as those imposed on the Consultant under this Clause A.30;
- (f) 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
- (g) comply with such other privacy and security measures as the Client may reasonably require from time to time.

A.30.2 On request by the Client, the Consultant must obtain from its Personnel performing the Services, an executed deed of privacy in a form acceptable to the Client.

A.30.3 In relation to any Personal Information (as defined in the *Privacy Act 1988* (Cth) (**Privacy Act**)) provided or to be provided by the Consultant in connection with the Services (whether as part of its offer or otherwise), the Consultant warrants to the Client:

- (a) the Consultant has obtained and will obtain the consent of each individual about whom any Sensitive Information (as defined in the *Privacy Act*) is provided; and

- (b) the Consultant has or will within the time required by the Privacy Act ensure that each individual about whom any Personal Information is provided has received or will receive a written statement setting out all of the matters required by National Privacy Principle 1.3:
- (i) in relation to disclosure of Personal Information to the Client and any consultant of the Client requiring the information for the purposes set out in Clause A.30.3(b)(ii); and
 - (ii) disclosing that the entities referred to in Clause A.30.3(b)(i) will use the Personal Information for the purposes of reviewing and assessing matters relevant to the Services under the Contract from time to time.
- A.30.4 The Consultant will comply with the provisions of the Privacy Act in relation to any Personal Information provided to the Consultant by the Client and any consultant of the Client.
- A.30.5 The Consultant must immediately Notify the Client on becoming aware of any breach of this Clause A.30.
- A.31 PERSONAL PROPERTY SECURITIES ACT**
- A.31.1 If the Client determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the Consultant agrees to do any thing (including obtaining consents, signing and producing documents, getting documents completed and signed, and supplying information) as the Client may reasonably require for the purposes of:
- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
 - (b) enabling the Client to apply for, and obtain, any registration or providing any notification in accordance with the *Personal Property Securities Act 2009* (Cth) (**PPSA**); or
 - (c) enabling the Client to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- A.31.2 The Consultant waives each right to receive any Notice from the Client under the PPSA (including notice of a verification statement) that can be waived.
- A.31.3 Except as expressly agreed in writing to the contrary, the Consultant:
- (a) acknowledges that neither the Contract nor a transaction in connection with it is intended to provide a Security Interest in favour of the Consultant; and
 - (b) agrees that it will not register or otherwise perfect (or seek to perfect) any Security Interest, and will remove any registration in respect of the Contract or a transaction in connection with it.
- A.31.4 The Consultant must:
- (a) promptly Notify the Client if it knows or becomes aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has or claims a Security Interest in the product of the Services:
 - (i) owned by the Client;
 - (ii) supplied or to be supplied by the Consultant to the Client; or
 - (iii) in which the Client has an interest;
 - (b) give the Client any information reasonably required by the Client in relation to any such Security Interest or claim; and
 - (c) on request by the Client, use best endeavours to ensure that the third party:
 - (i) discharges any such Security Interest, and does not register or otherwise perfect (or seek to perfect), and removes any registration, in respect of any such Security Interest; or
 - (ii) subordinates any such Security Interest to the interest of the Client, by an agreement in form and substance satisfactory to the Client.
- A.31.5 Without limiting Clauses A.31.3 and A.31.4, at any time when title to or ownership of any the product of the Services, is passed to the Client, the Consultant must ensure that title or ownership is passed free of any Security Interest of the Consultant or any other person.
- A.31.6 The Consultant must ensure that each subcontract has, for the benefit of the Client, a Clause that reflects this Clause A.31.
- A.31.7 Without limiting Clause A.18, neither the Client nor the Consultant will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Consultant will not authorise, and will ensure that no other party authorises, the disclosure of such information. However, this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
- A.32 DISPUTES**
- A.32.1 If a dispute between the parties arises from or in connection with this Contract (whether before or after termination of the Contract) (**Dispute**), the parties agree to resolve it in the manner set out in this Clause A.32, and a party may not commence court proceedings concerning the Dispute unless the party has complied with this Clause A.32 or the party seeks urgent injunctive or declaratory relief.
- A.32.2 A party claiming that a Dispute has arisen must Notify the other party of the Dispute and specify the nature of the claim (**Dispute Notice**).
- A.32.3 A party served with a Dispute Notice may give a written response to the Dispute Notice to the other party within 28 days of the receipt of the Notice.
- A.32.4 Within 42 days of service of a Dispute Notice, or within 14 days of the receipt a written response to the Dispute Notice, whichever is the earlier, the Client and the Consultant must confer at least once to attempt to resolve the Dispute. At any such conference, each party must be represented by a person having authority to agree to a resolution of the Dispute.
- A.32.5 If the Dispute is not resolved under Clause A.32.4 within 56 days after the date of the Dispute Notice, then either party may refer the Dispute to mediation in accordance with, and subject to, the Resolution Institute's Mediation Rules. The parties must agree on the identity of the mediator, failing which, a mediator must be appointed by the Chairman of the Queensland Chapter of the Resolution Institute. The place of mediation will be the Gold Coast. Each party will bear its own costs and share equally the costs of the mediator or the process of mediation.
- A.32.6 If the Dispute is not resolved under Clause A.32.5 within 30 days of the appointment of a mediator, or the parties do not submit the Dispute to mediation within 70 days after the date of the Dispute Notice, either party may commence litigation.
- A.32.7 Each party must continue to perform its obligations under the Contract despite the existence of a Dispute.
- A.33 CONFLICT OF INTEREST**
- A.33.1 The Consultant warrants that, at the time of entering into the Contract, neither the Consultant nor any of its Personnel have, or are likely to have, any Conflict of Interest that could be expected to affect the performance of the Consultant's obligations under the Contract.
- A.33.2 If a Conflict of Interest arises, or there is in the minds of either Party a real, perceived, anticipated or identified risk of a Conflict of Interest arising, or risk of a Conflict of Interest arising before Completion or the expiry of the Contract Term (as the case may be), then Consultant must immediately give Notice of the Conflict of Interest, or the risk of it, to the Client.
- A.33.3 The Consultant must:
- (a) ensure that its Personnel do not engage in any activity or obtain any interest which may conflict with either the interests of the Client or the Consultant's obligations under the Contract; and
 - (b) immediately give Notice to the Client of any Conflict of Interest relating to the activities or interests of any of its Personnel.
- A.33.4 Upon receipt of a Notice in accordance with Clauses A.33.2 or A.33.3, or upon the Client otherwise identifying a real, perceived, anticipated or identified Conflict of Interest, the Client may:
- (a) Direction the Consultant as to how to manage the Conflict of Interest, and the Consultant must comply with that Direction;
 - (b) suspend the Contract in accordance with Clause A.19; or
 - (c) terminate the Contract in accordance with Clause A.26.
- A.33.5 If the Client does not terminate the Contract in accordance with Clause 27 the Consultant must give Notice to the Client when the Conflict of Interest, or risk of the Conflict of Interest, is resolved.
- A.34 COMMISSIONS, INCENTIVES AND COLLUSION**
- A.34.1 The Consultant must not, and must ensure that its Personnel do not, give or offer anything to the Client, the Client's Personnel (including any Councillor), or to a parent, spouse, child or associate of the Client or the Client's Personnel, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to influence the Client's actions in relation to the Contract.
- A.34.2 The Consultant represents and warrants to the Client that:
- (a) the Contract was not prepared (and any Variations to the Contract will not be prepared) with any consultation, communication, contract, arrangement or understanding with any competitor (including a consultant under a similar contract with the Client) regarding:
 - (i) prices;
 - (ii) methods, factors or formulas used to calculate prices;
 - (iii) the intention or decision to submit or not submit an offer (or request a Variation) to the Contract;
 - (iv) the quality, quantity, Scope or delivery particulars of the Services; or
 - (v) the terms of the Quotation Form (or Variation) or a competitor's offer (or Variation);
 - (b) except with the consent of the Client (which may be refused or given in the Client's absolute discretion):
 - (i) it has not offered or provided any consideration or other benefit directly or indirectly, or entered into any contract, arrangement or understanding to provide any consideration or benefit directly or indirectly, to any competitor (including any consultant under a similar contract with the Client) arising from or in connection with the Contract;
 - (ii) it has not received any consideration or other benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any consideration or other benefit directly or indirectly, from

- any competitor (including any consultant under a similar contract with the Client) arising from or in connection with the Contract;
- (iii) it will not offer, provide or receive any consideration or other benefit directly or indirectly, or enter into any contract, arrangement or understanding to provide any consideration or benefit directly or indirectly, to any competitor (including any consultant under a similar contract with the Client) arising from or in connection with the Contract;
- (c) it has not consulted, communicated or entered into any contract, arrangement or understanding to provide any consideration or other benefit, whether directly or indirectly, to any trade, industry or other association (above the published standard fee) relating in any way to the Contract, nor has it provided, nor will it provide, any such consideration or other benefit;
- (d) at the time of entering into the Contract, the Consultant, the Consultant's Personnel and the Consultant's Related Body Corporates (as that term is defined in the *Corporations Act 2001* (Cth)), including the directors and senior management of any of them, are not, and have never been, subject to legal proceedings relating to improper or anti-competitive conduct in Australia or overseas; and
- (e) the Consultant will Notify the Client immediately upon becoming aware that the Consultant, the Consultant's Personnel or the Consultant's Related Body Corporates (as that term is defined in the *Corporations Act 2001* (Cth)), including a director or member of senior management of any of them, becomes subject to legal proceedings relating to improper or anti-competitive conduct in Australia or overseas by disclosing (at a minimum):
- (i) the names of the parties to the legal proceedings;
 - (ii) the case number;
 - (iii) the general nature of the legal proceedings;
 - (iv) the outcome or current status of the legal proceedings.
- (f) The Consultant acknowledges that the Client relied on the representations and warranties made in Clause A.34 when it entered into the Contract.
- A 35 QUALITY ASSURANCE**
- A.35.1 The Consultant must:
- (a) implement and carry out the performance of the Services in accordance with the Quality Assurance System; and
 - (b) allow the Client and its nominees access to the Consultant's Quality Assurance System at all reasonable times for the purposes of quality monitoring and auditing.
- A.35.2 The Consultant's implementation of, or compliance with, the Quality Assurance System does not relieve the Consultant of its obligations under the Contract.
- A 36 RECORDS**
- A.36.1 The Consultant must keep and maintain, and ensure that its subcontractors and subconsultants keep and maintain, accurate accounts, records and information (including information stored by or accessible by computer or other electronic means or technology) relating to the performance of the Services.
- A.36.2 At all reasonable times, the Client (by itself or by its agents) will have the right to inspect and review performance of the Services and the accounts, records and information created by the Consultant in the performance of the Services, and on request by the Client, the Client may itself (or may require the Consultant to) take or arrange for copies of any such accounts, records and information.
- A 37 GENERAL**
- A.37.1 The relationship of the parties under the Contract is one of client and independent consultant and the Consultant is not by virtue of the Contract in a partnership or joint venture with, or an officer or employee of, the Client, and the Consultant must not represent itself, or allow itself to be represented, as a partner, joint venturer, officer or employee of the Client.
- A.37.2 The Contract may only be amended by written agreement between all parties.
- A.37.3 The Contract (including the Quotation Form) may be executed in any number of counterparts. All counterparts together make one instrument.
- A.37.4 The Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in the Contract.
- A.37.5 Each party must do all things reasonably necessary to give effect to the Contract and the transactions contemplated by it.
- A.37.6 A right under the Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- A.37.7 A clause or part of a clause of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining clauses or parts of the clause of the Contract continue in force.
- A.37.8 If the Consultant comprises two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons), the obligations and liabilities of those persons is joint and several, and any rights of those persons can only be exercised jointly.
- A.37.9 Clauses A.16, A.17, A.18, A.27, A.28, A.30, A.31 (and any other clauses which by their nature are capable of surviving) survive the expiration or termination of the Contract.
- A 38 NOTICE**
- A.38.1 A Notice under the Contract is only effective if it is:
- (a) in writing, signed by or on behalf of the person giving it;
 - (b) addressed to the person to whom it is to be given; and
 - (c) given by hand to that person's address, sent by registered mail to that person's address or sent by email to that person's email address.
- A.38.2 Any Notice given under Clauses A.18.1, A.26 or A.35 must be served by hand or registered mail.
- A.38.3 A Notice delivered under Clause A.38.1 is given and received:
- (a) if it is hand delivered or sent by email by 5.00pm (local time in the place of receipt) on a Business Day, on that day;
 - (b) if it is hand delivered or sent by email after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day, on the next Business Day; and
 - (c) if it is sent by post, 5 Business Days after posting.
- A.38.4 A party's address and email address are those set out in the Quotation Form, or as one party may Notify the other of a change of such address or email address.
- A 39 NOTIFICATION OF CLAIM**
- A.39.1 The Client will not be liable upon any Claim unless:
- (a) if the requirements for Notification of the Claim are prescribed elsewhere in this Contract, the Consultant has strictly complied with those requirements; or
 - (b) if Clause A.39.1(a) does not apply, the Consultant has given the Client written Notice of the Claim within 5 Business Days of when the Consultant should first have become aware of the Consultant's right to make the Claim if the Consultant had applied Good Industry Practice.
- A.39.2 A Notice under Clause A.39.1(b) must be in writing and include:
- (a) the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;
 - (b) the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment; and
 - (c) details of the quantum of the Claim showing the calculations and their bases.
- A.39.3 Failure by the Consultant to comply with this Clause A.39 is an absolute bar to making the Claim and constitutes an irrevocable release of that Claim by the Consultant.
- A 40 NO OTHER PAYMENTS**
- A.40.1 Where the Consultant is expressly entitled to submit a Claim or Notice of Claim (or similar) during the Contract:
- (a) the relevant document submitting or notifying the Claim:
 - (i) must not be in the form of (and is not) an invoice; and
 - (ii) is not a document requesting payment, or notifying an obligation on the Client to make any payment, of the amount submitted or notified; and
 - (b) liability for, and payment to the Consultant of, the amount submitted or notified is expressly dealt with in accordance with the Contract.