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mb+ Operational Works Accreditation- A3 - Accreditation Deed for Consultant



ABN: 92 967 232 136

PO Box 159 Caboolture QLD 4510 | T 07 3205 0555 | E mbrc@moretonbay.qld.gov.au | W www.moretonbay.qld.gov.au

Made as a Deed

This Deed is made on the _____

day of _____ 20 _____

between

Moreton Bay Regional Council
2 Hasking Street, Caboolture
P.O Box 159
Caboolture QLD 4510
(‘Moreton Bay Regional Council’)

and

Consultant's name:

Consultant's address:

As an employee or contractor of (insert Accredited Consultancy name):

with the ACN of

(“Accredited Consultant”)

in relation to the Accredited Consultant performing mb+ Assessment services for Moreton Bay Regional Council.

Recitals

- A. The Accredited Consultant as an employee or contractor of the Accredited Consultancy wishes to provide mb+ Assessment Services under the mb+ Assessment process to Moreton Bay Regional Council.
- B. The Moreton Bay Regional Council requires the Accredited Consultant to undertake to preserve and maintain the confidentiality of certain information relevant to those services.
- C. The process and services relevant to the mb+ Assessment Services are set out in the Guidelines for Accredited Consultant/Consultancy.
- D. The Development Services Manager is authorised to sign this Deed on behalf of Moreton Bay Regional Council.

Terms and conditions

1. Definitions and interpretation

The following terms shall have the following meaning for the purpose of this Deed.

‘**Accredited Consultant**’ is the individual considered ‘accredited’ for the purposes of mb+ Assessment. The individual consultant must demonstrate the required level of expertise and experience to obtain accreditation.

‘**Accredited Consultancy**’ means the body corporate named in the Accreditation Application Form completed by the Accredited Consultant for the Accreditation Process.

‘**Accreditation Process**’ means the process and assessment procedures for becoming an Accredited Consultant, as specified by the Moreton Bay Regional Council and which has been completed by the Accredited Consultancy.

‘**Authorised User**’ has the meaning given to that term by the Trade Marks Act 1995 (Cth)

‘**Confidential Information**’ means the confidential information of the Moreton Bay Regional Council and includes any documents or information provided by the Moreton Bay Regional Council: (a) that are marked as confidential; (b) that are provided by the Moreton Bay Regional Council under circumstances or communications that are confidential; or (c) which the Accredited Consultant ought to know are confidential but (in respect of any of the information in (a), (b), and (c) of this definition), does not include any information that is or becomes part of the public domain, other than as a result of a breach of an obligation of confidence or any information that is required to be disclosed by law.

‘**Deed**’ means this Accreditation Deed

‘**Guidelines for Accredited Consultant/Consultancy**’ means the guidelines titled Guidelines for Accredited Consultant/ Consultancy which are attached to this Deed, as amended by the Moreton Bay Regional Council from time to time.

‘**Intellectual Property Rights**’ means all intellectual and industrial property rights and interests in Australia and throughout the world, whether registered or unregistered and whether created before, on or after the date of the Deed, including trademarks, designs patents, inventions, circuit layouts, copyright and analogous rights, confidential information, know how trade secrets and all other Intellectual Property Rights’.

‘**List of Accredited Consultants**’ means the list of Accredited Consultants as from time to time may be published by the Moreton Bay Regional Council and in the manner of publication or disclosure determined by the Moreton Bay Regional Council.

‘**Operational Works**’ has the same meaning as given to it under the *Planning Act 2016 (Qld)*.

‘**mb+ Assessment Service**’ means the Third Party Accredited Consultant Development Assessment services, which the Moreton Bay Regional Council specifies from time to time including, but not limited to, preparation and

lodgement of mb+ compliant development applications up to 'on maintenance.'

'Term' means the term of this Deed, as determined by clause 5.1.

2. Accredited Consultants' obligations

2.1. The Accredited Consultant hereby represents and warrants to the Moreton Bay Regional Council, and it is a condition of this Deed that the Accredited Consultant:

2.1.1. provided information to the Moreton Bay Regional Council during the Accreditation Process that was true, accurate and correct and will continue to provide information during its performance of the mb+ Assessment process that is true, accurate and correct;

2.1.2. has disclosed to the Moreton Bay Regional Council the locations of all the Accredited Consultant's business premises;

2.1.3. will immediately inform the Moreton Bay Regional Council in writing of any changes to the Accredited Consultant's employment by the Accredited Consultancy, and any other information provided or disclosed by the Accredited Consultant during the Accreditation Process;

2.1.4. will keep itself informed of any changes made by the Moreton Bay Regional Council to the Guidelines for Accredited Consultant/ Consultancy

2.1.5. will carry out mb+ Assessment Services safely, securely and in a professional manner;

2.1.6. will carry out the mb+ Assessment Services in accordance with the standards specified by the Moreton Bay Regional Council from time to time including in the Guidelines for Accredited Consultant/Consultancy and as required by law; and

2.1.7. will comply with the lawful advice and directions of the Moreton Bay Regional Council made in connection with the mb+ Assessment Process.

2.2. Other than as expressly set out in this Deed, this Deed does not licence, assign or transfer to the Accredited Consultant any Intellectual Property Rights of the Moreton Bay Regional Council or any goodwill in the same.

2.3. The Accredited Consultant acknowledges that benefits, rights and privileges attached to the accreditation of the Accredited Consultant are limited to the type of use the Accredited Consultant/Consultancy is qualified and demonstrates competency in, as determined by the Moreton Bay Regional Council (e.g. Industrial, Residential, Reconfiguring a Lot etc.). The Accredited Consultant must not perform any mb+ Assessment Services that, in the opinion of Moreton Bay Regional Council, fall outside the limitations of the accreditation of the Accredited Consultant.

2.4. The Accredited Consultant acknowledges that any non-compliance with or breach by the Accredited Consultant of the Guidelines for the Accredited Consultant/Consultancy or the terms of this Deed in the conduct or operation of mb+ Assessment Services by the Accredited Consultant for or on behalf of Moreton Bay Regional Council will provide the

Moreton Bay Regional Council with the option to elect to immediately cancel the accreditation of both the Accredited Consultant and the Accredited Consultancy.

2.5. The Accredited Consultancy indemnifies the Moreton Bay Regional Council from and against any claim, (including but not limited to claims based in negligence), loss or damage suffered or incurred by the Moreton Bay Regional Council arising from or in connection with the Third Party Assessment Services performed by the Accredited Consultancy or by an Accredited Consultant employed or contracted by the Accredited Consultancy who undertook the Third Party Assessment Services, (including but not limited to claims by third parties).

2.6. The Accredited Consultant must not provide or disclose any Confidential Information to any third party without the prior written consent of the Moreton Bay Regional Council. If the Accredited Consultant becomes aware of an unauthorised disclosure of any Confidential Information, it must immediately inform the Moreton Bay Regional Council of the disclosure. These provisions shall not restrict the Accredited Consultant from:

2.6.1. Disclosing information to third parties (including its sub-consultants or sub-contractors) which is necessary for the performance of Services provided that any such disclosure is on terms which include a confidentiality clause identifiable to the Accredited Consultant's obligations under this Clause; and/or

2.6.2. Disclosing the information to its insurance broker, legal representatives and financial or accounting advisors to the extent required for the day to day running of the Accredited Consultant's business or making or defending a claim either under an insurance policy or in court proceedings.

Clause 2.6 survives termination or expiry of this Deed.

2.7. The terms of the Guidelines for the Accredited Consultant/ Consultancy form part of the terms of this Deed. In the event of inconsistency, the terms of this Deed shall prevail over the terms of the Guidelines for the Accredited Consultant/Consultancy to the extent of the inconsistency.

3. Moreton Bay Regional Council's obligations

3.1. Subject to the terms of this Deed, the Moreton Bay Regional Council shall:

3.1.1. carry out the mb+ Assessment Process with due care and skill; and

3.1.2. promptly after the execution of this Deed, add the name of the Accredited Consultant to the List of Accredited Consultants (for clarity, the name of the Accredited Consultant may be removed from that list in accordance with this Deed).

3.2. The Accredited Consultant acknowledges and agrees that:

3.2.1. it has not relied on any statement, representation, warranty, conduct or undertaking made or given by the Moreton Bay Regional Council or any person on its behalf; and

3.2.2. it has relied on its own skill and judgment in agreeing to enter into this Deed.

3.3. The Moreton Bay Regional Council is not liable to pay to the mb+ Consultant any fees, expenses or other costs in connection with the Accreditation Process, the mb+ Assessment Services or for any other work performed by the Accredited Consultant in connection with this Deed.

4. Suspension and/or removal

4.1. The Accredited Consultant agrees **the** that the Moreton Bay Regional Council may, by notice in writing to the Accredited Consultant and/or the Accredited Consultancy, suspend the right of the Accredited Consultant to perform the mb+ Assessment Services if, in the opinion of Moreton Bay Regional Council:

4.1.1. the Accredited Consultant fails to: (a) maintain the relevant level of professional body membership and professional indemnity insurance required by the Guidelines for Accredited Consultant/Consultancy; or (b) provide the Moreton Bay Regional Council with evidence (including certificates of currency and policy schedules) of that insurance within one business day of the Moreton Bay Regional Council requesting such evidence;

4.1.2. the Accredited Consultant has breached any of its obligations and/or warranties in clause 2;

4.1.3. the Moreton Bay Regional Council becomes aware by whatever means of any fraud perpetrated, or allegedly perpetrated by the Accredited Consultant, or

4.1.4. the Accredited Consultant ceases to be employed or otherwise engaged by the Accredited Consultancy.

4.2. The Accredited Consultant must cease providing mb+ Assessment Services on and from the date of suspension and for the period of time specified in the notice given by the Moreton Bay Regional Council under clause 4.1 above, or if no date is specified in that notice, immediately upon receipt of that notice by the Accredited Consultant.

4.3. The Moreton Bay Regional Council may remove the name of the Accredited Consultant from the List of Accredited Consultants during the period of any suspension under this Clause 4.

5. Expiry and Termination

5.1. This Deed commences on the date that it is signed by both parties and continues for a period of five years, unless terminated earlier (including but not limited to termination under clauses 5.2 and 5.3 below).

5.2. The Moreton Bay Regional Council may by notice in writing to the Accredited Consultant and/or the Accredited Consultancy, immediately terminate this Deed if:

5.2.1. the Moreton Bay Regional Council determines that it is not reasonable for the Accredited Consultant

to remain accredited because of the nature or extent of conduct which led to the Moreton Bay Regional Council issuing a notice to the Accredited Consultant under Clause 4.1 above;

5.2.2. the Accredited Consultant breaches any of the terms of this Deed, including any failure to comply with the Accredited Consultant's obligations or warranties in Clause 2; or

5.2.3. The Accredited Consultant becomes the subject of any insolvency, bankruptcy or winding-up proceedings of any kind (as determined by the Moreton Bay Regional Council).

5.3. The Moreton Bay Regional Council may terminate this Deed for convenience (for any reason or for no reason) by giving no less than 60 days' notice to the Accredited Consultant.

5.4. In exercising any of its rights under clause 5, the Moreton Bay Regional Council has no obligation to consider the impact of the termination on the Accredited Consultant and has no liability to the Accredited Consultant for any loss or damage suffered or incurred by the Accredited Consultant as a result of the termination.

6. Effect of Suspension, Termination and Completion of Term

Immediately upon suspension or termination of this Deed under clauses 4 and/or 5 all rights granted by the Moreton Bay Regional Council to the Accredited Consultant end and:

6.1. the Accredited Consultant must immediately cease using the Moreton Bay Regional Council Accredited Consultant Graphic specified by Moreton Bay Regional Council (Trade Mark) and must (at the election of the Moreton Bay Regional Council) return or destroy any documentation, signage or other materials that feature the Trade Mark or any other Intellectual Property Rights of all licensed by the Moreton Bay Regional Council;

6.2. the Moreton Bay Regional Council shall remove the Accredited Consultant from the List of Accredited Consultants;

6.3. the Accredited Consultant must cease providing any mb+ Assessment Services;

6.4. the Accredited Consultant must cease to represent or refer to itself as an "Accredited Consultant" of the Moreton Bay Regional Council; and

6.5. the Accredited Consultant must immediately return any documents and confidential information of the Moreton Bay Regional Council and must provide written undertakings that it has done so, upon request by the Moreton Bay Regional Council. Nothing in this Deed prevents the Accredited Consultant from retaining one copy of any document solely for the purpose of its own records and upon the continuing duty of confidence set out in this Deed.

7. Waiver and Forbearance

The waiver or forbearance of the Moreton Bay Regional Council in the face of any breach of this Deed by the Accredited Consultant shall not be construed as a waiver or relinquishment of the Moreton Bay Regional Council's rights to future performance of such provision and the Accredited Consultant's obligations in respect of such future performance shall continue in full force and effect.

8. Limitation of Liability

Notwithstanding anything to the contrary in this Deed, the Moreton Bay Regional Council excludes all liability to the Accredited Consultant in connection with any loss or damage (including consequential loss, indirect loss, loss of profit, loss of revenue, loss of opportunity, loss of bargain and damage to reputation) suffered or incurred by the Accredited Consultant in connection with this Deed or any act or omission of the Moreton Bay Regional Council, including the negligence of the Moreton Bay Regional Council (but not including death or personal injury directly caused by the gross negligence of the Moreton Bay Regional Council).

9. Entire Agreement

These terms and conditions of this Deed contain the entire understanding between the parties and any variation of the provisions of this Deed shall have no effect unless in writing and signed by the parties.

10. Notices

Any notice to be served under this Deed shall be in writing and served upon the recipient at its address set out at page 1 of the Accreditation Application Form by hand, regular post or facsimile and shall be deemed served 48 hours after posting if sent by post, on delivery if delivered by hand and on completion of transmission if sent by facsimile.

11. Jurisdiction and Law

This Deed is governed by and is to be construed in accordance with the laws applicable in Queensland. Each party irrevocably and unconditionally submits to the nonexclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

12. Consent and approval

If the Moreton Bay Regional Council has a right to approve, consent, decide, determine, form an opinion or make any other decision of any kind under this Deed, it may exercise that right at its absolute discretion and, in exercising the right, it may do so conditionally or unconditionally, is not obliged to give reasons or consult with the Accredited Consultant in exercising that right and has no obligation to exercise the right within any particular period of time or a within reasonable period of time.

13. Amendment

This Deed may only be varied or replaced by a document executed by the parties.

14. Contra proferentem

No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

15. Counterparts

This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

Executed as a Deed

In witness hereof the parties hereto set their hands and seals the day and year first hereinbefore written.

Signed, sealed and delivered by

Signature of Council representative:

Name of Council representative:

Date:

Signed, sealed and delivered by

Signature of Accredited Consultant:

Name of Accredited Consultant:

Date:



mb+ Operational Works Accreditation- A4 - Accreditation Deed for Consultancy



ABN: 92 967 232 136

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Made as a Deed

This Deed is made on the _____

day of _____ 20 _____

between

Moreton Bay Regional Council
2 Hasking Street, Caboolture
P.O Box 159
Caboolture QLD 4510
(‘Moreton Bay Regional Council’)

and

Consultancy
name:

Consultancy
address:

with the ACN of

(“Accredited Consultancy”)

in relation to the Accredited Consultancy performing mb+ Assessment services for Moreton Bay Regional Council.

Recitals

- A. The Accredited Consultancy has successfully completed the Accreditation Process and now wishes to provide mb+ Assessment Services to the Moreton Bay Regional Council, including admission to the List of Accredited Consultants.
- B. The Moreton Bay Regional Council requires the Accredited Consultancy to undertake to preserve and maintain the confidentiality of certain information relevant to those services.
- C. The process and services relevant to the mb+ Assessment Services are set out in the Guidelines for Accredited Consultant/Consultancy.
- D. The Development Services Manager is authorised to sign this Deed on behalf of Moreton Bay Regional Council.

Terms and conditions

1. Definitions and interpretation

The following terms shall have the following meaning for the purpose of this Deed.

‘**Accredited Consultant**’ is the individual considered ‘accredited’ for the purposes of mb+ Assessment. The individual consultant must demonstrate the required level of expertise and experience to obtain accreditation.

‘**Accredited Consultancy**’ means the body corporate named in the Accreditation Application Form completed by the Accredited Consultant for the Accreditation Process.

‘**Accreditation Process**’ means the process and assessment procedures for becoming an Accredited Consultant, as specified by the Moreton Bay Regional Council and which has been completed by the Accredited Consultancy.

‘**Authorised User**’ has the meaning given to that term by the Trade Marks Act 1995 (Cth)

‘**Confidential Information**’ means the confidential information of the Moreton Bay Regional Council and includes any documents or information provided by the Moreton Bay Regional Council: (a) that are marked as confidential; (b) that are provided by the Moreton Bay Regional Council under circumstances or communications that are confidential; or (c) which the Accredited Consultant ought to know are confidential but (in respect of any of the information in (a), (b), and (c) of this definition, does not include any information that is or becomes part of the public domain, other than as a result of a breach of an obligation of confidence or any information that is required to be disclosed by law.

‘**Deed**’ means this Accreditation Deed

‘**Guidelines for Accredited Consultant/Consultancy**’ means the guidelines titled ‘Guidelines for Accredited Consultant/Consultancy’ which are attached to this Deed, as amended by the Moreton Bay Regional Council from time to time.

‘**Intellectual Property Rights**’ means all intellectual and industrial property rights and interests in Australia and throughout the world, whether registered or unregistered and whether created before on or after the date of this Deed, including trademarks, designs patents, inventions, circuit layouts, copyright and analogous rights, confidential information, know how trade secrets and all other Intellectual Property Rights.

‘**List of Accredited Consultants**’ means the list of Accredited Consultants and consultancies as from time to time may be published by the Moreton Bay Regional Council and in the manner of publication or disclosure determined by Moreton Bay Regional Council.

‘**Operational Works**’ has the same meaning as given to it under the *Planning Act 2016 (Qld)*.

‘**mb+ Assessment Service**’ means the Third Party Accredited Consultant Development Assessment services, which Moreton Bay Regional Council specifies from time to time including, but not limited to, the preparation of mb+ Accredited Consultant Development applications including but not limited to the following: stormwater quality, vegetation management, road works etc.

‘**Term**’ means the term of this Deed, as determined by clause 5.1.

2. Accredited Consultancy's obligations

- 2.1. The Accredited Consultancy hereby represents and warrants to the Moreton Bay Regional Council, and it is a condition of this Deed that the Accredited Consultancy:
 - 2.1.1. provided information to the Moreton Bay Regional Council during the Accreditation Process that was true accurate and correct and will continue to provide information during its performance of the mb+ Assessment Services that is true, accurate and correct;
 - 2.1.2. has disclosed to the Moreton Bay Regional Council the locations of all the Accredited Consultancy's business premises;
 - 2.1.3. will immediately inform the Moreton Bay Regional Council in writing of any changes to the Accredited Consultancy's business address/es; business, company or trading name/s and any other information provided or disclosed by the Accredited Consultancy during the Accreditation Process;
 - 2.1.4. will keep itself informed of any changes made by the Moreton Bay Regional Council to the Guidelines for Accredited Consultant/Consultancy.
 - 2.1.5. will carry out mb+ Assessment Services safely, securely and in a professional manner
 - 2.1.6. will carry out the mb+ Assessment Services in accordance with the standards specified by the Moreton Bay Regional Council from time to time including in the Guidelines for Accredited Consultant/ Consultancy and as required by law; and
 - 2.1.7. will comply with the lawful advice and directions of the Moreton Bay Regional Council made in connection with the mb+ Assessment Services.
 - 2.2. Other than as expressly set out in this Deed, this Deed does not licence, assign or transfer to the Accredited Consultancy any Intellectual Property Rights of the Moreton Bay Regional Council or any goodwill in the same.
 - 2.3. The Accredited Consultancy acknowledges that benefits, rights and privileges attached to the accreditation of the Accredited Consultancy are limited to the type of use the Accredited Consultancy is qualified and demonstrates competency in, as determined by the Moreton Bay Regional Council (e.g. Industrial, Residential, Reconfiguring a Lot etc.). The Accredited Consultancy must not perform any mb+ Assessment Services that, in the opinion of the Moreton Bay Regional Council, fall outside the limitations of the accreditation of the Accredited Consultancy.
 - 2.4. The Accredited Consultancy acknowledges that any non-compliance with or breach by the Accredited Consultancy of Guidelines for the Accredited Consultant/Consultancy or the terms of this Deed in the conduct or operation of mb+ Assessment Services by the Accredited Consultancy for or on behalf of the Moreton Bay Regional Council will provide the Moreton Bay Regional Council with the option to elect to immediately cancel the accreditation of both the Accredited Consultant employed or contracted by the Accredited Consultancy who undertook the Assessment Services.
 - 2.5. Prior to performing any Compliance Assessment Services, the Accredited Consultancy must:
 - 2.5.1. take out and maintain from a reputable insurance company, professional indemnity insurance that applies to the performance of mb+ Assessment Services by the Accredited Consultancy (whether performed by employees or contractors of the Accredited Consultancy) for an amount of cover of no less than \$5 million per claim and
 - 2.5.2. take out and maintain from a reputable insurance company, public liability insurance that applies to the performance of the mb+ Assessment Services by the Accredited Consultancy for an amount of cover no less than \$20 million per occurrence and,
 - 2.5.3. provide the Moreton Bay Regional Council with a copy of the certificate of currency and policy schedule of each of the insurance policies referred to in clauses 2.5.1 and 2.5.2 and
 - 2.6. Without limiting the insurance obligations of the Accredited Consultancy under clause 4.1.1, the Accredited Consultancy must:
 - 2.6.1. maintain the insurance policies referred to in clauses 2.5.1 and 2.5.2 during the Term and for a period of no less than seven years from the later to occur of:
 - 2.6.1.1. the termination or expiry of this Deed; or
 - 2.6.1.2. the Accredited Consultancy providing the Moreton Bay Regional Council with the final deliverable that the Accredited Consultancy is required by the Moreton Bay Regional Council to provide in connection with this Deed
 - 2.6.2. upon request, provide the Moreton Bay Regional Council with up-to-date copies of the certificate of currency and policy schedule of the insurance policies referred to in clause 2.6.1.
- Clause 2.6 survives termination or expiry of this Deed.**
- 2.7. The Accredited Consultancy indemnifies the Moreton Bay Regional Council from and against any claim, (including but not limited to claims based in negligence), loss or damage suffered or incurred by the Moreton Bay Regional Council arising from or in connection with the Third Party Assessment Services performed by the Accredited Consultancy or by an Accredited Consultant employed or contracted by the Accredited Consultancy who undertook the Third Party Assessment Services, (including but not limited to claims by third parties).
 - 2.8. The Accredited Consultancy must not provide or disclose any Confidential Information to any third party without the prior written consent of the Moreton Bay Regional Council. If the Accredited Consultancy becomes aware of an unauthorised disclosure of any Confidential Information, it must immediately inform the Moreton Bay Regional Council of the disclosure. These provisions shall not restrict the Accredited Consultancy from:
 - 2.8.1. disclosing information to third parties (including its sub-consultants or sub-contractors) which is necessary for the performance of Services provided that any such disclosure is on terms which include a confidentiality clause identifiable to the Accredited Consultancy's obligations under this Clause

- 2.8.2.** disclosing the information to its insurance broker legal representatives and financial or accounting advisors to the extent required for the day to day running of the Accredited Consultancy's business or making or defending a claim either under an insurance policy or in court proceedings

Clause 2.8 survives termination or expiry of this Deed.

- 2.9.** The terms of the Guidelines for the Accredited Consultant/ Consultancy form part of the terms of this Deed. In the event of inconsistency, the terms of this Deed shall prevail over the terms of the Guidelines for the Accredited Consultant/Consultancy to the extent of the inconsistency.

3. Moreton Bay Regional Council's obligations

- 3.1.** Subject to the terms of this Deed, the Moreton Bay Regional Council shall:

3.1.1. carry out the mb+ Accreditation Process with due care and skill;

3.1.2. promptly after the execution of this Deed, add the name of the Accredited Consultancy to the List of Accredited Consultants (for clarity, the name of the Accredited Consultancy may be removed from that list in accordance with this Deed);

3.1.3. during the Term, grant a limited, revocable, non-exclusive licence (without any right to sub-license) to the Accredited Consultancy to use the Moreton Bay Regional Council Accredited Consultant Graphic specified by the Moreton Bay Regional Council (Trade Mark) to perform the mb+ Assessment Services, provided that

3.1.3.1. without limiting any other restrictions on use of the Trade Mark by the Accredited Consultancy must not exercise any rights that it may have as an Authorised User under section 26(1) of the Trade Marks Act 1995 (Cth) without the prior written consent of the Moreton Bay Regional Council and

3.1.3.2. the Accredited Consultancy may only use the Trade Mark only in accordance with the directions given from time to time by the Moreton Bay Regional Council.

- 3.2.** The Accredited Consultancy acknowledges and agrees that:

3.2.1. it has not relied on any statement, representation, warranty, conduct or undertaking made or given by the Moreton Bay Regional Council or any person on its behalf; and

3.2.2. it has relied on its own skill and judgment in agreeing to enter into this Deed.

- 3.3.** The Moreton Bay Regional Council is not liable to pay to the Accredited Consultancy any fees, expenses or other costs in connection with the Accreditation Process, the mb+ Assessment Services or for any other work performed by the Accredited Consultancy in connection with this Deed.

4. Suspension and/or removal

- 4.1.** The Accredited Consultancy agrees that the Moreton Bay Regional Council may, by notice in writing to the Accredited Consultancy suspend the right of the Accredited Consultancy to perform the mb+ Assessment Services if, in the opinion of Moreton Bay Regional Council:

4.1.1. the Accredited Consultancy fails to: (a) maintain the relevant level of professional body membership and professional indemnity insurance required by the Guidelines for Accredited Consultant/Consultancy; or (b) provide the Moreton Bay Regional Council with

evidence (including certificates of currency and policy schedules) of that insurance within one business day of the Moreton Bay Regional Council requesting such evidence;

4.1.2. the Accredited Consultancy breaches any of its obligations and/or warranties in clause 2;

4.1.3. The Moreton Bay Regional Council becomes aware by whatever means of any fraud perpetrated, or allegedly perpetrated by the Accredited Consultancy, its directors, employees, agents, contractors or any of its senior management.

4.2. The Accredited Consultancy must cease providing mb+ Assessment Services on and from the date of suspension and for the period of time specified in the notice given by the Moreton Bay Regional Council under clause 4.1 above, or if no date is specified in that notice, immediately upon receipt of that notice by the Accredited Consultancy.

4.3. The Moreton Bay Regional Council may remove the name of the Accredited Consultancy from the List of Accredited Consultants during the period of any suspension under this clause 4.

5. Expiry and Termination

5.1. This Deed commences on the date that it is signed by both parties and continues for a period of five years, unless terminated earlier (including but not limited to termination under clauses 5.2 and 5.3 below)

5.2. The Moreton Bay Regional Council may by notice in writing to the Accredited Consultancy, immediately terminate this Deed if:

5.2.1. The Moreton Bay Regional Council determines that it is not reasonable for the Accredited Consultancy to remain accredited because of the nature or extent of conduct which led to Moreton Bay Regional Council issuing a notice to the Accredited Consultancy under clause 4.1 above;

5.2.2. the Accredited Consultancy breaches any of the terms of this Deed, including any failure to comply with the Accredited Consultancy obligations or warranties in clause 2; or

5.2.3. the Accredited Consultancy becomes the subject of any insolvency, bankruptcy or winding-up proceedings of any kind (as determined by the Moreton Bay Regional Council).

5.3. The Moreton Bay Regional Council may terminate this Deed for convenience (for any reason or for no reason) by giving no less than 60 days' notice to the Accredited Consultancy.

5.4. In exercising any of its rights under clause 5, the Moreton Bay Regional Council has no obligation to consider the impact of the termination on the Accredited Consultancy and has no liability to the Accredited Consultancy for any loss or damage suffered or incurred by the Accredited Consultancy as a result of the termination.

6. Effect of Suspension, Termination and Completion of Term

Immediately upon suspension or termination of this Deed under clauses 4 and/or 5 all rights granted by the Moreton Bay Regional Council to the Accredited Consultancy end and:

- 6.1. the Accredited Consultancy must immediately cease using the Trade Mark and must (at the election of the Moreton Bay Regional Council) return or destroy any documentation, signage or other materials that feature the Trade Mark or any other Intellectual Property Rights at all licensed by the Moreton Bay Regional Council;
- 6.2. the Moreton Bay Regional Council shall remove the Accredited Consultancy from the List of Accredited Consultants;
- 6.3. the Accredited Consultancy must cease providing any mb+ Assessment Services;
- 6.4. the Accredited Consultancy must cease to represent or refer to itself as an "Accredited Consultancy" of Moreton Bay Regional Council; and
- 6.5. the Accredited Consultancy must immediately return any documents and confidential information of Moreton Bay Regional Council and must provide written undertakings that it has done so, upon request by Moreton Bay Regional Council. Nothing in this Deed prevents the Accredited Consultant from retaining one copy of any document solely for the purpose of its own records and upon the continuing duty of confidence set out in this Deed.

7. Waiver and Forbearance

The waiver or forbearance of the Moreton Bay Regional Council in the face of any breach of this Deed by the Accredited Consultancy shall not be construed as a waiver or relinquishment of the Moreton Bay Regional Council's rights to future performance of such provision and the Accredited Consultancy's obligations in respect of such future performance shall continue in full force and effect.

8. Limitation of Liability

Notwithstanding anything to the contrary in this Deed, the Moreton Bay Regional Council excludes all liability to the Accredited Consultancy in connection with any loss or damage (including consequential loss, indirect loss, loss of profit, loss of revenue, loss of opportunity, loss of bargain and damage to reputation) suffered or incurred by the Accredited Consultancy in connection with this Deed or any act or omission of the Moreton Bay Regional Council, including the negligence of the Moreton Bay Regional Council (but not including death or personal injury directly caused by the gross negligence of the Moreton Bay Regional Council).

9. Entire Agreement

These terms and conditions of this Deed contain the entire understanding between the parties and any variation of the provisions of this Deed shall have no effect unless in writing and signed by the parties.

10. Notices

Any notice to be served under this Deed shall be in writing and served upon the recipient at its address set out at page 1 of the Accreditation Application Form by hand, regular post or facsimile and shall be deemed served 48 hours after posting if sent by post, on delivery if delivered by hand and on completion of transmission if sent by facsimile.

11. Jurisdiction and Law

This Deed is governed by and is to be construed in accordance with the laws applicable in Queensland. Each party irrevocably and unconditionally submits to the nonexclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

12. Consent and approval

If the Moreton Bay Regional Council has a right to approve, consent, decide, determine, form an opinion or make any other decision of any kind under this Deed, it may exercise that right at its absolute discretion and, in exercising the right, it may do so conditionally or unconditionally, is not obliged to give reasons or consult with the Accredited Consultancy in exercising that right and has no obligation to exercise the right within any particular period of time or a within reasonable period of time.

13. Amendment

This Deed may only be varied or replaced by a document executed by the parties.

14. Contra proferentem

No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

15. Counterparts

This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

Executed as Deed

In witness here of the parties here to set their hands and seals the day and year first herein before written.

Signed, sealed and delivered by

Signature of Council representative:

Name of Council representative:

Date:

Signed, sealed and delivered by

Company name:

ACN of Accredited Consultancy:

Signature of Director of the Accredited Consultancy:

Name of Director of the Accredited Consultancy:

Date:

