



# **STANDARD CONSULTANCY AGREEMENT**

**BMT EASTERN AUSTRALIA PTY LTD  
ABN 54 010 830 421**

***Full Legal Name of Client:***

***ACN/ABN:***

***Contract Ref:  
(If Applicable)***

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## AGREEMENT PARTICULARS

### Formation of Agreement

Date:

### The Parties

#### BMT EA:

Name: BMT Eastern Australia Pty Ltd ACN 010 830 421

ABN: 54 010 830 421

Address for Notices:

*Delivery:* Level 8, 200 Creek Street, Brisbane, Qld 4000

*Post:* PO Box 203, Spring Hill, 4004

*Facsimile:* +61 7 3832 3627

Representative:

*Name:*

*Email:*

*Phone:* 07 3831 6744

#### The Client:

Name:

A.C.N./ABN:

Address for Notices:

*Delivery:*

*Post:*

*Facsimile:*

Representative:

*Name:*

*Email:*

*Phone:*

### Background

Background:

The Client has requested BMT EA, and BMT EA has agreed, to provide the Services for the Project as expressed in this Agreement.

### Agreement Documents

This Agreement is comprised of the following documents, which together comprise the contract between the Parties:

- these Agreement Particulars;
- Part 2 Terms and Conditions (including the Appendix);
- Other relevant documents (must be specified here):

## AGREEMENT PARTICULARS

### Project

Project Name:

Project Description:

Client Project Number:

BMT EA's Contract/Project  
Number:

### Services

Scope of Services:

Deliverables:

### Consultancy Period

Commencement Date:

End Date  Estimated End Date:  
\*Select whichever is applicable

### Fee

Fee Deposit if Applicable: \$

Fee  Estimated Fee \$  
(excl. GST):  
\*Select whichever is applicable

Fee basis:  Time plus expenses charged basis. .  
 Fixed fee basis.

Total estimated Service Fee hours:

### Nominated Personnel and Service Fee Rates

Name of Nominated Personnel and  
applicable Service Fee rate:

Subcontractor Management fee  
rate:

## AGREEMENT PARTICULARS

### Reimbursable Expenses

Reimbursable Expenses

- Travel expenses (including car hire at away destination).*
- Accommodation and meal costs.*
- Third party data purchase costs.*
- (If applicable to the Services) Costs to engage third party specialist soil consultant.*
- (If applicable to the Services) Costs to engage third party specialist ground water consultant.*
- (If applicable to the Services) Costs to engage surveyor.*
- Other:*

### Invoicing and Payment of Fee

Invoicing:

1. (If applicable) Invoice for the Fee Deposit to be submitted to the Client with the provision of the Agreement Documents.
2. Subsequent invoices for the Fee to be submitted monthly, in arrears, from the Commencement Date, comprising:
  - (a) the Service Fee for the Services performed during the subject invoice period; plus
  - (b) (if applicable) Reimbursable Expenses expended or committed within the subject invoice periodand/or subsequent invoices for the Fee to be submitted at the times and in the amounts as follows:

Payment of Invoices:

1. (If applicable) Fee Deposit invoice to be paid by the Client upon the formation of the Agreement (see Part 2 of the Terms and Conditions), by electronic transfer into BMT EA's bank account detailed below.
2. Subsequent invoices for the Fee to be paid by the Client no later than 30 days after the date of the invoice, by electronic transfer into BMT EA's bank account detailed below or as subsequently nominated in writing by BMT EA to the Client.

### Manner of Payment

Bank Account Details:

Bank Name	National Australia Bank Limited
BSB Number	084-004
Account Number:	53-819-2307
Swift Code	NATAAU3302S
Account Name:	BMT Eastern Australia Pty Ltd
Payment Reference	

### Insurance

Workers Compensation:

As required by law.

Public Liability:

Not less than \$5 million.

**AGREEMENT PARTICULARS**

Professional Indemnity: Not less than \$2 million.

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**Limited Liability**

Limited Liability Amount:

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**Special Conditions**

[Insert Special Conditions]:

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**Execution by the Client**

**Alternative 1 (by an individual):**

Executed and delivered by:

- as a contract;
- in the presence of a witness

.....  
Signature of the Client

.....  
Witness

Full Name [*Print*]

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**Alternative 2 (company without affixing seal):**

Executed and Delivered on behalf of the Client

- as a contract;
- pursuant to *Corporations Act* sections 127(2) and 127(3);
- by a director and a second director/the secretary, who certify they are the proper officers to sign this Agreement:

.....  
Director

Full Name [*Print*]

.....  
Director/Secretary

Full Name [*Print*]

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**AGREEMENT PARTICULARS**

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**Alternative 3 (company by an Attorney under Power of Attorney):**

Executed and delivered on behalf of the Client

- as a contract;
- as an attorney under registered Power of Attorney No.
- in the presence of a witness:

.....  
Signature of Attorney

Full name [*Print*]

.....  
Witness

Full name [*Print*]

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**Alternative 4 (company by an authorised person):**

Executed and delivered on behalf of the Client

- as a contract;
- under *Property Law Act 1974* (Qld) section 46(2) / in accordance with its Constitution;
- by a person authorised by resolution of the board of directors, who certify they are the proper person to sign on behalf of the company
- in the presence of a witness:

.....  
Signature of authorised person

.....  
Full name [*Print*]

.....  
Witness

.....  
Full name [*Print*]

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**Execution by BMT EA**

Executed and delivered on behalf of **BMT Eastern Australia Pty Ltd**

- as a contract;
- by a person authorised by resolution of the board of directors, who certify they are the proper person to sign on behalf of the company:

.....  
Authorised Person

Full Name [*Print*]

BMT EA Project name:

BMT EA Project number:

## PART 2 TERMS AND CONDITIONS

### DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions and Interpretation

- (1) This Agreement is to be interpreted by reference to the definitions and interpretational rules in the Appendix.
- (2) Each of those definitions and rules applies to the Agreement unless:
  - (a) the context otherwise requires; or
  - (b) a contrary intention appears.

experienced in the same or similar services;

- (3) in a timely manner to the extent that it is within its control to do so.

### PART 2 FORMATION OF AGREEMENT

#### 2.1 Formation

This Agreement is formed upon the earlier of either:

- (1) the Client completing and signing the Execution section contained in the Agreement Particulars and notifying BMT EA in writing that it has done so; or
- (2) the Client, following receipt of a copy of this Agreement;
  - (a) providing BMT EA with verbal or written instructions to proceed with the Services; or
  - (b) engaging in conduct which could reasonably be understood by BMT EA to indicate the Client's acceptance of the Agreement (such as the continued provision of instructions to BMT EA regarding the Services or the Project, whether verbally or in writing).

#### 2.2 Reliance

Where the Client accepts the Agreement other than as provided for in Clause 2.1(1), BMT EA is entitled to rely on the Agreement and enforce its rights under it and the Client agrees that it may not, in those circumstances, deny the existence of a binding agreement.

#### 2.3 Consultancy Period

BMT EA will provide the Services during the Consultancy Period unless the Agreement is earlier terminated in accordance with this Agreement.

### PART 3 BMT EA RESPONSIBILITIES

#### 3.1 Performance

In exchange for the payment of the Fee, BMT EA will provide the Services.

#### 3.2 Standard

BMT EA will provide the Services:

- (1) with reasonable care, skill and diligence;
- (2) to a professional standard that is reasonably expected of a consultant

#### 3.3 Nominated Personnel

- (1) BMT EA will ensure the Services are performed by the Nominated Personnel.
- (2) If at any time any of the Nominated Personnel are not available for any reason (whether within BMT EA's control or not), BMT EA is entitled to replace the Nominated Personnel in question with another person who is, in the sole opinion of BMT EA, suitably qualified and experienced to carry out the relevant component of the Services.

#### 3.4 Bona Fide

If the Services include the giving of evidence in a court or tribunal or the provision of a report as an expert, BMT EA will exercise its professional judgement and will act bona fide and without bias in providing those Services.

#### 3.5 Request for Information

If BMT EA considers the information provided to it by the Client is not sufficient to enable BMT EA to provide the Services, BMT EA will advise the Client in writing of:

- (1) the nature of the information being sought;
- (2) the reason why it is being sought;
- (3) by when the information sought is required to be provided to BMT EA;
- (4) the consequences if the information is not provided, including that BMT EA (at its sole discretion) may elect to suspend the provision of the Services or terminate the Agreement.

#### 3.6 Time Records

- (1) BMT EA will, at all times, keep and maintain accurate records of the time spent by its Nominated Personnel in the provision of the Services.
- (2) If requested by the Client to verify an invoice relating to the Fee, BMT EA will provide a copy of the time records kept, and receipts or other supporting documentation of Reimbursable Expenses incurred or committed, in the provision of the Services relevant to the subject invoice.

### PART 4 CLIENT RESPONSIBILITIES

#### 4.1 Information

- (1) By no later than the Commencement Date, the Client must provide to BMT EA

## PART 2 TERMS AND CONDITIONS

all information (including Documentation) relating to the Project relevant to the Services in order to enable BMT EA to provide the Services.

- (2) If BMT EA notifies the Client as provided for in Clause 3.5 that additional information is required in order to enable BMT EA to provide the Services, the Client must provide such information to it by no later than 5 Business Days after BMT EA's notification.

### 4.2 Clause 4.1(2) suspension or termination

If the Client fails to provide to BMT EA the information as required by Clause 4.1(2) within the time period stated under Clause 3.5(3), BMT EA (at its sole discretion) may elect to suspend the provision of the Services until such information is provided, or terminate the Agreement, by giving written notice of its election to the Client, subject to Clauses 12.4 and 12.5.

### 4.3 Information Warranty

The Client warrants and represents that the information (including Documentation) provided by it to BMT EA is accurate, complete and correct.

### 4.4 Cooperation

- (1) The Client will cooperate with and provide such assistance to BMT EA as requested by it.
- (2) The Client will not interfere with or obstruct BMT EA in the provision of the Services.

### 4.5 Enablement

By no later than the Commencement Date (or, if not required by the Commencement Date, such later time as nominated in writing by BMT EA), the Client will ensure that:

- (1) it obtains the necessary approvals, authorities, licences and permits to enable BMT EA to provide the Services;
- (2) it makes relevant arrangements to enable BMT EA to enter any site, land and premises as necessary to enable BMT EA to provide the Services;
- (3) it provides to BMT EA the equipment, data and facilities as appropriate relating to the Project to enable BMT EA to provide the Services.

### 4.6 Clause 4.6 suspension

If the Client fails to comply with the obligations contained in Clause 4.5, BMT EA may suspend the performance of the Services until the Client complies with the subject obligations to the satisfaction of BMT EA, subject to Clauses 12.4 and 12.5.

## PART 5 REPRESENTATIVES

### 5.1 Authority Warranty

Each Party warrants and represents that its Representative is authorised to act on behalf of, and to bind, that Party in respect of the administration and management of the Agreement.

### 5.2 Change of Representative

A Party may change its Representative by giving the other Party at least 7 days written notice of the change of the Representative and their full contact details.

## PART 6 FEE PAYMENT

### 6.1 Fee

The Fee (excluding GST) is comprised of, and calculated as follows:

- (1) If the Services are on a time plus expenses charged basis, the sum of:
  - (a) the Service Fee, calculated by applying the Service Fee rates specified for the Nominated Personnel against the time recorded by the respective Nominated Personnel for the provision of the Services; plus
  - (b) the cost of Reimbursable Expenses, whether expended or committed; plus
  - (c) the fee for BMT EA to manage subcontractors (including third party consultants) who are listed as Reimbursable Expenses, by applying the subcontractor management fee rate specified in the Agreement Particulars against the total contract value of the subcontractor's contract.
- (2) If the Services are on a fixed fee basis, the Fee specified in the Agreement Particulars inclusive of all Reimbursable Expenses and subcontractor management fees.

### 6.2 Payment

The Client will pay BMT EA the Fee by way of instalments, at the times and in the manner set out in the Agreement Particulars, subject to receiving a tax invoice from BMT EA.

### 6.3 Fee Deposit

- (1) The Fee Deposit is non-refundable.
- (2) Once paid, BMT EA will account for the Fee Deposit by deducting it from the Fee amount that would otherwise be due and payable under the first invoice issued after the Commencement Date.



## PART 2 TERMS AND CONDITIONS

### 6.4 Interest

If the Client fails to pay an invoice by the specified time for payment, in addition to the invoiced amount, the Client must pay interest to BMT EA at the rate of 8% simple interest calculated from the day after the specified time for payment until the Client pays BMT EA the invoiced amount and interest in full.

### 6.5 Fee Inclusions

The Service Fee rates for Nominated Personnel include the cost of administrative and other support tasks performed by BMT EA's other personnel, but excludes the cost of a third party service provided to BMT EA that is a Reimbursable Expense.

### 6.6 GST

- (1) Unless GST is expressly included in the Fee or items comprising the Fee, the Fee and items comprising the Fee do not include the application of GST.
- (2) In addition to the Fee, the Client must pay BMT EA the amount of GST applicable to the Fee amount specified in an invoice.
- (3) The amount of GST will be determined in accordance with the GST Laws as amended from time to time.

### 6.7 Legislative and Other Changes

- (1) If, after formation of the Agreement, there are changes to legislative requirements or to the cost of provision of third party services that are Reimbursable Expenses which directly or indirectly impacts the cost of any item comprising the Fee, BMT EA will notify in writing the Client of the nature of the change and the impact on the Fee and any item comprising the Fee.
- (2) No later than 7 days after receiving a notice from BMT EA regarding such changes, the Client will advise BMT EA whether it agrees to or rejects the proposed Fee increase.
- (3) If the Client accepts the proposed increase, the Fee will be increased accordingly.
- (4) If the Client rejects the proposed increase, BMT EA (at its sole discretion) is entitled to terminate the Agreement by giving written notice of termination to the Client, subject to Clause 12.6.

## PART 7 VARIATIONS

### 7.1 Notice of Potential Variation

If a Party becomes aware of any matter which may change the scope of the Services, the Deliverables or the timing of the Services

(*a Potential Variation*), that Party must notify in writing the other Party of:

- (1) the nature of the Potential Variation;
- (2) the likely impact on the Services and/or the Consultancy Period.

### 7.2 Notice of Amended Fee

- (1) In giving or receiving a notice under Clause 7.1, BMT EA will notify the Client in writing of the change to the Fee as a result of the Potential Variation (*the Proposed Amended Fee*).
- (2) BMT EA will determine the Proposed Amended Fee in accordance with the Service Fee rates and the cost of Reimbursable Expenses specified in the Agreement Particulars or, if no rates or costs applicable to the nature of the Potential Variation are specified in the Agreement Particulars, at reasonable fee rates and expenses (which shall include a reasonable amount for profits and overheads).

### 7.3 Notice of Acceptance or Rejection

No later than 5 Business Days after receiving BMT EA's notification under Clause 7.2, the Client must notify BMT EA whether it accepts or rejects the Potential Variation and the Proposed Amended Fee.

### 7.4 Acceptance of Potential Variation

If the Client accepts the Potential Variation *and* the Proposed Amended Fee, from the date the Client notifies BMT EA of its acceptance:

- (1) the Potential Variation becomes a variation to the Services and will form part of the Services; and
- (2) BMT EA will provide the Services as varied; and
- (3) the amount of the Proposed Amended Fee becomes the amount of the Fee, which Fee will be calculated, and paid by the Client, in accordance with Part 6.

### 7.5 Rejection of Potential Variation

If the Client rejects, or within the specified period fails to notify whether it accepts or rejects, the Potential Variation *or* the Proposed Amended Fee:

- (1) the Potential Variation is automatically withdrawn; and
- (2) the Parties will proceed with the performance of the Agreement, without regard to the Potential Variation.

## PART 2 TERMS AND CONDITIONS

### 7.6 Consequence of rejection of BMT EA Potential Variation

If:

- (1) BMT EA notified the Client about the Potential Variation; *and*
- (2) the Potential Variation or the Proposed Amended Fee is rejected by the Client under Clause 7.5; *but*
- (3) BMT EA (acting in good faith) considers that, without the Potential Variation, it cannot provide the Services in accordance with this Agreement,

BMT EA (at its sole discretion) is entitled to terminate the Agreement by giving written notice of termination to the Client, subject to Clause 12.6.

## PART 8 INSURANCE AND INDEMNITY

### 8.1 Insurance

- (1) BMT EA will keep and maintain the insurances, and with the limits, specified in the Agreement Particulars.
- (2) At the written request of the Client, BMT EA will, at the cost of the Client, use its best endeavours to arrange any additional insurance cover beyond that normally borne by BMT EA or otherwise vary the nature of the insurance cover. No additional liability shall attach to BMT EA until the Client has paid, or reimbursed BMT EA for, the cost of such additional insurance coverage.
- (3) If requested by the Client (which request must not be made more than twice per calendar year), BMT EA will provide the Client with confirmation that such insurances have been effected and maintained.

### 8.2 Indemnity

The Client agrees to indemnify and keep indemnified BMT EA against Cost incurred, sustained or suffered by BMT EA that results directly or indirectly from:

- (1) the Client breaching its obligations under this Agreement;
- (2) the enforcement of BMT EA's rights under this Agreement; or
- (3) the reliance by a third party on the Deliverables.

## PART 9 LIMITATION OF LIABILITY

### 9.1 Consequential Loss

Neither Party ("the first Party") is liable to the other Party for any Consequential Loss that may be suffered, sustained or incurred by the other Party relating to or arising out of the

performance of this Agreement (including the provision of the Services) by the first Party.

### 9.2 Exclusion of Implied Warranties

To the extent permitted by law, all statutory or implied conditions or warranties are excluded from the Agreement.

### 9.3 Liability Limitation Period

- (1) BMT EA's liability to the Client (including persons claiming through or under the Client) for the provision of the Services or arising out of this Agreement ends at the expiration of one year from the End Date.
- (2) If the Client wishes to exercise its rights against BMT EA in respect of the provision of the Services or arising out of this Agreement, it must do so prior to the expiration of the period specified in Clause 9.3(1).
- (3) After the expiration of the period specified in Clause 9.3(1), the Client is prohibited from bringing an action or proceedings in contract or tort, or a complaint for breach of a legislative requirement, against BMT EA arising out of the provision of the Services or the performance of its obligations under the Agreement.

### 9.4 Limited Liability

To the extent permitted by law, but subject to Clause 9.5, BMT EA's liability to the Client:

- (1) under any condition or warranty which cannot legally be excluded; or
- (2) arising out of the provision or non-provision of the Services; or
- (3) arising out of this Agreement; and
- (4) whether under contract, in tort (including negligence), under statute or otherwise,

is limited, in each case, at BMT EA's election, to the lesser of:

- (a) the cost of re-performing or rectifying the Services; or
- (b) the Limited Liability Amount.

### 9.5 Exclusion from Limited Liability

Clause 9.4 does not apply to loss or liability that is recoverable by the Client from BMT EA under contracts of insurance maintained by BMT EA as specified in this Agreement.

## PART 10 INTELLECTUAL PROPERTY RIGHTS

### 10.1 Pre-existing Material

Each Party retains ownership of the Intellectual Property Rights in any material proprietary to that Party existing prior to the formation of this Agreement.

## PART 2 TERMS AND CONDITIONS

### 10.2 Title

Title to and all Intellectual Property Rights in the Deliverables immediately upon creation vest in, and remain vested in, BMT EA.

### 10.3 Licence

- (1) It is a condition precedent to BMT EA granting the Client the licence under Clause 10.3(2) that the Client pays BMT EA the Fee (plus GST) in full.
- (2) Upon the Client paying BMT EA the Fee (plus GST) in full, BMT EA grants the Client a non-transferable licence to use and reproduce the Deliverables for the purpose of the Project only, on the following conditions:
  - (a) the Deliverables, if reproduced, must be reproduced in full, without amendment;
  - (b) the Client will only provide a reproduction of the Deliverables to a third party who is an Associate engaged by it for the purpose of the Project; and
  - (c) the Client will ensure that its Associates only use the Deliverables and information derived from the Deliverables solely for the purpose of the Project.
- (3) Except as provided for in this Clause 10.3(2), the Deliverables are not to be onsold, transmitted, used, reproduced or otherwise distributed to any third party.

### 10.4 Use for Other Purposes

Should the Client wish to use or reproduce the Deliverables for any purpose other than the Project, the Client must first obtain the written consent of BMT EA, which consent may be subject to conditions as deemed appropriate by BMT EA, including the payment of additional fees.

### 10.5 Return and Destruction of the Deliverables

In the event that:

- (1) BMT EA has provided the Deliverables to the Client prior to receiving payment of the Fee (plus GST) in full; and
- (2) the Client fails to pay BMT EA the Fee (plus GST) in full within the period required by the Agreement,

the Client must not use, reproduce or distribute the Deliverables. Additionally, at the request of BMT EA, the Client must return to BMT EA, or destroy and certify to BMT EA the destruction of, the Deliverables (including any drafts or reproductions).

### 10.6 Publication by BMT EA

With the prior written consent of the Client, BMT EA may publish or communicate to the public, either alone or in conjunction with other persons, articles, photographs, animations and other illustrations relating to the Project or the Services (including the Deliverables).

## PART 11 DISPUTE DETERMINATION

### 11.1 Dispute Process

Neither Party will commence court proceedings or actions against the other Party under or in connection with the Agreement (other than where urgent interlocutory relief is required) unless it is first attempted to resolve the dispute in accordance with this Part 11.

### 11.2 Continued Performance

- (1) Except if Clause 11.2(2) or Clause 12.2 applies, notwithstanding the existence of a dispute, each Party must continue to perform its obligations under the Agreement, subject to Clause 11.3.
- (2) If, due to the subject matter of the dispute, BMT EA (acting in good faith and reasonably) considers it is unable to continue to provide the Services unless and until the dispute is resolved, it may elect to suspend the provision of the Services until the dispute is resolved, subject to Clauses 12.5(3) and 12.5(4).

### 11.3 Payment Claims

Despite this Part 11, and without derogating from its other rights under the Agreement, BMT EA is entitled to issue payment claims and take action under the *Building and Construction Industry Payment Act* (or equivalent legislation in the jurisdiction in which the work is performed) in relation to any dispute in relation to the payment of BMT EA's invoices.

### 11.4 Dispute Notice

Subject to BMT EA's rights under Clauses 11.3 and 12.5(2), if a dispute arises under the Agreement, a Party must give to the other Party notice specifying the dispute (*a dispute notice*) and convening a without prejudice meeting between the parties no later than 5 Business Days after the giving of the dispute notice.

### 11.5 Representatives at Dispute Meeting

- (1) Each Party must ensure that its Representative who attends the convened dispute meeting has the authority to settle the dispute.
- (2) Each Party's Representatives must act in good faith and reasonably to resolve the dispute.

## PART 2 TERMS AND CONDITIONS

### 11.6 Referral to Independent Expert

- (1) If the dispute is not resolved at the convened dispute meeting, the Parties will refer the dispute to an independent expert having the appropriate qualifications, skills and experience to hear and determine disputes relating to the subject matter of the dispute.
- (2) Either Party may provide the other Party with a panel of 3 proposed experts from which the other Party will nominate an expert.
- (3) If the Parties fail to agree on an independent expert within 5 Business Days of a Party providing the other Party with a panel of proposed experts, either Party may refer the decision to appoint an expert to:
  - (a) for engineering matters, the President of the Institute of Engineers Australia, Queensland Division;
  - (b) for matters relating to the interpretation of the Agreement, the President of the Queensland Law Society.
- (4) In particular, the expert may:
  - (a) receive submissions (verbal or written) from the Parties;
  - (b) interview persons he considers might assist in resolving the issue/s in the dispute;
  - (c) seek information and documents he considers are or might be relevant to an issue in the dispute;
  - (d) inspect documents and consider information obtained; and
  - (e) draw upon his own knowledge and skill concerning the subject-matter of the dispute.
- (5) Each Party will cooperate with, and provide assistance to, the expert and provide information and documentation as requested by the expert.
- (6) In determining the issues in dispute, the expert must:
  - (a) act as an expert, not as an arbitrator;
  - (b) act as quickly as the interests and a fair and proper resolution of the dispute permit;
  - (c) act bona fide, without bias or reference to irrelevant considerations; and
  - (d) endeavour to make the determination that serves best the nature and intent of this Agreement.
- (7) If the expert considers that a Party has acted frivolously, irresponsibly, or unconscionably in precipitating or prolonging the dispute, he may express that conclusion in his determination.
- (8) The expert will determine the dispute no later than 10 Business Days (or such longer period as the expert reasonably determines is appropriate having regard to the complexity of the dispute) after being appointed.
- (9) The expert must deliver his determination (including a full statement of the reasons for his determination) in writing, addressed to the Parties jointly.
- (10) Unless, no later than 14 Business Days after the expert delivers his determination, a Party applies to a court to overturn or vary the determination, the determination will be final and binding on the Parties.
- (11) The Parties will equally bear the cost of the independent expert from the date of appointment.

## PART 12 TERMINATION AND SUSPENSION

### 12.1 General Right of Termination

A Party not in default under the Agreement (***the non-defaulting Party***) may terminate this Agreement by giving the other Party a notice of termination if:

- (1) the other Party fails to discharge an obligation that the Agreement imposes on it, within the time the Agreement provides for discharging the obligation; or
- (2) the other Party commits an Act of Insolvency; or
- (3) the non-defaulting Party gives a notice of breach to the other Party (the defaulting Party) for failure to discharge an obligation that is capable of being remedied, which notice details the breach and requires the defaulting Party to remedy the breach no later than 7 Business Days after the giving of the notice, and the defaulting Party fails to remedy the breach to the satisfaction of the non-defaulting Party (acting reasonably) within the required time.

### 12.2 Client's Failure to Pay

If the failure to discharge an obligation under clause 12.1(1) is the Client failing to pay an invoice issued by BMT EA representing its Fee, without limiting any other rights BMT EA may

## PART 2 TERMS AND CONDITIONS

have under the Agreement, BMT EA may, at its sole discretion:

- (1) suspend the provision of the Services, without notice to the Client, until the Client pays the amount of the Fee the subject of the outstanding invoice;
- (2) terminate the Agreement, by giving notice of termination to the Client.

### 12.3 Consequences of Clause 12.2(1) Suspension

If BMT EA suspends the provision of the Services pursuant to Clause 12.2(1) and subsequently the Client pays the amount of the Fee the subject of the invoice:

- (1) the suspension will end on the next Business Day following BMT EA's receipt of the Fee amount the subject of the invoice; and
- (2) the End Date for the Consultancy Period will be extended by the number of days the provision of the Services were suspended; and
- (3) the Client will pay to BMT EA any delay costs incurred, sustained or suffered by BMT EA arising out of the suspension of the Services, no later than 7 days after receiving an invoice for such costs from BMT EA.

### 12.4 Other Suspension Rights

BMT EA may suspend the provision of the Services pursuant to exercising its rights under Clauses 4.2, 4.6, or 11.2(2), by giving notice of suspension to the Client, which notice details the clause under which the suspension is effected and the circumstances surrounding the suspension. If BMT EA suspends the provision of the Services as provided for in this Clause 12.4, it is not in breach of this Agreement.

### 12.5 Consequences of Clause 12.4 Suspensions

If BMT EA suspends the provision of the Services pursuant to exercising a right under Clause 12.4, and subsequently the Client performs the action that grounded the suspension:

- (1) the Client must notify BMT EA that it has fulfilled the action that grounded the suspension and provide BMT EA with sufficient evidence of the fulfilment of the subject action; and
- (2) the suspension will end on the next Business Day following BMT EA's receipt and acceptance of the Client's notification under Clause 12.5(1). Such acceptance will be at BMT EA's sole discretion; and

- (3) the End Date for the Consultancy Period will be extended by the number of days the provision of the Services were suspended; and
- (4) the Client will pay to BMT EA any delay costs incurred, sustained or suffered by BMT EA arising out of the suspension of the Services, no later than 7 days after receiving an invoice for such costs from BMT EA.

### 12.6 Additional Termination Rights

BMT EA may terminate this Agreement pursuant to exercising its rights of termination under Clauses 4.2, 6.7(4) or 7.6, by giving to the Client a notice of termination, which details the clause under which the termination is effected. If BMT EA terminates the Agreement as provided for in this Clause 12.6, it is not in breach of this Agreement.

### 12.7 Rights of a Party

Termination is without prejudice to any Claim which either Party may have against the other Party in respect of any breach of the Agreement that occurs prior to the date of termination.

### 12.8 Agreement to Terminate

This Agreement may be terminated by mutual written agreement of the Parties.

### 12.9 Early Termination Payment

- (1) Should this Agreement be terminated other than for a breach of the Agreement by BMT EA, the Client will pay to BMT EA the Fee for the Services provided (whether or not delivered) up to and including the date of termination and any reasonable Costs incurred, sustained or suffered by BMT EA directly or indirectly attributable to the early termination of the Agreement, including (without limitation) Costs incurred to procure specialist equipment and third party specialist consultants.
- (2) Should this Agreement be terminated for breach of the Agreement by BMT EA, the Client will pay BMT EA for the part of the Services duly and properly performed in accordance with the Agreement up to and including the date of termination.

## PART 13 NOTICES

### 13.1 Notice Requirements

A notice under this Agreement must be in writing and signed by the Party giving the notice or one of its authorised persons.

### 13.2 Delivery Methods

A Party must give a notice by delivering, posting or transmitting it by facsimile to the intended

## PART 2 TERMS AND CONDITIONS

recipient at its address for notices as set out in the Agreement Particulars.

### 13.3 Deemed Receipt

- (1) A notice delivered or posted is deemed received:
  - (a) if delivered at or before 4:30pm: at the moment of delivery;
  - (b) if delivered after 4:30pm: at 8:30am on the Business Day following the day of delivery;
  - (c) if posted to an address in Australia: 2 Business Days after posting;
  - (d) if posted to an address outside Australia: 5 Business Days after posting.
- (2) A notice sent by facsimile transmission is deemed received at the time of receipt specified in a confirmation report, if the report discloses that the transmission was received at or before 4:30pm.
- (3) If the confirmation report discloses receipt of the transmission after 4:30pm, the notice is deemed received at 8:30am on the Business Day following the date of receipt disclosed in the report.
- (4) A confirmation report is, for a facsimile transmission confirmation report produced by the sender's facsimile machine:
  - (a) containing the identification code of the intended recipient's facsimile machine; and
  - (b) indicating that the transmission was received without error.
- (5) A notice received upon a day that is not a Business Day is deemed received at 8:30am on the Business Day following the day of receipt.

## PART 14 MISCELLANEOUS

### 14.1 No Assignment

- (1) A party must not assign, subcontract or transfer any right or obligation under the Agreement without the written consent of

the other Party, subject to such conditions as the other Party (acting reasonably) may impose.

- (2) Despite Clause 14.1(1), the Client hereby consents to BMT EA assigning or transferring the performance of this Agreement or right to receive payment of the Fee to a related body corporate. BMT EA will notify the Client in writing of any such assignment or transfer.
- (3) The Client hereby consents to BMT EA subcontracting or employing third parties as it deems appropriate to assist in the provision of the Services.

### 14.2 Warranty of Authority

Each person signing the Agreement as an officer or other representative of a Party assures each other Party or signatory that he possesses unrestricted authority to sign in that capacity.

### 14.3 Relationship between Parties

This Agreement creates between the Parties no partnership, joint venture, or agency relationship, irrespective of:

- (1) any other provision in the Agreement; and
- (2) any rule or presumption of law.

### 14.4 Waiver

- (1) A waiver of a Party's rights under the Agreement is valid only if it is waived in a written document signed by the waiving Party.
- (2) No forbearance, delay or indulgence by a Party in enforcing the provisions of this Agreement shall prejudice, restrict or limit the rights of that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

### 14.5 Governing Law

- (1) Queensland law governs the Agreement.
- (2) For clarity, Queensland law includes Commonwealth Acts to the extent that they bind Queensland

*[End of Terms and Conditions]*

## APPENDIX

### [Definitions and Interpretational Rules for Agreement]

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#### 1. Definitions

Each of the following expressions bear the meaning assigned to them:

<hr/> <b>Act of Insolvency</b> <hr/>	For a Party: <ol style="list-style-type: none"><li>(1) suffering the appointment of a receiver, which appointment is not terminated, postponed or enjoined within 14 days after it is made;</li><li>(2) entering voluntary administration;</li><li>(3) suffering the appointment of a provisional liquidator;</li><li>(4) failing to satisfy a statutory demand under the <i>Corporations Act</i>;<sup>1</sup></li><li>(5) voluntarily applying to be wound-up, or suffering presentation of an application for winding-up;</li><li>(6) being wound up or being de-registered as a corporation;</li><li>(7) entering a composition or scheme of arrangement for the benefit of creditors;</li><li>(8) failing to secure the return of an asset within 21 days after a creditor or an encumbrancee lawfully seizes it;</li><li>(9) committing an act of bankruptcy mentioned in the <i>Bankruptcy Act</i>;<sup>2</sup></li><li>(10) presenting a debtors petition for bankruptcy, or suffering the presentation of a creditors petition;</li><li>(11) signing under the <i>Bankruptcy Act</i> an authority (to appoint a controlling trustee);<sup>3</sup></li><li>(12) becoming bankrupt upon a debtors petition or a creditors petition.</li></ol>
<hr/> <b>Agreement</b> <hr/>	The Agreement Documents which together comprise the contract between the parties.
<hr/> <b>Agreement Documents</b> <hr/>	The documents specified in the Agreement Particulars as being the Agreement Documents.
<hr/> <b>Agreement Particulars</b> <hr/>	The document entitled "Agreement Particulars", which document forms part of the Agreement Documents.
<hr/> <b>Associate</b> <hr/>	For a Party, a person who claims under or through the Party. For example: An employee, an agent or a contractor.
<hr/> <b>Bank</b> <hr/>	A trading bank licensed to conduct banking business, and conducting banking business, under Commonwealth or Queensland legislation regulating banking.

<sup>1</sup> Refer to section 459E.

<sup>2</sup> Refer to section 40.

<sup>3</sup> Refer to section 188.

<b>Business Day</b>	<ul style="list-style-type: none"> <li>(1) For giving notice under the Agreement: a day other than a Saturday, Sunday or public holiday in the locality to which the notice is to be sent;</li> <li>(2) For making a payment under the Agreement: a day, other than a Saturday, Sunday or public holiday, upon which Banks are open for business in the locality of the recipient's Address for Notices.</li> </ul>
<b>Claim</b>	A demand, claim, action, or proceeding.
<b>Commencement Date</b>	The date specified as the Commencement Date in the Agreement Particulars unless the Client has not paid the Fee Deposit prior to that specified date; in which case, the Commencement Date will be on the third Business Day after the Fee Deposit is received into BMT EA's bank account specified in the Agreement Particulars.
<b>Consequential Loss</b>	<p>Any of the following:</p> <ul style="list-style-type: none"> <li>(1) loss of contract;</li> <li>(2) loss of business opportunity;</li> <li>(3) loss of use;</li> <li>(4) loss of profit or anticipated profit;</li> <li>(5) loss of production; and</li> <li>(6) loss of revenue or anticipated revenue,</li> </ul> <p>and in each case:</p> <ul style="list-style-type: none"> <li>(a) arising out of or in connection with this Agreement or any of the transactions contemplated by this Agreement; and</li> <li>(b) whether or not foreseeable or in the ordinary contemplation of the Parties at formation of the Agreement; and</li> <li>(c) irrespective of whether the loss is caused by the negligence of a Party or by any other act of a Party, whether in breach of the Agreement or otherwise.</li> </ul>
<b>Consultancy Period</b>	In relation to the Services, the period starting on the Commencement Date and ending on the End Date.
<b>Cost</b>	Includes loss, liability, damages and expense.
<b>Deliverable</b>	Each and every outcome or deliverable of the Services (including Documentation) which BMT EA is required to produce or contribute to as part of the provision of the Services detailed in the Agreement Particulars.
<b>Documentation</b>	Any document, record, system, program or other material (irrespective of the form in which such information is written, embodied, stored and/or reproduced whether by electronic means (including encryption or encoding) or any handwritten form (including notes and drafts).



<b>End Date</b>	The date specified as the End Date in the Agreement Particulars unless the Client has not paid the Fee Deposit prior to the Commencement Date specified in the Agreement Particulars; in which case, means the date which is the End Date specified in the Agreement Particulars extended by the number of days between the Commencement Date specified in the Agreement Particulars and the third Business Day after receipt of the Fee Deposit by BMT EA, subject to the application of Clauses 12.3 and 12.5. If the End Date for the Consultancy Period is specified in the Agreement Particulars as an Estimated End Date, the end date of the Consultancy Period is the date by which BMT EA has provided all Deliverables to the Client.
<b>Fee</b>	The fee amount specified in the Agreement Particulars, comprising the fixed fee amount or the Service Fee rates, charges, costs and Reimbursable Expenses for the provision of Services calculated in accordance with Part 6.
<b>Fee Proposal</b>	A written proposal provided by BMT EA to the Client setting out the scope of, and proposed fee for, the Services BMT EA proposes to provide to the Client under the Agreement.
<b>GST</b>	The Goods and Services tax payable pursuant to the GST Laws.
<b>GST Laws</b>	The GST law (as defined by <i>A New Tax System (Goods and Services Tax) Act 1999</i> of the Commonwealth) together with all other laws and regulations which impose or regulate the implementation and operation of GST.
<b>Intellectual Property Rights</b>	Any rights in respect of or in connection with any confidential information, copyright, patents, design rights, trade marks (whether registered or not), trade names, trade secrets, knowhow, discovery, invention, secret process, improvement in procedure, innovation, and includes any right to apply for registration of such intellectual property rights.
<b>Limited Liability Amount</b>	The amount specified as such in the Agreement Particulars.
Nominated Personnel	The persons listed under Nominated Personnel in the Agreement Particulars.
Party	For this Agreement, a person specified as a Party in the Agreement Particulars.
Project	The project named and described in the Agreement Particulars.
Reimbursable Expenses	Expenses listed in the Agreement Particulars that are or will be incurred by BMT EA to third parties for services or the provision of goods (including equipment) which, in the opinion of BMT EA, are required for the provision of the Services.
Representative	For a Party, the person specified as such in the Agreement Particulars, subject to Clause 5.2.
Service Fee	The fees for the provision of the Services by Nominated Personnel calculated by applying the respective service fee rate specified for a relevant Nominated Person detailed in the Agreement Particulars against the time charged by that Nominated Person.

Services	The scope of services detailed in the Agreement Particulars and includes services reasonably incidental to the detailed services and includes any Deliverables required to be created, provided or produced (either in whole or in part) by BMT EA as part of the provision of the Services.
Special Conditions	The special conditions (if any) stated or referred to in the Agreement Particulars.

## 2. Interpretation

- (3) Headings are for convenience only and do not form part of the Agreement.
- (4) Reference to the singular includes the plural, and vice-versa.
- (5) Reference to a gender includes each other gender.
- (6) Reference to a person encompasses a natural person, a corporation, any other type of legal entity (including a body politic), a firm, and a voluntary association.
- (7) Reference to an entity that has ceased to exist, or has reconstituted, amalgamated, reconstructed, or merged, is to be treated as a reference to the person:
  - (a) established or constituted in its stead; or
  - (b) as nearly as may be, succeeding to its power or function.
- (8) Reference to an Act includes an Act that amends, consolidates, or replaces an Act.
- (9) Reference to an agreement or other instrument is to that agreement or instrument as amended, supplemented, replaced, or novated.
- (10) Reference to termination of the Agreement is a reference to termination by any means (for example, by expiry or merger, by frustration, or by termination for breach).
- (11) Reference to money is a reference to Australian dollars and cents.
- (12) Reference to a time of day is a reference to Australian Eastern Standard Time.
- (13) Reference to writing is a reference to reproduction of words, figures, symbols, and shapes in visible form, in English.
- (14) Reference to a Party includes the person's successors and permitted assigns.

## 3. Contra Proferentem Interpretation

A provision of the Agreement is not to be interpreted against the interest of a Party merely because the Agreement or provision was drawn by or on behalf of that Party.

## 4. Severance

A provision is to be treated as omitted from the Agreement if:

- (1) the provision is void, unenforceable, or incomprehensible; or
- (2) retaining the provision would render the Agreement or part of the Agreement void, unenforceable, or incomprehensible.

## 5. Order of Precedence

The Agreement Documents will be read in the following order of precedence and, in the case of any conflict or ambiguity, the document lower in precedence will be read down to resolve such conflict or ambiguity:

- (1) the Special Conditions (if any) stated or referred to in the Agreement Particulars;
- (2) the Agreement Particulars;
- (3) these Terms and Conditions; and
- (4) any other document referred to in the Agreement Documents detailed in the Agreement Particulars, in the descending order in they are listed.