



General Conditions of Contract

For Consultancy Services (Quotations)

Consultancy Services Contract General Conditions

1. Definitions and Interpretation

1.1 In this Consultancy Services Contract unless the contrary intention appears:

Annexure means an annexure to this Consultancy Services Contract.

Approvals means all licences, permits, consents, determinations and approvals necessary to perform the Services.

Authorised Representative means any person appointed by a party from time to time to act as an authorised representative for the purposes of this Consultancy Services Contract and includes the Consultant's Representative in the case of the Consultant and the Principal's Representative in the case of the Principal.

Best Industry Practices means the practices, methods and acts engaged in or approved by an organisation who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by the best skilled and experienced operators engaged in the same type of undertaking, under the same or similar circumstances and conditions.

Business Day means a day that is not a Saturday, Sunday, public holiday in Western Australia or the 27, 28, 29, 30 or 31 of December.

Civil Liability Act means *Civil Liability Act 2002 (WA)*.

Commencement Date means the date on which this Supply Contract is signed by the last party to do so unless otherwise specified in the Contract Specifics.

Construction Contracts Act means the *Construction Contracts Act 2004 (WA)*.

Consultancy Services Contract means this contract for the supply of the Services comprising the Contract Specifics, the Special Conditions (if any), the General Conditions, the Schedules and the Annexures. If this is a Framework Agreement, then each Order issued under this Consultancy Services Contract constitutes an individual Consultancy Services Contract (comprising this document and that Order).

Consultant Background IP means Intellectual Property Rights owned by or licensed to the Consultant (including know-how and technical information) which exist prior to the date of this Consultancy Services Contract or are developed or acquired by the Consultant independently of this Consultancy Services Contract, which are used by the Consultant in the performance of the Services or otherwise made available to the Principal under or in connection with this Consultancy Services Contract, but does not include the Project IP.

Consultant's Personnel means the Consultant and its Workers including subconsultants, contractors, subcontractors, suppliers and the directors, officers, employees, representatives, volunteers and agents of each of them.

Consultant's Representative means, as at the date of this Consultancy Services Contract, the person identified as such in the Contract Specifics, as may be changed from time to time by the Consultant in accordance with clause 4.2.

Contract Period means the period specified in the Contract Specifics, subject to any extension under clause 3.3(a).

Contract Specifics means the section of this Consultancy Services Contract headed "Contract Specifics".

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporations Act 2001 (Cth)*.

CPI means the index published by the Australian Bureau of Statistics known as the table 1 index – 6401.0, or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician.

CPI Number means the relevant number shown by the CPI for the "All Groups CPI, Index Number (Perth)" at the end of the relevant period.

Current CPI Number means, in respect of a Review Date, the CPI Number last published by the Australian Statistician before that Review Date.

Date for Completion means the date(s) for completion of the Services as specified in the Contract Specifics, as extended or reduced in accordance with clause 21.

Date of Completion means the date(s) the Services were completed in accordance with the terms of this Consultancy Services Contract.

Defective Services means Services or the result of the Services which are not in conformity with this Consultancy Services Contract (including the warranties and representations in clause 23.1) or are otherwise unsatisfactory to the Principal.

Deliverables means those Documents and things required under this Consultancy Services Contract to be handed over to the Principal by the Consultant as set out in Schedule 1 or, if this Consultancy Services Contract is specified in the Contract Specifics as a Framework Agreement, an Order.

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

Design Documents means the plans, designs, drawings, engineering information, data specifications, reports, accounts and other design documents required by this Consultancy Services Contract and created (or, where the context required, to be created) by the Consultant in the performance of, or in connection with, the Services.

Dispute means any dispute, difference of opinion or disagreement whatsoever between the parties arising under, out of or in connection with the performance of the Services and/or this Consultancy Services Contract.

Documents include information stored by electronic and other means.

Environment has the same meaning as under the Environmental Protection 1986 (WA).

Environmental Laws means all present and future approvals and Laws concerning Environmental matters and any common law relating to the Environment.

Event of Force Majeure means an event or circumstance which is beyond the control and without the fault or negligence of the party affected by the event or circumstance and which by the exercise of reasonable diligence the party affected is unable to prevent, provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity;
- (e) strikes at a national level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers, but excluding any industrial dispute which is specific to the performance of this Consultancy Services Contract; and
- (f) maritime disasters.

Excluded Information means Principal's Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this Consultancy Services Contract or an obligation of confidence owed to the Principal or the Principal's Personnel;
- (b) the Consultant can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Principal or the Principal's Personnel (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Consultant acquires from a source other than the Principal Party or any of the Principal's Personnel where such source is entitled to disclose it.

Expert means an independent person appointed in accordance with clause 36.2 to determine a Dispute between the parties.

Fee means the fee specified in the Contract Specifics and Schedule 2, subject to any increases or decreases as may be made in accordance with this Consultancy Services Contract.

First Option Period means the period (if any) specified in the Contract Specifics.

Freedom of Information Act means the Freedom of Information Act 1992 (WA).

General Conditions means the general conditions comprising clauses 1 to 46 of this Consultancy Services Contract.

General Conditions of Tendering means the general conditions of tendering issued by the Principal in relation to the performance of the Services the subject of this Consultancy Services Contract.

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

GST means a goods and services or similar tax imposed in Australia.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the financier reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due;
- (h) in the case of a natural person, it commits an act of bankruptcy or an order is made for the sequestration in bankruptcy of the estate of the Consultant, or the Consultant assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that person under the law of any jurisdiction.

Insurances means the insurances which the Consultant is required to obtain under clause 24 and the Contract Specifics.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Invoice means an invoice relating to a supply made under this Consultancy Services Contract during the period of the invoice, which meets all the requirements of a valid tax invoice for GST purposes.

Law means any statute, ordinance, code, law, decree, circular, rule or regulation by any Government Agency, whether currently in force or coming into force on or after the date of this Consultancy Services Contract.

Licences means all licences, qualifications, registrations and other statutory requirements necessary for the supply of the Services under this Consultancy Services Contract.

Notifiable WHS Incident means:

- (a) a “notifiable incident”, “serious injury or illness” or “dangerous incident” as defined in Part 3 of the *Work Health and Safety Act 2020* (WA) or any associated regulations; and/or
- (b) any other safety incident that must be reported to a WHS Regulator or other third-party.

Order means a purchase order from the Principal to the Consultant which requires the supply of specific Services under this Consultancy Services Contract, where this Consultancy Services Contract is a Framework Agreement.

Other Warranties means the other warranties in relation to the Services as specified in Schedule 4.

Party means the Consultant or the Principal as the context requires.

Parties means both the Consultant and the Principal.

Pollution includes any solid, liquid gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Environment:

- (a) unsafe or unfit for habitation or occupation by human beings or animals;
- (b) degraded in its capacity to support plant life;
- (c) Contaminated; or
- (d) otherwise environmentally degraded.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Previous CPI Number means, in respect of a Review Date, the CPI Number last published by the Australian Statistician before the immediately preceding Review Date or, in the case of the first Review Date, before the execution of this Consultancy Services Contract.

Principal Information means all information supplied to the Consultant by or on behalf of the Principal, regardless of its material form, for the purposes of this Consultancy Services Contract.

Principal's Background IP means Intellectual Property Rights owned by or licensed to the Principal (including know-how and technical information) which exist prior to the date of this Consultancy Services Contract or are developed or acquired by the Principal independently of this Consultancy Services Contract, which are made available to the Consultant under or in connection with this Consultancy Services Contract, but does not include the Project IP.

Principal's Confidential Information means all information disclosed to the Consultant or any of the Consultant's Personnel, under or in connection with this Consultancy Services Contract, including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Principal or any of the Principal's Personnel;
- (b) information derived or produced partly or wholly from the information referred to in (a) including any calculation, conclusion, summary or computer modelling; and
- (c) information which is capable of protection at law or equity as confidential information, whether the information was disclosed:
 - (d) orally, in writing or in electronic or machine readable form;
 - (e) before, on or after the date of this Consultancy Services Contract; or
 - (f) by the Principal or any of the Principal's Personnel or by any third person.

Principal's Personnel means the officers, employees, representatives, agents and contractors (other than the Consultant and the Consultant's Personnel) of the Principal.

Principal's Representative means, as at the date of this Consultancy Services Contract, the person identified as such in the Contract Specifics, as may be changed from time to time by the Principal in accordance with clause 4.4.

Professional Consultant means a consultant with skill and experience in, and the expertise and resources necessary, to perform services of a similar nature to the Services.

Project IP means Intellectual Property Rights discovered or coming into existence as a result of, for the purposes of, or in connection with, the performance of the Services in accordance with this Consultancy Services Contract, but does not include the Consultant Background IP or the Principal Background IP.

Program has the meaning given in clause 8.1(b).

Progress Claim means a document in a form approved by the Principal evidencing the performance of Services and which includes the information set out in the Contract Specifics.

Recipient Created Tax Invoice has the meaning it has in the GST Act.

RCTI Agreement means an agreement in the form provided by the Principal pursuant to which the parties have agreed that the Principal shall issue Recipient Created Tax Invoices in respect of all Services.

Regulations means the Local Government (Functions and General) Regulations 1996 (WA).

Related Services means any services performed or undertaken or to be performed or undertaken by:

- (a) the Principal;
 - (b) the Principal's Personnel; or
 - (c) public or private utilities or a statutory or other relevant authorities,
- either concurrently or sequentially with the Services:
- (d) at, on, over or adjacent to the Site; or
 - (e) which may be connected to, associated with, ancillary to or otherwise related or relevant to the Services.

Review Date means the commencement of the First Option Period or the Second Option Period, if applicable.

Schedule means each of the schedules to this Consultancy Services Contract.

Schedule of Rates means the schedule of rates set out in Schedule 2.

Scope means the scope of the Services to be performed by the Consultant under this Consultancy Services Agreement as set out in Schedule 1 (as varied from time to time in accordance with this Consultancy Services Agreement).

Second Option Period means the period (if any) specified in the Contract Specifics.

Services means the services specified in the Contract Specifics, including the supply of the Deliverables.

Services Start Date means the date for commencement of the performance of the Services by the Consultant under this Consultancy Services Contract, as set out in the Contract Specifics.

Site means the site where the Services are to be performed.

Special Conditions means the special conditions set out in Schedule 7.

Standards means all industry standards and government regulations applicable to the Services, including the standards specified in Schedule 3.

Taxes means all present and future sales, use, personal property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on the Principal's income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable, but does not include GST.

Technical Materials includes plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material specified in this Consultancy Services Contract and includes Design Documents.

Tender means the offer submitted by the Consultant in accordance with the General Conditions of Tendering following an invitation of the Principal to supply the Services under this Consultancy Services Contract and includes associated documentation.

Term has the meaning given in clause 3.

Trust means the trust established under the Trust Deed of which the Consultant is trustee.

Trust Deed means the deed of trust by which the Trust is established, a copy of which is set out in Annexure A.

Variation means any change to the Services, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Services.

Warranty Period means the relevant period set out in the Contract Specifics, commencing on the Date of Completion of the relevant Services.

WHS means work health and safety.

WHS Legislation means all WHS legislation that applies to the Services, including but not limited to the *Work Health and Safety Act 2020* (WA) and any associated regulations.

WHS Regulator means the Western Australian Department of Mines, Industry Regulation and Safety, WorkSafe Western Australia, or any other statutory authority or department with power to investigate and/or regulate WHS matters under WHS Legislation.

WHS Requirements means the WHS Legislation and WHS guidance material that applies to the Services from time to time, including but not limited to:

- (a) any relevant Australian Standards;
- (b) any relevant Codes of Practice or guidance material published by the Western Australian Department of Mines, Industry Regulation and Safety, or other relevant WHS Regulator or authority; and
- (c) any licences, terms or conditions imposed by any government or relevant WHS Regulator or authority.

Worker has the same meaning as defined in the *Work Health and Safety Act 2020* (WA).

1.2 Notwithstanding clause 1.1, if this Consultancy Services Contract is identified as a Framework Agreement in the Contract Specifics then the following words have the following meanings in this Consultancy Services Contract:

- (a) **“Fee”** means the Fee for the relevant Services the subject of the Order as agreed under clause 6.4 or determined under clause 6.5;
- (b) **“Date for Completion”** means, where an Order provides a Date for Completion, that date, but if any extension of time for completion of the Services is Directed by the Principal’s Representative or allowed in any dispute process provided for in this Consultancy Services Contract or litigation, it means the date resulting therefrom;
- (c) **“Schedule of Rates”** means any schedule included in an Order which, in respect of any section or item of work to be carried out, shows the rate of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices;
- (d) **“Services”** means the services specified in an Order (including the supply of Deliverables); and
- (e) **“Services Start Date”** means the date for the commencement of the Services the subject of an Order, as set out in the relevant Order.

1.3 In this Consultancy Services Contract unless the contrary appears:

- (a) a reference to this Consultancy Services Contract or another instrument includes any variation or replacement of either of them;
- (b) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, persons taking by novation) and assigns;

- (f) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (g) a reference to a clause is a reference to a clause in this Consultancy Services Contract;
- (h) a reference to a schedule is a reference to a schedule to this Consultancy Services Contract;
- (i) a reference to a third person or a third party is a reference to a person who is not a party to this Consultancy Services Contract;
- (j) a reference to "dollar" or "\$" is a reference to Australian dollars; and
- (k) the words "including" and "include" are a reference to "including, but not limited to".

1.4 Headings are inserted for convenience only and do not affect the interpretation of this Consultancy Services Contract.

2. Supply of Services

2.1 The Consultant must perform the Services detailed in Schedule 1 (or, where this Consultancy Services Contract is identified as a Framework Agreement in the Contract Specifics, detailed in an Order issued under clause 6) in accordance with, and as specified in, this Consultancy Services Contract.

2.2 The Consultant agrees, warrants and represents that it has:

- (a) examined carefully this Consultancy Services Contract and any other information made available by the Principal to the Consultant in connection with the Tender or this Consultancy Services Contract;
- (b) satisfied itself as to the correctness and sufficiency of its Tender and that the Fee covers the entire cost of complying with all of its obligations under this Consultancy Services Contract and of all matters and things necessary for the due and punctual performance and completion of this Consultancy Services Contract; and
- (c) obtained and properly examined all information (including information provided by or on behalf of the Principal) relevant to the risks, contingencies and other circumstances that may have had an effect on its Tender and which was provided or obtainable by the making of reasonable enquiries.

2.3 Failure by the Consultant to do all or any of the things set out in clause 2.2 will not relieve the Consultant of its obligation to perform and complete this Consultancy Services Contract in accordance with its terms.

2.4 The Consultant must examine all information, documents and other particulars relating to the Scope which are made available by the Principal to the Consultant and satisfy itself of the sufficiency of all information, documents and other particulars.

2.5 If the Consultant considers at any time that the information, documents and any other particulars relating to the Scope which are made available to it by the Principal are deficient or not sufficient to enable the Consultant to perform the Services in accordance with this Consultancy Services Contract then the Consultant must promptly advise the Principal specifying such deficiency or the further information, documents or other particulars it requires.

2.6 If the Consultant gives notice under clause 2.5, the Principal must either:

- (a) Direct an appropriate amendment to the Scope; or
- (b) Direct the Consultant to proceed notwithstanding its advice.

2.7 The Consultant is entitled to an adjustment to the Fee (to be determined by the Principal's Representative in accordance with clause 21.6) and/or an extension of time for performance of the Services in relation to a Direction under clause 2.6:

- (a) where the Consultant has given a notice under clause 2.5; and
- (b) it was not reasonably practicable for the Consultant to identify any ambiguity, error, omission, discrepancy, insufficiency or inconsistency necessitating amendment to the Scope prior to the commencement of the performance of the Services.

3. Term

- 3.1 Where this Consultancy Services Contract is not identified in the Contract Specifics as being a Framework Agreement, the term of this Consultancy Services Contract will commence on the Commencement Date and will continue until each party has fulfilled its obligations under this Consultancy Services Contract, unless it is terminated earlier in accordance with its terms.
- 3.2 Where this Consultancy Services Contract is identified in the Contract Specifics as being a Framework Agreement, the term of this Consultancy Services Contract will commence on the Commencement Date and, subject to clause 3.3, will continue until the later of the expiry of the Contract Period and the date on which each party has fulfilled its obligations under this Consultancy Services Contract, unless it is terminated earlier in accordance with its terms.
- 3.3 Where this Consultancy Services Contract is identified in the Contract Specifics as being a Framework Agreement, the Principal may:
- (a) extend the Contract Period by the First Option Period by advising the Consultant in writing not less than three months prior to the end of the then current term; and
 - (b) if the Principal exercises the option in clause 3.3(a), further extend the Contract Period by the Second Option Period by advising the Consultant in writing not less than three months prior to the end of the then current term.

4. Representatives

- 4.1 The person nominated by the Consultant as such in the Contract Specifics will be the Consultant's Representative. Subject to clause 4.5, the Consultant's Representative has authority to issue notices to the Principal and receive notices from the Principal and to perform any other functions specifically identified as being its responsibility or within its authority under this Consultancy Services Contract.
- 4.2 The Consultant may change the Consultant's Representative at any time by notice in writing to the Principal and the Consultant is responsible for all acts and omissions of the Consultant's Representative.
- 4.3 The person nominated as such by the Principal in the Contract Specifics is the Principal's Representative. Subject to clause 4.5, the Principal's Representative has authority to issue directions, notices and certificates to the Consultant and to receive notices from the Consultant and to perform any other functions specifically identified as being its responsibility or within its authority under this Consultancy Services Contract including monitoring the performance by the Consultant of its obligations under this Consultancy Services Contract.
- 4.4 The Principal may at any time change the Principal's Representative by notice to the Consultant.
- 4.5 The Consultant's Representative does not have authority to give notices on behalf of the Consultant, and the Principal's Representative does not have authority to give notices on behalf of the Principal, under clause 32, 33, 35 or 36.

5. Consultant as trustee

- 5.1 If the Consultant enters into this Consultancy Services Contract in its capacity as the trustee of a trust, the following provisions of this clause 5 apply.
- 5.2 The Consultant represents and warrants to the Principal that:
- (a) the Consultant is the only trustee of the Trust;
 - (b) no action has been taken or proposed to remove it as trustee of the Trust;
 - (c) the copy of the Trust Deed delivered to the Principal prior to the execution of this Consultancy Services Contract as set out in Annexure A discloses all the terms of the Trust and there has been no other amending deed, instrument of appointment, vesting deed or other instrument of any description whatsoever that affects the terms of the Trust;

- (d) the Consultant has power under the Trust Deed to enter into and observe its obligations under this Consultancy Services Contract and it has entered into this Consultancy Services Contract in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
 - (e) the Consultant has the right to be fully indemnified out of the property or fund of the Trust in respect of obligations incurred by it under this Consultancy Services Contract without any impairment and without any set off on account of any liability owed by it to the beneficiaries of the Trust in respect of any breach of trust or otherwise;
 - (f) the property and fund of the Trust is sufficient to satisfy the right of indemnity referred to in clause 5.2(e) and all other obligations in respect of which the Consultant has a right to be indemnified out of the property and fund of the Trust;
 - (g) the Consultant is not in default under the Trust Deed; and
 - (h) the Consultant has in full force and effect the authorisations necessary to make and enter into this Consultancy Services Contract, perform obligations under it and allow it to be enforced (including, without limitation, under the Trust Deed and the Consultant's constituent documents).
- 5.3 The Consultant acknowledges that it enters into this Consultancy Services Contract both in its own capacity and in its capacity as trustee of the Trust.
- 5.4 At the request of the Principal, the Consultant agrees to exercise its right of indemnity from the property and fund of the Trust and to the beneficiaries of the Trust in respect of obligations incurred by the Consultant under this Consultancy Services Contract.
- 5.5 The Consultant agrees to observe its obligations as trustee of the Trust.
- 5.6 The Consultant must not, without the consent of the Principal, do anything that:
- (a) effects or facilitates the retirement, removal or replacement of the Consultant as trustee of the Trust;
 - (b) could restrict the Consultant's right of indemnity from the property and fund of the Trust in respect of obligations incurred by the Consultant under this Consultancy Services Contract; or
 - (c) effects or facilitates the termination of the Trust, the variation of the Trust Deed or the resettlement of the property and fund of the Trust.

6. Orders

- 6.1 If this Consultancy Services Contract is identified as a Framework Agreement in the Contract Specifics, this clause 6 applies.
- 6.2 The Principal may require the Consultant to provide Services from time to time during the Term by giving the Consultant an Order specifying the relevant Services and the Fee for such Services.
- 6.3 Within 5 Business Days after receipt of an Order the Consultant must give notice to the Principal if it:
- (a) disagrees with any of the information and/or requirements contained in the Order, and must include in the notice details of the aspects with which it disagrees; or
 - (b) recommends any change to any of the information and/or requirements contained in the Order and must include in the notice the Consultant's reasons for the recommendation.
- 6.4 If the Consultant:
- (a) gives notice under clause 6.3, the parties must attempt to agree on the matters the subject of the notice and if such agreement is reached, the Principal must re-issue an Order containing the agreed information and requirements and the Consultant must perform its obligations under the Order in accordance with this Consultancy Services Contract; or
 - (b) does not give notice pursuant to clause 6.3, the Consultant must perform its obligations under the Order in accordance with this Consultancy Services Contract.

- 6.5 If, within 15 Business Days of a notice issued under clause 6.3, the parties have been unable to agree on the matters the subject of the notice, the Principal acting reasonably (and having regard to the Schedule of Rates to the extent applicable), may determine:
- (a) the Fee applicable to that Order and such fee will be deemed to be the Fee for that Order; and
 - (b) the other information and requirements of the Order, provided that such information and requirements fall within the scope of, and do not breach, this Consultancy Services Contract.
- 6.6 The Principal is not obliged to issue Orders or otherwise purchase Services under this Consultancy Services Contract.
- 6.7 The Principal or the Principal's Representative may cancel any Order by providing written notice to the Consultant for any reason, however the Principal must pay for any Services provided in accordance with this Consultancy Services Contract prior to the date the cancellation is notified to the Consultant.

7. Quality and description of the Services

- 7.1 The Services performed by the Consultant under this Consultancy Services Contract must comply with all requirements set out in this Consultancy Services Contract including the Standards.
- 7.2 The Services must be performed with due care, diligence and skill by appropriately qualified and trained personnel.
- 7.3 Any items which the Consultant uses or supplies in connection with the Services must be of merchantable quality and must be new unless otherwise specified by the Principal in writing and be fit for their usual purpose and any other purpose which the Principal has made known to the Consultant.
- 7.4 The Consultant must obtain the Approvals, if any, stated in the Contract Specifics.

8. Inspection and information

- 8.1 The Consultant must provide to the Principal at its request:
- (a) copies of all Design Documents relating to the Services which are to be performed under this Consultancy Services Contract where the Services require the Consultant to prepare Design Documents;
 - (b) a detailed program for the performance of the Services which are to be performed under this Consultancy Services Contract ("Program");
 - (c) progress reports setting out in such detail as the Principal requires the status of the performance of the Services which are to be performed under this Consultancy Services Contract; and
 - (d) any other information and assistance required to identify, evaluate, implement and report on any matter required by Law in connection with the performance of the Consultant's obligations under this Consultancy Services Contract.
- 8.2 The Consultant must perform the Services in accordance with any Program required under clause 8.1(b).
- 8.3 If the Services require the Consultant to prepare Design Documents, the Consultant must:
- (a) prepare the Design Documents in accordance with the requirements of this Consultancy Services Contract;
 - (b) ensure that the Design Documents are prepared by people with appropriate professional qualifications;
 - (c) provide the Principal's Representative with a copy of the Design Documents;
 - (d) allow sufficient time for the Principal's Representative to determine whether the Design Documents are satisfactory and, if necessary, comment on them; and
 - (e) if the Principal's Representative notifies the Consultant that the Design Documents are not satisfactory, amend and resubmit the Design Documents to the Principal's Representative.
- 8.4 At all reasonable times, the Principal has the right to have the Principal's Personnel review, examine and witness the performance of the Services.

- 8.5 The Consultant must ensure that the Principal and the Principal's Personnel are provided with access to the Site to allow them to review, examine and witness performance of the Services in accordance with clause 8.4.
- 8.6 If, as a result of the Principal's Personnel's review, inspection, examination or witnessing of the Services or Technical Materials, the Principal is not satisfied that the Services or Technical Materials will comply in all respects with this Consultancy Services Contract and the Principal informs the Consultant in writing of its dissatisfaction, the Consultant agrees to take such steps (at the Consultant's sole cost and expense) as are necessary to ensure compliance with this Consultancy Services Contract.
- 8.7 Any review, inspection, examination or witnessing of the Services or the Technical Materials that the Principal's Personnel undertake does not relieve the Consultant of its responsibilities under this Consultancy Services Contract.
- 8.8 The Consultant must ensure that the Principal's rights set out in this clause 8 are included in any supply or other subcontract entered into by the Consultant in respect of the performance of the Services.

9. Site

- 9.1 The provisions of this clause 9 apply where the Consultant performs the Services at a Site which is under the control of the Principal.
- 9.2 Until the Date of Completion, the Principal will provide the Consultant with non-exclusive access to or possession of the Site. Possession of the Site shall confer on the Consultant a right to only such use and control as is necessary to enable the Consultant to perform the Services and shall exclude camping, residential purposes and any purpose not connected with the Services, unless approved by the Principal's Representative.
- 9.3 The Consultant must comply with the directions of the Principal's rules, procedures and practices, including the:
- (a) Standards;
 - (b) safety requirements set out in this Consultancy Services Contract;
 - (c) environmental requirements set out in this Consultancy Services Contract and the Environmental Laws; and
 - (d) any other policies set out in the Contract Specifics.
- 9.4 Except and only to the extent permitted by the relevant municipal, public or statutory authority, the Consultant must not cause Pollution to occur or obstruct or damage the Environment. The Consultant must immediately remove and make good any Pollution to the Environment caused by the Consultant or the Consultant's Personnel or as a consequence of or incidental to the performance of the Services.
- 9.5 If the Consultant fails to comply with its obligations under clause 9.4:
- (a) the Principal may have the remedial work carried out by third parties and the cost of doing so will be a debt due and payable on demand by the Consultant to the Principal; and
 - (b) the Consultant will indemnify the Principal against any loss, cost, damage or expense (including any fine or penalty imposed by any statutory authority) which the Principal may incur as a consequence of that failure. The amount of such loss, cost, damage or expense will be a debt due and payable on demand by the Consultant to the Principal.

10. Plant and equipment

- 10.1 Unless otherwise provided in this Consultancy Services Contract, the Consultant must supply, at its own expense, all labour, plant, equipment, tools, appliances or any other property and items the Consultant requires to comply with its obligations under this Consultancy Services Contract.
- 10.2 Any plant, equipment, tools, appliances or any other property and items listed in the Contract Specifics which the Principal provides to the Consultant to enable the Consultant to perform its obligations under this

Consultancy Services Contract will remain the Principal's property and must only be used by the Consultant for the purpose of complying with its obligations under this Consultancy Services Contract.

- 10.3 The Consultant must keep the Principal's property in good order and condition.
- 10.4 All plant, machinery and equipment used in connection with the performance of the Services must be maintained in a fully serviced and safe condition in accordance with all relevant Laws and the Principal's requirements.

11. Fee

- 11.1 The Principal agrees to pay the Consultant the Fee for the Services in accordance with clause 12.
- 11.2 The Consultant is only entitled to payment for disbursements set out in the Contract Specifics, and any other disbursement approved in writing by the Principal prior to the disbursement being incurred.
- 11.3 Except as otherwise expressly provided in this Consultancy Services Contract, the Fee is inclusive of all direct and indirect costs incurred by the Consultant in complying with its obligations under this Consultancy Services Contract, including:
- (a) fees and levies;
 - (b) labour, machines and materials;
 - (c) mobilisation, demobilisation and establishment charges;
 - (d) office costs;
 - (e) transportation, travel, vehicles and equipment;
 - (f) costs of insurances and other securities; and
 - (g) all Taxes.
- 11.4 Unless otherwise stated in this Consultancy Services Contract, the Fee shall be fixed and firm and not subject to rise and fall.
- 11.5 Where specified in the Contract Specifics, on each Review Date, the Consultant is entitled to adjust the Fee for the Services in accordance with clause 11.6.
- 11.6 If the Current CPI Number at a Review Date exceeds the Previous CPI Number, the Fee is to be adjusted from and including that Review Date in accordance with the following formula:

$$NP = CP \times \frac{C}{P}$$

Where:

NP = the new Fee payable on and from the Review Date.

CP = the Fee payable immediately prior to the Review Date.

C = the Current CPI Number.

P = the Previous CPI Number.

12. Invoicing and payment

- 12.1 The Consultant must submit Invoices to the Principal in accordance with Part 2 of Schedule 2.
- 12.2 An Invoice must include, as a minimum:
- (a) in respect of the Services:
 - (i) identify the Services to which the Invoice relates;
 - (ii) separately identify each Variation;

- (iii) separately identify any other claim for payment under this Consultancy Services Contract; and
 - (iv) set out the amount of the Fee claimed, and how that amount was determined; and
 - (b) in respect of disbursements permitted by this Consultancy Services Contract:
 - (i) identify each disbursement claimed;
 - (ii) state the amount of the disbursement claimed; and
 - (iii) be accompanied by relevant invoices and receipts for payment.
- 12.3 Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Consultant, the Principal must pay all Invoices that comply with clause 12.2 within the period specified in the Contract Specifics (or such other period as the Principal's Representative and the Consultant's Representative agree) of their receipt by the Principal, except where the Principal:
- (a) is required by applicable legislation to pay within a shorter time frame, in which case the Principal must pay within that time frame;
 - (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Consultant; or
 - (c) disputes the Invoice, in which case:
 - (i) to the extent permitted by law, the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the dispute in accordance with this Consultancy Services Contract; and
 - (ii) if the resolution of the dispute referred to in clause 12.3(c)(i) determines that the Principal must pay an amount to the Consultant, the Principal must pay that amount upon resolution of the dispute.
- 12.4 The Principal has the right to withhold or retain any payment of money due to the Consultant under this Consultancy Services Contract until such time as the Services comply with the terms of this Consultancy Services Contract.
- 12.5 A payment made pursuant to this Consultancy Services Contract will not be taken or construed as proof or admission that the Services performed (or any part thereof) were to the satisfaction of the Principal and will only be taken to be payment on account.
- 12.6 Where specified in the Contract Specifics, the Principal has the right to withhold or retain 5% of the Fee for the Warranty Period (which sum must, subject to the Principal's other rights under this Consultancy Services Contract, be released by the Principal at the end of the Warranty Period).
- 12.7 The Principal may withhold, retain or set off from any payment due to the Consultant under this Consultancy Services Contract amounts the Principal deems necessary to protect itself against any costs, charges, expenses or damages for which the Consultant may be liable to the Principal under or in connection with this Consultancy Services Contract. This right of set off does not limit the Principal's right to recover those amounts in any other way.
- 12.8 Failure by the Principal to pay an amount payable under this Consultancy Services Contract when due will not be grounds to invalidate or avoid this Consultancy Services Contract.
- 12.9 Unless the parties otherwise agree, any money payable under this Consultancy Services Contract is to be paid in Australian dollars.
- 12.10 The Principal has the right to conduct an audit of the basis of the Consultant's charges set out in an Invoice using the Consultant's records. This right continues for 12 months after the Principal pays the relevant Invoice.

13. GST

- 13.1 Unless expressly stated otherwise, the consideration specified in this Consultancy Services Contract does not include any amount for GST.
- 13.2 If a Supply under this Consultancy Services Contract is subject to GST, the Recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.
- 13.3 The additional amount referred to in clause 13.2 is payable at the same time as the consideration for the Supply is payable or to be provided. However, the additional amount need not be paid until the Supplier gives the Recipient a Tax Invoice for the supply.
- 13.4 If the additional amount differs from the amount of GST payable by the Supplier, the parties must adjust the additional amount accordingly.
- 13.5 If a party is entitled to be reimbursed or indemnified under this Consultancy Services Contract, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.
- 13.6 In this clause 13 the following words have the following meanings:

“Amount of the Consideration” means:

- (a) the amount of any payment in connection with a Supply: and
- (b) in relation to non-monetary consideration in connection with a Supply, the GST Exclusive Market Value of that consideration as reasonably determined by the supplier.

“GST Exclusive Value”, “Input Tax Credit”, “Recipient”, “Supply”, and “Tax Invoice” have the meanings given to them in the GST Act.

“Supplier” means the person making a Supply.

14. Work Health and Safety

- 14.1 The Consultant acknowledges that the Principal is relying on the Consultant’s skill and experience in the Services to perform the Contract safely and in accordance with the WHS Requirements.
- 14.2 The Consultant must ensure that the Consultant’s Personnel:
- (a) are competent and have the necessary skills, qualifications, licences and experience to perform the services safely;
 - (b) understand and will comply with the WHS Requirements when providing the Services.
- 14.3 The Consultant must ensure that it has adequate oversight of the Consultant’s Personnel to monitor if they are working safely and in accordance with the WHS Requirements when providing the Services.
- 14.4 NOT USED
- 14.5 The Consultant warrants that it:
- (a) has, or will within 30 days of the date of this Consultancy Services Contract develop, a health and safety management plan specific to the provision of the Services (HSMP) that complies with the WHS Requirements;
 - (b) will maintain and update the HSMP to ensure it is, and remains, fit for purpose over the life of this Consultancy Services Contract; and
 - (c) will ensure WHS when providing the Services is managed in accordance with the HSMP and WHS Requirements.
- 14.6 The Consultant must immediately notify the Principal of:
- (a) each Notifiable WHS Incident; and/or
 - (b) any investigation or enforcement action taken by a WHS Regulator or other third-party, including:

- a. the issue of any improvement, prohibition or any other statutory notice related to WHS; and/or
 - b. proceedings under WHS Legislation; and/or
- 14.3 The Consultant must give the Principal a copy of any notification sent to a WHS Regulator or other third-party because of a Notifiable WHS Incident within 24 hours of sending the notification to the WHS Regulator.
- 14.4 If requested by the Principal, the Consultant must give the Principal a copy of:
- (a) all documents the Consultant is required to provide to a WHS Regulator or other third-party in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third party;
 - (b) all documents a WHS Regulator or other third party sends to the Consultant in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third party; and
 - (c) any other document in relation to a Notifiable WHS Incident or any enforcement action taken by a WHS Regulator or other third-party.
- 14.5 The Principal may, but is not required to:
- (a) investigate any Notifiable WHS Incident; and/or
 - (b) participate in an investigation of a Notifiable WHS Incident conducted by the Consultant.
- 14.6 The Consultant must cooperate with the Principal and help facilitate the Principal's investigation, if the Principal chooses to independently investigate any Notifiable WHS Incident. This includes but is not limited to, providing the Principal with full access to conduct the investigation, including access to any premises, plant, equipment or records.
- 14.7 The Principal may, but is not required to, request the Consultant to provide evidence that the Consultant is complying with its WHS obligations, and to assist the Principal to comply with its WHS obligations, including:
- (a) providing the Principal with a copy of the HSMP or any WHS plan, procedure, incident report, Safe Work Method Statement, investigation or other document, data or report; and
 - (b) allowing the Principal to audit the Services; and
 - (c) providing, at the Consultant's expense, an independent audit or review of WHS management in relation to the Services.
- 14.8 The Principal may, but is not required to, give directions to the Consultant about WHS matters, including a direction to stop providing the Services if the Principal reasonably believes the provision of the Services is unsafe or in breach of the WHS Requirements, and the Consultant and the Consultant's Personnel must comply with those directions.

15. Construction Contracts Act

- 15.1 This clause 15 applies where this Consultancy Services Contract is subject to the Construction Contracts Act.
- 15.2 The Consultant must:
- (a) promptly give the Principal and the Principal's Representative a copy of any notice the Consultant receives from a subcontractor under section 26, 27 or 42 of the Construction Contracts Act; and
 - (b) ensure that each subcontractor promptly gives the Principal and the Principal's Representative a copy of any notice that the subcontractor receives from any other person under any of sections 26, 27 or 42 of the Construction Contracts Act.
- 15.3 If the Consultant becomes aware that a subcontractor is entitled to suspend work under section 42 of the Construction Contracts Act, the Principal may pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the performance of the Services, and any amount paid by the Principal is recoverable from the Consultant as a debt due and payable by the Consultant to the Principal on demand.
- 15.4 Any loss, cost, damage, liability or expense of any nature (including legal costs) suffered or incurred by the Principal arising out of or in connection with:

- (a) a suspension by a subcontractor of work which forms part of the performance of the Services under section 42 of the Construction Contracts Act; or
 - (b) failure by the Consultant to comply with this clause 15,
- will be recoverable from the Consultant as a debt due and payable by the Consultant to the Principal on demand.

15.5 Where this Consultancy Services Contract is subject to the Construction Contracts Act, the appointor for the purposes of the Construction Contracts Act is The Institute of Arbitrators & Mediators Australia.

16. Performance of the Services

16.1 The Consultant must commence the Services on the Services Start Date.

16.2 The Consultant must, and must ensure the Consultant's Personnel, perform the Services:

- (a) exercising due care, professional skill and judgment and using its best endeavours;
- (b) in accordance with Best Industry Practices or such higher standard as the Consultant has represented in writing to the Principal;
- (c) in an efficient, professional and cost effective manner in accordance with all applicable Standards;
- (d) consult with the Principal and the Principal's other consultants where necessary or desirable for the proper performance of the Services; and
- (e) in accordance with this Consultancy Services Contract and all guidelines, procedures and directions made by the Principal under this Consultancy Services Contract.

16.3 The Consultant must:

- (a) promptly provide any information, and supply any documents, requested by the Principal concerning the performance of the Services; and
- (b) keep accurate and comprehensive books and records relating to the performance of the Services and give the Principal access to those books and records on reasonable notice.

16.4 The Consultant must perform the Services with due diligence so as to complete the Services by the Date for Completion.

16.5 The Consultant must and must procure that the Consultant's Personnel, comply with the Approvals, all applicable Laws and the requirements of any Government Agency and must ensure that the Consultant's Personnel possess all relevant authorisations, permits and Licences to perform the obligations under this Consultancy Services Contract.

16.6 Without limiting clauses 14 and 16.5, the Consultant must comply with:

- (a) all applicable WHS and environmental laws, guidelines and codes of practice including, without limitation, the WHS Legislation;
- (b) all WHS and environmental guidelines, rules and procedures provided to the Consultant by the Principal, including under clause 14; and
- (c) any performance instructions set out in the Contract Specifics or in Schedule 6; and

16.7 The Consultant must promptly comply with any directions given by the Principal's Representative concerning the performance of the Services and attend any meetings as may be necessary, desirable or required by the Principal's Representative for the performance of the Services.

16.8 The Principal may, at any time, request the Consultant to provide the Principal with evidence of compliance with its obligations under clauses 16.5 and 16.6 and the Consultant must comply with such request as soon as reasonably practical after receipt.

16.9 If the Consultant is unable or fails (for whatever reason) to perform the Services in accordance with this Consultancy Services Contract, the Principal may, for as long as determined by the Principal (acting reasonably) and without being liable in any way to the Consultant (including for that part of the Price which

relates to the Services), obtain or acquire such services as it requires from a third party (“**Alternative Services**”).

16.10 If the Principal exercises its rights under clause 16.9 to source Alternative Services, the Consultant is responsible for any incremental costs to the Principal associated with sourcing the Alternative Services, except where the reason for the inability to supply the Services was:

- (a) due to an Event of Force Majeure; or
- (b) as a direct result of any default of the Principal.

16.11 The Consultant represents and warrants to the Principal that the Consultant will:

- (a) at all times, be suitably qualified and experienced, and must exercise the skill, care and diligence to be expected of a Professional Consultant in the performance of the Services (including any design obligations);
- (b) engage and retain the Consultant’s Personnel who are suitably qualified and experienced in services of a similar nature to the Services;
- (c) develop and complete the Design Documents so that they are accurate, suitable, appropriate and adequate for the intended purpose, taking into account the Site and the Environment; and
- (d) perform the Services in accordance with the Design Documents so that when completed, the Services will be fit for the intended purpose and be in accordance with this Consultancy Services Contract and all Laws.

17. Key personnel

17.1 The Consultant must provide the key personnel (if any) stated in the Contract Specifics to perform the Services specified in the Contract Specifics. If any key person is not available due to circumstances beyond the reasonable control of the Consultant, the Consultant must promptly notify the Principal and arrange a replacement approved by the Principal (such consent not to be unreasonably withheld or delayed).

18. Conflict of interest

18.1 A conflict of interest in connection with this Consultancy Services Contract includes a conflict between a duty owed by the Consultant to a person and a duty owed by the Consultant to the Principal.

18.2 The Consultant represents that, to the extent reasonably ascertainable at the commencement of this Consultancy Services Contract, after making all reasonable enquiries, no conflict of interest exists or is likely to arise in relation to the Consultant’s performance of the Services.

18.3 The Consultant must notify the Principal immediately on becoming aware of a conflict of interest or a significant risk of a conflict.

18.4 Where a conflict of interest arises or is likely to arise, the Principal may terminate this Consultancy Services Contract immediately by giving written notice to the Consultant.

19. Cooperation

19.1 In performing the Services, the Consultant must:

- (a) take all reasonable steps to plan, coordinate and program, and to the maximum extent possible integrate, the performance of the Services (including the performance of the Consultant’s Personnel) with the Related Services; and
- (b) not perform the Services in a manner which may cause damage to, or inconvenience the execution of, the Related Services.

19.2 The Consultant’s Representative must liaise with, and report to, the Principal’s Representative on all aspects of the Services.

19.3 If the Consultant fails to comply with this clause 19 and additional work or any alterations or remedial work to the Related Services becomes necessary as a result, the additional costs, if any, will be a debt due and payable on demand from the Consultant to the Principal.

20. Variations

20.1 The Consultant must not vary the Services except as directed by the Principal's Representative in accordance with this clause 20.

20.2 Subject always to Regulation 21A of the Regulations, the Principal's Representative may, by notice, direct the Consultant to alter, amend, omit, add to or otherwise vary the Services and the Consultant must carry out and be bound by any such Variations, subject to the terms of this clause 20.

20.3 Within 5 Business Days of receipt of the notice referred to in clause 20.2, and before the Consultant carries out the Variation, the Consultant must provide to the Principal a variation proposal ("Variation Proposal"). The Variation Proposal must specify:

- (a) the effect (if any) the Consultant anticipates the proposed Variation will have on the Program, the Date for Completion and the Fee; and
- (b) any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.

20.4 The Principal is not obliged to Direct a Variation after receiving a Variation Proposal from the Consultant.

20.5 If the parties agree on the terms of the Variation Proposal, the Principal's Representative may Direct a Variation specifying the details of such Variation and this Consultancy Services Contract will be varied accordingly.

20.6 If the parties are unable to agree on:

- (a) the fee for the Variation in a Variation Proposal within 10 Business Days of the Principal's receipt of the Variation Proposal, then the Variation shall be valued by the Principal's Representative on the basis of the rates and prices (including any Schedule of Rates) set out in Schedule 2 (or, where this Consultancy Services Contract is identified in the Contract Specifics as being a Framework Agreement, in an Order), or if there are no applicable rates or prices set out in Schedule 2 (or an Order in the case of a Framework Agreement), using reasonable rates or prices having regard to all circumstances the Principal's Representative considers relevant; or
- (b) the impact of the Variation on the Program and the Date for Completion, then the Principal's Representative must determine such impact (if any) and any necessary amendment to the Program, and the Principal must provide such determination by notice in writing to the Consultant, which notice will constitute a Variation to this Consultancy Services Contract (subject to clause 20.7).

20.7 If the Consultant does not accept the determination of the Principal's Representative under clause 20.6, the Consultant may, by notice in writing to the Principal, raise this as a Dispute to be resolved in accordance with the process set out in clause 35.

20.8 If the Consultant considers any Direction requires a Variation but the Direction is not in writing or does not specify that it directs a Variation, then the Consultant must promptly notify the Principal in writing setting out why the Consultant considers the Direction a Variation and the Consultant must not comply with the Direction unless the Consultant receives a written:

- (a) Direction specifying a Variation; or
- (b) notice that the Principal disagrees stating its reasons.

20.9 If a notice is issued under clause 20.8, the Consultant must comply with the Direction but may, within 20 Business Days, dispute the Principal's notice under clause 20.8(b) by notice given under clause 35.

20.10 No Variation issued in accordance with this clause 20 vitiates or invalidates this Consultancy Services Contract.

- 20.11 A Variation under this clause 20 may involve the omission of any part or parts of the Services and the Consultant agrees that the Principal may engage others to supply or perform that part or parts so omitted. The Consultant acknowledges that any one or more omissions do not constitute a basis to allege that the Principal has repudiated this Consultancy Services Contract notwithstanding the extent or timing of the omission.
- 20.12 The Consultant acknowledges that the Principal is not liable for or in connection with any loss incurred by the Consultant arising out of or in connection with any Variation to the Services. The Consultant is not entitled to any payment (pursuant to this Consultancy Services Contract or otherwise at common law, equity, statute or code) in relation to any Variation unless the Consultant has been Directed to carry out the Variation pursuant to clause 20.2.
- 20.13 The Consultant's Representative may request that the Principal's Representative Direct a Variation under this clause and the Principal's Representative may, or may decline to, do so in its sole discretion.

21. Time

- 21.1 The Consultant must commence the performance of the Services on the Services Start Date, or such other date as agreed in writing between the Parties and in accordance with the Program.
- 21.2 The Consultant must perform the Services with due expedition and complete the Services by the Date for Completion.
- 21.3 Within 7 days of it becoming reasonably evident that performance of the Services is likely to be delayed beyond the Date for Completion, the Consultant must give notice to the Principal setting out full details of the cause of the delay with supporting documents and stating a reasonable period by which the Consultant believes the Date for Completion should be extended.
- 21.4 Subject to the other provisions of this clause 21 and this Consultancy Services Contract, the Consultant is only entitled to an extension of time to the Date for Completion where a delay to the Date for Completion is caused by any of the following events (each a "Qualifying Cause of Delay"):
- (a) any act or omission (other than in accordance with the terms of this Consultancy Services Contract), breach or default by the Principal or the Principal's Personnel;
 - (b) the execution of a Variation under clause 20 (subject always to the terms of that clause), except where that Variation is caused by the Consultant's act, omission, breach or default;
 - (c) an Event of Force Majeure; or
 - (d) the occurrence of any event specified in the Contract Specifics as an additional ground for the extension of time,
- and the Consultant:
- (e) could not reasonably have been expected to foresee the delay at the date of signing of this Consultancy Services Contract;
 - (f) has taken all reasonable steps to mitigate the delay and the effect of the delay; and
 - (g) the Consultant's Personnel did not cause the delay, whether by breach of this Consultancy Services Contract or otherwise.
- 21.5 Within 10 Business Days after receipt of a notice provided in accordance with clause 21.3, the Principal must notify the Consultant as to the period, if any, by which the Date for Completion will be extended (as determined by the Principal, acting reasonably).
- 21.6 Notwithstanding any other provision in this clause 21, the Principal may at any time extend the Date for Completion by notice to the Consultant. The Consultant acknowledges that the mechanism in this clause 21.6 is a discretionary right of the Principal which may be exercised by the Principal for its sole benefit and does not:
- (a) impose any obligations on the Principal;
 - (b) to the maximum extent permitted by Law, give rise to any duty to act in good faith;

- (c) in any way constitute a waiver or relaxation of any of the requirements under this clause 21 or otherwise under this Consultancy Services Contract; or
- (d) entitle the Consultant to claim any loss of whatever nature arising out of or in connection with any extension of time granted by the Principal in accordance with this clause 21.6.

- 21.7 If the Consultant has reasonably and necessarily incurred or will reasonably and necessarily incur extra cost as a direct consequence of the Qualifying Cause of Delay referred to in clause 21.4(a), 21.4(b) or 21.4(d), the Consultant must give to the Principal notice of the Consultant's claim for delay costs at the same time as the notice under clause 21.1, including all necessary particulars and supporting documentation.
- 21.8 If the Consultant is granted an extension of time for a delay pursuant to clause 21.5, the Principal's Representative agrees, subject to clauses 21.9 and 21.10, to assess and determine as soon as reasonably practicable the extra costs reasonably and necessarily incurred by the Consultant as a consequence of the delay referred to in clause 21.7 in respect of which an extension of time has been granted.
- 21.9 For the avoidance of doubt, the Consultant is not entitled to recover any amount representing any consequential, indirect or special loss or damage of any nature whatsoever, whether based in contract, tort (including negligence) or otherwise arising under, out of, or in connection with, an extension under this clause 21.
- 21.10 It is a condition precedent to the Consultant's entitlement to any extension of time and to recover any amount representing extra costs reasonably and necessarily incurred under clause 21.8 that the Consultant submits the notices as required under clauses 21.3 and 21.7 and has taken all reasonable steps to mitigate the delay and the effects of the delay.
- 21.11 The sums payable under this clause 21 are the Consultant's sole entitlement to compensation for delay or disruption caused by the Principal whether caused by a Qualifying Cause of Delay or otherwise and are in substitution for and shall exclude the Consultant's rights and remedies at common law, equity, statute or code (including the right to recover damages for breach of this Consultancy Services Contract or otherwise).

22. Independent contractor

- 22.1 Nothing in this Consultancy Services Contract constitutes a joint venture, agency or partnership or other fiduciary relationship between the Principal and the Consultant. The Consultant acknowledges that it has no authority to bind the Principal. At all times during the performance of this Consultancy Services Contract, the Consultant is an independent contractor and not personnel of the Principal.

23. Warranties

- 23.1 The Consultant represents and warrants that the Services will:
- (a) be performed in accordance with this Consultancy Services Contract;
 - (b) be performed with appropriate skill and care and to a high quality consistent with Best Industry Practices;
 - (c) meet the Standards; and
 - (d) comply with all applicable Laws, Australian Standards and codes.
- 23.2 The Consultant represents and warrants that as at the date of this Consultancy Services Contract, it is not aware of any claim for infringement of Intellectual Property Rights in relation to the Consultant's Background IP or the Project IP, or for the breach of any obligations of confidence, arising out of the performance of the Services.
- 23.3 The Consultant further gives each of the Other Warranties in respect of the Services performed by the Consultant under this Consultancy Services Contract.
- 23.4 The Consultant represents and warrants that all of the statements, representations, facts and information contained in its Tender were true and accurate and not misleading (including by way of omission) as at the date the Tender was submitted.

- 23.5 If, during the Warranty Period, the Principal finds any of the Services or the results of the Services to be Defective Services, the Principal may, at its option reject the Defective Services by notifying the Consultant that the Principal is rejecting them.
- 23.6 If the Principal rejects the Defective Services in accordance with clause 23.5, the Principal may:
- (a) require the Consultant to re-perform or make good the Defective Services free of charge to the Principal;
 - (b) procure a third party to perform the relevant Services, in which case the Consultant will be responsible for any incremental costs to the Principal associated with obtaining the Services from a third party (which shall be a debt due and payable to the Principal on demand); or
 - (c) make good the Defective Services itself, in which case the Consultant will be responsible for any expenses the Principal incurs in making good any Defective Services (which shall be a debt due and payable to the Principal on demand).
- 23.7 Any Services that are re-performed or made good by the Consultant under this clause 23.6 will be subject to the same warranty as the original Services, commencing from the date of re-performance or the date on which the Services were made good.
- 23.8 The remedies provided in this clause 23 do not exclude any other remedies provided by law.

24. Insurance

- 24.1 The Consultant must, at its own cost and expense, as a minimum procure and maintain the Insurances during the Term (and any additional period specified in this clause 24):
- (a) on the terms and conditions set out in this clause 24 and otherwise on terms acceptable to the Principal; and
 - (b) from an insurer having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency, and approved by the Principal which either:
 - (i) carries on business in Australia and is authorised by the Australian Prudential Regulation Authority; or
 - (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the Principal.
- 24.2 The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance under clause 24.1.
- 24.3 Without limiting clause 24.1, the Consultant must:
- (a) pay all premiums and all deductibles applicable to the Insurance when due;
 - (b) promptly reinstate any Insurance required under this clause 24 if it lapses or if cover is exhausted;
 - (c) ensure that any party to whom work is subcontracted under this Consultancy Services Contract obtains and maintains insurance, as appropriate (including as to amounts of insurance and type of amount) given the nature of work to be performed by that party, as if they were the Consultant; and
 - (d) not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances.
- 24.4 To the extent available at the times of placement and each renewal, each Insurance must:
- (a) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
 - (b) come into effect on or before the Commencement Date and be maintained throughout the Term, with the exception of the professional indemnity insurance required by clause 24.11 which must extend for a period of seven (7) years after the Term;

- (c) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
- (d) provide, where the Principal is an insured under the Insurance, that any breach of the conditions of that Insurance by an insured other than the Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance; and
- (e) state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction in any dispute under or relating to the Insurance.

24.5 If a claim is made under any of the Insurances, the Consultant is liable for any excess or deductible payable as a consequence.

24.6 The effecting and maintaining of the Insurances by the Consultant does not, in any way, affect or limit the liabilities or obligations of the Consultant under this Consultancy Services Contract.

24.7 The Consultant must effect and thereafter maintain public and product liability insurance, which policy must:

- (a) be endorsed to note the Principal for its respective rights and interests in relation to this Consultancy Services Contract;
- (b) be for an amount of not less than the amount set out in the Contract Specifics in respect of any one claim and unlimited in the number of occurrences and not less than the amount set out in the Contract Specifics in the aggregate in relation to products liability during any one 12 month period of insurance;
- (c) include a cross liability endorsement extending the policy to operate in the same manner as if there was a separate policy of insurance covering each party insured (without increasing the deductibles or reducing the overall limit of indemnity);
- (d) cover the liability of the Consultant, the Consultant's Personnel, the Principal and the Principal's Personnel in respect of:
 - (i) loss of, damage to, or loss of use of, any real or personal property; and
 - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any applicable Law to be insured under a workers compensation policy),

arising out of or in connection with the performance of this Consultancy Services Contract by the Consultant; and

- (e) be endorsed:
 - (i) to cover the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Consultancy Services Contract;
 - (ii) to cover sudden and accidental pollution; and
 - (iii) to provide a waiver of subrogation in favour of the Principal in relation to this Consultancy Services Contract where the Principal is not a named insured.

24.8 In addition to any compulsory third party motor vehicle insurance required to be taken out by the Consultant under any applicable Law, the Consultant must effect and maintain vehicle and equipment insurance for the Consultant's vehicles, plant and equipment used in connection with this Consultancy Services Contract whether owned, hired or leased ("Consultant's Vehicles"), which policy must:

- (a) cover against all loss and/or damage to the Consultant's Vehicles;
- (b) cover third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Consultant's Vehicles;
- (c) be for an amount of not less than the market value of the plant and equipment, and otherwise for not less than the amount set out in the Contract Specifics for any one claim or occurrence and unlimited in the number of occurrences;

- (d) other than compulsory third party motor vehicle insurance required by virtue of any applicable Law, to the extent available from the insurance market from time to time, be endorsed to contain a principal's indemnity extension in favour of the Principal;
- (e) include a cross liability endorsement extending the policy to operate in the same manner as if there was a separate policy of insurance covering each party insured (without increasing the deductibles or reducing the overall limit of indemnity); and
- (f) be endorsed to note the Principal for its respective rights and interests in relation to the Consultancy Services Contract.

24.9 The Consultant must effect and maintain insurance against liability for death of, or injury to, persons employed by, or deemed by an applicable Law to be employed by, the Consultant, including liability by statute and at common law, which insurance cover must:

- (a) be extended to indemnify the Principal and Principal's Personnel for their statutory and common law liability to natural persons employed or engaged by the Consultant, including a waiver of subrogation; and
- (b) be for not less than the amount set out in the Contract Specifics in respect of any one event.

24.10 In the event that the Consultant is a sole trader and no workers compensation policy is in place, the Consultant must insure against loss of income for accident and illness by the purchase of an income protection or a salary continuance policy.

24.11 Unless the Principal agrees otherwise in writing, the Consultant must effect and maintain professional indemnity insurance, which policy must:

- (a) be for not less than the amount set out in the Contract Specifics in respect of any one claim and not less than the amount set out in the Contract Specifics in the aggregate for all claims arising in any one 12 month period of insurance;
- (b) include one full automatic reinstatement of the limit of liability;
- (c) cover liability arising from any act or omission in connection with or arising out of the professional activities and duties under this Consultancy Services Contract; and
- (d) cover claims in respect of this Consultancy Contract under the *Competition and Consumer Act 2010* (Cth), *Fair Trading Act 2010* (WA) and any similar legislation in Western Australia, insofar as they relate to the provision of professional advice under this Consultancy Services Contract.

24.12 The Consultant must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances.

24.13 The Consultant must, on or prior to the Commencement Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to effect and maintain under this Consultancy Services Contract is current by providing to the Principal current and updated Certificates of Insurance or the terms and conditions (including schedules) of the Insurances, to demonstrate compliance with this Consultancy Services Contract. Nothing in this clause 24 will fix the Principal with notice of the contents of any policy and must not be raised as a defence to any claim by the Principal against the Consultant.

24.14 If the Consultant fails to effect and maintain the Insurances in accordance with this Consultancy Services Contract, the Principal may, but is not obliged to, effect and maintain any such Insurance and the cost of doing so will be a debt due and payable on demand from the Consultant to the Principal.

24.15 The Consultant must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of an Insurance.

24.16 The Consultant must:

- (a) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Consultancy Services Contract under any of the Insurances, except claims which the Principal may have against the Consultant; and

- (b) where relevant provide all such assistance to the Principal as may be required for the preparation and negotiation of insurance claims.

24.17 The Insurances are primary, and not secondary, to the indemnities referred to in this Consultancy Services Contract. The Principal is not obliged to make a claim or institute proceedings against any insurer under an Insurance before enforcing any of its rights or remedies under the indemnities in this Consultancy Services Contract. In addition, the parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Consultancy Services Contract before the insurer considers or meets the relevant claim.

24.18 The Consultant may be required, at the discretion of the Principal, to provide the Principal with a risk management plan relating to this Consultancy Services Contract in accordance with AS/NZS 4360-2004 Risk Management.

25. Liability and indemnities

25.1 To the extent permitted by law, the Consultant is liable for and indemnifies the Principal against any liability and any loss, expense, costs or damage of any kind whatsoever arising directly or indirectly from:

- (a) any breach of any warranty given by it in this Consultancy Services Contract or any of the other terms and conditions of this Consultancy Services Contract by the Consultant;
- (b) the illness, injury or death of any of the Consultant's Personnel arising under, out of or in connection with, this Consultancy Services Contract;
- (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property, or any other loss or damage of any kind whatsoever, caused or contributed to by:
 - (i) the Services; or
 - (ii) the entry onto, and the activities undertaken on and in, the Site by the Consultant and/or the Consultant's Personnel;
- (d) any negligence or wilful act or omission by the Consultant and/or any of the Consultant's Personnel in connection with this Consultancy Services Contract;
- (e) any claim made against the Principal by any of the Consultant's Personnel in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
- (f) any penalty imposed for breach of an applicable Law in connection with the performance of the Services;
- (g) any loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Consultant or the Consultant's Personnel and used in connection with this Consultancy Services Contract; or
- (h) any claim that the Services, anything the Consultant does in performing the Services, or the Principal's use of the Services or any part of the Services infringes, or allegedly infringes, the Intellectual Property Rights of any person.

25.2 The Consultant will not be liable to the extent that any loss or damage was caused by the wilful misconduct or gross negligence of the Principal or the Principal's Personnel.

25.3 Every exemption, limitation, defence, immunity or other benefit contained in this Consultancy Services Contract to which the Principal is entitled is also held by the Principal for the benefit of, and extends to protect, each of the Principal's Personnel.

25.4 Each indemnity in this Consultancy Services Contract is a continuing obligation separate and independent from the Consultant's other obligations and survives termination of this Consultancy Services Contract.

25.5 It is not necessary for the Principal to incur expense or make payment before enforcing a right of indemnity conferred by this Consultancy Services Contract.

- 25.6 Subject to clause 25.8, neither party is liable to the other party for any consequential, indirect or special loss or damage of any nature whatsoever, whether based on contract, tort (including negligence) or otherwise, arising under, out of, or in connection with, this Consultancy Services Contract.
- 25.7 Subject to clause 25.8, the Consultant's total liability under this Consultancy Services Contract will not exceed the amount (if applicable) set out in the Contract Specifics as the Aggregate Limit of Liability, which amount will exclude the proceeds on any insurances required to be taken out by the Consultant under this Consultancy Services Contract.
- 25.8 Clauses 25.6 and 25.7 do not limit the Consultant's liability:
- (a) under clauses 25.1(f) and 25.1(h);
 - (b) under any other provisions of this Consultancy Services Contract which expressly impose a greater liability;
 - (c) in cases of fraud, wilful misconduct or illegal or unlawful acts;
 - (d) if, but for clause 25.7 the Consultant would have insurance cover for that liability under an insurance policy that the Consultant is required to take out under this Consultancy Services Contract; or
 - (e) in cases of the Consultant's acts or omissions which are contrary to the most elementary rules of diligence which a conscientious supplier would have followed in similar circumstances.
- 25.9 Part 1F of the Civil Liability Act is excluded from operation with respect to any dispute, claim, action or any matter whatsoever arising out of or in connection with this Consultancy Services Contract or the Consultant's Personnel.

26. Intellectual property

26.1 The Consultant:

- (a) retains the Intellectual Property Rights in the Consultant Background IP; and
- (b) grants to the Principal a non-exclusive, royalty free licence to use the Consultant Background IP for the sole purpose of exercising its rights with respect to the Services and this Consultancy Services Contract.

26.2 The Principal:

- (a) retains the Intellectual Property Rights in the Principal Background IP; and
- (b) grants to the Consultant a non-exclusive, royalty free licence to use, reproduce, modify and adapt the Principal Background IP for the sole purpose of performing the Services and its other obligations under this Consultancy Services Contract.

26.3 The Consultant acknowledges and agrees that all Project IP vests in and is owned by the Principal on creation.

26.4 On creation, the Principal grants to the Consultant a non-exclusive, royalty free licence to use, reproduce, modify and adapt the Project IP for the sole purpose of performing the Services and its other obligations under this Consultancy Services Contract.

26.5 The Consultant must not infringe any Intellectual Property Rights in performing the Services, including the provision of the Design Documents.

26.6 The Principal must not infringe any Intellectual Property Rights in providing the Principal Information.

26.7 The Consultant must notify the Principal as soon as the Consultant becomes aware of any suspected, threatened or actual infringement of the:

- (a) Principal Background IP; or
- (b) Project IP.

- 26.8 The Consultant agrees to provide all reasonable assistance the Principal may request regarding any infringement or alleged infringement of the:
- (a) Principal Background IP; or
 - (b) Project IP.
- 26.9 The Consultant shall make all payments and royalties to the appropriate party in respect of any Consultant Background IP required to perform its obligations under this Consultancy Services Contract and such payments and royalties shall be included in the Fee.
- 26.10 Upon completion of the Services or termination of this Consultancy Services Contract, the Consultant must ensure that all Design Documents (if any), Project IP and Principal Background IP and anything else recording, containing, setting out or making reference to the Services are delivered to the Principal's Representative or, if directed by the Principal's Representative, destroyed except for a single copy which may be retained by the Consultant for record keeping purposes.
- 26.11 The obligations in this clause 26 continue after the termination of this Consultancy Services Contract.

27. Moral rights

- 27.1 This clause 27 applies if specified in the Contract Specifics.
- 27.2 The Consultant has or must obtain a consent from the Consultant's Personnel in connection with the Services in substantially the same form as the consent set out in Annexure B, or such other form acceptable to the Principal.
- 27.3 In relation to the Services:
- (a) the Consultant must be attributed as the author of the physical product of the Services when the Principal considers it reasonable and practicable, or as otherwise agreed in writing;
 - (b) the Principal need not advise the Consultant of any intended alteration to or demolition of any project, building or structure related to the Services unless otherwise agreed in writing;
 - (c) the Consultant has the right to give consent on behalf of the Consultant's Personnel; and
 - (d) where requested, the Consultant must provide the Principal with copies of all relevant consents in the form of Annexure B, or another form as agreed, within a reasonable time.

28. Confidential information

- 28.1 Subject to clause 28.4, no Principal's Confidential Information may be disclosed by the Consultant to any person except:
- (a) to the Consultant's Personnel requiring the information for the purposes of this Consultancy Services Contract;
 - (b) with the written consent of the Principal;
 - (c) if the Consultant is required to do so by Law, a stock exchange or any regulatory authority; or
 - (d) if the Consultant is required to do so in connection with legal proceedings relating to this Consultancy Services Contract.
- 28.2 If the Consultant discloses Principal's Confidential Information under clause 28.1(a) or 28.1(b), the Consultant must use its reasonable endeavours to ensure that recipients of the Principal's Confidential Information do not disclose the Principal's Confidential Information except in the circumstances permitted in clause 28.1.
- 28.3 The Consultant must not use any Principal's Confidential Information, except for the purpose of performing its obligations under this Consultancy Services Contract or as otherwise required by operation of Law.
- 28.4 Clauses 28.1, 28.2 and 28.3 do not apply to the Excluded Information.
- 28.5 The obligations under this clause 28 survive termination or expiry of this Consultancy Services Contract.

29. Media

- 29.1 The Consultant must refer to the Principal any enquiries from the media concerning the Services or the Principal's business and activities.
- 29.2 The Consultant must not advertise or issue any information, publication, document or article for publication or media release or other publicity relating to the Services, this Consultancy Services Contract or the Principal's business and activities without the Principal's Representative's written approval (which shall not be unreasonably withheld).

30. Taxes

- 30.1 The Consultant is responsible for any Taxes which are levied on, in respect of, or in connection with the performance of the Services.
- 30.2 The Consultant must promptly on request provide the Principal with documentary evidence of the Consultant's payment of the Taxes referred to in clause 30.1.

31. Force Majeure

- 31.1 If, as a result of an Event of Force Majeure, a party becomes unable, wholly or in part, to perform any of its obligations under this Consultancy Services Contract or is delayed in performing those obligations:
- (a) the affected party must, at the first possible opportunity following the happening of the Event of Force Majeure, give notice to the other party setting out (to the extent practicable):
 - (i) full details of the Event of Force Majeure;
 - (ii) the obligations affected by the Event of Force Majeure; and
 - (iii) the manner in which the relevant obligations have been affected by the Event of Force Majeure;
 - (b) the affected obligations identified in the notice referred to in clause 31.1(a), will be suspended but only so far as, and for so long as, the performance of those obligations is affected by the Event of Force Majeure; and
 - (c) the affected party must use its best endeavours to overcome or remove the effects of the Event of Force Majeure as quickly as possible.
- 31.2 During the period for which an obligation of the Consultant is suspended pursuant to clause 31.1(b), the Principal may (at the Principal's cost) make alternative arrangements for the performance of the suspended obligations (whether by another person or otherwise), without liability to the Consultant.
- 31.3 When the Event of Force Majeure no longer affects the performance of the obligations referred to in clause 31.1, the affected party must as soon as reasonably practicable recommence the performance of the affected obligations.
- 31.4 Subject to clause 21, the Consultant has no entitlement and the Principal has no liability for:
- (a) any costs, losses, expenses, damages, or the payment of any fees incurred, due to an Event of Force Majeure; and
 - (b) any delay costs in any way incurred by the Consultant due to an Event of Force Majeure.
- 31.5 If an Event of Force Majeure which is the subject of a notice under clause 31.1(a) continues for more than 60 days, then either party may terminate this Consultancy Services Contract on written notice to the other party, in which case clauses 33.6, 33.7, 33.8 and 33.9 will apply.

32. Default

- 32.1 The Consultant will be in default under this Consultancy Services Contract ("Consultant Default") if:

- (a) the Consultant commits, suffers or permits any breach of the terms of this Consultancy Services Contract and fails to take action to remedy such breach within 14 days after receipt of written notice from the Principal detailing the breach and the actions required to remedy the breach;
- (b) any of the Consultant's Personnel are found guilty of any criminal act related to the Services;
- (c) the Consultant fails, refuses or neglects to comply with any reasonable instruction or Direction which the Principal's Representative is entitled to give and that default is not remedied:
 - (i) within 7 Business Days after receipt of written notice from the Principal's Representative; or
 - (ii) within such longer period as the Principal's Representative may determine;
- (d) the Consultant becomes Insolvent; or
- (e) the Consultant includes in its Tender any statement, representation, fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Consultant or not.

32.2 The Principal will be in default under this Consultancy Services Contract ("Principal Default") if the Principal commits, suffers or permits any breach of the terms of this Consultancy Services Contract and fails to take action to remedy such breach within 30 days after receipt of written notice from the Consultant detailing the breach and the actions required to remedy the breach.

32.3 The Consultant acknowledges and agrees that where the Principal has failed to pay the Consultant any amount due and payable to the Consultant but such amount is subject to a Dispute pending determination in accordance with clause 35, that failure will not constitute a Principal Default.

33. Termination

33.1 In the event of a Consultant Default that is not remedied in accordance with clause 32.1 (where applicable) or where the Consultant Default is not capable of remedy the Principal may, by giving written notice to the Consultant, immediately terminate this Consultancy Services Contract.

33.2 In the event of a Principal Default, the Consultant may serve a notice of default on the Principal requiring the Principal to remedy the Principal Default within a specified period of not less than 20 Business Days after service of the default notice to the Principal.

33.3 If the Principal fails to remedy the Principal Default within the period specified in the notice of default referred to in clause 33.2, then the Consultant may either:

- (a) cease performance of all or any part of the Services until the Principal's Default is remedied; or
- (b) terminate this Consultancy Services Contract by written notice to the Principal.

33.4 The Principal may terminate this Consultancy Services Contract immediately by giving written notice to the Consultant if, in the Principal's sole opinion, continued connection or involvement with the Consultant will, or is reasonably likely to, have a detrimental impact on the reputation of the Principal.

33.5 The Principal may terminate this Consultancy Services Contract for whatever reason by giving the Consultant at least 30 days prior written notice.

33.6 In the event of termination of this Consultancy Services Contract for any reason the Consultant must:

- (a) cease performance of the Services;
- (b) ensure the safety of all Consultant's Personnel;
- (c) take all reasonable steps to protect property that is in the possession of the Consultant and that the Principal has an interest in, or may acquire an interest in;
- (d) assign to the Principal or its nominee, to the extent required by the Principal, all the rights and benefits of the Consultant under agreements that the Consultant has with third parties relating to the provision of the Services; and
- (e) take any other action that the Principal may reasonably request in relation to the termination.

- 33.7 In the event of termination of this Consultancy Services Contract by either party the Principal will be liable to pay the Consultant:
- (a) all amounts due to the Consultant as shown on any unpaid Invoices (subject to the requirements of clause 12); and
 - (b) for all Services properly completed in accordance with this Consultancy Services Contract up to the date of termination.
- 33.8 The amounts set out in clause 33.7 represent the only amounts that the Consultant may recover from the Principal following a termination of this Consultancy Services Contract.
- 33.9 Upon termination or expiry of this Consultancy Services Contract, the Consultant must promptly return to the Principal any of the Principal's property or documents that the Principal owns or in which the Principal has an interest.
- 33.10 Any expiration or termination of this Consultancy Services Contract does not affect:
- (a) any rights of the parties which may have accrued before the date of termination; and
 - (b) the rights and obligations of the parties under clauses 1, 12.10, 25, 26, 27,28, 33, 40, 41 and 44.6, which survive termination of this Consultancy Services Contract.

34. Suspension

- 34.1 The Principal may, at any time and for any reason, by notice in writing to the Consultant (stating the reason for and, if it is possible to make such an estimate, the estimated length of, the suspension), Direct the Consultant to suspend performance of the whole or any part of the performance of the Services.
- 34.2 Upon receipt of a notice of suspension from the Principal or the Principal's Representative in accordance with clause 34.1, the Consultant must suspend performance of the relevant obligations until such time as the Principal or the Principal's Representative Directs the Consultant to resume performance of those obligations by notice in writing, whereupon the Consultant must promptly recommence the performance of those obligations in accordance with this Consultancy Services Contract. The Consultant must do everything possible to minimize any cost or expense to it which is consequent on the suspension.
- 34.3 Unless otherwise agreed, the Principal must, subject to receipt of satisfactory evidence of such costs from the Consultant, pay to the Consultant reasonable compensation reflecting the costs necessarily and reasonably incurred by the Consultant as a direct consequence of the suspension for the period of the suspension under this clause 34, except where the suspension is a result of a Force Majeure Event or, in the reasonable opinion of the Principal's Representative, the suspension is necessary because of an act, default or omission of the Consultant or any of the Consultant's Personnel, in which case the Consultant is not entitled to any payment or compensation for the suspension. For the avoidance of doubt, the Consultant is not entitled to recover any amount representing any consequential, indirect or special loss or damage of any nature whatsoever, whether based in contract, tort (including negligence) or otherwise arising under, out of, or in connection with, a suspension under this clause 34.
- 34.4 As soon as the Principal determines that the reason for any suspension under clause 34.1 no longer applies, the Principal shall instruct the Consultant to recommence performance of the relevant obligations suspended under clause 34.1 and the Consultant must promptly recommence performance in accordance with this Consultancy Services Contract.
- 34.5 If the Principal suspends the whole or any part of the performance of the Services under this clause 34 (other than where the suspension is a result of a Force Majeure Event or, in the reasonable opinion of the Principal's Representative, the suspension is necessary because of an act, default or omission of the Consultant or any of the Consultant's Personnel), the Date for Completion for the relevant Services will be extended by the period of the suspension.

35. Dispute resolution

- 35.1 If a Dispute arises between the parties, then:
- (a) a party affected by the Dispute must notify the other party of the nature and extent of the Dispute;

- (b) the parties undertake in good faith to use their best endeavours to settle the Dispute expeditiously by negotiation; and
 - (c) a party must comply with the process set out in clauses 35.2 to 35.5 before commencing court or other proceedings except where that party is seeking urgent interlocutory relief or if a party has unreasonably failed to comply with its obligations under this clause 35.
- 35.2 If the Dispute is not resolved within 10 Business Days of a party advising the other party of a Dispute under this Consultancy Services Contract, a party may convene, and the other party must attend, a without prejudice meeting of a senior representative of each party (“Senior Representative Meeting”) with the objective of settling the Dispute.
- 35.3 The party requesting a Senior Representative Meeting must give not less than 15 Business Days written notice to the other party of the time and place for the Senior Representative Meeting.
- 35.4 Each party must procure that a senior representative of that party attends the Senior Representative Meeting and has authority to negotiate the issues in dispute. Each senior representative must negotiate in good faith and use its best endeavours to resolve the Dispute (subject to any necessary corporate or other action required to authorise and bind a party to such resolution).
- 35.5 The Senior Representative Meeting must take place within 10 Business Days of the service of the notice under clause 35.3.
- 35.6 If the Senior Representative Meeting fails to resolve a Dispute within 15 Business Days (including obtaining any necessary authorisation) or a Senior Representative Meeting has not taken place within the time required under clause 35.5, then, save for where it is a matter requiring referral to an Expert in accordance with clause 36, either party may commence court proceedings in relation to the Dispute.
- 35.7 Despite the parties being in dispute or taking steps to comply with this clause 35, the parties must continue to perform their respective obligations under this Consultancy Services Contract in a timely manner (including those pre-existing obligations the subject of the Dispute or disagreement to the extent possible).
- 35.8 Where a Dispute concerns whether the Services comply with the requirements of this Consultancy Services Contract and is not resolved following the process set out in clauses 35.2 to 35.5, the parties may, by agreement, refer the Dispute for resolution by an Expert in accordance with the process set out in clause 36.

36. Expert determination

- 36.1 If a Dispute arises which is to be dealt with under this clause 36, then a party may serve a notice on the other party requiring the Dispute to be determined by an Expert.
- 36.2 The parties must endeavour to agree on an independent person to serve as the Expert within 10 Business Days of the service of the notice under clause 36.1. If the parties are unable to agree on an independent person to serve as the Expert, then a party may request the President (for the time being) of the Law Society of Western Australia, or any body which is a successor or equivalent of it, to appoint a suitably qualified person to act as the Expert. The parties may make written submissions to that person on the choice of candidate.
- 36.3 The parties agree that the person appointed as the Expert must:
- (a) be appropriately qualified by their education, experience and training to determine the issues in dispute; and
 - (b) not have any relationship or association with the parties which may affect their impartiality.
- 36.4 The parties agree to instruct the Expert that the Expert:
- (a) acts as an expert and not an arbitrator;
 - (b) may decide on rules of conduct in their absolute discretion and enquire into the matter to be determined as the Expert thinks fit, including receiving submissions and taking advice from any persons that the Expert considers appropriate and requiring the parties to provide any material in their possession or control which is reasonably relevant to the issues in dispute;

- (c) must give a written decision (including reasons); and
- (d) must endeavour to give that decision as soon as practicable.

- 36.5 The parties may make submissions to the Expert, including the provision of expert reports, and the parties agree to give every assistance that the Expert requires, including providing copies of relevant documents with a view to reaching a decision without delay.
- 36.6 Each party is to bear its own costs in relation to the Dispute. The Expert must decide the proportions in which the parties will bear the costs of the Expert having regard to the extent to which the parties may have acted unreasonably or been at fault.
- 36.7 The Expert's determination is conclusive and binding on the parties in the absence of manifest error.

37. Assignment and sub-contracting

- 37.1 The Consultant must not assign or novate its rights and obligations under this Consultancy Services Contract without the Principal's prior written consent, which consent may be withheld in the Principal's sole discretion or granted with such conditions deemed fit by the Principal.
- 37.2 The Principal has the right to assign or novate any or all of its rights and obligations under this Consultancy Services Contract.
- 37.3 The Consultant must not subcontract any of its obligations under this Consultancy Services Contract without the Principal's prior written consent, which consent may be withheld in the Principal's sole discretion or granted with such conditions deemed fit by the Principal.
- 37.4 Any approval to subcontract given by the Principal will not relieve the Consultant of any of its liabilities or obligations under this Consultancy Services Contract.
- 37.5 Notwithstanding any approval given to the Consultant to subcontract, the Consultant will remain liable to the Principal for:
- (a) the due and continued performance of the Services; and
 - (b) all acts, defaults, neglects and omissions of any subcontractor as if they were those of the Consultant.

38. Personal Property Securities Act 2009 (Cth)

- 38.1 For the purposes of this clause 38:
- (a) the "**Principal's Personal Property**" means all personal property the subject of a security interest granted under this Consultancy Services Contract; and
 - (b) words and phrases used that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.
- 38.2 If the Principal determines that this Consultancy Services Contract (or a transaction in connection with it) or a provision within it contains a security interest for the purposes of the PPSA, the Consultant agrees it will do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (b) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
 - (c) enabling the Principal to exercise rights in connection with the security interest.
- 38.3 The Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.
- 38.4 The Consultant must notify the Principal as soon as the Consultant becomes aware of any of the following:

- (a) if any personal property which does not form part of the Principal's Personal Property becomes an accession to the Principal's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; or
- (b) if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal property.

38.5 The Consultant must not:

- (a) create any security interest or lien over any of the Principal's Personal Property whatsoever (other than security interests granted in favour of the Principal);
- (b) sell, lease or dispose of its interest in the Principal's Personal Property;
- (c) give possession of the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
- (d) permit any of the Principal's Personal Property to become an accession to or commingled with any asset; or
- (e) change its name, relocate its principal place of business outside Australia or change its place of registration or incorporation without first giving the Principal 15 Business Days' notice.

38.6 Everything the Consultant is required to do under this clause 38 will be at the Consultant's expense.

38.7 The Consultant and the Principal agree that this Consultancy Services Contract and all related information and document(s) are confidential ("**Designated Confidential Information**") and will not be disclosed, except to the extent disclosure is permitted or required by this Consultancy Services Contract or by Law. The Consultant and the Principal agree that the Consultant will not disclose Designated Confidential Information pursuant to a request under section 275(1) of the PPSA.

39. Priority

39.1 To the extent of any inconsistency between the Special Conditions and any other part of this Consultancy Services Contract, the Special Conditions will prevail.

39.2 To the extent of any inconsistency between the Contract Specifics and the General Conditions or the Special Conditions, then the General Conditions or Special Conditions (as applicable) will prevail.

39.3 To the extent of any inconsistency between the General Conditions and any Schedules (including any documents referred to in the Schedules but excluding the Special Conditions), then the General Conditions will prevail.

39.4 If the Consultant considers that there is any ambiguity or discrepancy in the documents comprising the Consultancy Services Contract, the Consultant shall promptly advise the Principal's Representative in writing, who shall give the Consultant a Direction as to the interpretation to be followed. If compliance with any such Direction under this clause 39.4 causes the Consultant to incur more or less cost than otherwise would have been incurred had the Direction not been given, the difference shall be assessed by the Principal's Representative and added to or deducted from the Fee, provided that the Consultant shall have no entitlement as a consequence of a Direction given under this clause 39.4 which is consistent with clauses 39.1 to 39.3.

39.5 To the extent of any inconsistency in the standard to which the Services are performed, the higher standard will prevail.

40. Record Keeping Requirements

40.1 The requirements in this clause 40 are the minimum requirements the Consultant must follow and do not limit any other obligations of the Consultant under this Consultancy Services Contract (including clause 8).

40.2 The Consultant must at all times maintain accurate, complete and up-to-date records which demonstrate its performance of, and compliance with, this Consultancy Services Contract, including:

- (a) any records which the Consultant is required to keep in order to comply with its obligations under this Consultancy Services Contract; and
- (b) any other records which a prudent and professional organisation would hold if it were required to perform the Consultant's obligations under this Consultancy Services Contract,

and such records must:

- (c) include appropriate audit trails for transactions performed;
- (d) be kept in a manner that permits them to be conveniently and properly audited;
- (e) be maintained in such a way as to:
 - (i) facilitate any action undertaken by the Principal;
 - (ii) allow a proper scrutiny of the conduct of the Consultant's business by appropriate authorities; and
 - (iii) protect the financial, legal and other rights of the Principal, its clients, and any third parties affected by its actions and decisions;
- (f) be controlled, as applicable, using:
 - (i) version control; and
 - (ii) date of last update and by whom;
- (g) be made available to the Principal on request; and
- (h) be governed by an appropriate retention and disposal management plan.

40.3 The Consultant acknowledges that the records it holds in connection with this Consultancy Services Contract may be subject to a request under the Freedom of Information Act received by the Principal, and such records are to be immediately returned to the Principal for review in such circumstances. If the return of the records impacts on the Consultant's performance of its obligations under this Consultancy Services Contract, the Principal will consider any concerns the Consultant may raise.

40.4 The Consultant must (at its own cost and expense), for the duration of this Consultancy Services Contract, provide the Principal with all assistance reasonably requested by the Principal to assist the Principal in complying with its obligations under the State Records Act 2000 (WA) and with the Principal's records management plan, where such compliance is in respect of records created, or to be created, by the Consultant on behalf of the Principal in accordance with this Consultancy Services Contract.

40.5 The Consultant must, in respect of records created during the term of this Consultancy Services Contract, retain such records for the retention period set out for that class of record in the General Disposal Authority for Local Government Records RD 2010046.

41. Notices

41.1 Any notice, approval, consent or other communication ("**Notice**") in relation to this Consultancy Services Contract must be:

- (a) in legible writing in English;
- (b) signed by an Authorised Representative of the sender and otherwise in accordance with the requirements of this Consultancy Services Contract;
- (c) marked for the attention of the Consultant's Representative if directed to the Consultant, or the Principal's Representative if directed to the Principal; and
- (d) either:
 - (i) left at the address for the party set out in the Contract Specifics;
 - (ii) sent by prepaid ordinary post (airmail if appropriate) to the address for the party set out in the Contract Specifics; or

(iii) sent by email to the email address for the party set out in the Contract Specifics.

However, if the addressee has notified a change of postal address or email address, then the Notice must be to that changed postal address or email address, as the case may be.

- 41.2 Notices sent by email need not be marked for attention in the way stated in clause 41.1 and are taken to be signed by the named sender.
- 41.3 Despite clause 41.1(d)(iii) and 41.2, a Notice under clause 33, 35 or 36 must not be sent by email.
- 41.4 Notices take effect from the time they are received or taken to be received under clause 41.5 (whichever happens first) unless a later time is specified.
- 41.5 Notices are taken to be received:
- (a) if sent by post, four days after posting (or seven days after posting if sent from one country to another); or
 - (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,
- whichever happens first.
- 41.6 Despite clauses 41.4 and 41.5, if Notices are received or taken to be received under clause 41.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

42. Entire agreement

This Consultancy Services Contract constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

43. Industrial arrangements

The Consultant agrees to observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the performance of the Services under this Consultancy Services Contract.

44. Other matters

- 44.1 If the whole or any part of a provision of this Consultancy Services Contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Consultancy Services Contract has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Consultancy Services Contract or is contrary to public policy.
- 44.2 A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Consultancy Services Contract expressly states otherwise.
- 44.3 If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.
- 44.4 The rights and remedies provided in this Consultancy Services Contract are in addition to other rights and remedies given by law independently of this Consultancy Services Contract.
- 44.5 Except as, and to the extent, expressly stated otherwise in this Consultancy Services Contract, a provision of this Consultancy Services Contract or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.
- 44.6 The indemnities in this Consultancy Services Contract are continuing obligations, independent from the other obligations of the parties under this Consultancy Services Contract and continue after this

Consultancy Services Contract ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Consultancy Services Contract.

- 44.7 Each party agrees, at its own expense, to do anything reasonably requested by another party (such as negotiating in good faith, obtaining consents, signing and producing documents and getting documents completed and signed) to give effect to the provisions of this Consultancy Services Contract and the transactions contemplated by it.
- 44.8 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Consultancy Services Contract or any part of it.
- 44.9 The Consultant must obtain at its own expense any necessary Licences or permits and comply with applicable Laws in supplying the Services.
- 44.10 The Principal's rights, remedies and powers under this Consultancy Services Contract are in addition to any rights, remedies and powers provided by law.
- 44.11 The Consultant acknowledges and agrees that the Principal may enter into arrangements or agreements with third parties for the provision of services the same as, or similar to, the Services.

45. Governing law

- 45.1 This Consultancy Services Contract is governed by the laws of Western Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts of appeal from them.

46. Counterparts

This Consultancy Services Contract may consist of a number of counterparts each signed by one or more parties to this Consultancy Services Contract. When taken together, the signed copies are treated as making up the one document.