

**C7545 – General Conditions of Contract**

# **Consultants for Engineering Projects**

**April 2026**

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## 1 Definitions / Interpretations

### 1.1 Definitions

In the Contract Documents:

**‘Authorised Representative’** has the meaning given in Clause 15.7.

**‘Background IP’** in respect of a party, means:

- a) all Intellectual Property Rights that the party owns prior to the Start Date
- b) all Intellectual Property Rights created or developed by that party other than in the course of performing this Contract and without using the Confidential Information of the other party, or
- c) any third-party Intellectual Property Rights licensed to that party,  
which the party provides or makes available to the other party for or in connection with this Contract and, in the case of:
  - d) the Principal, includes the Principal Materials, and
  - e) the Consultant, includes the Consultant Materials.

**‘BIM’** means Building Information Modelling.

**‘Business Day’** means any day other than a Saturday, Sunday or public holiday at the Principal’s address.

**‘Change in Control’** in relation to the Consultant, that is:

- a) a company within the meaning of the *Corporations Act 2001* (Cth), means a change in the identity of a person who, as at the Start Date of the Contract, is able to ‘control’ (as that term is defined in section 50AA of the *Corporations Act 2001* (Cth)) the Consultant, or
- b) not a company within the meaning of the *Corporations Act 2001* (Cth), means a circumstance in which effective control is or may be exercised over the Consultant.

**‘Computer Software’** has the meaning given in Clause 15.10.

**‘Confidential Information’** means all information disclosed by or on behalf of the Principal or the Consultant (**Discloser**) to the other party (**Recipient**) in connection with the Consultant Service or Contract or created using that information, which is confidential in nature and designated as confidential, or which a reasonable person receiving the information would understand or perceive to be sensitive or confidential, and all information to the extent it is

derived from that information. However, 'Confidential Information' does not include any information which:

- a) is or becomes public, except through breach of a confidentiality obligation
- b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient, or
- c) the Recipient receives from another person on a non-confidential basis, except through breach of a confidentiality obligation.

**'Conflict of Interest'** includes any actual, reasonably anticipated or perceived Conflict of Interest, whether personal, financial, professional or otherwise.

**'Consequential Loss'** means any Loss not arising naturally, according to the usual course of things, from the relevant breach or acts or omissions, and includes any loss of revenue, loss of profit, loss of opportunity, loss of contracts, loss of reputation or goodwill, and any special or punitive damages.

**'Consultant'** means the person contracted to carry out the Consultant Services as stated in Item 2.1A of the Form C7586 *Offer for Consultant Service – Non-Price Component*.

**'Consultant's Delegate'** means the position / person delegated by the Consultant to manage the Consultant Services as stated in Item 2.1B of the Form C7586 *Offer for Consultant Service – Non-Price Component*.

**'Consultant Material'** means any Material (other than the Contract Material) provided by the Consultant to the Principal in connection with the Contract.

**'Consultant's Office(s)'** means the offices that are approved for the Consultant Services to be carried out, as stated in Item 1.7 of the Form C7586 *Offer for Consultant Service – Non-Price Component*.

**'Consultant Services'** means the services to be supplied by the Consultant as set out in the Contract Documents.

**'Contract'** means the agreement between the Principal and the Consultant comprising the Contract Documents.

**'Contract Amount'** means the fees specified in the Letter of Acceptance.

**'Contract Documents'** means:

- a) this Form C7545 *General Conditions of Contract*
- b) if specified in the Letter of Acceptance, the Supplementary Conditions of Contract, and
- c) documents specified in the Letter of Acceptance, or equivalent as forming part of the Contract Documents.

**‘Contract Material’** means any Material which is created, developed or otherwise brought into existence by or on behalf of the Consultant in the course of performing, or pursuant to, the Contract.

**‘Contract Term’** has the meaning given in Clause 2.1.

**‘Data Breach’** means any actual, threatened or suspected cyber or information security incident affecting the security, integrity or availability of the Principal Data held by or on behalf of the Consultant, and includes:

- a) any unauthorised access, disclosure, modification, use, copying, or loss of any Principal Data (whether or not confidential in nature), and
- b) any Eligible Data Breach in respect of the Principal Data.

**‘Date for Completion’** means the date on which milestones for the Consultant Services are to be completed as stated in Item 1.7 of the Invitation for Offer, or the date subsequently determined according to the provisions of the Contract.

**‘Date of Completion’** means the date when the Consultant Services are completed in accordance with the provisions of the Contract.

**‘Direction’** includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

**‘Eligible Data Breach’** has the meaning given in the *Information Privacy Act 2009* (Qld).

**‘Extension Event’** is an event that has or will cause the Consultant to be delayed in reaching completion of the Consultant Services by the Date for Completion as a consequence of:

- a) any act, default or omission of the Principal, or
- b) any other event or circumstances beyond the Consultant’s reasonable control,

but does not include any event (including any event described above) which is directly or indirectly caused, or contributed to, by any act or omission of the Consultant or its Personnel.

**‘Fault’** means a defect, error or omission affecting any aspect of the Consultant Material or Contract Material.

**‘Finish Date’** means the date specified in the Letter of Acceptance when the Consultant shall conclude the Consultant Services.

**‘Force Majeure Event’** means any of the following events provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party by reasonable diligence or reasonable precautions:

- a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, tsunami, explosion or fire
- b) strikes or other industrial action, other than strikes or other industrial action of some or all of the Consultant’s Personnel, and
- c) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic, but excludes any act or omission of a sub-consultant (except where that act or omission was caused by a Force Majeure Event).

**‘Functional Specification’** means Functional Specification(s) for Consultant Services issued with the Invitation for Offer.

**‘General Conditions of Offer’** means the Form C7542 *General Conditions of Offer* issued with the Invitation for Offer.

**‘Government Department or Instrumentality’** means the Procurement Assurance Branch within Queensland Government Procurement Division of the Department of Housing and Public Works, and any governmental regulator, including but not limited to Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission, and the Australian Taxation Office.

**‘GST’** means the goods and services tax imposed under the GST Acts. A reference to an amount of GST is a reference to the GST liability in respect of the service in question.

**‘GST Acts’** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), associated legislation and any additional or substituted legislation providing for a value added tax, consumption tax, retail tax or other goods and services tax.

**‘Information Privacy Act’** means the *Information Privacy Act 2009* (Qld).

**‘Insolvency Event’** means, in relation to a party, any of the following:

- a) the party is or states that it is unable to pay from its own money all its debts as and when they become due and payable
- b) the party is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation
- c) an application or order is made for the winding up or dissolution or a resolution is passed, or any steps are taken to pass a resolution for the winding up or dissolution of the party

- d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the party or any action is taken to appoint any such person, and the action is not stayed, withdrawn or dismissed within 7 calendar days
- e) a receiver or receiver and manager is appointed in respect of any property of the party
- f) the party is deregistered under the *Corporations Act 2001* (Cth), or notice of its proposed deregistration is given to the party
- g) the party enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the party's creditors or members or a moratorium involving any of them, or
- h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the party.

**'Intellectual Property Rights'** includes all copyright, designs, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time whether created before, on or after the Start Date, but excludes Moral Rights.

**'Invitation for Offer'** means the Form C7585 *Invitation for Offer* issued by or on behalf of the Principal for the procurement of the Consultant Services.

**'Legislative Requirement'** includes:

- a) acts, regulations, by-laws, orders, awards and proclamations of the Commonwealth, State or local government, applicable to the Consultant Services, and
- b) certificates, licences, consents, permits, approvals and mandatory requirements of organisations having jurisdiction applicable to the Consultant Services.

**'Letter of Acceptance'** means Form C7599 *Letter of Acceptance* issued by the Principal pursuant to the General Conditions of Offer.

**'Loss'** means any loss, damage, liability, penalty, fine, charge, expense, outgoing, payment or cost of any nature or kind, including reasonable legal fees and expenses.

**'Lump Sum'** means an amount (if any) specified as a 'Lump Sum' amount in the Letter of Acceptance.

**'Machinery of Government Change'** means a transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body.

**‘Manual’** means the Manual – *Consultants for Engineering Projects* (most current version) published by or on behalf of the Principal.

**‘Materials’** includes documents, equipment, information and data stored by any means.

**‘Moral Rights’** means the right of integrity of authorship, the right of attribution of authorship, and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement of this Contract.

**‘Notice of Dispute’** means notice in writing from one party to the other party setting out details of the dispute or difference that the initiating party believes has arisen regarding the Consultant Services.

**‘Personal Information’** has the meaning given in the *Information Privacy Act 2009* (Qld).

**‘Personnel’** means a party’s officers, directors, employees and agents, and, in case of the Consultant, includes any sub-contractor and the sub-contractor’s officers, directors, employees and agents.

**‘Prequalification Notice’** has the meaning given in Clause 4.16.3.

**‘Prequalification Systems’** has the meaning given in Clause 4.16.1.

**‘Prequalified Consultant’** means a Consultant organisation approved under the Principal’s Prequalification Systems to make competitive offers on departmental transport infrastructure projects and work packages that stipulate a prequalification category / level.

**‘Principal’** means the State of Queensland acting through the Department of Transport and Main Roads.

**‘Principal Data’** means any information (including Principal Confidential Information), material, data, dataset or database to the extent provided by or on behalf of the Principal to the Consultant under the Contract, but does not include any Background IP of the Consultant.

**‘Principal Materials’** means Materials (other than Contract Materials) that are provided by the Principal to the Consultant in connection with the Contract including the Project Brief, Functional Specification, any Reliance Information and any Principal Data. For clarity, Principal Materials include the Reliance Information, but not all Principal Material is necessarily Reliance Information.

**‘Principal’s Delegate’** means the position / person delegated by the Principal to represent the Principal’s interest in the Consultant Services as named in Item 3.2 of the Invitation for Offer.

**‘Procurement Assurance Model’** means the Procurement Assurance Model described in Part 3 of the *Queensland Procurement Policy*.

**‘Project Brief’** means the brief for Consultant Services issued with the Invitation for Offer.

**‘QBCC Act’** means the *Queensland Building and Construction Commission Act 1991* (Qld).

**‘Queensland Government Body’** means any of:

- a) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority)
- b) a body established by the State of Queensland through the Governor or a Minister, or
- c) an incorporated or unincorporated body over which the State of Queensland exercises control.

**‘Queensland Government Supplier Code of Conduct’** means Queensland Government policy titled *Queensland Government Supplier Code of Conduct*, or any policy that replaces that policy.

**‘Queensland Procurement Policy’** means the *Queensland Procurement Policy* as amended or replaced by the Queensland Government from time to time.

**‘Reliance Information’** means Principal Material that is identified as Reliance Information in the Invitation for Offer.

**‘Start Date’** means the date nominated in the Letter of Acceptance for commencement of the Consultant Services.

**‘Supplementary Conditions of Contract’** means the document titled Form C7554 *Supplementary Conditions of Contract for Road Planning and Design Projects* issued with the Invitation for Offer.

**‘Supplier Code of Conduct’** means the *Supplier Code of Conduct* published by the Queensland Government, as amended or replaced by the Queensland Government.

**‘Tax Invoice’** means a Tax Invoice within the meaning of the GST Acts and which complies with the requirements of the GST Acts in all respects.

**‘Team Member’** means any nominated Personnel as stated in Item 3.1 of the Form C7586 *Offer for Consultant Service – Non-Price Component*.

**‘Third-Party Material’** means any Material in which the Intellectual Property Rights are owned by a third party.

**‘Unit Rate’** means, where Item 1.8 of the Invitation for Offer specifies that Unit Rates apply, the rate (if any) specified in the Form C7587 *Offer for Consultant Service – Price Component*.

**‘Validation Data’** has the meaning given in Clause 4.17e).

## **1.2 Interpretations**

In the Contract Documents:

- a) a reference to '**person**' includes bodies corporate and unincorporated
- b) headings and subheadings do not form part of the Contract and are not to be used in the interpretation or construction of the Contract
- c) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning
- d) words imparting a gender include each and every gender
- e) prices, sums of money and payments under the Contract shall be in Australian currency
- f) all measurements of physical quantities shall be in legal metric units of measurement within the meaning of the *National Measurement Act 1960* (Cth) as amended from time to time, and
- g) all Contract Documents and all communications between the parties to the Contract must be in the English language.

## **2 Term**

### **2.1 Contract Term**

The Contract commences on the Start Date and ends on the Finish Date, unless extended by written agreement between the parties or terminated earlier in accordance with the Contract ('**Contract Term**').

## **3 No exclusivity**

Unless expressly stated otherwise in the Contract Documents, the Principal may engage other Consultants (or itself) to provide services the same or similar to the Consultant Services.

## **4 Consultant responsibilities**

### **4.1 Legislative Requirements**

The Consultant must comply with applicable Legislative Requirements in the provision of the Consultant Services.

### **4.2 Consultant's obligations**

The Consultant must ensure that:

- a) it has the necessary skills, and experience to complete the Consultant Services in accordance with the Contract

- b) its employees, sub-consultants and agents have the necessary skills and experience to perform its obligations under the Contract
- c) it has the Personnel, resources and equipment to perform the Consultant Services in accordance with the terms of the Contract, and
- d) it has the applicable approvals, licences and accreditations to perform the Consultant Services in accordance with the terms of the Contract.

### **4.3 Consultant's acknowledgements**

#### **4.3.1 Queensland Procurement Policy and Queensland Government Supplier Code of Conduct**

- a) The Consultant:
  - i. must, and must ensure its sub-consultants adhere to the *Queensland Procurement Policy* (where applicable) and the *Queensland Government Supplier Code of Conduct* for the Contract Term
  - ii. warrants that it and its sub-consultants adhere to the *Queensland Government Supplier Code of Conduct*, and
  - iii. acknowledges that its failure or any of its sub-consultants' failure to adhere to the *Queensland Government Supplier Code of Conduct* is a breach of contract.
- b) The Consultant acknowledges that a failure to comply with government policies and legislation that apply to the work under the Contract or the Consultant's obligations under the Contract may result in:
  - i. consequences under the Procurement Assurance Model, and
  - ii. the imposition of a demerit or sanction under the *Queensland Government Supplier Code of Conduct*,in addition to any other remedies available to the Principal under this Contract.
- c) The Consultant acknowledges that the Principal may:
  - i. obtain information about the Consultant relevant to the Consultant's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct* which may be held by any Government Department or Instrumentality, and
  - ii. access all information relevant to assessing the Consultant's compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct* and take the information into account in assessing the Consultant's

compliance with the *Queensland Procurement Policy* and the *Queensland Government Supplier Code of Conduct*.

#### **4.3.2 Purposeful public procurement**

The Consultant will support the Principal in its 'purposeful public procurement' (as defined in the *Queensland Procurement Policy*) outcomes, as advised by the Principal from time to time, and will maintain any tender commitments in respect of such outcomes.

#### **4.4 Changing Team Members / Consultant's Offices**

The Consultant shall not vary the Team Members nominated to carry out the Consultant Services without the written approval of the Principal, which approval shall not be unreasonably withheld or delayed. The Consultant shall not allow persons other than the agreed Team Members to carry out the Consultant Services unless otherwise agreed in writing by the Principal.

In addition, the Consultant's Office(s) as nominated in Item 1.7 of the Form C7586 *Offer for Consultant Service – Non-Price Component* shall not be varied without the written approval of the Principal, and such approval shall only be granted under exceptional circumstances.

#### **4.5 Not an employment / agency agreement**

The Consultant shall not represent itself, and shall ensure that its employees, sub-consultants and agents do not represent themselves, as being employees or agents of the Principal. It is the express intention of the parties that this Contract does not create a relationship of employment or agency between the Principal and Consultant.

#### **4.6 Skill, care and diligence**

The Consultant must perform the Consultant Services as described in the Contract Documents with the standards of skill, care and diligence as is generally exercised by competent members of the profession performing services of a similar nature at the time the Consultant Services are provided.

#### **4.7 Consultant identification of errors**

The Consultant has a duty to use reasonable endeavours to identify any erroneous information supplied by the Principal and bring this to the attention of the Principal at the earliest opportunity.

#### **4.8 Quality management**

The Consultant must implement systems and procedures to ensure that the Consultant Services are provided in accordance with either ISO 9001:2015 or Australian Standard AS/NZS ISO 9001:2016.

#### **4.9 Reporting**

The Consultant shall liaise with and report to the Principal as reasonably required by the Principal during the period of this Contract and, where required by the Principal, shall attend meetings and briefings with the Principal. Reports to the Principal shall be in writing unless otherwise permitted by the Principal.

#### **4.10 Accommodation and so on**

Unless specified or otherwise agreed in writing the Consultant shall provide at its own cost, suitable accommodation and equipment necessary to complete the Consultant Services.

#### **4.11 Access to Consultant premises**

The Consultant shall at all reasonable times give to the Principal, or to any other persons authorised in writing by the Principal, access to premises occupied by the Consultant where the Consultant Services are being undertaken and shall permit those persons to inspect the performance of the Consultant Services, and anything brought into existence in association with the Contract.

#### **4.12 Safety Directions by Principal**

Where the Consultant uses the Principal's premises or facilities, it shall comply with all reasonable Directions and procedures relating to security and to workplace health and safety, which are in effect at those premises or in regard to those facilities, as notified by the Principal.

#### **4.13 Safety Directions by Consultant**

Where the Principal uses the Consultant's premises or facilities, it shall comply with all reasonable Directions and procedures relating to security and to workplace health and safety, which are in effect at those premises or in regard to those facilities, as notified by the Consultant.

#### **4.14 Faults in Contract Materials**

If it is necessary to subsequently amend the Contract Materials due to one or more Faults caused, or contributed to, by the Consultant, then the Consultant shall rectify the relevant Contract Materials and shall be responsible for that part of the cost, including the Principal's

costs, of rectifying the Contract Materials which may reasonably be attributed to the Consultant, its officers, employees, sub-consultants or agents.

As soon as possible after discovery of the Fault the party that identified the Fault will notify the other party of the Fault.

#### **4.15 Rectification of works**

For the purpose of this Clause 4.15, the word 'works' means construction works that have flowed from design works.

Where construction works were performed or completed in reliance of a Fault that was subsequently discovered in the Contract Material, the following will apply:

- a) As soon as possible after discovery of the Fault, the party that identified the Fault will notify the other party.
- b) Following notification under Clause 4.15a), and other than in cases of urgency, the Principal shall provide the Consultant an opportunity to respond to the existence of the Fault and, where agreement is reached, the Consultant shall, at its cost, prepare (or, if agreed by the Principal) be involved in the preparation of details of the rectification work to be performed, so that the Consultant has the opportunity to minimise the costs and delays resulting from rectification works. Such response by the Consultant shall be within 3 Business Days of receipt of the notice in Clause 4.15a).
- c) Where agreement is not reached within 5 Business Days of the notice in Clause 4.15a) above or where urgency precludes the opportunity for Consultant response, the Principal shall carry out the rectification works, and the Consultant must reimburse the Principal the costs for those rectification works in accordance with Clause 4.15d), and
- d) To the extent the Consultant, its employees, sub-consultants or agents were responsible for the Fault, the Consultant will be responsible for the actual cost of the rectification works incurred by the Principal including any costs of delays associated with the rectification works, and such costs will become debt due and owing by the Consultant to the Principal if not paid within the timeframe specified by the Principal.

#### **4.16 Principal's rights relating to Consultant's prequalification status**

##### **4.16.1 Acknowledgement**

The Consultant acknowledges that the Principal maintains various prequalification and registration systems (**Prequalification Systems**), which are designed to (besides other things) minimise the contractual risks associated with constructing infrastructure, reduce the risk of injury to persons or damage to property, ensure value for money in the expenditure of public funds and promote best practice in the construction industry.

#### **4.16.2 General obligation**

- a) This Clause 4.16.2 does not apply unless Item 1.5.1 of the Invitation for Offer specifies that the Consultant Services must be provided by a Prequalified Consultant.
- b) If the Consultant was required to demonstrate registration under one or more Prequalification Systems at the time of tendering for the Consultant Services, the Consultant shall maintain such registration during the Contract Term.
- c) If the Consultant fails to comply strictly with this Clause 4.16.2, such failure will be a substantial breach of the Contract.

#### **4.16.3 Loss of prequalification status**

- a) Notwithstanding anything else in the Contract, if the Consultant fails to comply strictly with Clause 4.16.2, the Principal shall be entitled (at its absolute discretion and without first issuing a show cause notice), by notice in writing to the Consultant (Prequalification Notice), to:
  - i. suspend the Consultant Services until a date specified by the Principal (where such date may be extended by the Principal giving a further notice to the Consultant), or
  - ii. terminate the Contract (including following any notice of suspension under Clause 4.16.3a)i.
- b) Where the Principal exercises a right under this Clause 4.16.3, the Principal may itself or by others complete the Consultant Services under the Contract not completed as at the date of the Prequalification Notice.

#### **4.16.4 Compensation**

Where a Prequalification Notice is issued by the Principal to the Consultant, all money which has been paid to the Consultant up to:

- a) any date the Consultant Services are suspended, or
- b) any date the Contract is terminated,

together with any pro rata amount which is payable to the Consultant for the supply of the Consultant Services performed up to the date of the Prequalification Notice, shall be in full satisfaction of all fees, expenses and claims by the Consultant under the Contract. The Principal is not otherwise liable to the Consultant for any Loss incurred by the Consultant under or in connection with the Contract arising from or in connection with the issuing of the Prequalification Notice.

#### **4.17 Principal Data**

- a) As between the Principal and the Consultant, the Principal owns all Principal Data, including any Intellectual Property Rights in Principal Data, on and from creation.
- b) The Consultant must not use, access, modify or disclose Principal Data to any person except to its Personnel on a need-to-know basis to perform the Contract and in accordance with all applicable laws.
- c) The Consultant must comply with Clause 15.15 and all applicable laws in relation to Principal Data which is Personal Information.
- d) The Consultant must provide reasonable assistance to the Principal on request to enable the Principal to comply with laws, policies and standards applicable to the Principal in relation to Principal Data, including identification, labelling, searching, reporting, copying, retrieval and modification of Principal Data in relation to Personal Information, public records, right to information and information standards.
- e) The Consultant acknowledges and agrees that, if it provides any model, formula or analytical tool under the Contract (including any Consultant Data) whether or not that model, formula or analytical tool is developed or based on any Principal Data or data of the Consultant or any other person, the Consultant must provide to the Principal all assumptions, data, logs, inputs, variables, formula and any other data or information requested by the Principal (**'Validation Data'**) for the sole purpose of enabling the Principal to test, validate and analyse the model, formula or analytical tool without the assistance or involvement of the Consultant. The use of any such Validation Data by the Consultant is subject to the confidentiality terms in Clause 15.12.
- f) The Consultant acknowledges and agrees that it must not:
  - i. disclose to
  - ii. use for the benefit of, or
  - iii. permit to be used by,  
any third party or other customers of the Consultant:
  - iv. any information or data (including any Principal Data) provided by or on behalf of the Principal to the Consultant in connection with the Contract, and
  - v. any Consultant Data that the Consultant is required to supply or develop exclusively for the Principal under the Contract or which forms part of the Deliverables,  
other than with the prior written consent of the Principal.
- g) The Consultant must promptly notify the Principal upon becoming aware of any loss, destruction or damage to any Principal Data.

## **5 Principal's responsibilities**

### **5.1 Payment**

The Principal shall pay the Consultant the Contract Amount, as modified by variations or other adjustments described in the Contract Documents.

### **5.2 Team Member removal**

The Principal may give written notice to the Consultant to remove Team Members from the work associated with the Consultant Services. In exercising this right, the Principal must act reasonably. The Consultant shall promptly comply with such notice, which may also require replacement with Personnel acceptable to the Principal.

### **5.3 Information**

#### **5.3.1 Materials provided by the Principal**

- a) The Consultant acknowledges and agrees that:
  - i. it has reviewed the Project Brief, Functional Specification and Reliance Information, and
  - ii. the Principal is relying on the skill and expertise of the Consultant in reviewing the Materials under Clause 5.3.1a).
- b) The Consultant must:
  - i. notify the Principal of any apparent inconsistencies or gaps, or manifest errors in any of the materials provided in Clause 5.3.1a)j that could be reasonably identified by the Consultant exercising the standard of professional care, skill, judgment and diligence expected of a competent professional Consultant experienced in providing the same or similar services to the Consultant Services
  - ii. determine what information it needs from the Principal to ascertain in detail the Principal's requirements for the performance of Consultant Services
  - iii. make written requests of the Principal if the Consultant considers that any document or other information (including any Principal Material) provided by or on behalf of the Principal is ambiguous or inaccurate or is insufficient to enable the Consultant to perform the Consultant Services or to understand the Principal's requirements, and
  - iv. satisfy itself that any information provided by the Principal, in response to a request by the Consultant, addresses the Consultant's concern.

- c) The Consultant acknowledges and agrees that the Contract Amount will not be adjusted in respect of any services that relate to inconsistencies or gaps, or manifest errors in any of the materials provided in Clause 5.3.1a)i that should have been reasonably identified by the Consultant and notified to the Principal in accordance with Clause 5.3.1b)i.

### **5.3.2 Principal warranties**

- a) Subject to Clauses 5.3.2b) and 5.3.2c), where the Principal provides Reliance Information, the Principal warrants that Reliance Information is accurate:
  - i. as to the information to which it pertains
  - ii. for the objective for which it was prepared
  - iii. at the time it was prepared, and
  - iv. to the best of the Principal's knowledge, at the time it was provided to the Consultant.
- b) The Principal does not warrant that the Reliance Information alone is sufficient, complete or adequate for the provision of the Consultant Services.
- c) Nothing in Clause 5.3.2a) relieves the Consultant of its obligations in Clause 5.3.1.
- d) Other than Clause 5.3.2a), the Principal makes no representation or warranty as to the accuracy, quality, completeness or adequacy of any Principal Materials.
- e) Any Principal Material which is provided after the Start Date is deemed not to be Reliance Information, unless it is specifically identified as such in writing by the Principal.

### **5.4 Principal-caused loss**

The Consultant is not liable, despite any other provisions of the Contract, for any Loss to the extent that any act or omission of the Principal, its employees or agents contributed to any Loss suffered.

This provision is in addition to and does not derogate from any right or defence that the Consultant may have under common law or legislation.

## **6 Principal Materials**

- a) The Consultant must:
  - i. take care of the Principal Materials
  - ii. only use the Principal Materials for the purpose of performing the Contract, to the extent necessary to perform the Contract, and in accordance with any requirements specified in the Contract Documents

- iii. not part with possession of the Principal Materials unless the Principal has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any Principal Materials
  - iv. not modify any Principal Materials without the prior written consent of the Principal
  - v. promptly inform the Principal of any Loss, destruction or damage (other than fair wear and tear) to any Principal Materials
  - vi. pay the costs, if any, stated in the Contract Documents for the Principal Materials, and
  - vii. comply with any instruction of the Principal for preserving, forwarding or disposing of any damaged Principal Materials at its own cost.
- b) The Consultant must comply with all Principal policies, codes of conduct, rules, standards and procedures (including in respect of work health and safety and security) which apply to the use of the Principal Materials. The Principal will provide copies of the relevant policies on request. If the Principal amends a relevant policy or introduces a new policy, code of conduct, rule, standard or procedure relevant to the Principal Material, the Principal will notify the Consultant and the Consultant must comply with the amended or new policy, code of conduct, rule, standard or procedure from the date of notification. The Principal will provide copies of the new and amended policies.
- c) Other than fair wear and tear, the Consultant bears the risk in all tangible property comprising the Principal Materials while those Principal Materials are in the possession, custody or control of the Consultant, and the Consultant must, at the election of the Principal, promptly replace such Principal Materials or pay the Principal the reasonable replacement cost of such Principal Materials.
- d) As between the Consultant and the Principal, the Principal retains all rights, title and interest (including all Intellectual Property Rights) in the Principal Materials.
- e) If any Principal Material is no longer required for the purposes of the Contract, including on termination or expiry of the Contract, the Consultant must promptly cease using it and (as applicable) return or destroy it (at the Principal's option), unless the parties agree otherwise. Without limiting Clause 15.13, the Consultant may retain a copy of any Principal Materials, that is, a document or record to the extent required by law, or for the Consultant's reasonable internal credit, risk, insurance, legal and professional responsibilities.

## **7 Contract Documents**

### **7.1 Number of copies**

The Principal is only required to supply one copy of the Contract Documents to the Consultant.

### **7.2 Ambiguities**

If either party discovers any ambiguity in any document prepared in the course of performing the Consultant Services, that party shall, as soon as possible after such discovery, notify the other party in writing of the ambiguity. If the Principal considers that the claimed ambiguity is not a Fault (in which case Clause 4.14 shall apply), the Principal shall give a Direction to the Consultant as to the interpretation to be followed by the Consultant in carrying out the Consultant Services.

### **7.3 Direction regarding ambiguities**

If a Direction under Clause 7.2 causes the Consultant to incur more or less cost than the Consultant could reasonably have anticipated at the Start Date, the difference shall be valued under Clause 9.5.1.

### **7.4 Resolving inconsistency**

In the event of any inconsistency in the Contract Documents, the document higher in the list below shall prevail to the extent of the inconsistency:

- a) this Form C7545 *General Conditions of Contract*
- b) the Supplementary Conditions of Contract
- c) the Project Brief and the Functional Specification
- d) Form C7586 *Offer for Consultant Service – Non-Price Component*
- e) Form C7587 *Offer for Consultant Service – Price Component*, and
- f) any other documents specified in the Letter of Acceptance, or equivalent.

## **8 Commencement, progress and other time issues**

### **8.1 Commencement and completion**

The Consultant shall commence the Consultant Services within 7 calendar days of the Start Date and shall proceed with due expedition and without delay and complete the Consultant Services by each Date for Completion.

## **8.2 Program**

- a) The Consultant shall submit to the Principal a Contract program within 2 weeks of the Start Date for approval by the Principal.
- b) The Consultant shall not, without reasonable cause, depart from:
  - i. a program included in the Contract, or
  - ii. a program furnished to the Principal.
- c) The submission of a Contract program does not relieve the Consultant of any obligations under the Contract including the obligation to not, without reasonable cause, depart from an earlier program.

## **8.3 Access to Principal**

Working hours for this Contract, where access to the Principal is involved, are between 9.30 AM and 4:00 PM on Business Days, unless otherwise agreed between the parties in writing.

## **8.4 Force Majeure Events**

- a) A party will not be liable for any delay in or for any failure to perform its obligations under the Contract to the extent that it is able to demonstrate that such delay or failure has been caused by a Force Majeure Event.
- b) A party prevented from performing any of its obligations under the Contract by a Force Majeure Event, must:
  - i. notify the other party, as soon as it is affected by the Force Majeure Event, of
    - A. details of the Force Majeure Event
    - B. delay arising from the Force Majeure Event
    - C. obligations it is prevented and/or likely to be prevented from performing under the Contract, and
    - D. its plans to work around or minimise the impact of the Force Majeure Event, and
  - ii. make all reasonable efforts to minimise the effects of the Force Majeure Event.
- c) If the affected party is prevented from performing its obligations under the Contract for 30 calendar days or such other period agreed in writing, then the other party may terminate the Contract by notice in writing to the affected party.

### **8.5 Principal-initiated extension of time**

The Principal may, in its sole and absolute discretion and without being under any obligation to do so, at any time and from time to time by notice in writing to the Consultant extend a Date for Completion for any reason.

### **8.6 Consultant initiated extension of time**

- a) The Consultant may request an extension of time to a Date for Completion if, and only to the extent that the Consultant:
  - i. is or will be delayed in achieving the applicable Date for Completion by an Extension Event
  - ii. notifies the Principal of the delay or potential delay as soon as practicable, and in any event within 2 Business Days of the Consultant becoming aware of the cause or potential cause of the delay, providing the Principal:
    - A. the details of the Extension Event, including the nature and impact of the Extension Event
    - B. the period by which the Consultant considers the applicable Date for Completion should be extended, and
    - C. the Consultant's plans to work around or minimise the impact of the Extension Event,
  - iii. makes all reasonable efforts to minimise the effects of the delay, and
  - iv. continues to perform this Contract to meet the Date for Completion until the Principal makes a determination in accordance with Clause 8.6b).
- b) Within 10 Business Days of receiving the notice from the Consultant under Clause 8.6a)ii, the Principal must make a determination in respect of the Consultant's request for the extension of the Date for Completion.
- c) If the Principal, acting reasonably, is satisfied that the Consultant has complied with Clause 8.6a) and that the Date for Completion should be extended by the period requested by the Consultant, the Principal will extend the Date for Completion as requested.
- d) If the Principal, acting reasonably, is not satisfied that:
  - i. the Consultant has complied with Clause 8.6a), or
  - ii. the Date for Completion should be extended by the period requested by the Consultant,

the Principal may either:

- iii. reject the extension request, in which case the original Date for Completion continues to apply, or
  - iv. extend the Date for Completion by a period which the Principal considers reasonable.
- e) Without limiting any other obligations of the Consultant under this Contract, the Consultant must maintain detailed records of all Extension Events, including the nature and impact of the Extension Events and the efforts taken to minimise the effects of the delay. The Consultant must, upon request by the Principal, provide such records to the Principal.

## **8.7 Collaborative agreement**

The Principal and the Consultant agree that, during the Contract Term, they intend to:

- a) cooperate to ensure timely progress and fulfilment of the Contract
- b) act reasonably with respect to matters that arise out of, or in connection with, the Contract
- c) perform obligations so as to avoid hindering the performance of the other party
- d) hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to each other on a regular basis to ensure each party is fully informed of the progress of services required under the Contract, and
- e) perform obligations and responsibilities by the dates stated in the Contract.

## **9 Payments and certificates**

### **9.1 General**

#### **9.1.1 Payment basis**

Payment by the Principal to the Consultant will be on the following basis:

- a) The Consultant shall be paid the Contract Amount for performing the Consultant Services. No additional amounts are payable to complete the Consultant Services unless otherwise provided for in this Contract or the parties expressly agree in writing.
- b) If a Lump Sum applies, the Consultant shall invoice the Principal for the Lump Sum after the Consultant Services have been completed and accepted by the Principal, or at milestone events as may be specified in the Contract Amount, or as otherwise agreed in writing, and

- c) If a Unit Rate applies, the Contract Amount is ascertained by multiplying the agreed Unit Rate (in Item 2.1 of the Form *C7587 Offer for Consultant Service – Price Component*) by the appropriate measured or agreed quantities, totalling such products and adding any offered and accepted Lump Sums. The Consultant shall invoice the Principal monthly on the last Business Day of each month, and once on the Date of Completion. Such Tax Invoices shall contain full details of the Consultant's Personnel involved and their hours charged for that period.

### **9.1.2 Travelling and other expenses**

- a) Unless set out in the Contract Documents or otherwise agreed in writing, the Consultant is responsible for all travelling expenses, costs of consumables and office expenses incurred in providing the Consultant Services.
- b) Where any travelling expenses, costs of consumables and office expenses are agreed to be paid by the Principal, details of all relevant travelling expenses, costs of consumables and office expenses must be included on the invoice issued by the Consultant to the Principal. Such costs, where appropriate shall be payable to the Consultant at the specified rate or as agreed in writing between the Principal and the Consultant. No additional costs will be paid unless approved in advance by the Principal.

### **9.1.3 Payment for 'if ordered' items**

The Principal is not required to pay for an item marked 'if ordered' included in Item 2.1 of the Form *C7587 Offer for Consultant Service – Price Component* except where the Principal gives a written instruction to the Consultant directing the Consultant to carry out services under that item. The amount payable for that item depends on whether the services are carried out by:

- a) the Consultant, in which case, the amount is the agreed Lump Sum, or the amount determined by multiplying the agreed Unit Rate (in Item 2.1 of the Form *C7587 Offer for Consultant Service – Price Component*) by the measured quantity for that item, or
- b) a sub-consultant to the Consultant, in which case, the amount is the agreed lump sum or the amount determined by multiplying the agreed Unit Rate (in Item 2.1 of the Form *C7587 Offer for Consultant Service – Price Component*) by the measured quantity for that item plus the percentage for profit and attendance stated in Item 2.2A of the Form *C7586 Offer for Consultant Service – Non-Price Component*.

## **9.2 Tax Invoices / General Services Tax (GST)**

### **9.2.1 Preparation of / action on Tax Invoices**

The following apply to Tax Invoices:

- a) The Consultant must prepare a Tax Invoice for any payment it is due to receive under this Contract and forward it to the Principal's address nominated in Item 3.2 of the Invitation for Offer for payment
- b) A Tax Invoice must meet the requirements of the GST Acts, and also include:
  - i. the Consultant's Australian Business Number (ABN)
  - ii. relevant order numbers supplied by the Principal
  - iii. the dates / periods of time to which the Tax Invoice applies
  - iv. details of Consultant Services to which the Tax Invoice relates, and
  - v. any other information required by the Principal.
- c) The Principal shall not consider any Tax Invoice from the Consultant where the Consultant's current ABN has not been included and/or the Consultant is not registered for GST
- d) If the Principal discovers that the Consultant does not have a valid ABN, the Principal will withhold from the Consultant all sums that the Principal is required to withhold under the GST Acts
- e) Where the Consultant is registered for GST, payment is conditional on the Principal receiving from the Consultant a Tax Invoice together with any additional required documentation. Any purported Tax Invoice that does not comply with relevant requirements will not be paid by the Principal, and
- f) The Principal may at any time, without the prior receipt of a Tax Invoice, make a progress payment to the Consultant.

### **9.2.2 Examination of Tax Invoices**

- a) The Principal shall, within 15 Business Days of receipt of the Consultant's Tax Invoice at the nominated place, either:
  - i. provide the Consultant with a payment schedule which:
    - identifies the Tax Invoice to which it responds

- states the amount of the payment, if any, that the Principal proposes to make, and
  - if the amount proposed to be paid is less than the amount stated in the Tax Invoice – states why the amount proposed to be paid (that is, the undisputed amount) is less, including the Principal’s reasons for withholding any payment, in which case the Consultant must provide the Principal with a revised Tax Invoice for the reduced amount within 3 Business Days of receipt of the Principal’s payment schedule, or
- ii. pay the Tax Invoice in accordance with Item 2.2B of the Form C7586 *Offer for Consultant Service – Non-Price Component*, in which case, for the avoidance of doubt, the Principal is not required to provide the Consultant with a payment schedule.
- b) In the event that the Principal disputes the whole or any part of the Tax Invoice, the Principal shall provide the written reasons for the dispute and pay the Consultant within 20 Business Days of receipt any undisputed amount for which a Tax Invoice has been issued under Clause 9.2.2a). The Principal is not obliged to pay any amount in dispute until the dispute has been resolved.
- c) If a party fails to pay monies payable under the Contract by the due date for payment, that party shall, except to the extent that Section 67P of the *QBCC Act* applies, pay the other party interest on the amount payable at the ‘Annual Rate of Interest for Overdue Amounts’ specified in Item 1.8 of the Invitation for Offer (or where no rate is specified, an annual rate of 10%) for each day that the amount is unpaid.

### **9.3 Set-off**

The Principal may, on 7 days’ prior written notice to the Consultant, set off any amounts owing by the Consultant to the Principal under the Contract, against any amounts payable by the Principal to the Consultant under the Contract.

### **9.4 Variations**

#### **9.4.1 Directions**

The following apply to Directions under this Contract:

- a) if, pursuant to a provision of the Contract enabling the Principal to give Directions, the Principal gives a Direction, the Consultant must comply with the Direction
- b) except where the Contract otherwise provides, a Direction may be given orally, but the Principal shall as soon as practicable after giving an oral Direction, confirm it in writing

- c) if the Consultant, in writing, requests the Principal to confirm an oral Direction, the Consultant is not bound to comply with the Direction until the Principal confirms it in writing, and
- d) for the avoidance of doubt, the Principal shall be entitled to have any omitted work carried out by other Consultants.

#### **9.4.2 Variation for Principal Direction**

The Principal may make a Direction to vary the Contract to:

- a) increase or decrease the scope of the Consultant Services
- b) omit any part or the balance of the Consultant Services
- c) change the quantity or quality of any part of the Consultant Services, or
- d) change the Consultant's obligations under the Contract.

#### **9.4.3 Principal-initiated variation**

- a) Upon receipt of a Direction under Clause 9.4.2 in writing from the Principal advising the Consultant of a proposed variation, the Consultant shall advise the Principal whether the proposed variation can be reasonably implemented.
- b) If the Consultant considers that the proposed variation can be reasonably implemented, the Consultant shall advise the Principal of the effect which the Consultant anticipates that the proposed variation will have on the program and any Date for Completion and provide an estimate of the costs (including delay costs, if any) to implement the proposed variation.
- c) If the Consultant considers that the proposed variation cannot be reasonably implemented, the Consultant shall advise the Principal of the reasons for its conclusion as soon as reasonably possible.
- d) Where the Consultant advises that the proposed variation can be reasonably implemented, the variation shall, unless otherwise agreed in writing between the parties, be priced in accordance with Clauses 9.5.1 and 9.5.2.
- e) Where the Principal and the Consultant agree on a proposed variation, the Principal may Direct the Consultant in writing to carry out the variation for the agreed price and according to the agreed timing.
- f) Where the Principal and the Consultant cannot agree upon the price and/or timing for a proposed variation that can reasonably be implemented, the Principal may direct the Consultant to proceed with the variation by delivery of a written Direction to carry out the variation, which shall be valued under Clauses 9.5.1.

#### **9.4.4 General rules for Principal initiated variations**

- a) The Principal shall reimburse the Consultant for the costs of complying with a variation under Clause 9.4.3, such costs, if not otherwise agreed in writing between the parties, to be valued in accordance with Clauses 9.5.1 and 9.5.2.
- b) Unless otherwise agreed in writing, the Consultant is not bound to implement a variation which is directed after the Date of Completion.
- c) The Principal will complete a valuation of the proposed variation and advise the Consultant of the price prior to the commencement by the Consultant of the implementation of that variation, unless otherwise agreed in writing between the parties.
- d) Where a variation is ordered, the Principal may grant an extension of time to a Date for Completion in accordance with Clause 8.5.

#### **9.4.5 Consultant initiated variation – Principal Direction**

- a) If the Consultant considers that the Principal has given a Direction, (including any matter raised by way of discussion either directly, or via a meeting or minutes of a meeting), and the Principal has not issued a Direction pursuant to Clause 9.4.2, then the Consultant must, within 14 calendar days of receiving the Direction, notify the Principal in writing that it considers a Direction has been made.
- b) If a notice under Clause 9.4.5a) is not delivered within 14 calendar days, the relevant matter will be considered part of the scope for the Consultant Services and the Principal is not obliged to agree to any variation relating to that matter.
- c) Within 7 calendar days of receiving a notice under Clause 9.4.5a), the Principal shall confirm in writing whether or not the Direction is a variation to the Contract. If the Principal confirms that the Direction is a variation to the Contract, it shall be valued in accordance with Clauses 9.5.1 and 9.5.2.
- d) If the Principal fails to respond within the time limits in Clause 9.4.5b), then the Direction will be deemed to be a variation and the Principal shall, within a reasonable time, direct the Consultant, by delivery of a written variation order, to carry out the variation, which shall be valued under Clauses 9.5.1 and 9.5.2.
- e) If the Consultant does not agree with the above response from the Principal, the Consultant may, within 14 calendar days of receiving the Principal's Direction, refer the matter for resolution in accordance with the dispute procedures in Clause 14.
- f) Where a variation is ordered, the Principal may grant an extension of time to a Date for Completion in accordance with Clause 8.5.

#### **9.4.6 Change in a Legislative Requirement**

- a) This Clause 9.4.6 applies to a new Legislative Requirement or a change in a Legislative Requirement which:
  - i. takes effect after the Start Date
  - ii. would not have been reasonably foreseeable to a competent professional Consultant experienced in providing the same or similar services to the Consultant Services as at the Start Date, and
  - iii. necessitates a material change to the Consultant Services.
- b) Where an event described in Clause 9.4.6a) occurs, the Consultant must notify the Principal of the change and provide the Principal with details of the impact of the change on the Consultant, and any other information reasonably requested by the Principal relevant to it understanding the impact of the change.
- c) On receipt of a notice under Clause 9.4.6b) the Principal may make a Direction under Clause 9.4.2 to vary the Consultant Services.

#### **9.4.7 Other Consultant initiated variations**

- a) The Consultant may request the Principal to consider a proposed variation (other than arising from a Principal Direction) at any time, including but not limited to:
  - i. for an extension to the Date for Completion
  - ii. where, subject to Clause 5.3.1b), the Reliance Information is inaccurate, or
  - iii. where new Reliance Information is provided after the Start Date.
- b) The Principal may, acting reasonably, approve or reject a variation proposed under Clause 9.4.7a) in writing. Such approval may be conditional, and the Consultant shall comply with such conditions if it implements the variation.
- c) Unless the Principal otherwise directs in the notice approving a variation requested by the Consultant, the Consultant is not entitled to:
  - i. an extension of time to a Date for Completion, or
  - ii. extra payment, in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved.
- d) For the avoidance of doubt, the Consultant is not required to perform any additional services unless and until a variation has been approved by the Principal.

## **9.5 Valuation of variations**

### **9.5.1 Arriving at valuation**

Where the Contract provides that valuation of a proposed variation or variation is to be made under Clauses 9.5.1 and 9.5.2, the amount payable to the Consultant, or to be deducted from the Contract Amount (as applicable), will be determined by the Principal as follows:

- a) if the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used
- b) if Clause 9.5.1a) does not apply, the rates or prices in Item 2.2 'Unit Rates' of the Form C7587 *Offer for Consultant Service – Price Component* shall be used to the extent that it is reasonable to use them
- c) to the extent that neither Clause 9.5.1a) or 9.5.1b) apply, reasonable rates or prices shall be used in any valuation made by the Principal
- d) in determining any reduction in scope of the Consultant Services required by a variation, the deduction shall include a reasonable amount for profit and overheads
- e) if any component of the valuation is for an increase or decrease in a fee or charge, or a new fee or charge to comply with statutory requirements, the value of the fee or charge shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit, and
- f) if the valuation relates to extra costs incurred by the Consultant for delay or disruption caused by an act or omission of the Principal, or the Principal's employees, Contractors or agents (other than the Consultant) or any other third party (except the Consultant's sub-consultants), the valuation shall include a reasonable amount for profit and overheads.

### **9.5.2 Variation quotation**

- a) The Principal may, to assist in determining its valuation under Clause 9.5.1, direct the Consultant to provide a detailed quotation for carrying out a variation, supported by evidence of the basis of its measured / estimated quantities, rates and Lump Sums.
- b) When the Principal directs the Consultant to support an estimate of cost or quotation with evidence of the basis of its measured / estimated quantities, rates and lump sums, the Principal shall allow the Consultant the reasonable cost of preparing the measurements or other evidence of cost that has been incurred over and above the reasonable overhead cost.

## **10 Liability terms**

### ***10.1 Limitation of liability of Consultant***

To the extent permitted by law and subject to the other provisions in this Clause 10, the Consultant's total liability for any Loss suffered or incurred by the Principal under or in connection with this Contract is limited to the greater of:

- a) \$20M, or
- b) the limit of cover of the professional indemnity insurance that the Consultant is required to hold, as specified in Item 1.10 of the Invitation to Offer.

### ***10.2 Limitation of liability of Principal***

To the extent permitted by law and subject to the other provisions in this Clause 10, the Principal's total liability for any Loss suffered or incurred by the Consultant under or in connection with this Contract is limited to \$20M.

### ***10.3 Exclusion of Consequential Loss***

Notwithstanding any other provision of the Contract, but subject to Clause 10.4, neither party will be liable for any Consequential Loss suffered or incurred by the other party under or in connection with this Contract.

### ***10.4 Uncapped Losses***

The limitation of liability under Clause 10.1, and the exclusion of liability for Consequential Loss under Clause 10.3, do not apply to any Loss arising out of or in connection with:

- a) any breach of Legislative Requirements
- b) any infringement of Intellectual Property Rights or Moral Rights
- c) any personal injury (including sickness or death) to any person
- d) any loss of or damage to any real or personal property of the other party caused by the other party or its Personnel (to the extent that the party suffers loss or damage, including in connection with a claim by a third party), other than where the loss of, or damage to tangible property is caused by the rendering, or failure to render, professional services by (or on behalf of) the Consultant
- e) breach of Clause 15.12 (Confidential Information) or Clause 15.15 (Privacy and Security Requirements), or
- f) any wilful misconduct, fraud or unlawful conduct of the other party or any of its Personnel.

## **10.5 Consultant's indemnity**

- a) Subject to Clauses 10.1, 10.6 and 10.7, the Consultant releases and indemnifies the Principal and its Personnel from and against any Loss (including legal expenses on a party and party basis) suffered or incurred by any of them, whether in Contract, tort (including negligence) or otherwise, arising directly or indirectly from any:
- i. failure by the Consultant or its Personnel to comply with applicable Legislative Requirements
  - ii. fraudulent, negligent or unlawful act or omission of the Consultant or its Personnel
  - iii. negligent act or omission of the Consultant or its Personnel resulting in or contributing to:
    - any death or injury to persons, or
    - any loss or damage to real or tangible property
  - iv. claim by a third party that any Material created or provided by the Consultant or its Personnel or the use of any such Material in accordance with the Contract infringes the Intellectual Property Rights or Moral Rights of that third party, or
  - v. breach by the Consultant or its Personnel of any obligation under the Contract.
- b) The indemnity in this Clause 10.5 does not exclude any other right of the Principal to be indemnified or compensated by the Consultant.

## **10.6 Proportional reduction in liability**

Each party's liability to the other party under or in connection with this Contract shall be reduced, to the extent permissible by law, proportionally to the extent caused by a negligent or other wrongful act or omission of the Principal or its officers, employees, agents or other Contractors of the Principal contributed to the Loss.

## **10.7 Duty to mitigate**

A party will not be liable for any additional Loss suffered or incurred by the other party under or in connection with this Contract to the extent that the other party fails to take reasonable steps to mitigate that additional Loss.

# **11 Insurance**

## **11.1 Consultant insurance**

- a) Subject to Clause 11.1e), the Consultant must, at its cost and by the Start Date, take out and maintain, or be insured under, the insurance policies described in the Invitation for Offer with an insurer authorised and licensed to operate in Australia or otherwise with an

insurer with a security rating of A – or better from AM Best (or equivalent rating organisation), on terms that are reasonably commercially available.

- b) The Consultant must promptly notify the Principal if any required insurance policy is cancelled or there is any significant change in any of those policies which may impact the Consultant's ability to meet its obligations under the Contract.
- c) The Consultant must maintain all required insurance policies which are maintained on a 'Claims made' basis for a minimum period of 7 years after the Contract ends, or such other period specified in the Invitation for Offer.
- d) The Consultant must, on request, promptly provide to the Principal an insurance certificate of currency confirming that the Consultant has effected and renewed or is insured under the insurance policies described in the Invitation for Offer.
- e) The Principal may at its sole discretion, agree to the Consultant being self-insured provided that the Consultant provides the Principal with such supporting documentation as may be required by the Principal, including the Consultant's financial records (limited to publicly available financial records where the Consultant or its related body corporate is publicly traded).
- f) The Consultant must ensure that the Principal's rights and interests under the Contract are noted under its public liability and products liability insurance policy described in the Invitation for Offer.
- g) To the extent permitted by a Legislative Requirement, where multiple insured parties are insured under a public liability insurance policy required under this Clause 11, the Consultant must:
  - i. ensure that the public liability policy of insurance held, or required to be held, by the Consultant under this Clause 11 contains a cross-liability clause, a non-vitiation clause and a waiver of subrogation by the insurer(s) in favour of the Principal, and
  - ii. the Principal is an additional insured under the public liability policy of insurance.

### **11.2 Consultant insurance of employees**

The Consultant shall effect and maintain insurance to cover the Consultant against liability for claims arising from death of or injury to the Consultant's employees in carrying out its obligations under the Contract. Such insurance shall be in accordance with any relevant statute dealing with workers' compensation or employer liability and shall include any liability imposed by statute and the common law. The Consultant shall take reasonable actions to ensure that any sub-consultants carrying out any part of the Consultant Services are similarly covered for such claims.

### **11.3 Sub-consultant insurance**

The Consultant shall ensure all other parties contracted by the Consultant to carry out the Consultant Services, have suitable professional indemnity and public liability insurance for the services to be performed by that other party.

## **12 Intellectual Property**

### **12.1 Intellectual Property Rights in Contract Materials**

- a) Unless otherwise specified in Item 1.11 of the Invitation for Offer, all right, title and interest (including Intellectual Property Rights) in and to all Contract Materials will vest solely and exclusively with the Principal upon creation.
- b) The Consultant must do all things necessary, including execute such documents or procure its Personnel to execute such documents, to give effect to Clause 12.1a) as applicable.
- c) If Item 1.11 of the Invitation for Offer specifies any Contract Material to be owned by the Consultant, the Consultant grants to the Principal a perpetual, irrevocable, royalty-free, transferrable, sub-licensable, and non-exclusive licence to access, use, reproduce, communicate, adapt and modify that Contract Material for any purpose.

### **12.2 Background IP**

- a) Except as expressly provided in this Contract, nothing in this Contract assigns to the other party any right or interest in the other party's Background IP. Each party acknowledges and agrees that each party continues to retain ownership of its own Background IP.
- b) The Consultant grants to the Principal a perpetual, irrevocable, royalty-free, transferrable, sub-licensable, and non-exclusive licence to access, use, reproduce, communicate, adapt, and modify its Background IP for any purpose.
- c) The Principal grants to the Consultant a limited, revocable, royalty-free, and non-exclusive licence to access, use and reproduce its Background IP for the Contract Term and only to the extent necessary for the Consultant to perform the Consultant Services.

### **12.3 Third-Party Material**

If the Consultant Materials or Contract Materials incorporate any Third-Party Material, the Consultant must grant (or procure the grant by the applicable third party) to the Principal a perpetual, irrevocable, royalty-free, transferrable, sub-licensable and non-exclusive licence to

access, use, reproduce, and adapt the Third-Party Material incorporated in the Contract Materials for any purpose.

### **12.4 Moral Rights**

- a) If the Consultant is an individual, the individual consents to any act or omission done by the Principal in the exercise of the Intellectual Property Rights in the Contract Materials under this Contract that might otherwise constitute an infringement of the individual's Moral Rights, and without limitation the individual consents to:
  - i. the Principal determining in its entire discretion whether or not the individual will be attributed as an author of the Contract Materials and if the individual will be attributed, that attribution will occur in a manner acceptable to the Principal
  - ii. any amendments deletion, destruction, alterations, relocation or selection of the Contract Materials (or part thereof) at the discretion of the Principal, and
  - iii. the publication or communication of the Contract Materials or any part thereof.
- b) Where the Consultant is not an individual, before any individual commences work in respect of the Contract Material on behalf of the Consultant, the Consultant shall obtain from that individual, in writing, and provide to the Principal, on request:
  - i. all consents, permissions and assignments to enable the Principal to exercise in full, without cost to the Principal and without impediment, the rights granted under this Clause 12.4, and
  - ii. without limiting Clause 12.4b)i, a consent to any act or omission which would otherwise infringe the Moral Rights of that individual. If requested by the Principal, such consent will be in a form specified by the Principal.

### **12.5 Indemnity**

The Consultant releases and indemnifies the Principal from and against all actions which may be brought or made against the Principal by any person, including the Consultant, arising from any infringement or alleged infringement of any Intellectual Property Rights or Moral Rights in respect of the Contract Materials and any other Materials produced by or on behalf of the Consultant.

## **13 Suspension, termination of the Contract**

### **13.1 Suspension**

#### **13.1.1 Suspension by Principal**

The Principal may, at any time, require the Consultant to suspend the progress of the whole or part of the Consultant Services for such time as the Principal advises to the Consultant:

- a) by reasonable notice in writing from the Principal for any reason, or
- b) by immediate notice in writing in the event that the Consultant or an employee or sub-consultant of the Consultant acts or omits to act in such a way as to, in the opinion of the Principal, require immediate suspension of the Consultant Services.

#### **13.1.2 Suspension by Consultant**

For all other situations where the Consultant wishes to suspend the whole or part of the Consultant Services, the Consultant shall obtain the prior written approval of the Principal. The Principal may approve of the suspension and may impose conditions of approval.

#### **13.1.3 Recommencement by Principal**

As soon as the Principal becomes aware or is satisfied on reasonable grounds that the reason for any suspension under Clause 13.1.1 no longer exists, the Principal shall direct in writing the Consultant to recommence work on the whole or on the relevant part of the Consultant Services, which were suspended.

#### **13.1.4 Recommencement by Consultant**

If the Consultant Services are suspended pursuant to Clause 13.1.2, the Consultant may recommence the Consultant Services at any time after reasonable advance notice to the Principal.

#### **13.1.5 Costs of suspension**

- a) Where the Principal directs the Consultant to suspend the Consultant Services under Clause 13.1.1a), any reasonable costs incurred by the Consultant by reason of the suspension shall be valued under Clauses 9.5.1 and 9.5.2 and borne by the Principal.
- b) Any cost incurred by the Consultant by reason of a suspension under Clauses 13.1.1b) and 13.1.2 shall be borne by the Consultant but if the suspension is due to an act or omission of the Principal or an employee, Consultant, or agent of the Principal and the suspension causes the Consultant to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under Clauses 9.5.1 and 9.5.2. The amount payable under this clause will be

adjusted so the Consultant is not liable to bear costs that arose due to the act or omission of the Principal or an employee, Consultant, or agent of the Principal.

### **13.1.6 Associated extension of time**

Suspension does not affect any Date for Completion, but the cause of suspension may be a ground for an extension of time under Clause 8.5.

## **13.2 Termination**

### **13.2.1 Principal payments**

In the event of a termination under Clauses 8.4c) or 13.2.6, the Consultant is entitled to seek payment for the cost of completed Consultant Services based on a reasonable percentage for Lump Sum items having regard to progress, and based on actual time for schedule of rates items.

### **13.2.2 Principal initiated termination**

Where an event listed in Clause 13.2.3 occurs, the Principal may issue a written notice to the Consultant:

- a) suspending payment under the Contract
- b) notifying the Consultant in writing of the reason for the notice, and
- c) requiring the Consultant to show cause as to why the Contract should not be terminated within 14 calendar days of the date when the notice is deemed to be served.

### **13.2.3 Basis for Principal action**

A notice under Clause 13.2.2 may be served where:

- a) the Consultant fails to observe or perform a material obligation of the Contract
- b) the Consultant Services performed by the Consultant are otherwise unsatisfactory to the Principal (in the Principal's reasonable opinion)
- c) the Consultant fails to comply with a Direction of the Principal given in accordance with the provisions of the Contract
- d) the Consultant assigns any of its benefits or purports to assign, sub-let or otherwise divest itself of any of its obligations without the written consent of the Principal
- e) the Consultant abandons or refuses to proceed with the supply of Consultant Services whether or not it has commenced work

- f) the Consultant is not able to reasonably satisfy the Principal that the Consultant will be able to complete the Consultant Services by a Date for Completion or reach a previously agreed significant milestone
- g) the Consultant is suspended under the *Queensland Government Supplier Code of Conduct*, or
- h) the Consultant suffers an Insolvency Event.

#### **13.2.4 Principal show cause / termination notice**

If the Consultant fails within the period specified in the notice in Clause 13.2.2 to show cause to the reasonable satisfaction of the Principal as to why this Contract should not be terminated, the Principal may, without prejudice to any other rights and to the extent permitted by law, terminate this Contract on notice in writing to the Consultant.

#### **13.2.5 Termination payments**

Upon termination of the Contract pursuant to Clause 13.2.4, all money which has been paid to the Consultant up to the date of termination, together with any pro rata amount which is payable to the Consultant for the supply of Consultant Services performed up to the date of termination shall be in full satisfaction of all fees, expenses and claims by the Consultant under this Contract.

#### **13.2.6 Termination for convenience**

- a) In addition to any other right available to the Principal to terminate the Contract, the Principal may, at its absolute discretion and without cause, terminate the Contract by giving no less than 20 Business Days written notice to the Consultant, other than where the Principal is unable to give such advance notice in order to comply with a mandatory order or Ministerial direction, Machinery of Government Change or change in law or Legislative Requirements.
- b) The Principal may itself or by others complete the work under the Contract not completed at the date of termination under this Clause.
- c) Within 28 calendar days after the issues of the notice of termination in accordance with this Clause the Principal must (subject to the Principal's rights under or in connection with the Contract including to withhold or set off payments and recover damages) pay the Consultant, as the Consultant's sole compensation and remedy in relation to the termination, any amount determined under Clause 13.2.1 to be owing to the Consultant. The Principal is not otherwise liable to the Consultant for any cost, loss, expense or damage incurred by the Consultant under or in connection with the termination of the Contract.

- d) Within 28 calendar days after the issue of the notice of termination, the Consultant shall deliver to the Principal's address nominated in the termination notice all Contract Materials created in relation to the Contract including any drawings, specifications and other information, samples, models, patterns and the like created in relation to the Contract. The Consultant may retain one copy subject to the provisions of Clause 15.12.1 for its professional record-keeping requirements.

## 14 Disputes

- a) If any dispute arises concerning the Contract, it must be resolved according to this Clause 14.
- b) Either party may give the other a Notice of Dispute. Within 5 Business Days after the date on which a party gives the other party a Notice of Dispute, representatives of the parties must meet and use reasonable endeavours to resolve the dispute.
- c) If the dispute is not resolved under Clause 14b), senior management representatives of the parties must, within 10 Business Days after the date of the Notice of Dispute, meet and use reasonable endeavours to resolve the dispute.
- d) If the dispute is not resolved under Clause 14c), the dispute must be referred to each party's Director-General / Chief Executive Officer (or their nominee) for resolution.
- e) If the dispute is not resolved under Clause 14d) within 30 Business Days after the date of the Notice of Dispute (or such other time as agreed between the parties), the dispute must be referred to mediation according to Clause 14f).
- f) Where the dispute is referred to mediation, the parties:
  - i. will conduct the mediation in Brisbane
  - ii. will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the Queensland Chapter of the Institute of Arbitrators and Mediators Australia will determine the mediator
  - iii. may be legally represented at the mediation
  - iv. will each bear their own costs concerning the mediation, the mediation venue and the mediator, and
  - v. will continue to perform their obligations under the Contract notwithstanding the existence of a dispute.
- g) Nothing in this Clause 14 will prevent a party from seeking urgent injunctive relief from a court of competent jurisdiction.

## **15 General**

### **15.1 Survival**

- a) The following clauses will survive termination or expiration of this Contract:
  - i. Clause 4.2 (Consultant's Obligations)
  - ii. Clause 10 (Liability Terms)
  - iii. Clause 11 (Insurance)
  - iv. Clause 12 (Intellectual Property)
  - v. Clause 15.1 (Survival)
  - vi. Clause 15.6 (Applicable Law)
  - vii. Clause 15.12 (Confidential Information)
  - viii. Clause 15.14 (Right to Information)
  - ix. Clause 15.15 (Privacy and Security Requirements), and
  - x. Clause 15.17 (Record-keeping Requirements).
- b) For the avoidance of doubt nothing in this Clause 15.1 prevents any other provisions of the Contract, as a matter of interpretation, also surviving the termination or expiry of the Contract.

### **15.2 Collusion**

The Consultant warrants and represents to the Principal that:

- a) it had no knowledge of the proposed fees of any other offeror for the Consultant Services at the time of submission of its offer
- b) except as disclosed in its offer, it has not entered into any Contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade or industry association (above the published standard membership fee) or to or on behalf of any other offeror in relation to this offer or any Contract to be entered into consequent to that offer, nor paid or allowed any money on that account, nor will it pay or allow any money on that account
- c) except by prior agreement with the Principal, it has not paid or allowed 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 nor received any money or allowance from or on behalf of any other offeror in relation to its offer or this consequent Contract, nor will it pay or allow or receive any such monies, and

- d) if, without the Principal's prior agreement, it receives or has received any money or allowance from or on behalf of any other offeror in relation to its offer, the other offeror's offer or this Contract, then without prejudice to any other right or remedy of the Principal, the Consultant agrees that such money or allowance is deemed to be held by the Consultant on trust for the Principal and shall be paid to the Principal immediately.

### **15.3 Conflict of Interest**

- a) The Consultant warrants that it and its officers, employees and sub-consultants:
- i. do not hold any office or possess any property
  - ii. are not engaged in any business or activity, or
  - iii. do not have any obligations,
- where a Conflict of Interest is created or might appear to be created, in conflict with the Consultant's obligations under the Contract, except as disclosed in the Contract Documents.
- b) If, during the Contract Term, a Conflict of Interest arises, or appears likely to arise, the Consultant must notify the Principal promptly and take such steps to resolve or otherwise deal with the Conflict of Interest to the reasonable satisfaction of the Principal.
- c) If the Principal requests, the Consultant must obtain from its Personnel a signed Conflict of Interest declaration in a form acceptable to the Principal.

### **15.4 Criminal organisation**

The Consultant must ensure that neither the Consultant and, to the best of its knowledge and belief having made all reasonable enquiries, its officers, employees and sub-consultants, have been convicted of an offence under the Criminal Code set out in Schedule 1 of the *Criminal Code Act 1899* (Qld) where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

### **15.5 Severability**

If any provision of the Contract is illegal, void, invalid or unenforceable for any reason, all other provisions that are self-sustaining and capable of separate enforcement shall, to the maximum extent permitted by law, be and continue to be valid and enforceable.

### **15.6 Applicable law**

The Contract is governed by and construed in accordance with the laws for the time being in force in the State of Queensland and the parties to the Contract agree to submit to the jurisdiction of the Courts of the State of Queensland.

## **15.7 Authorised Representative**

- a) The Principal's Delegate and the Consultant's Delegates will be the Authorised Representatives of each party for the purposes of this Contract (each an '**Authorised Representative**').
- b) Each party warrants to the other party that its Authorised Representatives have the authority to provide such consents and approvals as are required for the purposes of the Contract and to issue instructions and Directions as are necessary for the purposes of the Contract, on behalf of that party.
- c) The parties will direct all enquiries relating to the Contract to the other party's Authorised Representative, or to another person if the other party directs.
- d) Any Direction, consent or approval given by any person other than a party's Authorised Representative will not bind the party unless the Direction is confirmed in writing by that party's Authorised Representative.
- e) A party may notify the other party of any replacement of its Authorised Representative from time to time (subject to Clause 4.4, where the Consultant's Delegate is a Team Member).

## **15.8 Notices**

### **15.8.1 Notices to be in writing**

All notices under the Contract shall be in writing.

### **15.8.2 Address for service**

Service of any notice on a party to the Contract shall be to the address of the party as shown in Item 3.2 of the Invitation for Offer or as subsequently advised by a notice addressed to the other party.

### **15.8.3 Method of service**

- a) Notice may be given by being:
  - i. posted to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail
  - ii. delivered by hand at the party's current address for notices
  - iii. sent by email to the party's current email address for notices, or
  - iv. given in any other way permitted by law or Legislative Requirements.

b) A notice will be deemed to be given:

i. if posted:

- within Australia to an Australian postal address, 5 Business Days after the date of posting, or
- outside of Australia to an Australian postal address or within Australia to an address outside of Australia – 10 Business Days after posting

ii. if delivered by hand during a Business Day – on the date of delivery, and

iii. if emailed – subject to Clause 15.8.3c) below, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5:00 pm (local time of the receiving party) will be deemed to be given on the next Business Day.

c) Any notice given under Clauses 8.4c), 13.2.2 or 14 which is sent by email must also be sent by post, hand delivery or in any other way permitted by law or Legislative Requirement. In such circumstances, a notice will be deemed to be given on the earlier of when the email is opened by the receiving party or at the time that the notice is otherwise brought to the attention of the receiving party by post, hand delivery or in any other way permitted by law or Legislative Requirement.

#### **15.8.4 Service of payment claims**

a) Service of payment claims by the Consultant on the Principal shall be made by forwarding or serving such claims to the Principal's Delegate.

b) The Consultant shall ensure that within 24 hours after any notice (other than a payment claim or payment schedule) under the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) is given or received by the Consultant or any sub-consultants, a copy of that notice is given to the Principal's Delegate.

### **15.9 Assignment, Change in Control and sub-contracting**

#### **15.9.1 Assignment**

Subject to Clause 15.9.2, neither party shall, without prior written consent of the other party and except on such reasonable terms and conditions as are determined in writing by that other party, assign the Contract, or any payment or any other right, benefit or interest under the Contract.

### **15.9.2 Transferability and portability of Consultant Services**

- a) Notwithstanding any other provision of the Contract, the Consultant agrees that the Principal is entitled to transfer:
  - i. the Contract, or
  - ii. any Consultant Services to other Queensland Government Bodies, on the same terms and conditions, but only as a consequence of a Machinery of Government Change.
- b) If the Consultant Services are transferred in accordance with Clause 15.9.2a)ii, the Consultant:
  - i. must immediately notify the Principal of any proposed reduction in costs which may occur, and
  - ii. may notify the Principal of any proposed additional fees for any additional costs directly incurred as a result of the provision of additional overall Consultant Services.
- c) The Consultant agrees to negotiate with the Principal in good faith to vary or consolidate the Contract to:
  - i. adjust the Contract Amount as a result of notice of the matters raised in Clause 15.9.2b), and/or
  - ii. comply with any specific requirements of the Queensland Government Body to which the Contract is transferred following the Machinery of Government Change.
- d) Any agreement that arises from Clause 15.9.2c) must be set out in writing in a document signed by the Principal's Delegate and Consultant's Delegate.

### **15.9.3 Change in Control**

- a) The Consultant must promptly provide the Principal with notice in writing of any Change in Control during the Contract Term. The Consultant must provide the Principal with all information reasonably requested by the Principal relating to the proposed Change in Control.
- b) A Change in Control of the Consultant is deemed to be an assignment of the Consultant's rights under this Contract, and Clause 15.9.1 applies to any Change in Control.

### **15.9.4 Sub-contracting**

The Consultant shall not sub-contract the whole or any part of the Consultant Services without prior written consent of the Principal which consent shall not be unreasonably withheld and may be conditional on the Consultant obtaining from the sub-consultant the Intellectual Property

Rights granted to or vested in the Principal in Clause 12 and appropriate insurance of employees, professional indemnity insurance and public liability insurance.

### **15.9.5 Consultant liability for assignees and sub-consultants**

The written consent of the Principal to assign or sub-contract will not discharge the Consultant from any liability in respect of the Contract and the Consultant is liable to the Principal for the acts and omissions of all sub-consultants and assignees and employees and agents of sub-consultants and assignees as if they were the acts and omissions of the Consultant.

### **15.10 Computer Software used to produce computer system outputs**

- a) Consultants shall use the Computer Software as nominated in Item 3.4 of the Invitation for Offer ('Computer Software') for the electronic production of design, drawings and electronic models.
- b) In addition, the Consultant is required to provide to the Principal with each work package or at a time otherwise agreed, the raw model, the design parameters that were used to generate the design model, including the input files, modifiers and macros that were applied to generate the various elements of the design model, horizontal and vertical alignment, pavement widths / depths, crossfall / superelevation, tapers, drains and batters. Where BIM has been specified in the Functional Specification, an Industry Foundation Class federated model must also be supplied to the Principal.

### **15.11 Performance reports**

- a) The Principal and Consultant shall together complete performance reports regarding the performance of the Consultant Services and delivery of the Contract Material. These reports will be used in the assessment of the Consultant's prequalification levels and will be taken into account in the award of future contracts by the Principal.
- b) Performance reporting is to be conducted during 2 phases – Pre-construction and Post-construction.
- c) The pre-construction reporting consists of 2 reports:
  - i. Form C7561 *Initiation of Contract*, and
  - ii. Form C7562 *Preconstruction Evaluation* for both milestone and finalisation of service reporting.
- d) Post Construction is one form:
  - i. Form C7563 *Post Construction* for use both during construction (to capture any issues) and after construction (to assess the constructability of the design).

- e) The Consultant shall participate in the performance reporting processes detailed in this Clause 15.11. Failure to do so will be taken into account by prequalification assessors and offer assessment panels.

## **15.12 Confidential Information**

### **15.12.1 Consultant undertaking and obligations**

- a) The Consultant hereby undertakes in respect of the Principal's Confidential Information:
  - i. to treat as confidential and not disclose (unless required by law, in which case the Consultant must promptly notify the Principal and only disclose the Confidential Information to the extent required by law), duplicate, use or permit the use of, at any time and in any way, the Confidential Information, other than for the purpose of providing the Consultant Services, and will protect fully the confidentiality of the Confidential Information, and
  - ii. to limit the disclosure of the Confidential Information to those of its officers, employees and sub-consultants to whom such a disclosure is strictly necessary for the purpose of providing the Consultant Services.
- b) Without limiting the Consultant's obligations in Clause 15.15.2, the Consultant must ensure that it implements technical and organisational measures to:
  - i. protect the confidentiality of the Principal's Confidential Information, and
  - ii. prevent unauthorised access to, or unauthorised disclosure, modification, or loss of the Principal's Confidential Information.
- c) The Consultant acknowledges that:
  - i. it is solely responsible for the damage to, or loss of, any data of the Principal (including Confidential Information and any data comprising the Principal Materials) while the data is in the Consultant's possession, custody or control, and
  - ii. damages may not be an adequate remedy for any damage to, or loss of, Confidential Information.

### **15.12.2 Publicity**

The Consultant must not:

- a) use the name of the Principal for promotion of the Consultant's business, unless the Principal has first given its written consent, which consent will not be unreasonably withheld, or

- b) make any public announcement or advertisement relating to the Contract, except where the Principal has approved the proposed public announcement or advertisement in writing.

### **15.12.3 Confidentiality and privacy deed**

If specified in the Invitation for Offer or if the Principal otherwise requests during the Contract Term, the Consultant must obtain from its Personnel (including sub-contractors) an acknowledgement of the confidentiality obligations imposed on the Consultant in the form required by the Principal.

### **15.13 Return of Materials**

Unless otherwise instructed by the Principal, all Contract Materials and Principal Materials must be returned to the Principal upon the earlier of termination or the Date of Completion. The Consultant may retain one copy subject to the provisions of Clause 15.12.1 for its professional record-keeping requirements.

### **15.14 Right to information**

For clarity, the Consultant acknowledges and agrees that information provided to the Principal may be subject to disclosure pursuant to the *Right to Information Act 2009* (Qld).

### **15.15 Privacy and security requirements**

#### **15.15.1 Personal Information**

In performing the Contract, the Consultant must:

- a) comply with Parts 1 and 2 of Chapter 2, and Section 41 of the *Information Privacy Act* as if it were any agency
- b) not use Personal Information other than for the purposes of the performance of the Consultant Services, unless required or authorised by law
- c) not disclose Personal Information without the consent of the Principal, unless required or authorised by law
- d) not transfer Personal Information outside of Australia without the consent of the Principal
- e) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to perform their duties
- f) ensure that its officers and employees do not access, use or disclose Personal Information other than in the performance of their duties

- g) 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
- h) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints, and
- i) comply with such other privacy and security measures as the Principal reasonably advises the Consultant in writing from time to time.

### **15.15.2 Cyber security risk management**

- a) The Consultant must have in place a written:
  - i. security incident response plan which must include a notification process and communication protocols with the Principal in relation to the Consultant's obligations under this Clause 15.15.2, and
  - ii. governance policies,  
that are up-to-date and consistent with all Legislative Requirements.
- b) The Consultant must, at its own cost and expense:
  - i. maintain effective cyber and information security measures to protect all information (including Principal Data) from unauthorised access, modification, use, copying, loss or disclosure
  - ii. promptly notify the Principal in writing if the Consultant becomes aware of any Data Breach, and take all reasonable steps required to prevent or stop, and mitigate the effects of, that Data Breach, and
  - iii. reasonably assist the Principal in connection with any action or investigation regarding any Data Breach, and provide any information reasonably requested by the Principal in connection with the Data Breach.
- c) Nothing in this Clause 15 is intended to limit any obligation of the Consultant under the *Information Privacy Act, Privacy Act 1988* (Cth) or other Legislative Requirement that the Consultant may have as an organisation.

### **15.16 Digital data licence agreement**

On request by the Principal in relation to digital data requirements (such as for Digital Video Roads), the Consultant must enter into a formal licence agreement with the Principal for the use of the data and software.

### **15.17 Record-keeping requirements**

The Consultant must provide the Principal with plans, drawings, specifications, documents, Contract Materials and Materials required under this Contract and the Manual at the times and the manner and form specified in the Contract and the Manual.

### **15.18 Electronic signatures for engineering drawings**

- a) Unless otherwise approved by the Principal, the Consultant must use electronic signatures for all engineering drawings produced as part of the Consultant Services.
- b) The Consultant's certification of engineering drawings must be in accordance with the Principal's Engineering Policy EP172 *Electronic Signature Policy for Engineering Drawings*, as amended from time to time. This policy can be viewed on the Principal's ['Engineering Policies'](#) webpage.

### **15.19 Entire agreement**

- a) The Contract sets out all the parties' rights and obligations relating to the subject matter of the Contract, and it supersedes all previous agreements and understandings, whether verbal or in writing, in connection with the relevant subject matter.
- b) Subject to Clause 9.4, the rights and obligations of the parties under the Contract shall not be varied except by agreement in writing between the parties.

