

1 March 2011

Dene Jamieson  
Assistant Principal Design Engineer  
NSW Public Works  
Level 13W McKell Building  
2 - 24 Rawson Place, Sydney NSW 2000

Dear Mr Jamieson,

**Re: Appointment – Professional Services for Technical Review**

I refer to your recent discussions with Barton Maher regarding the appointment of the State of New South Wales as represented by the Department of Services, Technology and Administration trading as NSW Public Works (**NSW Public Works**) to undertake an independent review of technical information related to the January 2011 Brisbane and Ipswich flood event.

To assist the Seqwater Legal Services Department in providing legal advice to Seqwater, we wish to retain NSW Public Works on the basis that Mr Len McDonald will undertake an independent review of technical information prepared for various reporting and other information requirements following the January 2011 Brisbane and Ipswich floods.

The scope of the retainer and the terms and conditions of the engagement are set out in the following attachments –

1. Consultancy Services Agreement which includes a Consultants Brief at Annexure C; and
2. Instructions for Professional Services.

The proposed fee of \$269/hr plus GST for Mr McDonald's professional services is acceptable.

Seqwater will liaise with Mr McDonald as required to agree the timeframes for completion of individual items of work under this retainer.

If the attached documents are acceptable to NSW Public Works, please arrange for the execution of the Consultancy Services Agreement and Instructions where indicated and return to me.

Please send all reports and documentation to me marked "Confidential and subject to Legal Professional Privilege".

We look forward to working with you in relation to this matter.

Yours sincerely,



Sarah Zeljko  
Manager Legal & Risk

**QFCI**

Date:

7/2/12

Exhibit Number:

1090

## INSTRUCTIONS FOR PROFESSIONAL SERVICES

A Commission of Inquiry has been established by the Queensland Government to inquire and report into a range of matters concerning the 2010/2011 floods in Queensland (*Inquiry*). One element of the broad Terms of Reference for the Inquiry is the:

*Implementation of the systems operation plans for dams across the state and in particular the Wivenhoe and Somerset release strategy and an assessment of compliance with, and the suitability of the operational procedures relating to flood mitigation and dam safety.*

Seqwater is the owner and operator of the Wivenhoe and Somerset dams in Brisbane.

The scope of your services and the relevant information we will provide you are set out in the Consultants Brief at Annexure C of the Consultancy Services Agreement.

You should rely on the information in the reports and other material we provide in making your assessment but you should not rely on any interpretation of that data in the relevant material.

Seqwater is relying on you to carry out your own research of relevant scientific literature and material to provide your own professional scientific response to the issues outlined above.

You will perform your work and form any opinion on the basis of the facts and assumptions put before you. If you are of the view that further facts or assumptions are necessary to enable your work to be performed or your opinion to be given, you will draw our attention to those matters.

If any aspect of the matter is outside your area of expertise or experience, we will rely on you to let us know and let us have your recommendation as to an expert who may be able to assist in that area.

You may be asked to perform work and ultimately to give an expert opinion on the matter referred to you. If this is the case, we will discuss what is required (including an extension to this retainer), at the relevant time.

Your retainer and all information given to you in connection with it are confidential and, except to the extent we expressly authorise in writing, will be kept confidential by you. Similarly, any documents you produce during the course of your retainer, including any report or advice, whether draft or final, are confidential and, except to the extent we expressly authorise in writing, will be kept confidential by you.

You will inform us if you have any conflicting duties or interests or if you have given any advice which may be argued to be inconsistent with any opinion which you give in this matter.

You will inform us of any matters which might be said to affect your independence and you will not take any action which will compromise your independence in any way.

In the event that the Services include the provision of any report or other written statement, or oral evidence, for the purpose of any Commission of Inquiry, court or


similar proceedings, you must comply with such guidelines as are applicable to the provision of such expert evidence at that time.

If at any time you receive a subpoena, notice or request concerning production of any documents connected with this retainer or to give evidence which may include your opinions in this matter, you will inform us immediately.

You will:

- (a) inform us if you have any conflicting interest or if you have given any advice which may be argued to be inconsistent with any opinion or advice you give us in this matter;
- (b) inform us of any matters which might be said to affect your independence; and
- (c) not take any action which will compromise your independence in any way.

The State of New South Wales as represented by the New South Wales Department of Services, Technology and Administration trading as NSW Public Works agrees to the terms set out above.

  
\_\_\_\_\_  
Signature of authorised officer

LEONARD ANGUS McDONALD  
Name of authorised officer in full



**CONSULTANCY SERVICES AGREEMENT  
FORMAL INSTRUMENT OF AGREEMENT**

**Project Name:** Review of Technical Information – January 2011 Floods

This AGREEMENT is made on 3rd day of March 2011

Between **Queensland Bulk Water Supply Authority trading as Seqwater of Level 3, 240 Margaret Street, Brisbane Queensland, 4000 ABN 75 450 239 876**

("Client")

And **The State of New South Wales as represented by the Department of Services, Technology and Administration trading as NSW Public Works of Level 13W McKell Building, 2-24 Rawson Place, Sydney NSW 2000 ABN 81 913 830 179**

("Consultant")

**BACKGROUND**

- A. The *Client* wishes to engage the *Consultant* to perform the *Services* in accordance with the requirements of this *Contract*.
- B. The *Client* and the *Consultant* agree that the *Consultant* must perform the *Services* for the *Client* on the terms of this *Contract*.

**IT IS AGREED**

1. In this *Formal Instrument of Agreement*, unless the context requires otherwise, terms used have the same meaning as defined in the *General Conditions of Contract*.
2. The *Contract* comprises the following documents:
  - (a) this *Formal Instrument of Agreement*;
  - (b) the *General Conditions of Contract* (as amended);
  - (c) the Annexures to the *General Conditions of Contract* (attached); and
  - (d) the *Brief*.
3. In the event of any ambiguity, conflict, discrepancy or inconsistency between the documents comprising this *Contract*, the order of precedence of the terms and conditions shall be as set out in clause 2 of this *Formal Instrument of Agreement*.
4. If a party discovers any ambiguity, conflict, discrepancy or inconsistency in this *Contract*, it must notify the other party as soon as possible.

**EXECUTED** as an agreement

Executed by **QUEENSLAND BULK WATER  
SUPPLY AUTHORITY TRADING AS  
SEQWATER ABN 75 450 239 876** by or in the  
presence of:



Signature of authorised officer

JAMES ROSS

Name of authorised officer in full



Signature of witness

BROOCE PETA FOXOER.

Name of witness in full

Executed for and on behalf of **THE STATE OF  
NEW SOUTH WALES** as represented by the  
**DEPARTMENT OF SERVICES,  
TECHNOLOGY AND ADMINISTRATION  
TRADING AS NSW PUBLIC WORKS:**



Signature of authorised officer

Dene Allan Samieson

Name of authorised officer in full

Signature of witness

Janel Moule.

Name of witness in full

AS 4122—2000

Australian Standard™

**General conditions of contract for the  
engagement of consultants  
(As amended)**

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This Australian Standard was prepared by Committee OB-010, Construction Industry Practice. It was approved on behalf of the Council of Standards Australia on 10 November 2000 and published on 19 December 2000.

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The following interests are represented on Committee OB-010:

Australian Chamber of Commerce and Industry  
Australian Institute of Purchasing and Materials Management  
Australian Procurement and Construction Council  
Construction Industry Engineering Services Group  
Construction Policy Steering Committee  
Law Council of Australia  
Master Builders Australia  
National Construction Council of the Australian Industry Group  
The Association of Consulting Engineers Australia  
The Royal Australian Institute of Architects

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#### Keeping Standards up-to-date

Standards are living documents which reflect progress in science, technology and systems. To maintain their currency, all Standards are periodically reviewed, and new editions are published. Between editions, amendments may be issued. Standards may also be withdrawn. It is important that readers assure themselves they are using a current Standard, which should include any amendments which may have been published since the Standard was purchased.

Detailed information about Standards can be found by visiting the Standards Australia web site at [www.standards.com.au](http://www.standards.com.au) and looking up the relevant Standard in the on-line catalogue.

Alternatively, the printed Catalogue provides information current at 1 January each year, and the monthly magazine, *The Australian Standard*, has a full listing of revisions and amendments published each month.

We also welcome suggestions for improvement in our Standards, and especially encourage readers to notify us immediately of any apparent inaccuracies or ambiguities. Contact us via email at [mail@standards.com.au](mailto:mail@standards.com.au), or write to the Chief Executive, Standards Australia International Ltd, GPO Box 5420, Sydney, NSW 2001.

## PREFACE

This Standard was prepared by the Standards Australia Committee OB-010, Construction Industry Practice, to supersede AS 4122(Int)—1993, *General conditions for engagement of consultants*.

The previous edition of this Standard was developed and issued to public comment by the Construction Industry Development Agency (CIDA) Code of Practice Working Party and forwarded to the Standards Australia Committee on Construction Industry Practice for endorsement as an Interim Australian Standard.

This edition incorporates the following major changes from the previous edition:

- (a) The Standard has been redrafted into a succinct form with greater emphasis on information to be provided by completing the Annexure.
- (b) The Clauses have been rearranged into a more satisfactory order.
- (c) A new Clause has been added on *Responsibilities and Obligations of the Client*.
- (d) New Clauses have been added on *Variations which Change the Scope of the Services, Variations due to a Change in a Legislative Requirement, Liability of Consultant, Insolvency, and Frustration*.
- (e) Replacement of the word Principal with *Client*.

This Standard originated from the building, construction and engineering industry where it will find its primary use; however, it may also find use in a broader range of fields.

### WARNINGS:

- (a) This Standard has not been developed specifically for projects where—
  - (i) the project procurement method is design and construct or a variant of that method; or
  - (ii) the Client intends to novate the Contract with the Consultant, to another party.
- (b) For the purpose of defining a contract between two parties, the two parties to this Contract are the Client and the Consultant.
- (c) The Contract should have regard to AS 4120, *Code of tendering*, and AS 4121, *Code of ethics and procedures for the selection of consultants*.



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## STANDARDS AUSTRALIA

## Australian Standard

## General conditions of contract for the engagement of consultants

## 1 INTERPRETATION

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

*Item* means an *Item* in Annexure A;

*Brief* means the *Client's* brief as stated in the *documents* listed in *Item 1*;

*Business Day* means a day that is not a Saturday, Sunday or a public holiday in Brisbane, Queensland or 27, 28, 29, 30 and 31 December;

*Claim* includes any claim for an increase in the *Contract Sum* or *Disbursements* or for payment of money (including damages):

- (a) under, arising out of, or in any way in connection with, the *Contract*;
- (b) arising out of, or in any way in connection with the provision of the *Services* or either party's conduct before the *Contract*; or
- (c) otherwise at law or in equity, including by statute, in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution;

*Client* means the client or the principal (as the case may be) stated in *Item 2*;

*Client's policies and procedures* means all policies, plans, manuals, guidelines, instructions and other requirements of the *Client* as published on the *Client's* website or otherwise provided to the *Consultant* from time to time which are, or may become, applicable to the *Services*;

*Consultant* means the *Consultant* stated in *Item 3*;

*Contract* means the agreement between the *Client* and the *Consultant* comprised of the documents set out in the *Formal Instrument of Agreement*;

*Contract Material* means those *documents* and materials created or required to be created under the *Contract* and to be handed over to the *Client*;

*Contract Sum* means the amount payable for the *Consultant's* fees determined in accordance with *Item 18(a)* as varied from time to time in accordance with the *Contract*;

*day* means calendar day;

*Disbursements* means the expenses and disbursements which the *Consultant* is entitled to claim payment for as set out in *Item 18(b)*;

*documents* includes information stored by electronic and other means;

*Expert* has the meaning in Clause 15.4;

*Expert-Determination* has the meaning in Clause 15.4;

Formal Instrument of Agreement means the formal instrument of agreement to which these General Conditions of Contract are attached;

GST means a goods and services tax and includes any replacement or subsequent similar tax;

GST Legislation means A New Tax System (Goods and Services) Act 1999 (Cth);

Information Privacy Act means the Information Privacy Act 2009 (Old);

Intellectual Property Right means any patent, registered design, trademark or name, copyright or other protected right;

IPP has the meaning given in the Information Privacy Act;

Legislative Requirements includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Services; and
- (b) certificates, licences, consent, permits, approvals and requirements of organisations having jurisdiction applicable to the Services;

Moral Rights means the moral rights granted to authors under the Copyright Act 1968 (Cth), and any similar rights existing under foreign laws;

Occupational Health and Safety Requirements includes:

- (a) the Client's occupational health and safety policies which are available on request from the Client; and
- (b) all Legislative Requirements relating to occupational health and safety,

as may be applicable or relevant to the Services from time to time;

Other Contractors means:

- (a) the persons listed in Item 3B; and
- (b) any other persons occupying the Client's premises or notified by the Client to the Consultant from time to time;

Personal Information has the meaning given in the Information Privacy Act;

Privacy Commissioner has the meaning given in the Information Privacy Act;

Project means the project described in Item 3A;

Program means a program required pursuant to Clause 3.1(b);

Qualifying Cause of Delay means:

- (a) any breach, act, default or omission of the Client or its consultants or agents;
- (b) those causes stated in Item 3C;

Services means:

- (a) the services, or any part of the services, described in the Brief;

(b) such other things or tasks which the Consultant is required to carry out under the Contract; and

(c) without limiting subclause (b), all other things and tasks not described in the Contract if those things and tasks should have reasonably been anticipated by an experienced and competent professional provider of services of the type required to be provided by the Consultant under this Contract as being necessary for the proper carrying out of the services or as are otherwise capable of inference from this Contract.

~~Services means those services described in the Brief together with those activities which the Consultant is required to carry out under the Contract.~~

~~The law governing the Contract, its interpretation and any agreement to arbitrate is the law of the State or Territory stated in Item 4, or if the State or Territory is not stated, the law of the State or Territory where the Services are to be carried out.~~

The clause and subclause headings in these General Conditions of Contract shall not form part of, nor be used in the interpretation of the Contract.

Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender.

If the time for giving any notice, making any payment or doing any other act required or permitted by the Contract, falls on a Saturday, Sunday or Statutory or Public Holiday, then the time for giving the notice, making the payment or doing the other act shall be deemed to be on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday.

## 2 NATURE OF CONTRACT

The Consultant shall perform the Services in accordance with the Contract.

~~The Contract is constituted by those documents listed in Item 5. The Consultant acknowledges and agrees that:~~

(a) it is solely responsible for the provision of the Services in accordance with this Contract;

(b) all labour (including any accommodation, supervision, training and all other costs associated with labour), supervision, on and off site overheads, goods, materials, plant, equipment, facilities, consumables and all other items which are required to enable the Consultant to perform the Services or which are reasonably inferred from the description of the Services (even if they are not expressly mentioned in the Brief) form part of the Services required to be provided under the Contract;

(c) the Contract Sum comprises the total consideration payable by the Client to the Consultant for the provision of the Services and the Consultant will not otherwise be entitled to make any claim (except for Disbursements), in respect of payment for the provision of the Services.

(d) the Client is relying upon the advice, skill and judgment of the Consultant in the performance of its obligations under this Contract; and

(e) except as expressly set out in this Contract, the Client has not made any representations or given any advice, warranty or undertaking of any kind in relation to the Services, the Contract Material or this Contract. Where any information has been supplied by the Client, the Client has not made any representations or given any advice, warranty or undertaking of any kind in relation to the accuracy or completeness of such information.

The *Consultant* represents and warrants that:

- (f) (nature of the *Services*) it has informed itself completely as to the nature of the *Services* and the requirements of the *Contract*;
- (g) (information) it has examined carefully and acquired actual knowledge of the contents of the *Brief*, the *Contract* and any other information provided by the *Client* (or anybody acting on behalf of the *Client*) to the *Consultant* prior to the execution of the *Contract*;
- (h) (suitability of *Services*) the *Services* are suitable, appropriate and adequate for the purposes stated in the information set out in clause 2(g);
- (i) (*Contract Sum*) it has satisfied itself that the *Contract Sum* and the *Disbursements* cover the cost of complying with all of its obligations under the *Contract*;
- (j) (*Legislative Requirements*) it has informed itself completely of all *Legislative Requirements* in relation to the *Services*;
- (k) (advice) it has obtained all professional and technical advice necessary on all matters and circumstances related to paragraphs (f) - (j) above;
- (l) (standard of *Services*) it shall perform the *Services* with the professional skill, care and diligence expected of a professional consultant experienced in projects or activities of the type the subject of the *Services*, and must ensure that any subconsultant appointed by it performs that part of the *Services* with the professional skill, care and diligence expected of a professional consultant experienced in projects or activities of the type the subject of that part of the *Services*;
- (m) (conflict of interest) at the date of this *Contract*, there is no conflict of interest existing between the *Consultant* performing the *Services* and the *Consultant* performing any other work for third parties;
- (n) (*Client's policies and procedures*) it has informed itself completely of all the *Client's* policies and procedures in relation to the *Services* including the steps and costs which are required to comply with all such *Client's* policies and procedures, and the *Services* will conform with all the *Client's* policies and procedures; and
- (o) (no reliance) it has not relied in any way on the skill or judgment of the *Client* or anybody acting for or on behalf of the *Client* and that it has relied absolutely on its own opinion and professional advice based upon the *Consultant's* own independent analysis and investigations in deciding to enter into this *Contract*; and
- (p) (authority) it has the right, power and authority to enter into this *Contract* and carry out its obligations under this *Contract*.

The *Consultant* shall perform the *Services* to that standard of care and skill to be expected of a consultant who regularly acts in the capacity in which the *Consultant* is engaged and who possesses the knowledge, skill and experience of a consultant qualified to act in that capacity.

The *Consultant* has examined the *Brief* and the *Services* are suitable, appropriate and adequate for the purpose stated in the *Brief*, having regard to the assumptions that the *Consultant* can be reasonably expected to make in accordance with sound professional principles.

### 3 RESPONSIBILITIES AND OBLIGATIONS OF THE CONSULTANT

#### 3.1 General

The *Consultant* shall:

- (a) engage and retain subconsultants identified in *Consultant's Services*;
- (b) where stated in *Item 6* and within the time and in the form stated in *Item 6* submit to the *Client* a *Program* for carrying out the *Services*;
- (c) with due expedition and without delay and in accordance with the *Program* if any, provide all professional skill and advice required for carrying out the *Services*;
- (d) comply with all directions of the *Client* given pursuant to a provision of the *Contract*;
- (e) remain fully responsible for the *Services* carried out by the *Consultant* notwithstanding any review or acceptance of those *Services* by the *Client*;
- (f) only employ staff engage employees, agents and subconsultants with appropriate qualifications and experience to carry out the *Services*;
- (g) ensure that the key personnel (if any) stated in *Item 7* (or alternates reasonably approved in writing by the *Client*) are used by the *Consultant* to carry out the work stated in *Item 7*;
- ~~(g)~~(h) promptly give written notice to the *Client* if and to the extent the *Consultant* becomes aware that any document or other information provided by the *Client* is ambiguous, or inaccurate or is otherwise insufficient to enable the *Consultant* to carry out the *Services*;
- ~~(h)~~(i) make reasonable all necessary enquiries to ascertain the requirements of the *Client* regarding the *Services*;
- ~~(i)~~(j) regularly consult the *Client* regarding the carrying out of the *Services*;
- ~~(j)~~(k) as soon as practicable promptly after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or carrying out of the *Services*, give written notice to the *Client* detailing the matter or circumstance and its anticipated effect on the *Services*;
- ~~(k)~~(l) comply with all *Legislative Requirements* in carrying out the *Services*;
- ~~(l)~~(m) when on the *Client's* premises and when using the *Client's* facilities, comply with all directions, procedures and policies relating to occupational health, safety and security requirements relating to the *Client's* premises and facilities;
- ~~(m)~~(n) after reasonable prior written notice by the *Client*, permit the *Client* to inspect and discuss the work, relevant records, *documents* and *Contract Material* produced by the *Consultant* in carrying out the *Services*;
- ~~(n)~~(o) except as required by law, treat as confidential information so designated in writing by the *Client* pursuant to the *Contract*;
- ~~(o)~~(p) notify the *Client* immediately the existence or likelihood of a conflict of interest becomes apparent to the *Consultant* and cooperate with the *Client* to resolve such conflict of interest;
- ~~(p)~~(q) take due care of the *Client's documents*, samples, patterns, moulds and other material provided to the *Consultant* in connection with carrying out the *Services* and return the

same, in the condition supplied (unless agreed otherwise and fair wear and tear excepted), at the expiration or termination of this Contract; and

- (g) do all things necessary and necessarily incidental for the proper performance of the Consultant's obligations under the Contract;
- (r) fully co-operate with the Other Contractors and any other parties when on the Client's premises or facilities;
- (s) carry out the Services so as to avoid interfering with, disrupting or delaying the activities of the Other Contractors and the Client;
- (t) prepare all requests and organise and attend all meetings required by the Client in connection with the Project; and
- (u) when on the Client's premises and when using the Client's facilities, ensure that it keeps the same clean and tidy and regularly removes any rubbish and surplus material.

### 3.2 Removal of personnel

- The Client may direct the Consultant to remove, within a stated time, from the Client's premises or facilities (or from any activity involved in the provision of the Services and the development of the Contract Materials) any of the Consultant's employees, agents or subconsultants who, in the Client's reasonable opinion, are incompetent, negligent or guilty of misconduct.

### 3.3 Privacy

- (a) This clause 3.3 applies where the Consultant deals with Personal Information when, and for the purpose of, complying with its obligations under the Contract.
- (b) The Consultant agrees in respect of the discharge of its obligations under the Contract:
  - (i) to ensure Personal Information is protected against loss and unauthorised access, use, modification or disclosure and against other misuse;
  - (ii) to use or disclose Personal Information obtained during the course of performing its obligations, only for the purposes of the Contract;
  - (iii) not to do any act or engage in any practice that would breach an IPP, which if done or engaged in by the Client, would be a breach of that IPP;
  - (iv) to carry out and discharge the obligations contained in the IPPs as if it were the Client under the Information Privacy Act;
  - (v) not to disclose Personal Information for sale or profit or other benefit;
  - (vi) to ensure that only authorised personnel of the Consultant will have access to Personal Information and that the personnel will only be authorised for that access on a need to know basis where access to the Personal Information is essential in order for the personnel to carry out their duties;
  - (vii) to notify individuals whose Personal Information the Consultant holds, that complaints about acts or practices of the Consultant may be investigated by the Privacy Commissioner who has power to award compensation against the Consultant in appropriate circumstances;



- (viii) not to use or disclose *Personal Information* or engage in an act or practice that would breach section 33 (Transfer of personal information outside Australia) of the *Information Privacy Act* or an *IPP*;
  - (ix) to immediately notify the *Client* if the *Consultant* becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 3.3, whether by the *Consultant* or any authorised personnel of the *Consultant*, giving details of the breach;
  - (x) to ensure that personnel of the *Consultant* who are required to deal with *Personal Information* for the purposes of the *Contract* are made aware of the obligations of the *Consultant* in this clause 3.3, and where necessary provide its personnel with adequate training in respect of the obligations; and
  - (xi) notwithstanding any other clause to the contrary in the *Contract*, to indemnify the *Client* for any loss, damage or expense that the *Client* may become liable for or incur in connection with a *Claim* or action resulting from a breach of this clause 3.3 by the *Consultant* or its personnel.
- (c) The *Consultant* will ensure that any subcontract entered into for the purpose of fulfilling its obligations under the *Contract* contains provisions to ensure that the subconsultant has the same awareness and obligations as the *Consultant* under this clause 3.3, including the requirement in relation to subcontracts.
- (g)(d) Subclause 3.3 will survive the expiration or termination of this *Contract*.

#### 4 RESPONSIBILITIES AND OBLIGATIONS OF THE CLIENT

The *Client* shall:

- (a) pay the *Consultant* in accordance with the *Contract*;
- (b) when and as required under the *Contract*, provide the *Consultant* with relevant documents, samples, patterns, moulds and other information in the possession or control of the *Client* sufficient to enable the *Consultant* to carry out the *Services*;
- (c) give or cause to be given to the *Consultant* in writing timely directions, instructions, decisions and information sufficient to define the *Services* required and facilitate the provision of the *Services* by the *Consultant*;
- (d) provide the *Consultant* with such access to premises or sites of the *Client* as is reasonably necessary for the *Consultant* to carry out the *Services*; and
- ~~(e) except as required by law and subject to the *Contract*, treat as confidential information so designated in writing by the *Consultant*;~~
- (f)(e) except as provided in *Item 8*, bear the cost of all fees and charges required to comply with *Legislative Requirements* incurred or which fees and charges the *Consultant* should reasonably have anticipated would be incurred in connection with carrying out the *Services* at the time of entering into this *Contract*.

#### 4A CONFIDENTIALITY

The parties shall ensure that they keep confidential the terms of this *Contract* and such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential or should reasonably have been known by a party to be confidential except where disclosure is:

- (a) to a professional adviser, financial adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential;
- (b) necessary to comply with *Legislative Requirements* and other laws, or a requirement of a regulatory body (including any relevant stock exchange);
- (c) to enforce rights or to defend a claim or action under this *Contract*;
- (d) to a minister or government authority responsible for the administration of the party; or
- (e) otherwise agreed by the parties in writing.

## 5 SERVICE OF NOTICES

Any notice, demand, consent or other communication given or made under the *Contract* which is in writing ("*Notice*"):

- (a) must either be delivered to the intended recipient by prepaid post or by hand or facsimile to the address or fax number stated in *Item 2* or *3* (as is relevant) or the address or fax number last notified by the intended recipient to the sender;
- (b) will be taken to be duly given or made:

- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by post, two *Business Days* after the date of posting; and
- (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages, the correct destination fax machine number and the result of the transmission as 'OK'.

but if the result is that a *Notice* would be taken to be given or made on a day which is not a *Business Day* in the place to which the *Notice* is sent or is later than 4.00 pm (local time), it will be taken to have been duly given or made at the commencement of business on the next *Business Day* in that place.

~~A notice shall be deemed to have been given when it is received by the person to whom it is addressed or is delivered to the address of that person stated in the *Contract* or last communicated in writing by that person to the person giving the notice, whichever is the earlier.~~

The *Client* and the *Consultant* shall each notify the other of a change of address.

## 6 CLIENT'S REPRESENTATIVE AND CONSULTANT'S REPRESENTATIVE

### 6.1 Client's Representative

The person named in *Item 9* or such person as the *Client* substitutes by written notice to the *Consultant*, shall act as the *Client's* representative to exercise functions of the *Client* for the purposes of the *Contract*.

### 6.2 Consultant's Representative

The person named in *Item 10* or such person as the *Consultant* substitutes by written notice to the *Client*, shall act as the *Consultant's* representative under the *Contract* and any direction given by the *Client* to the *Consultant's* representative shall be binding. The *Consultant* shall not substitute the *Consultant's* representative, without the prior consent of the *Client*, which consent shall not be unreasonably withheld.

## 7 ASSIGNMENT AND THE ENGAGEMENT OF SUBCONSULTANTS

~~The Consultant shall not~~ Neither party shall, without the prior written approval of the ~~other Client~~ and except on such reasonable terms and conditions as are determined in writing by the ~~other Client~~, assign the *Contract* or any payment or any other right, benefit or interest thereunder.

The *Consultant* shall not subcontract any part of the *Services* without the prior written approval of the *Client*, which approval shall ~~not~~ may be unreasonably withheld at the Client's absolute discretion and may be conditional upon the *Consultant* obtaining from a subconsultant the corresponding *Intellectual Property Rights* granted to or vested in the *Client* pursuant to Clause 8.1 and appropriate professional indemnity insurance. Any such subcontracting shall not relieve the *Consultant* from any liability or obligation under the *Contract*.

## 8 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

### 8.1 Ownership

The Alternative in *Item 11* applies.

#### *Alternative 1*

The *Consultant* retains the *Intellectual Property Right* in or in relation to the *Contract Material*. The *Consultant* grants to the *Client* an perpetual, royalty-free, irrevocable licence to use that *Intellectual Property Right* for any purpose for which the *Services* are provided including any subsequent repairs, maintenance or servicing, the supply of replacement parts, additions or alterations or entering into any agreement with any third party which is associated with or utilises the *Contract Material*. This licence arises immediately upon creation of the *Contract Material* and survives the termination of the *Contract* on any basis.

#### *Alternative 2*

~~On payment by the Client of all fees due under this Contract plus an additional fee set out in Item 12 to the Consultant, the~~ The *Intellectual Property Right* in or relating to the *Contract Material* shall vest absolutely in the *Client* upon its creation but such vesting shall not affect any lien or other rights of the *Consultant* specified in the *Contract*.

The *Client* grants to the *Consultant* an irrevocable licence to use that *Intellectual Property Right* for the purpose of carrying out the *Services*. The *Consultant* shall retain the *Intellectual Property Right* in any original ideas, equipment processes or systems created outside the terms of the *Contract* and used in carrying out the *Services*. The *Consultant* shall grant or cause to be granted to the *Client* an perpetual, irrevocable, royalty-free licence to use such *Intellectual Property Right* for any purpose the *Services* are provided including any subsequent repairs ~~to~~, maintenance or servicing, the supply of replacement parts, additions or alterations or entering into any agreement with any third party which is associated with or utilises the *Contract Material*.

To the extent the *Intellectual Property Right* in or relating to the *Contract Material* is not capable of being vested in the *Client* because the *Consultant* does not own that *Intellectual Property Right*, the *Consultant* shall ensure the *Client* is provided with a perpetual, irrevocable, royalty-free licence irrevocably licensed to use that *Intellectual Property Right* for any purpose for which the *Services* are provided, including any subsequent repairs, maintenance or servicing, the supply of replacement parts, additions or alterations or entering into any agreement with any third party which is associated with or utilises the *Contract Material*.

## 8.2 Warranty and Indemnity by Client

Unless otherwise provided in the *Contract*, the *Client* shall indemnify the *Consultant* against the *documents* provided by the *Client* under the *Contract* infringing the *Intellectual Property Right* of any third party.

In additions to the purposes stated in the *Brief*, the *Contract Material* may be used by or with the authority of the *Client* for the additional purposes stated in *Item 13*.

Except to the extent that the *Contract Material* infringes the *Intellectual Property Right* of a third party, the *Client* shall indemnify the *Consultant* against any liability, loss or damage arising out of the use (other than by the *Consultant*) of the *Contract Material* by or with the authority of the *Client* for any purpose not reasonably contemplated under the *Contract*.

## 8.3 Warranty and Indemnity by Consultant

The *Consultant* warrants that, unless otherwise provided in the *Contract*, in providing the *Services* the *Consultant* owns or is licensed to use the *Intellectual Property Right* in the *Contract Material* and the *Consultant* shall indemnify the *Client* against liability, loss or damage arising out of the use of the *Contract Material* infringing the *Intellectual Property Right* of a third party.

## 8.4 Moral Rights

(a) The *Consultant* must, to the extent permitted by law:

- (i) use its best endeavours to procure from any person (including each of its relevant employees and relevant employees of its subconsultants and agents) who is an author of copyright works which are assigned or licensed to the *Client* under this *Contract*; and
- (ii) grant, to the extent the *Consultant* itself has any *Moral Rights* as an author of such copyright works and

an unconditional and irrevocable assignment or waiver of all *Moral Rights* in respect of such copyright works to which the author or *Consultant* (as the case may be) or become entitled to the *Client* and its successors in title.

(b) The *Consultant* must, and must use its best endeavours to procure each author, to give a written consent authorising the *Client* and its successors in title to exercise in accordance with this *Contract* all acts comprised in the copyright in the copyright works including:

- (i) the use, dealing, reproduction, modification, distortion, abridgement, revision, retitling, publication, transmission, exhibition or adaptation of those copyright works into other dimensions, format or media;
- (ii) having the copyright work bear the name of the *Project* or the *Client*;
- (iii) changing, relocating, demolishing or destroying any two or three dimensional reproduction of the copyright work without notice to or consultation with the author,

without attribution of authorship to the author.

## 9 LIABILITY OF CONSULTANT

### 9.1 Liability

Where a monetary limit of liability is stated in *Item 14*, the *Consultant's* liability to the *Client* arising out of the performance or non-performance of the *Services*, whether under the law of contract, tort or otherwise, shall be limited to that monetary limit of liability.

However, nothing in this Clause shall be read or applied so as to purport to exclude, restrict or modify, or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to the *Contract* of all or any of the provisions of the *Competition and Consumer Act 2010 Trade Practices Act 1974 (Cth)* as amended and in force from time to time or any relevant State Act or Territory Act which by law cannot be excluded, restricted or modified.

### 9.2 Indemnity by Consultant

Subject to Clause 9.1 the *Consultant* shall indemnify the *Client* against:

- (a) loss of or damage to property of the *Client* including the *Contract Material*; and
- (b) claims by any person against the *Client* in respect of personal injury or death or loss of or damage to any other property,

arising out of or in consequence of carrying out the *Services* by the *Consultant* but the *Consultant's* liability to indemnify the *Client* shall be reduced proportionally to the extent that the act or omission of the *Client* or the employees, agents or other contractors of the *Client* contributed to the loss, damage, death or injury. The indemnity under this Clause 9.2 shall not apply to the extent that the liability of the *Consultant* is limited by another provision of the *Contract* or exclude any other right of the *Client* to be indemnified by the *Consultant*.

## 10 INSURANCE

### 10.1 Professional Indemnity Insurance

Before the *Consultant* commences carrying out the *Services*, the *Consultant* shall effect a professional indemnity insurance policy for the *Services* covered in the *Contract* with a total aggregate cover of not less than the sum stated in *Item 15(a)*. The policy shall include provisions for one automatic reinstatement of the sum insured and for loss of *documents*. The policy and such level of cover shall be maintained until the *Consultant* completes carrying out the *Services* and thereafter for a period as stated in *Item 15(b)*.

### 10.2 Public Liability Insurance

The *Consultant* shall maintain a public liability policy for an amount in respect of any one claim or series of claims arising from the one original cause of not less than the sum stated in *Item 16*. The policy shall be maintained until the *Consultant* completes carrying out the *Services*. The policy shall cover the *Consultant* in respect of liability to the *Client* and third parties in respect of any claim for loss of or damage to property or death or injury to any person arising from the acts or omissions of the *Consultant*, its employees and subconsultants in the course of carrying out the *Services* and shall extend to indemnify the *Client* as one of the class of persons constituting the Insured but not in respect of liability to the extent that the loss, damage, death or injury is due to or results from an act or omission of the *Client*.

### 10.3 Insurance of Employees

Before the *Consultant* commences carrying out the *Services*, the *Consultant* shall insure against liability for death or injury to persons employed by the *Consultant* including liability by statute and at common law. The insurance cover shall be for not less than the minimum amounts required by statute in each State and Territory in which the *Services* are to be performed or the *Consultant's* employees are employed or normally reside and shall be maintained until the *Consultant* completes carrying out the *Services*. Where permitted by law, the insurance cover shall be extended to indemnify the *Client* for the *Client's* statutory liability for persons employed by the *Consultant*. The *Consultant* shall ensure that employees of the *Consultant's* subconsultants are similarly insured.

### 10.4 General

- (a) The *Consultant* must ensure that the insurance referred to in clause 10.1 and 10.2:
- (i) is effected with an insurer or insurers approved by the *Client*;
  - (ii) contains a cross liability clause in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any persons comprising the insured; and
  - (iii) is on terms, including any deductible, approved in writing by the *Client* which approval must not be unreasonably withheld.
- (b) Before the commencement of the performance of the *Services*, and at other times requested by the *Client*, give the *Client* a certificate from the relevant insurer or insurers specifying for each insurance policy the cover, any significant exclusions or limitations, the policy number, the expiry date and sufficient information to enable the *Client* to confirm proof of currency and coverage of each insurance required by this *Contract* to be obtained and maintained by the *Consultant*.
- (c) Upon request the *Consultant* must give the *Client* or the *Client's* insurance broker (or make available for their inspection and copying) the insurance policies effected by the *Consultant* under clause 10.1.
- (d) The *Consultant* must:
- (i) ensure that all insurance policies that it is required by this *Contract* to be obtained and maintained are paid on time, that all deductibles are paid promptly and that the conditions of insurance are otherwise complied with;
  - (ii) immediately notify the *Client* of any event which may result in any insurance policy effected by the *Consultant* pursuant to this *Contract* lapsing or being cancelled or avoided.

## 11 DIRECTIONS AND VARIATIONS

### 11.1 Directions by the Client

Except where the *Contract* otherwise provides, a direction may be given orally but the *Client* shall as soon as practicable confirm it in writing.

~~If the *Consultant* in writing requests the *Client* to confirm an oral direction, the *Consultant* shall not be bound to comply with the direction until the *Client* confirms it in writing.~~

## 11.2 Variations

Subject to Clause 11.3, ~~the~~ *Client* may, by written notice to the *Consultant*, direct the *Consultant* to vary the *Services* and the *Consultant* shall be bound to comply with that direction.

Any variation in the fee payable to the *Consultant* as a consequence of a direction issued by the *Client* under this Clause shall be agreed between the *Client* and the *Consultant*, otherwise Clause 11.4 shall apply.

## 11.3 ~~Variations which Change the Scope of the Services~~ Not Used

~~The *Consultant* shall not be obliged to comply with a direction which would change the general scope of the *Services* if the *Consultant* within 7 days of receipt of the direction gives a written notice to the *Client* in accordance with this Clause 11.3.~~

~~If the *Client* directs a variation to the *Services* which the *Consultant* considers changes the general scope of the *Services*, the *Consultant* shall so advise the *Client* in writing within 7 days, stating whether the *Consultant* agrees to comply with the direction and, if so, a fee proposal for carrying out the direction. If the *Client* accepts a *Consultant's* proposal, the *Consultant* shall effect the variation in accordance with that proposal.~~

~~If the *Client* either does not agree within 7 days of receipt of the *Consultant's* notice given under this Clause 11.3 that the direction changes the general scope of the *Services* or does not accept a *Consultant's* proposal, Clause 15 shall apply if the *Client* directs the *Consultant* to proceed with the variation.~~

## 11.4 Valuation of Variations

Unless otherwise agreed, the value of a variation shall be determined using the basis on which the fee and expenses are determined pursuant to Clause 13 except that if the fee or fee and expenses to be determined pursuant to Clause 13 is a lump sum, or the basis of the fee and expenses are not applicable to the variation, then the *Client* shall determine the value of the variation; ~~reasonable rates and prices shall apply.~~

## 11.5 Variations due to a Change in a Legislative Requirement

If a new *Legislative Requirement* or a change in a *Legislative Requirement* after the date of the *Contract* necessitates:

- (a) necessitate a change to the *Services*;
- (b) has effect after the date of the *Contract*; and
- (c) could not reasonably have been anticipated at that date by a competent and experienced consultant,

then the extent to which the *Services* are changed by that *Legislative Requirement* shall be deemed to be a variation pursuant to Clause 11.2.

## 11.6 Errors or Omissions in the Contract Material

The *Consultant* shall correct errors or omissions in the *Contract Material* at the *Consultant's* own expense.

Where due to circumstances beyond the reasonable control or anticipation of the *Consultant*, the *Consultant* is required to alter, add to or delete *Contract Material* previously submitted and which otherwise would have complied with the *Contract*, the *Consultant* shall inform the *Client* and seek

directions. Any subsequent alteration, addition or deletion shall be deemed to be a variation pursuant to Clause 11.2.

## 12 TIME

### 12.1 DELAY Delay AND and EXTENSION Extension OF of TIME Time

The *Consultant* shall proceed with the work under the *Contract* with due expedition and without delay.

When it becomes evident to a party that anything including an act or omission of the *Client* or an employee, other consultant, contractor or agent of the *Client*, may delay carrying out the *Services*, that party shall promptly notify the other party in writing with details of the possible delay and the cause.

If the *Consultant* is or will be delayed in carrying out the *Services* by a Qualifying Cause of Delay, the *Consultant* may claim an extension of time.

It is a condition precedent to the *Consultant's* entitlement to an extension of time that the cause of the delay was or is beyond the reasonable control of the *Consultant* and was a Qualifying Cause of Delay.

~~the time for carrying out the *Services* shall be extended by the extent of the delay.~~

If the conditions precedent to an extension of time have been established to the satisfaction of the *Client*, the time for carrying out the *Services* shall be extended by the extent of the delay as determined by the *Client*.

If the cause of the delay is an act or omission of the *Client* or an employee, other consultant, contractor or agent of the *Client*, the *Client* shall pay the *Consultant* such extra costs as are reasonably and necessarily incurred by the *Consultant* by reason of the delay.

The *Client* may, at any time, by written notice to the *Consultant* extend the time for carrying out the *Services* for any reason. The parties acknowledge that:

- (a) the *Client* is not required to exercise the *Client's* discretion under this clause for the benefit of the *Consultant*;
- (b) this clause does not give the *Consultant* any rights; and
- (a)(c) the exercise or failure to exercise the *Client's* discretion under this clause is not capable of being the subject of a dispute or difference for the purposes of clause 15 or otherwise subject to review.

The *Client* may direct the *Consultant* in what order and at what time the *Services* shall be performed. If the *Consultant* can reasonably comply with the direction, the *Consultant* shall do so. If the *Consultant* cannot reasonably comply with the direction (notwithstanding the use of its best endeavours) the *Consultant* shall so notify the *Client* in writing, giving reasons and providing all reasonable available alternatives for giving effect to the direction. If compliance with the direction causes the *Consultant* to incur more or less cost than otherwise would have been incurred had the *Consultant* not been given the direction, the difference shall be valued pursuant to Clause 11.4 as though the direction was a direction to vary the *Services*.

Nothing in this Clause 12 shall:

- (a) oblige the *Client* to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the *Contract*; or



- (b) limit the *Client's* liability for damages for breach of *Contract*.

**12.2 Principal-initiated acceleration**

- (a) At any time, including prior to giving a *direction* to accelerate under subclause 12.2(b), the *Client* may direct the *Consultant* to provide a written proposal in connection with a proposed acceleration of the performance of *Services*. If so directed, the *Consultant* must provide to the *Client* within the time stated in such direction, or if no time is stated, then promptly, an acceleration proposal including the following information:
- (i) whether and to what extent the proposed acceleration is achievable;
  - (ii) whether and to what extent the proposed acceleration is likely to cause delay or disruption to the execution of any other parts of *Services*; and
  - (iii) an estimate of the costs that will be incurred to comply with the proposed acceleration.
- (b) Notwithstanding subclause 12.2(a), where the *Consultant* is entitled to an extension of time under subclause 12.1, the *Client* may, instead of granting an extension of time under that subclause, direct the *Consultant* in writing to accelerate the performance of *Services* so as to overcome the whole or part of the delay which gave rise to the entitlement to an extension of time and the *Consultant* must comply with that *direction*.
- (c) If the *Client* directs the *Consultant* under subclause 12.2(b) to accelerate the performance of *Services* so as to overcome the whole of the delay in question, the *Consultant* will no longer be entitled to any extension of time for that delay.
- (d) If the *Client* directs the *Consultant* under subclause 12.2(b) to accelerate the performance of *Services* so as to overcome part only of the delay in question, the *Consultant* will no longer be entitled to any extension of time for that part of the delay, but the *Client* must grant a reasonable extension of time under subclause 12.1 for the balance of the delay.
- (e) If compliance with a *direction* to accelerate given under subclause 12.2(b) causes the *Consultant* to incur more or less cost than otherwise would have been incurred had the *Consultant* not been given the *direction*, the reasonable difference, as determined by the *Client*, will be added to or deducted from the *contract sum* (as applicable), save that if the *Client* accepts an acceleration proposal provided by the *Consultant* under subclause 12.2(a), then the *Consultant's* entitlements (including as to extensions of time and adjustments to the *contract sum*) in connection with the acceleration will be governed by the proposal which was accepted by the *Client*.
- (f) If the *Consultant* is not entitled to an extension of time for *practical completion* under subclause 12.1, but the *Client* accepts an acceleration proposal provided by the *Consultant* under subclause 12.2(a):
- (i) the *Consultant* must perform the *Services* in accordance with the acceleration proposal which was accepted by the *Client*; and
  - (ii) the *Consultant's* entitlements (including any adjustments to the *Contract Sum*) in connection with the acceleration will be governed by the proposal which was accepted by the *Client*;
- (g) No *direction* by the *Client* will be taken to constitute a *direction* to accelerate under subclause 12.2(b) or an acceptance of an acceleration proposal provided by the *Consultant* unless the *direction* or the acceptance is in writing, is signed by the *Client* and expressly

states that it is a direction under subclause 12.2(b) or an acceptance of an acceleration proposal provided under subclause 12.2(a).

### 13 PAYMENT

#### 13.1 Claims for Payment

At the times stated in *Item 17*, the *Consultant* shall submit written claims for payment of the Contract Sum and Disbursements. An early progress claim shall be deemed to have been made at the time stated in *Item 17* for making that claim.

Each progress claim shall include:

- (a) the amount claimed for the Contract Sum and Disbursements, shown separately;
- (b) the amounts of any adjustments to the Contract Sum or Disbursements arising out of or in connection with the Contract or any alleged breach of the Contract;
- (c) the total amount previously paid by the Client pursuant to Clause 13.3; and
- (d) ~~fees and reimbursement of expenses accompanied by such other information and documentation as is reasonably required by the Client to verify the claim.~~

#### 13.2 Payment of Disbursements, Fees and Expenses

~~The Consultant's fees shall be determined in accordance with the *Item 18(a)*.~~

~~The Client and the Consultant shall bear the expenses and disbursements stated in *Item 18(b)* as being borne by that party. Except as provided in this Clause 13.2 or elsewhere in the Contract, the Contract Sum and Disbursements are not subject to adjustment for:~~

- (a) changes in taxes or Legislative Requirements;
- (b) any payments which the Consultant may be obliged to make, on behalf of its employees in respect of any superannuation fund, scheme or arrangement for the benefit of workers; and
- (c) any other expenses incurred by the Consultant in performing the Services.

~~the Consultant shall bear all other expenses and disbursements incurred by the Consultant in performing the Services.~~

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that the *Services* have been executed satisfactorily but shall be a payment on account only.

#### 13.3 Time and Place for Payment

On receipt of a claim for payment, the *Client* shall assess the claim and within the times and at the place stated in *Item 19* the *Client* shall pay the *Consultant* the amount due and payable. If the *Client* does not pay the amount of the claim the *Client* shall, either with the payment or not later than the time for payment, provide the *Consultant* with a written statement of the reason for any difference between the amount claimed and the amount paid or to be paid.

#### 13.4 Interest on Overdue Payments

If any moneys due and payable to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be payable

thereon at the rate stated in *Item 20* from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid.

### 13.5 Right to set off

- (a) The *Client* may deduct from any monies otherwise due to the *Consultant*:
- (i) any debt or other moneys due from the *Consultant* to the *Client*; and
  - (ii) any claim to money which the *Client* may have against the *Consultant*,
- whether under the *Contract* or otherwise at law.
- (b) The rights given to the *Client* under subclause 13.5 are in addition to and do not limit or affect any other rights of the *Client* under the *Contract* or at law and nothing in the clause affects the right of the *Client* to recover from the *Consultant* the whole of the debt or claim in question or any balance that remains owing.
- (c) Failure by the *Client* to deduct from an amount otherwise due to the *Consultant* any amount which the *Client* is entitled to deduct under subclause 13.5 will not prejudice the *Client's* right to subsequently exercise its right of deduction under this clause 13.5.
- (d) Subclause 13.5 will survive any termination of the *Contract*.

### 13.6 Conditions precedent to payment

It is a condition precedent to any claim for payment by the *Consultant* that:

- (a) the *Consultant* has effected the insurances required by clause 10 and, where requested, provided proof of such insurance as required by clause 10;
- (b) the *Consultant* has issued a tax invoice to the *Client* and otherwise complied with subclauses 13.1 and 17(d).

## **14 TERMINATION, DEFAULT, SUSPENSION AND FRUSTRATION**

### **14.1 Termination Other than Due to Default**

The *Contract* may be terminated at any time by mutual agreement or by the *Client* giving reasonable prior written notice to the *Consultant*.

If the *Contract* is terminated pursuant to this Clause 14.1, the *Client* shall pay the *Consultant* that portion of the *Contract Sum* and *Disbursements* which are payable to the date of termination—~~fair~~ and reasonable fee for the *Services* carried out up to and including the date of termination together with payment of any costs and expenses reasonably, directly and necessarily incurred by the *Consultant* to that date (subject to the *Consultant* taking all reasonable steps to mitigate those costs) and the *Consultant* shall have no entitlement to make any other claim.

Upon termination and payment of the amount due to the *Consultant* under this Clause 14.1, the *Consultant* shall, subject to any lien or other rights of the *Consultant* under the *Contract*, deliver to the *Client* the *Contract Material* including sketches, plans, designs, estimates, calculations, reports, models, computer source codes, articles, information, files and data produced by the *Consultant* up to the date of termination regardless of their stage of completion but without any liability in respect of the *Contract Material* which is incomplete by reason only of such termination.

~~If due to a cause or causes beyond the reasonable control of both parties, the carrying out of the Services is delayed, beyond the date (if any) specified in Item 21 then, unless the parties otherwise agree, the Contract shall thereupon be deemed to be frustrated and Clause 14.5 shall apply.~~

#### 14.2 Termination due to Default by Either Party

If either party commits a substantial breach of *Contract*, the other party may give to the party who committed the breach, a written notice to show cause. Failure to make a payment due under the *Contract* shall be a substantial breach of *Contract*.

A notice to show cause shall:

- (a) state it is a notice given under Clause 14 of these General Conditions of *Contract*;
- (b) specify the alleged breach with reasonable details;
- (c) require the party who committed the breach to show cause in writing why the party giving the notice should not exercise a right referred in this Clause 14; and
- (d) specify the date by which the party who committed the breach must show cause (which date shall be not less than 7 clear days after the notice is given to that party).

If by the time specified in a notice given under this Clause 14.2 the party who committed the breach fails to show reasonable cause the other party may, by further written notice, terminate the *Contract* or suspend the party's obligations to perform the *Contract*.

If the *Contract* is terminated pursuant to this Clause 14.2, the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting party repudiated the *Contract* and the other party had elected to treat the *Contract* as at an end and recover damages.

If a party suspends performance of the *Contract* pursuant to this Clause 14.2, that party shall lift the suspension if the other party remedies the breach. If the party in default fails, within a reasonable time, to remedy the breach the other party may, by further written notice, terminate the *Contract*.

A party who suspends performance of the *Contract* pursuant to this Clause 14.2 shall be entitled to recover any damages incurred by reason of the suspension.

#### 14.3 Suspension for Convenience

The *Client* may, at any time by prior written notice to the *Consultant*, require the *Consultant* to suspend the carrying out of the *Services* or any part thereof.

If fees or expenses have not been agreed in advance, the *Client* shall pay the *Consultant* the fees and expenses reasonably incurred by the *Consultant* in carrying out the *Services* to the date of suspension together with any costs and expenses reasonably incurred by the *Consultant* by reason of the suspension. The *Client* shall give the *Consultant* reasonable notice to recommence carrying out those *Services* so suspended.

#### 14.4 Insolvency

If:

- (a) a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;

- (c) a party is an individual person or a partnership including an individual person, and if that person:
- (i) commits an act of bankruptcy;
  - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (iii) is made bankrupt;
  - (iv) makes a proposal for a scheme of arrangement or a composition; or
  - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a party being a corporation:
- (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (ii) the party enters a deed of company arrangement with creditors;
  - (iii) a controller or administrator is appointed;
  - (iv) an application is made to a court for the winding-up of the party and not stayed within 14 days;
  - (v) a winding-up order is made in respect of the party;
  - (vi) resolves by special resolution that the party be wound up voluntarily (other than for a members' voluntary winding-up); or
  - (vii) a mortgagee of any property of the party takes possession of that property;

then, the other party may, notwithstanding that there has been no breach of contract and in addition to any other rights, terminate the *Contract* without giving prior notice.

#### 14.5 ~~Frustration~~Not used

~~If pursuant to Clause 14.1 or under the law governing the *Contract*, the *Contract* is frustrated, the *Client* shall pay the *Consultant*:~~

- ~~(a) for work executed up to the date of frustration, the amount not then paid but which would have been payable if the *Contract* had not been frustrated;~~
- ~~(b) costs reasonably incurred by the *Consultant* to that date in the expectation of carrying out the *Services* and not included in any prior payment by the *Client*; and~~
- ~~(c) the reasonable cost of return to their place of recruitment of the *Consultant's* employees and subconsultants engaged in carrying out the *Services* at the date of frustration.~~

~~Upon such payment, the *Consultant* shall, subject to any lien or other rights of the *Consultant* under the *Contract*, deliver to the *Client* all *Contract Material* produced by the *Consultant* up to the date of frustration regardless of its stage of completion but without any liability in respect of the *Contract Material* which is incomplete by reason only of the frustration of the *Contract*.~~

#### 14.6 Return of Client's Documents, etc.

On completion of the *Services* or on termination or frustration of the *Contract*, the *Consultant* shall promptly return to the *Client* the *Client's documents*, samples, patterns, moulds and other information provided to the *Consultant* in carrying out the *Services*.

#### 14.7 Preservation of Other Rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

If the *Contract* is terminated pursuant to Clauses 14.2 and 14.4 the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

### 15 DISPUTE RESOLUTION

#### 15.1 Notice of Dispute

If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of the *Contract*, then either party shall, by hand, facsimile or by registered post, give the other party a written notice of dispute adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a dispute, the parties shall, subject to Clause 14 and Clause 15.5, continue to perform the *Contract*.

#### 15.2 Conference

- (a) Within 15 business days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so.
- (b) If within the period mentioned in subparagraph (a) the parties are unable to resolve the dispute or agree on a method of doing so, the dispute must be referred to the following senior managers to endeavour to resolve the dispute:
  - (i) in the case of the *Principal*, a relevant divisional manager;
  - (ii) in the case of the *Contractor*, a manager equivalent in seniority to that of a divisional manager of the *Principal*;
- (c) If the relevant senior managers are unable to resolve the dispute at the first meeting after the dispute has been referred to them (or within such longer period as may be agreed), the dispute must be referred to the chief executive officers (or equivalent position) of the parties to endeavour to resolve the dispute.
- (d) If the chief executive officers (or equivalent position) of the parties are unable to resolve the dispute within 15 business days after the dispute has been referred to them (or within such longer period as may be agreed) either party may refer the dispute for mediation in accordance with clause 15.3.

#### 15.3 Mediation

- (a) Mediation will be conducted in Brisbane in accordance with the Institute of Arbitrators and Mediators Australia Mediation Rules. The giving of a notice under Rule A1 of those rules is not required.

- (b) The role of the mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision binding on the parties to the dispute unless those parties have so agreed in writing. The cost of mediation will be borne equally by the parties to the dispute.

#### 15.4 Litigation

If at any time either party considers that the other party is not making reasonable efforts to resolve the dispute, either party may by written notice to the other party refer such dispute to litigation.

~~Within 14 days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods of resolution. All aspects of every such conference except the fact of occurrence shall be privileged.~~

~~If the dispute has not been resolved within 28 days of service of the notice of dispute, then unless Clause 15.4 applies, that dispute shall be and is hereby referred to arbitration.~~

#### ~~15.11 Arbitration~~

~~If within a further 14 days of the dispute being referred to arbitration, the parties have not agreed upon an arbitrator, the arbitrator shall be nominated by the person in Item 22(a). The arbitration shall be conducted in accordance with the rules in Item 22(b).~~

#### ~~15.12 Expert Determination~~

~~If within 28 days of service of a notice of dispute the parties agree that the dispute shall be referred to Expert Determination then the dispute shall be determined by an Expert. If within a further 14 days of the dispute being referred to Expert Determination the parties have not agreed upon an Expert the Expert shall be nominated by the person in Item 22(a). The Expert Determination shall be conducted in accordance with the rules in Item 22(c).~~

~~Except where the parties otherwise agree in writing or the rules in Item 22(c) otherwise provide:~~

- ~~(a) each party shall bear its own costs and pay one half of the Expert's fees and expenses;~~
- ~~(b) the Expert shall not act as an arbitrator; and~~
- ~~(c) the determination of the Expert shall be final and binding on the parties.~~

#### ~~15.13~~ 15.5 Summary Relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

## 16 SEVERABILITY

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

## 17 GST

- (a) Where any supply occurs under or in connection with the *Contract* or the *Services* (other than any supply under this clause) for which GST is not otherwise provided, the party making the supply ("*Supplier*") shall be entitled to increase the amount payable for the supply by the amount of any applicable GST.

- (b) Where under the *Contract* the *Consultant* is entitled to any adjustment to the *Contract Sum*, and such adjustment is based on the reasonable or actual cost to the *Consultant* of performing any work, any input tax credits available to the *Consultant*, or its representative member, in relation to performing such work will be deemed to reduce the cost of such work.
- (c) Where the amount payable to the *Supplier* for a supply under or in connection with the *Contract* or the *Services* (other than any payment on account of the *Contract Sum*) is based on the actual or reasonable costs or *Disbursements* incurred by the *Supplier*, the amount to which the *Supplier* is entitled to be paid in respect of that supply will be limited to the actual or reasonable costs or *Disbursements* incurred by the *Supplier* less any input tax credits available in respect of such costs.
- (d) A party will not be obliged to pay any amount in respect of *GST* to the other party unless and until a tax invoice that complies with the *GST Legislation* has been issued in respect of that *GST*. Each party agrees to do all things, including providing invoices or other documentation, that may be necessary or desirable to:
- (i) enable or assist the other party to claim input tax credits to the maximum extent possible; or
  - (ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under the *Contract*.
- (e) In this clause terms defined in *GST Legislation* have the meaning given to them in *GST Legislation*.

## 18 GENERAL MATTERS

### 18.1 Governing law

This *Contract* is governed by and is to be construed in accordance with the laws in force in the jurisdiction set out in *Item 4*.

### 18.2 Jurisdiction

- (a) The parties submit to the non exclusive jurisdiction of the courts of the jurisdiction set out in *Item 4*.
- (b) The *Consultant* irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any *Claim* it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within subclause 18.2(a).

### 18.3 Joint and several liability

If the *Consultant* comprises 2 or more persons (whether a joint venture, consortium, partnership or any other unincorporated grouping of 2 or more persons):

- (a) the obligations and liabilities of the *Consultant* under this *Contract* bind those persons jointly and severally;
- (b) those persons must notify the *Client* of their leader who must have authority to bind the *Consultant* and each of those persons; and
- (c) the *Consultant* must not alter its composition or legal status without the prior written consent of the *Client*.



**18.4 Amendments**

Except where expressly stated otherwise, this Contract may only be varied by a written document signed by or on behalf of each party.

**18.5 Legal costs**

Each party will bear its own legal costs of and incidental to the preparation, negotiation and signing of the Contract.

**18.6 Independent contractor**

The Consultant is an independent contractor with respect to the Services and neither the Consultant nor any subconsultants, nor any agents or employees of any of them, shall represent themselves to be the employees, agents or representatives of the Client.

**18.7 Stamp duty**

The Consultant is liable for and will pay any stamp duty (including, without limitation, any fines, interests or penalties) payable on the Contract.

**18.8 Approvals and consent**

Subject to any express provision in the Contract to the contrary, the Client:

- (a) may give or withhold any consent or approval required under this Contract in its sole discretion; and
- (b) is not obliged to give their reasons for doing so.

**18.9 Counterparts**

The Contract may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

**18.10 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this Contract:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

**18.11 Language**

Except where expressly stated otherwise, the language for communications for the purposes of this Contract is English.

**18.12 Indemnities**

- (a) Each indemnity given under this Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives the termination, rescission or expiration of this Contract.
- (b) It is not necessary for a party to incur an expense before enforcing a right of indemnity conferred by this Contract.

(c) A party must pay on demand any amount it must pay under an indemnity in this Contract.

18.13 Waiver

(a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Contract.

(b) A waiver or consent given by a party under this Contract is only effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver of a breach of a term of this Contract operates as a waiver of another breach of that term or of a breach of any other term of this Contract.

## ANNEXURE PART A

ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Engagement of Consultants

## Part A

Item		
1.	The <i>Brief</i> is comprised in the following documents: (Clause 1)	The Document at Annexure Part C.
2.	(a) The <i>Client</i> or <i>Principal</i> is: (Clause 1)  (b) The <i>Client's</i> or <i>Principal's</i> address is:	Queensland Bulk Water Supply Authority trading as Seqwater ABN 75 450 239 876  240 Margaret Street, Brisbane Queensland, 4000.
3.	(a) The <i>Consultant</i> is: (Clause 1)  (b) The <i>Consultant's</i> address is:	The State of New South Wales as represented by the Department of Services, Technology and Administration trading as NSW Public Works ABN 81 913 830 179  Level 13W McKell Building, 2-24 Rawson Place, Sydney NSW 2000
3A.	The <i>Project</i> is: (Clause 1)	Review of Technical Information – January 2011 Floods.
3B.	The <i>Other Contractors</i> are: (Clause 1)	Not Applicable.
3C.	Conditions which constitute a <i>Qualifying Cause of Delay</i> : (Clause 1)	Not Applicable.
4.	The law applicable is that of the <i>State or Territory</i> of: (Clause 1)	Queensland.  (If nothing stated, the State or Territory where the Services are carried out laws of the State of Queensland)

5.	<p><del>Not used</del> The <del>Contract documents</del> are: (Clause 2)</p>	<p>1. <del>These General Conditions of Contract</del>                  2. <del>The Brief being the documents stated in Item 1</del>                  3. _____                  4. _____                  5. _____</p>					
6.	<p>(a) If required by Clause 3.1(b), the Consultant shall submit a Program for carrying out the Services: (Clause 3.1(b))</p> <p>(b) If yes, the Program shall be in the following form: (Clause 3.1(b))</p> <p>(c) If yes, the Program shall be submitted at the following time: (Clause 3.1(b))</p>	<p>No</p>					
7.	<p>Key personnel: (Clause 3.1(g))</p>	<table border="1"> <thead> <tr> <th data-bbox="759 1066 1046 1137">Name</th> <th data-bbox="1046 1066 1345 1137">Work to be carried out</th> </tr> </thead> <tbody> <tr> <td data-bbox="759 1137 1046 1379">Len McDonald</td> <td data-bbox="1046 1137 1345 1379">The Services under the Contract</td> </tr> </tbody> </table>	Name	Work to be carried out	Len McDonald	The Services under the Contract	
Name	Work to be carried out						
Len McDonald	The Services under the Contract						
8.	<p>Fees and charges to satisfy Legislative Requirements payable by the Consultant: (Clause 4(e))</p>	<p>Not Applicable</p>					
9.	<p>The Client's representative is: (Clause 6.1)</p>	<p>Sarah Zolko, Manager Legal and Risk                  Phone: 3035 5791                  Mobile: 0448 325 616</p>					
10.	<p>The Consultant's representative is: (Clause 6.2)</p>	<p>Dane Jameson, Assistant Principal Design Engineer                  Phone: 02 9372 7814                  Mobile: 0428 113 272</p>					
11.	<p>Intellectual Property Rights - Alternative applying: (Clause 8.1)</p>	<p>Alternative 2                  (If nothing stated, Alternative 2 applies)</p>					

12.	If Alternative 2 applies, the additional fee payable to the Consultant to vest the Intellectual Property Right in or relating to the Contract Material in the Client. (Clause 9.4) Not Used					
13.	Additional Purposes for which Contract Material may be used. (Clause 8.2)	Not Applicable				
14.	The Consultant's liability is limited as follows. (Clause 9.1)	To the extent permissible by law, the total aggregate liability of the Consultant in relation to the performance or non-performance of the Contract, is limited to the value of insurance required to be held by the Consultant under Clause 10.1				
15.	(a) Amount of professional indemnity insurance shall not be less than. (Clause 10.1)  (b) The period for which professional indemnity insurance shall be maintained is. (Clause 10.1)	\$5M per occurrence  ..... years after the date of completion of the Services (if nothing stated, until 7 years after completion of the Services)				
16.	The amount of public liability insurance shall not be less than. (Clause 10.2)	\$10M per occurrence				
17.	Claims for payment shall be made. (Clause 13.1)	On the last day of each month				
18.	(a) The Consultant's fee shall be determined as follows. (Clause 13.2)	Lump Sum Fee: \$ Where the fee is payable on a lump sum basis it is not adjustable except as provided for in the Contract.  Fee In Stages: The stages for the delivery of the Services and the fee / percentage of the fee applicable to each stage.				
		<table border="1"> <thead> <tr> <th data-bbox="767 1861 1015 1921">Stage</th> <th data-bbox="1015 1861 1361 1921">Fee / Percentage of Fee</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Stage	Fee / Percentage of Fee		
Stage	Fee / Percentage of Fee					

† Delete as appropriate

		Not Applicable				
		Time Charge				
		<table border="1"> <thead> <tr> <th>Level of Task</th> <th>Rate per hour</th> </tr> </thead> <tbody> <tr> <td colspan="2" style="text-align: center;">See Annexure Part D</td> </tr> </tbody> </table>	Level of Task	Rate per hour	See Annexure Part D	
Level of Task	Rate per hour					
See Annexure Part D						
	(b) The expenses and disbursements to be reimbursed to the Consultant shall be: (Clause 13.2)	As set out in Schedule 1 As follows: All reasonable expenses at cost				
19.	The times and place for payment shall be: (Clause 13.3)	<p>No later than</p> <p>(a) 30 days after the date of submission of a claim for payment (If nothing stated, 28 days)</p> <p>(b) Place of Payment ..... (If nothing stated, the Client's address)</p>				
20.	The rate of interest on overdue payments is: (Clause 13.4)	Not applicable.				
21.	<del>Not used</del> The deemed frustration date if Services are not completed: (Clause 14.1)	.....				
22.	<p>Arbitration and Expert Determination (Clause 15) <del>Not used</del></p> <p>(a) Person to nominate an arbitrator or expert (Clause 15.4)</p>	<p>.....</p> <p>(If none stated, the Chairperson for the Joint Body of the Chapter of the Institute of Arbitrators &amp; Mediators Australia in the State or Territory in (om 4)</p>				

† Delete as appropriate

	<p>(b) Rules for arbitration (Clause 15.3)</p>	<p>(If nothing stated, rules 5-18 of the Rules of The Institute of Arbitrators &amp; Mediators Australia for the Conduct of Commercial Arbitrations)</p>
	<p>(c) Rules for expert determination (Clause 16.4)</p>	<p>(If nothing stated, the Guidelines for Expert Determination of the Australian Commercial Dispute Centre)</p>

**ANNEXURE PART B**

**ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Engagement of Consultants**

# Part B

**Deletions, amendments and additions**

1. The following clauses or parts of clauses have been deleted from the General Conditions in AS 4122-2000:

As set out in the marked-up version of these general conditions. ....

.....  
.....  
.....  
.....  
.....  
.....  
.....

2. The following clauses have been amended and differ from the corresponding clauses in AS 4122-2000:

As set out in the marked-up version of these general conditions .....

.....  
.....  
.....  
.....  
.....  
.....

3. The following clauses have been added to those of AS 4122-2000;

As set out in the marked-up version of these general conditions .....

.....  
.....  
.....  
.....  
.....  
.....



**ANNEXURE PART C**

**ANNEXURE to the Australian Standard  
General Conditions of Contract for  
Engagement of Consultants**

# Part C

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**BRIEF**

The Consultant is required to undertake any or all parts of the below services, as confirmed in writing by Seqwater from time to time:

- Review in relation to the recent flood events, in particular the January 2011 Flood Event (Flood Event):
  - Technical Situation Reports, Flood Operation Logs, other relevant technical data and decision making processes followed in accordance with the Manual of Operational Procedures for Flood Mitigation at Wivenhoe Dam and Somerset Dam (Flood Operations Manual);
  - Seqwater's Regulatory Report to the Chief Executive of the Department of Environment and Resource Management on the Flood Event;
  - the Flood Operations Manual;
  - any other technical reports and submissions prepared by Seqwater or other party; and
  - associated technical information prepared for various reporting and other information requirements.
- Provide a report/s to Seqwater which describes the findings of your review on the matters that Seqwater seeks your opinion;
- Participate in technical workshops;
- Provide a written statement, or oral evidence for the purpose of any Commission of Inquiry, court or similar proceedings.

**ANNEXURE PART D**

**ANNEXURE to the Australian Standard**  
**General Conditions of Contract for**  
**Engagement of Consultants**

**Part D****Consultant's Fees**

The following hourly rates apply to the Consultant's team working on the Project:

Consultant	Rate/hour for FY 2010/11	Rate/hour for FY 2011/12
Len McDonald	\$269.00	\$280.00
Dene Jamieson	\$247.00	\$257.00
Janet Moule	\$131.00	\$136.00

The above hourly rates are exclusive of GST.

