



1. Interpretation

1.1 In this *Contract*, except where the context otherwise requires -

'*Consultancy Services*' means the services described in the *Terms of Reference* and also means contractors providing professional services as described in the *Terms of Reference* as applicable;

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

'*Contract*' means the agreement in writing between the *Principal* and the *Consultant* including these General Conditions of Contract;

'*Contract material*' means all material which is created in connection with or for the purposes of performing the *Consultancy Services*;

'*Intellectual property rights*' means any patent, registered design, trade mark or name, copyright or other protected right;

'*Principal*' means the *Principal* stated in the Schedule;

'*Project Officer*' means the person appointed by the *Principal* and stated in the Schedule;

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

'*Terms of Reference*' means the document issued by the *Principal* to the *Consultant* for the purpose of describing the scope of the project and the scope of the services to be provided by the *Consultant*.

2. Responsibilities, obligations and acknowledgements of the *Consultant*

2.1 Performance

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

- (a) comply with the directions of the *Principal* given pursuant to a provision of the *Contract*;
- (b) comply with all legislative requirements in carrying out the *Consultancy Services*;
- (c) remain responsible for the provision of *Consultancy Services* in accordance with the *Contract* notwithstanding any review or acceptance of the whole or any part of those *Consultancy Services* by the *Principal*;
- (d) except as required by law or provided by the *Contract*, treat as confidential all *Records* and *Contract material*;

(e) attend meetings and briefings reasonably required by the *Principal* or the *Project Officer*.

(f) proceed with the *Consultancy Services* with due expedition and without delay.

2.2 Acknowledgements

The *Consultant* has represented itself and acknowledges itself as being a skilled and competent professional in the particular fields relevant to the *Consultancy Services*. The *Consultant* agrees that it will perform the *Consultancy Services* to the standard of skill, care and diligence expected of a skilled and competent professional practicing in the particular fields relevant to the *Consultancy Services*.

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

The *Consultant* acknowledges and agrees that if awarded a *Contract* as a result of submitting an offer, it shall comply with the requirements of the **Conditions of working with QBuild - Consultants** and, prior to commencing the Works, be registered as a QBuild registered *Consultant*.

2.3 Personnel

The *Consultant* must ensure that *Consultancy Services* are performed by the key personnel nominated, if any, and that there is no substitute of such personnel without the *Principal*'s consent.

2.4 Subcontracting and Assignment

The *Consultant* must not subcontract or assign the whole or any part of the *Contract* without the *Principal*'s prior written consent.

3. Responsibilities and obligations of the *Principal*

The *Principal* must:

- (a) pay the *Consultant* in accordance with the *Contract*;
- (b) give or cause to be given to the *Consultant*, timely directions, decisions and *Records* sufficient to facilitate the provision of the *Consultancy Services* by the *Consultant*; and
- (c) provide the *Consultant* with such access to premises or sites of the *Principal* as reasonably necessary for the *Consultant* to carry out the *Consultancy Services*.

4. Payment of fees and disbursements

The *Consultant* must provide the *Consultancy Services* for the fees and reimbursable expenses set out or referenced in the Schedule. All amounts quoted by the *Consultant* and accepted by the *Principal* for the provision of the *Consultancy Services* will be taken to be GST inclusive amounts.

In the case of expenses not described in the Schedule, reimbursement will be made only if the Principal's written consent has been obtained prior to the expense being incurred.

The *Consultant* shall submit payment claims to the *Principal* at times stated in the Schedule 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 *Principal* shall 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.

5. Intellectual property

Title to and ownership of *Intellectual property rights* (including copyright) in all *Contract material* shall upon its creation vest in the *Principal*.

The *Consultant* shall retain 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 *Consultancy Services*. The *Consultant* shall grant to the *Principal* an irrevocable license to use such *Intellectual property rights* for any purpose for which the *Consultancy Services* are provided.

To the extent that *Intellectual property rights* in or relating to the *Contract material* are not capable of being vested in the *Principal* because the *Consultant* does not own that *Intellectual property right*, the *Consultant* shall ensure that the *Principal* is irrevocably licensed to use that *Intellectual property right*.

The *Principal* grants to the *Consultant* a paid up, non exclusive, irrevocable license to use the *Intellectual property rights* in *Contract material* vested in the *Principal* pursuant to this clause.

Prior to the *Consultant*, including any servant or agent of the *Consultant*, commencing any work on or in connection with the provision of the *Consultancy 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 *Principal* in respect of moral rights that may be possessed under the *Copyright Act 1968*.

In this clause 'moral rights' has the meaning as conferred by the *Copyright Act 1968* (Commonwealth).

This clause survives the termination or expiration of the *Contract*.

6. Records and Contract material

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

7. Variations

The *Principal* may, by written notice to the *Consultant*, direct the *Consultant* to vary the *Consultancy Services* in nature, scope or timing (and including the omission or reduction of any part of the *Consultancy Services*) and the *Consultant* shall be bound to comply with that direction.

8. Disputes, suspension, default, termination and insolvency

8.1 Disputes

Within 14 days of a dispute arising either party may refer it to the *Principal*. Within 28 days of receiving notice of dispute the *Principal* shall give its written decision to each party. If the *Principal* fails to give the decision, or if either party is dissatisfied with it, the parties shall within 14 days of receipt of the decision, or the date upon which it should have been given, confer at least once to attempt to resolve the dispute.

8.2 Suspension

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

8.3 Termination due to Default

If the *Consultant* commits a breach of *Contract* the *Principal* 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, the *Consultant* fails to show reasonable cause to the satisfaction of the *Principal*, the *Principal* may, by further written notice, terminate the *Contract*.

8.4 Termination without Cause

The *Principal* may terminate the *Contract* at any time and for any reason by giving reasonable prior written notice to the *Consultant*. The *Principal* shall be liable for 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, but shall not be liable for payment to the *Consultant* for any other compensation, including for loss of profits or any other reason as a result of termination, nor shall the *Principal* be liable for payment to the *Consultant* for any amount greater than the amount that the *Principal* would have paid to the *Consultant* had the *Contract* been completely performed.

8.5 Insolvency

If the *Consultant*:

- (a) 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
- (b) enters into a debt agreement, a deed of assignment or a deed of arrangement under

the Bankruptcy Act 1966, or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or

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

then the *Principal* 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.

8.6 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 *Principal* shall be the same as they would have been at common law had the *Consultant* repudiated the *Contract* and the *Principal* had elected to treat the *Contract* as at an end and recover damages.

9. Risk and indemnity

To the extent permissible by law, the *Consultant* indemnifies the *Principal* from and against:

- (a) loss of or damage to any property of the *Principal* including the *Contract material*;
- (b) claims and demands whatsoever and howsoever arising which may be brought or made against the *Principal* 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 subconsultants, arising out of the performance (or attempted or purported performance or non performance) of the *Consultancy Services*, but the *Consultant's* liability to indemnify the *Principal* shall be reduced proportionally to the extent that an act or omission of the *Principal* or the employees, agents or other contractors of the *Principal* contributed to the loss, damage, death or injury.

The indemnity in this clause 9 shall not apply to:

- (c) exclude any other right of the *Principal* to be indemnified by the *Consultant*;
- (d) damage which is the unavoidable result of the carrying out of the *Consultancy Services* in accordance with the *Contract*;
- (e) claims in respect of the *Principal's* right to have the *Consultancy Services* carried out.

With the exception of claims which may be brought against the *Principal* for personal injury or death, the *Consultant's* liability to the *Principal* under the *Contract* is limited, per claim and in the aggregate, to the amount specified in the Schedule.

This clause survives the termination or expiration of the *Contract*.

10. Insurance

The *Consultant* must effect and maintain the following insurances in connection with the provision of *Consultancy Services*:

- public liability insurance,
- workers' compensation insurance,
- professional indemnity insurance.

The public liability insurance shall be for an amount not less than that set out in the Schedule and shall be maintained for the entire duration of the *Contract*.

The workers' compensation insurance shall be for an unlimited amount, shall include liability under statute and at common law and shall be maintained for the entire duration of the *Contract*.

The professional indemnity insurance shall be for an amount not less than that set out in the Schedule and shall be maintained for not less than the period set out in the Schedule.

This clause survives the termination or expiration of the *Contract*.

11. Governing law

The *Contract* shall be governed by and construed in accordance with the law of Queensland.

Schedule

1. (a) The <i>Principal</i> (Clause 1)	The State of Queensland through the Department of
(b) Address of the <i>Principal</i>	
2. (a) The <i>Project Officer</i> is: (Clause 1)	
(b) Address of the <i>Project Officer</i>	
3. (a) <i>Consultant's</i> Fees and reimbursable expenses (Clause 4)	
(b) Times for payment (Clause 4)	
4. Limit of Liability (Clause 9)	\$†
5. (a) Amount of public liability insurance	\$*
(b) (i) Amount of Professional Indemnity Insurance	\$*
(ii) Period during which Professional Indemnity Insurance is to be maintained	

Notes for Project Officers – delete from Contract:

* The amount of insurance required should be based on a risk assessment for the consultancy. Refer to clause 9.

For building industry *Consultants*, refer to the Department of Public Works' CWMF Policy Advice Note '*Professional Indemnity and Public Liability Insurances for Building Industry Consultants*'.

† To be based on a risk assessment of the consultancy - as a guide, the amount should generally be the same as the amount of professional indemnity insurance required at item 5(b)(i), plus an additional amount if required