# Conditions of Contract and Annexure

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| Project Name |  |
| Project Number |  |

# CONDITIONS OF CONTRACT

### DEFINITIONS AND INTERPRETATION

1.1. Definitions

In the Contract, except where the context otherwise requires:

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

*Business Day* means a day that is not:

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

*Client* means the person stated in the Annexure;

*Client Information* means all material including but not limited to books, documents, information and data stored by any means disclosed or made available by the *Client* to the *Consultant* in connection with the performance of the *Contract*;

*Consultant* means the person appointed in writing by the *Client* to perform the *Services* and that person’s executors or successors and permitted assigns;

*Contract* means the agreement in writing between the *Client* and the *Consultant* including these Conditions of Contract;

*Contract Material* means all material which is created in connection with or for the purposes of performing the *Contract* by the *Consultant*;

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

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

*Government Department or Instrumentality* means:

* + - 1. any government department responsible for compliance with government policy, including without limitation:
         1. the Queensland Government Procurement Compliance Branch within the Procurement Division of the Department of Energy and Public Works;
         2. the Queensland Apprenticeship and Traineeship Office within the Department of Employment, Small Business and Training; and
         3. Local Content with the Department of State Development, Infrastructure, Local Government and Planning; and
      2. any government regulator, including without limitation:
         1. the Queensland Building and Construction Commission;
         2. the Office of Industrial Relations;
         3. the Fair Work Commission;
         4. the Australian Taxation Office;
         5. the Australian Building and Construction Commission; and
         6. the Office of the Federal Safety Commissioner;

*Intellectual Property Rights* means any statutory or 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 Requirement* means legislation and subordinate legislation of the Commonwealth of Australia or the State or Territory applicable to the *Services* and any instruments made under such legislation or subordinate legislation and includes certificates, licences, consents, permits, approvals and the requirements of organisations having jurisdiction in connection with the performance of the *Services*, and fees and charges payable in connection with the foregoing;

*Project Officer* means the person appointed by the *Client* and stated in the Annexure;

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

*Queensland Procurement Policy* means the Queensland Government policy titled “Queensland Procurement Policy 2018” or any policy which replaces that policy;

*Services* means the services described in the *Terms of Reference* including the supply of *Contract Material* to the *Client*;

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

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

*Terms of Reference* means the documents issued by the *Client* to the *Consultant* describing the scope of the project including its purpose and the scope of the services to be provided by the *Consultant* (as varied from time to time in accordance with the *Contract*).

1.2. Interpretation

In the *Contract*, except where the context otherwise requires:

* + - 1. references to persons include an individual, firm or a body, corporate or unincorporated;
      2. words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
      3. if a word is defined, another part of speech or grammatical form of that word has a corresponding meaning;
      4. clause headings in the Conditions of Contract do not form part of the Conditions of Contract and are not used in the interpretation of the *Contract*;
      5. where a party consists of two or more persons, their obligations and liabilities under the *Contract* is joint and several;
      6. a reference to *Legislative Requirements* includes all amendments, re-enactments and replacements to *Legislative Requirements*.

### RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT

2.1. Performance

The *Consultant* must perform the *Services* in accordance with the *Contract*.

In performing the *Services*, the *Consultant* must:

* + - 1. comply with the directions of the *Client* given pursuant to a provision of the *Contract*;
      2. comply with all *Legislative Requirements* in carrying out the *Services*;
      3. remain responsible for the provision of *Services* in accordance with the *Contract* notwithstanding any review or acceptance of the whole or any part of those *Services* by the *Client*;
      4. except as required by law or provided by the *Contract*, treat as confidential all *Client Material* and *Contract Material*;
      5. attend meetings and briefings reasonably required by the *Client*; and
      6. proceed with the *Services* with due expedition and without delay.

2.2. Standard of Care

The *Consultant* must perform the *Services* to the standard of skill, care and diligence expected of a skilled and competent professional practicing 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 the *Contract*.

The *Consultant* acknowledges that the *Client* has entered into the *Contract* in reliance upon the foregoing representation.

2.3. Representatives and Key Personnel

The *Consultant* must ensure that *Services* are performed by the key personnel nominated, if any, and that there is no substitute of such personnel without the *Client’s* written approval.

The *Consultant* must appoint a representative to act as *Consultant’s* representative in connection with the *Contract* and exercise the *Consultant’s* functions under the *Contract*. The *Consultant* is to notify the *Client* in writing as to its representative. Matters within the knowledge of the representative of the *Consultant* are deemed to be within the knowledge of the *Consultant*.

The *Client* appoints the *Project Officer* to act as the *Client’s* representative in connection with the *Contract* and to exercise the *Client’s* functions under the *Contract*.

2.4. Subcontracting and Assignment

* + - 1. The obligations of government agencies contained in the *Queensland Procurement Policy* will apply equally to the *Consultant* as though it is a government agency, and the *Consultant* must procure subcontracts in accordance with the requirements of the *Queensland Procurement Policy*.
      2. The Consultant must prepare and produce all required copies of the subcontract tender documentation (“Subcontract Tender Documentation”), which:
         1. incorporates suitable conditions of contract which reflect the provisions of the *Contract*;
         2. requires subcontract tenderers and *subcontractors* to consent to a relevant *Government Department or Instrumentality* providing information to the *Client* or the *QGP Compliance Branch* about the tenderer’s or *subcontractor’s* compliance with government policies and legislation, including without limitation, commitments made in relation to or required by the *Queensland Procurement Policy*, the *Ethical Supplier Mandate* and the *Ethical Supplier Threshold*;
         3. requires subcontract tenderers and *subcontractors* to acknowledge that the information referred to in clause 2.4.(b)(ii), which includes without limitation payroll records, management records and time recordings that may be held by any *Government Department or Instrumentality*, may be obtained by or made available to the *Client* and the *QGP Compliance Branch*, for its information and verification of the subcontract tenderer’s or *subcontractor’s* compliance with commitments made in relation to or required by government policies and legislation;
         4. includes terms that evidence the right of the *Client* and the *QGP Compliance Branch* to exercise the discretion in clause 16.10 to publish any information relevant to the *Ethical Supplier Mandate*, including but not limited to information about the *subcontractor’s* compliance with the *Ethical Supplier Threshold* and *Ethical Supplier Mandate*, and prohibits the *subcontractor* from exercising any rights at law, including in contract, at common law or in equity, against the *Client* or the *Consultant* in relation to that publication;
         5. requires the *subcontractor* to execute a deed poll in favour of the *Client* in the form attached to these Conditions of Contract and provide this as part of their tender;
         6. requires the *subcontractor* to make and keep the records referred to in clause 16.1;
         7. provides for evaluation of subcontract tender responses against clear evaluation criteria and weightings; and
         8. incorporates any other documentation or information required for the tendering or the completion of the relevant *Services* under the *Contract*.
      3. The *Consultant* must ensure that all *subcontractors* and any sub subcontractors:
         1. for the purposes of the *Queensland Procurement Policy* are:

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

compliant with the *Ethical Supplier Threshold*; and

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

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

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

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

will be paid to achieve a specified result or outcome;

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

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

* + - 1. The *Consultant* must examine, analyse and evaluate all subcontract tenders received, in accordance with the Subcontract Tender Documentation, and in doing so, the *Consultant* must:
         1. ensure evaluation of subcontract tender responses against clear evaluation criteria and weightings;
         2. prepare and retain written records of the evaluation process undertaken, all evaluation findings and recommendations and, if requested, submit these to the *Client* at the completion of each subcontract evaluation.
      2. The *Consultant* must not, without the prior written approval of the *Client* which shall not be unreasonably withheld, subcontract or allow a *subcontractor* to subcontract any of the *Services* under the *Contract*. When seeking approval pursuant to this clause 2.4(e), the *Consultant* must provide to the *Client* a request for approval in the form attached to these Conditions of Contract and such other information which the *Client* may reasonably request.
      3. Within 10 *Business Days* after a request by the *Consultant* for approval made in accordance with clause 2.4(e), the *Client* will approve the request or advise the Contractor of any objections. If approval is given to sub subcontract part of the *Services* under the *Contract*, the *Consultant* must ensure the requirements of clause 2.4 are met.
      4. The *Client* may at any time prior to the completion of the *Services* under the *Contract*, undertake an audit in respect of the *Consultant’s* compliance with clause 2.4, in accordance with the provisions of clause 16.8.
      5. Subcontracting does not relieve the *Consultant* of any liability or obligation under the *Contract*. Except where the *Contract* otherwise provides, the *Consultant* is liable to the *Client* for the acts and omissions of s*ubcontractors* and the s*ubcontractors’* employees and agents as if they were acts or omissions of the *Consultant*.
      6. The *Consultant* must not assign the *Contract* or any payment or any other right or benefit or interest under it without the prior written approval of the *Client*.

2.5. Conflict of Interest

The *Consultant* must monitor and avoid the occurrence of any conflict of interest and must notify the *Client* immediately on becoming aware of a conflict of interest or a significant risk of a conflict.

2.6. Collusive Arrangements

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

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

In the event of the *Consultant* paying or allowing any money in breach of this clause 2.6, the *Client* may deduct from payments to the *Consultant* an equivalent sum as an amount due from the *Consultant* to the *Client*, in addition to any other claim, demand, action or proceeding the *Client* may have against the *Consultant* (whether for damages or otherwise).

Without limitation, if the *Consultant* commits a breach of this clause 2.6, the *Client* may at its discretion terminate the *Contract* and claim damages for breach of contract.

### RESPONSIBILITIES AND OBLIGATIONS OF THE CLIENT

* + 1. The *Client* must:
       1. pay the *Consultant* in accordance with the *Contract*;
       2. give or cause to be given to the *Consultant*, timely directions, decisions, approvals and *Records* sufficient to facilitate the provision of the *Services* by the *Consultant*; and
       3. provide the *Consultant* with such access to premises or sites of the *Client* as is reasonably necessary for the *Consultant* to carry out the *Services*.

### PAYMENT OF FEES AND DISBURSEMENTS

* + 1. The *Consultant* must provide the *Services* for the fees and any reimbursable expenses set out or referenced in the Annexure. All amounts quoted by the *Consultant* and accepted by the *Client* for the provision of the *Services* will be taken to be GST inclusive amounts.
    2. In the case of expenses not described in the Annexure, such expenses will only be reimbursed if the *Client’s* written approval has been obtained prior to the expense being incurred.
    3. The *Consultant* may submit payment claims to the *Client* at times stated in the Annexure or if no times are stated, on a monthly basis, in the form of a tax invoice that complies with the provisions of *A New Tax System (Goods and Services Tax) Act 1999* (Cth). The *Consultant* must provide sufficient detail to enable the *Client* to assess that the amount claimed is due and payable including the provision of any additional information reasonably requested by the *Client*.
    4. The *Client* is only required to pay for *Services* carried out to the date of the claim for payment and in accordance with the *Contract*.
    5. The *Client* must pay the amount claimed or such other amount it reasonably determines is due and payable, within 15 *Business Days* of receipt of a payment claim. Payments are on account only, are not evidence of the value of work completed, nor evidence that the *Services* have been performed satisfactorily. If the full amount claimed is not determined to be payable, the *Client* must provide reasons for determining such other amount.

### INTELLECTUAL PROPERTY

* + 1. For the purposes of this clause ‘moral rights’ has the same meaning as in the *Copyright Act 1968* (Cth).
    2. Title to and ownership of *Intellectual Property Rights* in all *Contract Material* vests in the *Client* upon its creation.
    3. The *Consultant* retains the *Intellectual Property Rights* in any original ideas, equipment, processes or systems created outside the terms of the *Contract* and used in carrying out the *Services*. The *Consultant* grants to the *Client* a royalty free non-exclusive irrevocable license to use such *Intellectual Property Rights* for any purpose for which the *Services* are provided.
    4. To the extent that *Intellectual Property Rights* in or relating to the *Contract Material* are not capable of vesting in the *Client* because the *Consultant* does not own those *Intellectual Property Rights*, the *Consultant* must obtain an irrevocable, royalty free, worldwide, perpetual and transferable license for the *Client*, which may be sub-licensed by the *Client*, to use those *Intellectual Property Rights*.
    5. The *Client* grants to the *Consultant* a paid up, non-exclusive, irrevocable license to use the *Intellectual Property Rights* in *Contract Material* vested in the *Client* pursuant to this clause.
    6. The *Consultant* must not infringe any *Intellectual Property Rights* in performing the *Services*. The *Consultant* indemnifies the *Client* against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of any claim by a third party against the *Client* alleging that the *Contract Material* or acts by the *Client* in relation to the *Client’s* use of the *Contract Material* infringe any *Intellectual Property Rights* of a third party.
    7. Prior to the *Consultant*, including any servant or agent of the *Consultant*, commencing any work on or in connection with the provision of the *Services*, the *Consultant* must use its best endeavours to obtain from all such persons a consent to infringement of moral rights in a form approved by the *Client* in respect of moral rights that may be possessed under the *Copyright Act 1968* (Cth).

### DISCLOSURE OF INFORMATION, CLIENT INFORMATION AND CONTRACT MATERIAL

The *Consultant* must not use *Client Information* for any purpose other than in the performance of the *Services* and must not allow unauthorised persons to have access to the *Client Information* while in the *Consultant’s* possession or control during or after the completion of the *Services*.

### VARIATIONS

* + 1. The *Consultant* must not vary the *Services* except as directed by the *Client*.
    2. The *Client* may, by written notice to the *Consultant*, direct the *Consultant* to vary the *Services* in nature, scope or timing (including the omission or reduction of any part of the *Services*) and the *Consultant* is bound to comply with that direction. The *Consultant* acknowledges that the *Client* may have any part of the *Services* omitted or reduced pursuant to this clause 7 carried out by another party.
    3. If any such direction causes a change to the fees for *Services*, the *Client* and the *Consultant* will agree in writing the value of the variation and its impact, if any, on the timing of the provision of the *Services*. If the amount for the variation is not agreed, the *Client* will determine the value of the change to the fees on the basis of any applicable rates or fees contained in the Annexure, or if none, then by using reasonable rates or fees.

### SUSPENSION, DEFAULT, TERMINATION

8.1. Suspension

The *Client* may, at any time by prior written notice to the *Consultant*, suspend the carrying out of the *Services* or any part thereof. The *Client* will not be liable for payment to the *Consultant* for any compensation for loss of profits or any other reason in relation to a suspension.

The *Consultant* must recommence the *Services* when reasonably directed to by the *Client*.

If the *Client* fails to make a payment that is due and payable under the *Contract*, the *Consultant* may suspend the carrying out of the *Services* or any part thereof after the expiry of 5 *Business Days* following a written notice to suspend the *Services* by the *Consultant* to the *Client*. The *Consultant* must lift the suspension after the *Client* has made the payment.

8.2. Termination due to Default

If the *Consultant* commits a material breach of *Contract* the *Client* may suspend payment under the *Contract* and give to the *Consultant* a written notice to show cause.

If, by the time specified in the notice to show cause, which must not be less than 10 *Business Days* after the notice is given to the *Consultant*, the *Consultant* fails to show reasonable cause to the satisfaction of the *Client*, the *Client* may, by further written notice, terminate the *Contract*.

8.3. Termination without Cause

In addition to any other right available to the *Client*, the *Client* may terminate the *Contract* at any time at its sole discretion and for any reason by giving reasonable prior written notice to the *Consultant*. Fees and reimbursable expenses reasonably incurred by the *Consultant* up to the date of termination, together with any costs and expenses reasonably incurred by reason of the termination, provided the *Consultant* has acted reasonably to mitigate any costs and expenses it incurs by reason of the termination, may be claimed by the *Consultant* in connection with termination pursuant to this clause 8.3 but the *Client* will not be liable to the *Consultant* for any other compensation, including for loss of profits or any other costs in connection with the termination, nor will the *Client* be liable to the *Consultant* for any amount greater than the amount that the *Client* would have paid to the *Consultant* for the performance of the *Services* in accordance with the *Contract*.

8.4. Insolvency

If the *Consultant*:

* + - 1. becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
      2. enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
      3. has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets,

then the *Client* may, notwithstanding that there has been no breach of the *Contract* and in addition to any other rights, terminate the *Contract* without giving prior notice, but only when and to the extent that there is no restriction on enforcing that right under the Part 5.1, Part 5.2, or Division 17 of Part 5.3A *Corporations Act 2001* (Cth).

8.5. Rights on Termination

If the *Contract* is terminated pursuant to subclauses 8.2 or 8.4 the rights and liabilities of the *Consultant* and the *Client* are the same as they would have been at common law had the *Consultant* repudiated the *Contract* and the *Client* had elected to treat the *Contract* as at an end and recover damages.

### RISK AND INDEMNITY

* + 1. To the extent permissible by law, the *Consultant* indemnifies the *Client* from and against:
       1. loss of or damage to any property of the *Client* including the *Contract Material*; and
       2. claims and demands whatsoever and howsoever arising which may be brought or made against the *Client* by any person in respect of personal injury or death or loss of or damage to any other property,

to the extent caused or contributed to by a breach of contract or by a negligent, unlawful or wilfully wrong act or omission of the *Consultant*, its employees, agents or *subcontractors*, arising out of the performance (or attempted or purported performance or non-performance) of the *Services*, but the *Consultant’s* liability to indemnify the *Client* is reduced proportionally to the extent that an act or omission of the *Client* or the employees, agents or other contractors of the *Client* contributed to the loss, damage, death or injury.

* + 1. The indemnity in this clause does not apply to:
       1. exclude any other right of the *Client* to be indemnified by the *Consultant*;
       2. damage which is the unavoidable result of the carrying out of the *Services* in accordance with the *Contract*;
       3. claims in respect of the *Client’s* right to have the *Services* carried out.
    2. With the exception of claims which may be brought against the *Client* for personal injury or death, the *Consultant’s* liability to the *Client* under the *Contract* is limited per claim and in the aggregate, to the amount specified in the Annexure.

### INSURANCE

* + 1. The *Consultant* must effect and maintain the following insurances in connection with the provision of the *Services*:
       1. public liability insurance;
       2. workers’ compensation insurance; and
       3. professional indemnity insurance.
    2. The public liability insurance must be for an amount not less than that set out in the Annexure and must be maintained for the entire duration of the *Contract*.
    3. The workers’ compensation insurance must be for an unlimited amount, must include liability under statute and at common law and must be maintained for the entire duration of the *Contract*.
    4. The professional indemnity insurance must be for an amount not less than that set out in the Annexure and must be maintained for not less than 6 years after the provision of the *Services*.
    5. Before the *Consultant* commences work and whenever requested in writing by the *Client*, the *Consultant* must provide to the *Client* a certificate of currency in respect of each insurance policy required under clause 10.1, showing:
       1. the insurance policy numbers;
       2. the expiry date of each policy; and
       3. the amount of insurance cover required to be held under the *Contract*.
    6. Failure by the *Consultant* to provide evidence of insurance will constitute a substantial breach of the *Contract* by the *Consultant*.

### GOVERNING LAW

The *Contract* is governed by and construed in accordance with the law of Queensland and the parties submit to the exclusive jurisdiction of the Courts of Queensland.

### INFORMATION PRIVACY

* + 1. For the purposes of this clause, *Personal Information* means information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.
    2. If the *Consultant* collects or has access to *Personal Information* in order to perform the *Services* under the *Contract*, this *Consultant* must:
       1. if the *Client* is an ‘agency’ within the meaning of the *Information Privacy Act 2009* (Qld) (“IPA”), comply with Parts 1 and 3 of Chapter 2 of the IPA in relation to the discharge of its obligations under the *Contract* as if the *Consultant* was the *Client*;
       2. ensure that *Personal Information* is protected against loss and unauthorised access, use, modification, disclosure or other misuse;
       3. not use *Personal Information* other than in connection with performing the *Services* under the *Contract*, unless required or authorised by law;
       4. not disclose, or transfer outside of Australia, *Personal Information* without the prior written approval of the *Client*, unless required or authorised by law;
       5. ensure that its officers, employees, agents and sub-consultants do not access, use or disclose *Personal Information* other than in connection with performing the *Services* under the *Contract*;
       6. ensure that its sub-consultants who have access to *Personal Information* comply with obligations the same as those imposed on the *Consultant* under this clause;
       7. fully co-operate with the *Client* to enable the *Client* to respond to applications for access to, or amendment of a document containing an individual’s *Personal Information* and to privacy complaints; and
       8. comply with such other privacy and security measures as the *Client* may reasonably require from time to time.
    3. On request by the *Client*, the *Consultant* must obtain from its employees, officers, agents or subconsultants performing the *Services* under this *Contract*, an executed deed of privacy in a form acceptable to the *Client*.
    4. The *Consultant* acknowledges that, in accordance with the *Contract*, the *Client* and the *QGP Compliance Branch*:
       1. will collect information for the purposes of administering the *Contract* that may contain *Personal Information* which will be used in accordance with the *Contract* and may be disclosed to the *Client*, the *QGP Compliance Branch* and agents, consultants, or other contractors engaged by the *Client*, but will not be disclosed to any other third party without the *Consultant’s* consent unless authorised or required by law or the *Contract*; and
       2. may collect information containing *Personal Information* for the purposes of determining the *Consultant’s* compliance with the *Ethical Supplier Threshold* and the *Ethical Supplier Mandate* which may be disclosed to the Tripartite Procurement Advisory Panel for compliance purposes, but will not be disclosed to any other third party without the *Consultant’s* consent unless authorised or required by law or the *Contract*.
    5. *Personal Information* will be handled in accordance with the IPA.
    6. The *Consultant* must immediately notify the *Client* on becoming aware of any breach of clause 12.
    7. This clause will survive the termination or expiry of the *Contract*.

### DISPUTE RESOLUTION

* + 1. Notwithstanding the existence of a dispute in relation to any matter other than the exercise of a right to terminate the *Contract*, the parties must continue to perform the *Contract* unless otherwise permitted to suspend its performance.
    2. If the parties are unable to resolve a dispute, the parties may commence legal proceedings or, if agreed in writing by the parties, commence alternative dispute resolution proceedings.

### SURVIVAL

Clauses 5, 6, 9, 10, 11, 12, 13 will survive the termination or expiry of the *Contract*.

### QUEENSLAND PROCUREMENT POLICY

* + 1. The *Consultant* must, and must ensure its *subcontractors*, in carrying out the *Services* under the *Contract*, comply with:
       1. the principles of the *Queensland Procurement Policy* and any requirements under the *Contract* in this regard;
       2. the *Ethical Supplier Threshold*;
       3. the *Ethical Supplier Mandate*; and
       4. the *Supplier Code of Conduct*.
    2. The *Consultant* acknowledges that a failure to comply with the government policies and legislation that apply to the Services under the *Contract* or the *Consultant’s* obligations under the *Contract* can result in the imposition of a penalty under the *Ethical Supplier Mandate*, in addition to any other remedies available to the *Client* under the *Contract*.
    3. Failure to comply in any respect with the requirements of the Policy will be considered a substantial breach of *Contract*.
    4. The *Consultant:*
       1. consents to a relevant *Government Department or Instrumentality* providing information to the *Client* and the *QGP Compliance Branch*; and
       2. authorises the *Client* and the *QGP Compliance Branch* to obtain information;

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

### RECORDS AND ACCESS TO RECORDS

* + 1. The *Consultant* must make and keep and must ensure that every s*ubcontractor* makes and keeps accurate and complete records of:
       1. the *Consultant’s* or the *subcontractor’s* offer, including without limitation the preparation and submission of that offer;
       2. offers received by it, whether accepted or not;
       3. the execution and completion of the *Services* under the *Contract* or of the services under the subcontract; and
       4. compliance with commitments made in the *Consultant’s* offer or a s*ubcontractor’s* offer relating to or required by government policies including but not limited to the *Queensland Procurement Policy*, the *Ethical Supplier Threshold*, the *Ethical Supplier Mandate* and the *Supplier Code of Conduct.*
    2. The records referred to in clause 16.1 must include records that are required to be created or provided, or that are otherwise referred to, under the *Contract* or under the subcontract, as well as other records including but not limited to those that:
       1. relate to the Consultant’s offer or a subcontractor’s offer, including offer preparation, submission, negotiation, evaluation, estimates and calculations;
       2. relate to design, including design calculations, option studies, opinions, reviews and reports;
       3. relate to the execution and completion of the Services under the Contract or a subcontract, including without limitation labour, subcontracts, subcontractors, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
       4. are required to demonstrate compliance with the matters referred to in clause 16.1(d) including without limitation payroll records, management records and time recordings; and
       5. are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications or social media.
    3. The records referred to in clause 16.1 must not be destroyed without the prior written approval of the *Client*.
    4. Without limiting any other rights or obligations under this clause 16.4, the *Client* and the *QGP Compliance Branch* may, at any time after giving written notice to the *Consultant* that an audit will be undertaken pursuant to this clause, undertake an audit of the *Consultant's* compliance with clause 2.4. In undertaking the audit, the *Client* and the *QGP Compliance Branch* will have the right to inspect and copy any record referred to in clause 16.1 and to access any of the *Consultant's* systems and processes which are in any way connected with subcontracting. Upon receipt of written notice of the audit pursuant to this clause 16.4, the *Consultant* must promptly and at its own cost provide the *Client* and the *QGP Compliance Branch* with every reasonable facility necessary to undertake the audit, including but not limited to:
       1. providing to the *Client* and the *QGP Compliance Branch* or its agent any record requested for inspection or copying pursuant to clause 16.5;
       2. making staff available to the *Client* and the *QGP Compliance Branch* or its agent to access or explain systems, processes or any record referred to in clause 16.1; and
       3. arranging and providing access to the *Consultant's* or *subcontractor’s* workplaces, sites, premises or facilities.
    5. Subject to the *Consultant’s* right to claim legal professional privilege in respect of any record, which is hereby maintained, the *Client* or the *QGP Compliance Branch* will have the right to inspect and to copy at any time any record referred to in clause 16.1. In the case of any records referred to in clause 16.1 stored on a medium other than in writing the *Consultant* must make available forthwith upon request such facilities as may be necessary to enable a legible reproduction thereof to be provided to the *Client* and the *QGP Compliance Branch*.
    6. Where a record referred to in clause 16.1 is created, maintained or stored by the *Consultant* or a *subcontractor* in an electronic format, it must be provided to the *Client* in its native, operable form or such other format as may be reasonably required by or acceptable to the *Client*.
    7. Where a record referred to in clause 16.1 is stored on a medium licensed from a third party, where the *Client* is a party to the communication, the *Consultant* must provide the *Client* with a copy of such records in an external electronic storage device, readable on the *Client*’s information technology system, or such other format as may be reasonably required by the *Client*, each month until the *Consultant* has completed the *Services*.
    8. The *Consultant* must comply in all respects with any request made pursuant to clause 16.5 to inspect or copy any record referred to in clause 16.1, or any audit undertaken pursuant to clause 16.4, and will not be entitled to refuse an audit, inspection or copying of any record referred to in clause 16.1 on any basis whatsoever other than on the basis that legal professional privilege attaches to the record.
    9. Records accessed under clause 16.4 or 16.5 may be used to assess the *Consultant’s* or its *subcontractors’* compliance with the *Contract*, the subcontract, the *Queensland Procurement Policy*, the *Ethical Supplier Threshold*, the *Ethical Supplier Mandate* and the *Supplier Code of Conduct* and may be shared with relevant *Government Departments or Instrumentalities* for the purposes of the making of a recommendation about compliance with the *Queensland Procurement Policy*, the *Ethical Supplier Threshold*, the *Ethical Supplier Mandate* and the *Supplier Code of Conduct*.”
    10. The *Client* and the *QGP Compliance Branch* may in their absolute discretion, publish information about the *Consultant’s* or a *subcontractor's* compliance with the *Ethical Supplier Mandate*, including but not limited to any sanctions or penalties imposed, and the parties acknowledge and agree that to do so will not constitute a breach of this *Contract* by the *Client* nor give rise to any other right or remedy of the *Consultant* at law or in equity against the *Client* or the *QGP Compliance Branch*.

# ANNEXURE

|  |  |  |
| --- | --- | --- |
| Item |  |  |
|  | The *Client* (Clause 1): | State of Queensland through |
|  | Address of the *Client*: |  |
|  | The *Project Officer* (Clause 1): |  |
|  | Address of the *Project Officer*: |  |
|  | *Consultant’s* reimbursable expenses (Clause 4): |  |
|  | Limit of liability (Clause 9): | $  **Guidance Note:** If this Contract is to be subject to a limitation of liability, the limit should be based on a risk assessment for the consultancy, having regard to the nature of the services to be provided by the Consultant and exclusive of project specific insurances (which are separately carved out from the limitation of liability). The contract fee or a multiple thereof may be a good starting point, if that figure accurately reflects the risks of the procurement. |
|  | Time(s) for submission of payment claims (Clause 4): |  |
|  | Amount of public liability insurance (Clause 10): | $  (If nothing stated, $20 million)  **Guidance Note:** *The amount of insurance required should be based on a risk assessment for the consultancy. For building industry consultants, refer to the Department of Energy and Public Works’ Capital Works Management Framework Policy Advice Note ‘Professional Indemnity and Public Liability Insurances for Building Industry Consultants’.* |
|  | Amount of professional indemnity insurance (Clause 10): | $  **Guidance Note:** *The amount of insurance required should be based on a risk assessment for the consultancy. For building industry consultants, refer to the Department of Energy and Public Works’ Capital Works Management Framework Policy Advice Note ‘Professional Indemnity and Public Liability Insurances for Building Industry Consultants’.* |

# SCHEDULES

#### Schedule 1 – Request for Approval to Subcontract / Sub subcontract (clause 2.4)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Contract Name: | |  | | | | |
| Project Number: | |  | | | | |
| Pursuant to clause 2.4 of the Conditions of Contract I request approval to enter into a subcontract for the following part of the *Services* under the *Contract*: | | | | | | |
| Proposed subcontractor: | | |  | | | |
| ACN: |  | | | | ABN: |  |
| Address: |  | | | | | |
| Total value of proposed subcontract: | | | | $ | | |

I confirm that*:*

1. the Consultant has complied with the requirements of Clause 2.4 of the Conditions of Contract including, without limitation, the Consultant’s obligations to procure the subcontract in accordance with the requirements of the *Queensland Procurement Policy*;
2. the Consultant has provided an original version of the Deed Poll executed by the proposed subcontractor; and
3. the proposed *subcontractor*:
   1. for the purposes of the Queensland Procurement Policy:
   2. is:

☐ a local supplier as described by the *Queensland Procurement Policy*, or

☐ not a local supplier as described by the *Queensland Procurement Policy* and evidence is attached demonstrating the *Consultant* efforts to source a local supplier; and

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

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

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

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

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

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

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

#### Schedule 2 – Subcontractor Deed Poll (clause 2.4)

FORM OF DEED POLL

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

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

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

##### RECITALS

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

This Deed Poll provides as follows:

1. The *Subcontractor* warrants that:
   1. it will make and keep accurate records of:
   2. its offer, including without limitation the preparation and submission of that offer;
   3. offers received by it, whether accepted or not;
   4. the execution and completion of the work under the *Subcontract*; and
   5. its compliance with any commitments made in the Subcontractor’s offer and its obligations under the Subcontract relating to compliance with government policies including but not limited to the Queensland Procurement Policy, the Ethical Supplier Mandate and the Ethical Supplier Threshold,
   6. The records referred to in clause 1.a. above must include records that are required to be created or provided, or that are otherwise referred to, under the *Subcontract*, as well as other records including but not limited to those that:
   7. relate to the *Subcontractor’s* offer, including offer preparation, submission, negotiation, evaluation, estimates and calculations;
   8. relate to design, including design calculations, option studies, opinions, reviews and reports;
   9. relate to the execution and completion of the work under the *Subcontract*, including without limitation labour, subcontracts, subcontractors, subconsultants, materials, equipment, resourcing, planning, progress, delay, inspection, examination, testing, compliance, approval, safety, risk, variations, claims, payment, cost and cost to complete;
   10. are required to demonstrate compliance with the matters referred to in 1.a.iv above, including without limitation payroll records, management records and time recordings; and
   11. are in a format or stored on any medium, including without limitation photographs, electronic files, telecommunications or social media.
   12. subject to the *Subcontractor’s* right to claim legal professional privilege in respect of any record, which is hereby maintained, permit the *Client* and the *QGP Compliance Branch* to inspect and to copy at any time any records referred to in clause 1.a. or 1.b., provide electronic copies of such records in native format and provide any access to the *Subcontractor’s* sites, premises or facilities necessary for an inspection referred to in this paragraph.
   13. without limiting the previous paragraphs, the *Subcontractor* will permit the *Client* and the *QGP Compliance Branch* to undertake an audit of the records referred to in clause 1.a. and 1.b. for the purposes of verifying the *Subcontractor’s* compliance with any commitments made in the *Subcontractor’s* offer and its obligations under the *Subcontract* relating to compliance with government policies including the Queensland Procurement Policy, the Ethical Supplier Mandate and the Ethical Supplier Threshold.
2. The *Subcontractor* consents to the *Client* and the *QGP Compliance Branch* disclosing or providing copies of any records which the *Client* and the *QGP Compliance Branch* inspects or copies in accordance with clause 1 of this Deed Poll to the *Consultant*.
3. The *Subcontractor* consents to the *Client* and the *QGP Compliance Branch*, in its absolute discretion, publishing information about the *Subcontractor’s* compliance with the Ethical Supplier Mandate, including but not limited to any sanctions or penalties imposed, and warrants that it will not exercise any right at law, including in contract, at common law or in equity, against the *Client*, including the *QGP Compliance Branch*, in relation to that publication.
4. This Deed Poll is governed by and construed in accordance with the laws of Queensland.
5. The *Subcontractor* hereby submits to the non-exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
6. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the *Client*.

**EXECUTED as a DEED POLL**

on the ……day of ……… 20…… by

|  |  |
| --- | --- |
|  |  |
| *Name of Company – Subcontractor* | *ACN* |

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

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

OR

|  |  |
| --- | --- |
|  |  |
| *Name of Person – Subcontractor* | *Signature of Person – Subcontractor* |

In the presence of:

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