General Conditions of Contract

For

Consultancy Services (Quotations)

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Consultancy Services Contract
General Conditions

1. Definitions and Interpretation

1.1 In this Contract unless the contrary intention appears:

Annexure means an annexure to this Contract.

Approvals means all licences, permits, consents, determinations and approvals of any Statutory or legislative authority relevant to the project.

Authorised Representative means any person appointed by a party from time to time to act as an authorised representative for the purposes of this 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 consultants 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 the *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.

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.

Contract Date means the date upon which the Contract is executed by both Parties.

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 Contract Date or are developed or acquired by the Consultant independently of this 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 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 Contract Date, 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 Specifics means the section of this Contract headed "Contract Specifics".

Controller has the meaning it has in the Corporations Act.

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

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 **Error! Reference source not found.**.

Defective Services means Services or the result of the Services which are not in conformity with this Contract (including the warranties and representations in clause 22.1) or are otherwise unsatisfactory to the Principal.

Deliverables means those Documents and things required under this Contract to be handed over to the Principal by the Consultant as set out in Schedule 1.

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 Contract and created (or, where the context required, to be created) by the Consultant in the performance of, or in connection with, the Services, each of which is a Deliverable.

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 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 or overcome, which event or circumstance prevents, hinders or delays a party from performing any of its obligations under this Contract, provided that event or circumstance is limited to the following:

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;

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;

pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

any act of God, flood, bush fire, drought, earthquake, landslide, cyclone or other natural disaster, but excluding weather conditions regardless of severity;

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 Contract or a party to this Contract; and

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 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 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 35.2 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 Contract.

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

General Conditions means these general conditions.

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 Contract.

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

GST has the meaning given to that term in the GST Act.

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

Head Contractor means contractor appointed by the Principal to construct the project at the Site.

HSMP has the meaning given to it in clause 13.5.

Information Breach means unauthorised access to, or unauthorised disclosure of, Personal Information under the possession or control of a party (or its Personnel) relating to this Contract.

A party 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 party, 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 party under the law of any jurisdiction.

Insurances means the insurances which the Consultant is required to obtain under clause **Error! Reference source not found.** 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 Contract during the period of the invoice, which meets all the requirements of a valid tax invoice for GST purposes.

IPP Entity has the same meaning as provided in the PRIS Act.

IPPs means the Principals as set out in the PRIS Act.

Law includes:

(a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of any Government Agency within which Services are being carried out;

(b) standards, codes and guidelines applicable to the Services;

(c) certificates, licenses, consents, permits, approvals, directions and requirements of any organisation or authority having jurisdiction in connection with the carrying out of the Services which governs, controls or in any way affects the Services; and

(d) any fees and charges payable in connection with (a), (b) or (c).

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

Notifiable Information Breach means an Information Breach of which a reasonable person would conclude is likely to result in serious harm to any individual to whom the information relates.

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

any other safety incident that must be reported to a WHS Regulator or other third-party.

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.

Personal Information has the meaning given to it in the PRIS Act.

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

(b) unsafe or unfit for habitation or occupation by human beings or animals;

(c) degraded in its capacity to support plant life;

(d) Contaminated; or

(e) otherwise environmentally degraded.

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

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 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 Contract Date or are developed or acquired by the Principal independently of this Contract, which are made available to the Consultant under or in connection with this Contract, but does not include the Project IP.

Principal's Confidential Information means all information (in whatever form) or documentation disclosed to the Consultant or any of the Consultant's Personnel, under or in connection with this 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, or which the Consultant or the Consultant's Personnel ought reasonably to know to be confidential;

(b) information which relates to the Contract or the business, affairs or activities of the Principal;

(c) information derived or produced partly or wholly from the information referred to in (a) or (b) including any calculation, conclusion, summary or computer modelling; and

(d) information which is capable of protection at law or equity as confidential information,

whether the information was disclosed:

orally, in writing or in electronic or machine readable form;

before, on or after the Contract Date; or

by the Principal or any of the Principal's Personnel or by any third person.

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

Principal's Policies means the policies and guidelines set out and identified in the Contract Specifics and such others as notified to the Consultant from time to time.

Principal's Representative means, as at the Contract Date, 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.

PRIS Act means the *Privacy and Responsible Information Sharing Act 2024* (WA).

Privacy Code of Practice refers to a code of practice, as defined in the PRIS Act, of a party which has been approved by the relevant Government Agency.

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 Contract, but does not include the Consultant Background IP or the Principal Background IP.

Program has the meaning given in clause 7.1.

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;

the Principal's Personnel; or

public or private utilities or a statutory or other relevant authorities,

either concurrently or sequentially with the Services:

at, on, over or adjacent to the Site; or

which may be connected to, associated with, ancillary to or otherwise related or relevant to the Services.

Schedule means each of the schedules to this 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 Contract as set out in Schedule 1 (as varied from time to time in accordance with this Contract).

Services means the services or any part of 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 Contract, as set out in the Contract Specifics.

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

SOP Act means the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

SOP Act Business Day means a day other than a Saturday, Sunday or public holiday, or any other day that falls between 22 December in any year and 10 January in the following year (inclusive).

Special Conditions means the special conditions set out in Schedule 6.

Stage means the stages (if any) for the Services as set out in the Contract Specifics.

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.

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 Contract and includes associated documentation.

Term has the meaning given in clause **Error! Reference source not found.**.

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.

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.

WHSMS means a workplace health and safety management system.

WHS Regulator means the Western Australian Department of Energy, 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:

(b) any relevant Australian Standards;

(c) any relevant Codes of Practice or guidance material published by the Western Australian Department of Energy, Mines, Industry Regulation and Safety, or other relevant WHS Regulator or authority; and

(d) 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 In this Contract unless the contrary appears:

a reference to this Contract or another instrument includes any variation or replacement of either of them;

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;

the singular includes the plural and vice versa;

the word person includes a firm, a body corporate, an unincorporated association or an authority;

a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, persons taking by novation) and assigns;

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;

a reference to a clause is a reference to a clause in this Contract;

a reference to a schedule is a reference to a schedule to this Contract;

a reference to a third person or a third party is a reference to a person who is not a party to this Contract;

a reference to "dollar" or "$" is a reference to Australian dollars; and

the words "including" and "include" are a reference to "including, but not limited to".

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

2. Scope of Services

2.1 The Consultant must perform the Services in accordance with, and as specified in, this Contract.

2.2 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.

2.3 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 (including ambiguities, errors, omissions, discrepancies or inconsistencies) or not sufficient to enable the Consultant to perform the Services in accordance with this Contract then the Consultant must promptly advise the Principal specifying such deficiency or the further information, documents or other particulars it requires.

2.4 If the Consultant gives notice under clause 2.3, the Principal must either:

(a) Direct an appropriate amendment to the Scope; or

(b) Direct the Consultant to proceed notwithstanding its advice.

2.5 Subject to the provisions of clause **Error! Reference source not found.** and **Error! Reference source not found.**, the Consultant may be entitled to an adjustment to the Fee and/or an extension of time for performance of the Services in relation to a Direction under clause 2.4 provided that:

(a) the Consultant has given a notice under clause 2.3; and

(b) it was not reasonably practicable for a competent consultant exercising Best Industry Practices to identify the deficiency or insufficiency necessitating amendment to the Scope prior to the commencement of the performance of the Services;

(c) the Consultant actually incurs additional costs and/or is actually delayed as a direct result of compliance with the Direction under clause 2.4.

3. Term

3.1 The Term of this Contract will commence on the Commencement Date and will continue until each party has fulfilled its obligations under this Contract, unless it is terminated earlier in accordance with its terms.

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 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 Contract including monitoring the performance by the Consultant of its obligations under this 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 **Error! Reference source not found.** (Default) , **Error! Reference source not found.** (Termination), **Error! Reference source not found.** (Dispute Resolution) or **Error! Reference source not found.** (Expert Determination).

5. Consultant as trustee

5.1 If the Consultant enters into this Contract in its capacity as the trustee of a trust, the provisions of this clause **Error! Reference source not found.** 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 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 it obligations under this Contract and it has entered into this 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 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 (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 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 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 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 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. Quality and description of the Services

6.1 The Services performed by the Consultant under this Contract must comply with all requirements set out in this Contract, all applicable Laws and Standards.

6.2 The Services must be performed with due care, diligence and skill by appropriately qualified and trained personnel.

6.3 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.

6.4 The Consultant must obtain the Approvals, if any, stated in the Contract Specifics. The cost of obtaining such Approvals is deemed to be included in the Fee.

6.5 Where an applicable Law changes after the Commencement Date, and the change could not reasonably have been anticipated by a competent consultant exercising Best Industry Practices prior to the Commencement Date, then:

(a) to the extent the Consultant incurs additional costs to perform the Services, the Principal will assess the Consultant's entitlement to the additional costs as a variation under clause **Error! Reference source not found.**; and

(b) to the extent the Consultant requires additional time to perform the Services, the Principal will assess the Consultant's entitlement to an extension of time to the Date for Completion under clause **Error! Reference source not found.**.

7. Inspection and Information

7.1 Subject to clause 7.2, the Consultant must complete the Services by the Date for Completion.

7.2 Within [10] Business Days of the Contract Date, the Consultant must submit to the Principal an initial program for the performance of the Services (**Initial Program**), which Initial Program must align with any key dates or milestones identified in the Contract, including any Date for Completion of the Services. If the Principal does not expressly accept or provide comment upon the Initial Program within 10 Business Days, then the Principal is deemed to have accepted the Initial Program. If the Consultant receives comments from the Principal under this clause 7.2, then the Consultant must take all reasonable steps to amend and update the Initial Program in accordance with the Principal's requirements. The Consultant must provide the updated Initial Program within 5 Business Days. Once the initial program is accepted by the Principal, it becomes the Program.

7.3 Without limiting any other provision in the Contract, the Consultant must provide to the Principal at its request:

(a) copies of all Design Documents which are to be prepared or provided under this Contract;

(b) an updated Program for the performance of the Services;

(c) progress reports setting out, in such detail as the Principal reasonably requires, the status of the performance of the Services which are to be performed under this Contract which report shall not be requested more frequently than as set out in the Contract Specifics; and

(d) any other information and assistance reasonably 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 Contract.

7.4 The Consultant must perform the Services in accordance with the Program and where there is no Program, by the date for completion of the Services set out in the Contract Particulars.

7.5 The Consultant must:

(a) prepare all Design Documents in accordance with the requirements of this Contract;

(b) ensure that all Design Documents are prepared by people with appropriate professional qualifications;

(c) provide the Principal's Representative with a copy of all 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 any Design Documents are not satisfactory, amend and resubmit the Design Documents to the Principal's Representative.

7.6 At all reasonable times, the Principal has the right to have the Principal's Personnel review, examine and witness the performance of the Services.

7.7 The Consultant must ensure that the Principal and the Principal's Personnel are provided with such access as is reasonably necessary to allow the Principal's Personnel to review, examine and witness performance of the Services in accordance with clause 7.6.

7.8 If, as a result of the Principal's Personnel's review, inspection, examination or witnessing of the Services or Design Documents, the Principal is not satisfied that the Services or Design Documents will comply in all respects with this 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 Contract.

7.9 No review, inspection, examination or witnessing of the Services or the Design Documents that the Principal's Personnel undertake relieves the Consultant of its responsibilities under this Contract.

8. Site

8.1 The provisions of this clause **Error! Reference source not found.** apply where the Consultant performs all or part of the Services at the Site.

8.2 The Principal will provide or arrange for the Consultant to have non-exclusive access to the Site as is reasonably necessary for the Consultant to perform the Services.

8.3 Where the Site is under the control of a Head Contractor, the Consultant must comply with the requirements of the Head Contractor for accessing the Site including site induction requirements.

8.4 Where the Site is under the control of the Principal, the Consultant must comply with all reasonable requirements of the Principal for accessing the Site, including any applicable site induction requirements.

9. Plant and equipment

9.1 Unless otherwise provided in this 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 Contract.

9.2 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 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 Contract.

9.3 The Consultant must keep the Principal's property in good order and condition.

9.4 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.

10. Fee

10.1 The Principal agrees to pay the Consultant the Fee for the Services in accordance with clause **Error! Reference source not found.**.

10.2 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. The Consultant shall not be entitled to any additional mark-up on the actual cost of the disbursement.

10.3 Except as otherwise expressly provided in this Contract, the Fee is inclusive of all direct and indirect costs incurred by the Consultant in complying with its obligations under this Contract.

10.4 Unless otherwise stated in this Contract, the Fee shall be fixed and not subject to rise and fall.

11. Invoicing and payment

11.1 The Consultant must submit a claim for payment to the Principal in accordance with and at the times stated in Schedule 2. If no time is stated then only one claim for payment can be made each month.

An early payment claim will be deemed to have been made on the date for making that claim under this Contract.

11.2 A valid payment claim must be in the form of a tax invoice and include, as a minimum:

(a) details of the Services to which the payment claim relates;

(b) separate identification of each Variation claimed;

(c) separate identification of any other claim for payment under this Contract;

(d) the amount of the Fee claimed, and how that amount was determined (by reference to Schedule 2 where applicable);

(e) where Schedule 2 is completed by reference to Milestone Payments, evidence of the applicable Milestone(s) achieved; and

(f) separate identification of each disbursement claimed, including the amount and where applicable, supported by invoices and receipts.

11.3 Where any part of the Fee claimed under clause 11.2 is based on hourly rates, the Consultant must within 5 Business Days of a request from the Principal, provide evidence to support the Fee claimed including time sheets or other records to show the hours spent and by whom.

11.4 Where the Principal disputes the amount claimed by the Consultant, then the Principal shall within 15 SOP Act Business Days of receipt of the payment claim, notify the Consultant in writing, which notice must identify:

(a) the payment claim to which it relates;

(b) the amount of the payment (if any) that the Principal intends to pay (Scheduled Amount);

(c) if the Principal intends to make no payment at all, that that no payment is proposed;

(d) the reasons why the Scheduled Amount is less than the claimed amount.

Where any reason included in the notice is that the Principal is asserting a right to withhold payment (or part of the payment), the reason must identify why the Principal is withholding payment, which may include any rights to liquidated damages, set off or deduction. Any notice issued by the Principal under this clause 11.4 will be deemed to be a payment schedule for the purpose of section 25 of the SOP Act where issued in response to a progress claim which is a payment claim under the SOP Act.

11.5 Subject to clause 11.4, and any right of the Principal to retain, withhold, reduce or set-off any amount due to the Consultant, the Principal must pay the amount claimed, or such lesser amount as set out in the notice issued under clause 11.3 within the period specified in the Contract Specifics (or such other period as the Principal's Representative and the Consultant's Representative agree in writing) of their receipt by the Principal.

11.6 A payment pursuant to this Contract will not be taken or construed as evidence that the Services performed (or any part thereof) are to the satisfaction of the Principal and is only be taken to be payment on account.

11.7 The Principal must pay interest at the rate set out in the Contract Specifics where it fails to pay the amount in accordance with clause 11.5.

11.8 If the Principal fails to make payment of the amount due and payable under clause 11.5, then:

(a) the Consultant may, in writing notify that the Consultant intends to suspend performance of the Services if the amount due and payable is not paid within [x] Business Days of such notice being received;

(b) provided notice under clause 1(a) has been given and the specified time frame has passed without payment, the Consultant may by further notice in writing suspend the Services.

11.9 The Principal shall be entitled to deduct or set off from any moneys which are otherwise due and payable to the Consultant:

(a) any amounts which are due and payable by the Consultant to the Principal pursuant to or in connection with this Contract

(b) any amounts for loss and damage which the Principal considers, acting reasonably, it may suffer as a result of the Consultant's breach of this Contract.

The rights of set off under this clause are in addition to and do not limit the Principal's rights to recover such amounts in any other way.

11.10 Unless the parties otherwise agree, any money payable under this Contract is to be paid in Australian dollars.

11.11 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.

12. GST

12.1 Unless expressly stated otherwise, the consideration specified in this Contract does not include any amount for GST.

12.2 If a Supply under this 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.

12.3 The additional amount referred to in clause 12.2 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.

12.4 If the additional amount differs from the amount of GST payable by the Supplier, the parties must adjust the additional amount accordingly.

12.5 If a party is entitled to be reimbursed or indemnified under this 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.

12.6 In this clause **Error! Reference source not found.** 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.

13. Work Health and Safety

13.1 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.

13.2 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.

13.3 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.

13.4 Not Used

13.5 The Consultant warrants that it:

(a) has before commencing the Services developed, a health and safety management plan specific to the provision of the Services that complies with the WHS Requirements (**HSMP**);

(b) will maintain, and where necessary update, the HSMP to ensure it remains fit for purpose over the life of this Contract; and

(c) will ensure that the Services can be carried out without risk to the health and safety of either those doing the Services, or anyone else who may be at or near the Site is managed in accordance with the HSMP and all applicable WHS Requirements.

13.6 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:

i. the issue of any improvement, prohibition or any other statutory notice related to WHS; and/or

ii. proceedings under WHS Legislation.

13.7 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.

13.8 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.

13.9 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.

13.10 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.

13.11 The Principal may, but is not required to, request the Consultant to provide evidence that the Consultant is complying with its WHS obligations, or 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, the Site, the project or the Consultant's activities; and

(c) providing, at the Consultant's expense, an independent audit or review of WHS management in relation to the Services, the project or the Contractor's activities.

14. Security of Payment Act

14.1 This clause **Error! Reference source not found.** applies where this Contract is subject to the SOP Act.

14.2 The Consultant must promptly give the Principal's Representative a copy of any written document of whatsoever nature in relation to SOP Act that the Consultant gives or receives in relation to the Services.

14.3 The Consultant must give any document under SOP Act in respect of this Contract by hand delivery to the Principal at the Principal's address set out in the Contract Specifics.

14.4 If the Consultant becomes aware that a subcontractor is entitled to suspend work (which forms part of the Services) under section 62 of the SOP Act, the Principal may (at its absolute discretion) pay the subcontractor such money that is, or may be, owing to the subcontractor in respect of 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. The Principal:

(a) must notify the Consultant prior to making payment pursuant to this clause 14.4; and

(b) will not make a payment pursuant to this clause 14.4 where the Consultant demonstrates to the Principal that it has reasonable grounds to have withheld payment to the subcontractor.

15. Performance of the Services

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

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

(a) exercising due care, professional skill and judgment expected of a skilled and competent Consultant experienced in the provision of similar services to the Services, exercising Best Industry Practice;

(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 Laws and Standards; and

(d) in accordance with this Contract and all directions made by the Principal under this Contract.

15.3 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.

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

15.5 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 Contract.

15.6 Without limiting clauses **Error! Reference source not found.** and 15.5, the Consultant must comply with:

(a) all applicable WHS and environmental laws, guidelines and codes of practice including, without limitation, the WHS Legislation; and

(b) all WHS and environmental guidelines, rules and procedures provided to the Consultant by the Principal, including under clause **Error! Reference source not found.**.

15.7 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 reasonably required by the Principal's Representative for the performance of the Services.

15.8 Where, acting reasonably, the Principal considers the Consultant may not be complying with its obligations under clause 15.6 and 15.7, the Principal may request the Consultant to provide the Principal with evidence of compliance and the Consultant must comply with such request as soon as reasonably practical after receipt.

15.9 If the Consultant is unable or fails (for whatever reason) to perform the Services in accordance with this 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**").

15.10 If the Principal exercises its rights under clause 15.9 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.

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

(a) at all times, be suitably qualified and experienced, and will 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 Contract and all Laws.

15.12 Where the Services are to be performed in Stages (as set out in the Contract Specifics), then the Consultant must not commence work on a subsequent Stage unless the Consultant has received confirmation from the Principal to proceed. The Consultant shall not be entitled to claim payment for any works or Services commenced without approval under this clause.

15.13 The Consultant must, subject to this clause, comply with the Principal's Policies. Where:

(a) the Consultant is required to comply with a Principal Policy which is not expressly identified or provided to the Consultant at or on the Contract Date, the Consultant must as soon as practicable notify the Principal if it considers it is not reasonably able to comply with such policies and the reasons why;

(b) the Principal directs compliance with additional policies, guidelines and procedures and compliance with such direction causes the Consultant to incur additional costs, the direction shall be assessed as a variation under clause **Error! Reference source not found.**.

16. Key personnel

16.1 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).

17. Conflict of interest

17.1 The Consultant represents that, to the extent reasonably ascertainable at the commencement of this 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.

17.2 The Consultant must notify the Principal immediately on becoming aware of a conflict of interest or a potential conflict of interest.

17.3 Where a conflict of interest arises or is likely to arise, the Principal may terminate this Contract immediately by giving written notice to the Consultant and the provisions of clauses 32.5 and 32.6 will apply.

18. Cooperation

18.1 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;

(b) not perform the Services in a manner which may cause damage to, or inconvenience the execution of, the Related Services; and

(c) consult with the Principal and the Principal's other consultants where necessary or desirable for the proper performance of the Services.

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

18.3 If the Consultant fails to comply with this clause **Error! Reference source not found.** 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.

19. Variations

19.1 The Consultant must not vary the Services except as directed by the Principal's Representative in accordance with this clause **Error! Reference source not found.**.

19.2 Subject always to Regulation 21A of the Regulations, the Principal's Representative may:

(a) by written notice titled "**Variation Order**" direct the Consultant to alter, amend, omit, add to or otherwise vary the Services and the Consultant must, subject to the terms of this clause **Error! Reference source not found.**, carry out and be bound by any such Variation as set out in the Variation Order;

(b) by written notice titled "**Variation Request**", direct the Consultant to provide a Variation Proposal pursuant to this clause **Error! Reference source not found.**.

19.3 Where the Principal's Representative has directed a Variation Order pursuant to clause 1.1.1(a), the Consultant must proceed with the direction. The price of the varied Services shall be as agreed by the parties (including by reason of an agreed Variation Proposal) or, if not already agreed by the parties, based on reasonable rates and prices having regard to all circumstances that the Principal's Representative considers relevant. The Principal's Representative shall, acting reasonably, assess the impact (if any) of the Variation Order on the Program pursuant to clause **Error! Reference source not found.**.

19.4 Where the Principal's Representative has directed a Variation Proposal be provided pursuant to clause 1.1.1(b), then within 5 Business Days of receipt of the notice referred to in clause 19.2 (or such longer period as the parties reasonably agree), and before the Consultant carries out the Variation, the Consultant must provide to the Principal a variation proposal ("**Variation Proposal**"), which Variation Proposal must specify:

(a) the effect (if any) 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.

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

19.6 If the parties agree on the terms of the Variation Proposal, the Principal's Representative may Direct a Variation by notice in writing titled "Variation Order" pursuant to clause 1.1.1(a), specifying the details of such Variation, the agreed adjustment to the Fee and the Program (if any) and this Contract will be varied accordingly.

19.7 The Consultant must not proceed with any Variation unless instructed pursuant to a Variation Order, and shall not be entitled to any payment for varied Services where a Variation Order issued pursuant to clause 1.1.1(a) has not been issued by the Principal's Representative.

19.8 If the Consultant does not accept the determination of the Principal's Representative (as to any adjustment to the Fee or the Program) under clause 19.6, 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 **Error! Reference source not found.**.

19.9 If the Consultant considers that any Direction from the Principal or the Principal's Representative has the effect of being a direction to vary the Services, but the Direction is not specified to be either a Variation Order or a Variation Request pursuant to clause 19.2, then the Consultant must promptly, and in any event within [5] Business Days of receipt of the Direction, notify the Principal in writing setting out why the Consultant considers the Direction is a Variation and the Consultant must not comply with the Direction unless the Consultant receives:

(a) a Variation Order issued pursuant to clause 19.2(a);

(b) a Variation Request issued pursuant to clause 1.1.1(b); or

(c) notice that the Principal disagrees that the Direction is a Variation, stating its reasons.

The giving of the notice under this subclause 19.9 is a condition precedent to any entitlement to claim additional payment or an extension of time in connection with the alleged Variation set out in the notice under clause 19.8.

19.10 If a notice is issued under subclause 1.1.1(c), the Consultant must comply with the Direction but may, within 20 Business Days, dispute the Principal's notice by notice given under clause **Error! Reference source not found.**.

19.11 No Variation issued in accordance with this clause **Error! Reference source not found.** vitiates or invalidates this Contract.

19.12 A Variation under this clause **Error! Reference source not found.** 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 Contract notwithstanding the extent or timing of the omission.

19.13 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.

20. Time

20.1 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.

20.2 The Consultant must perform the Services with due expedition and complete the Services by the Date for Completion.

20.3 Within 7 days of it becoming reasonably evident to the Consultant that performance of the Services is likely to be delayed beyond the Date for Completion, the Consultant must give notice to the Principal notice setting out 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.

20.4 Subject to the other provisions of this clause **Error! Reference source not found.** and this Contract, the Consultant shall be entitled to an extension of time to the Date for Completion where a delay to the Services 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 Contract), breach or default by the Principal or the Principal's Personnel;

(b) the execution of a Variation Order directed under clause **Error! Reference source not found.** (subject always to the terms of that clause), except where that Variation is caused by the Consultant's act, omission, breach or default;

(c) a suspension under clause **Error! Reference source not found.** (but not where the suspension is due to a cause set out in clause 33.4);

(d) an Event of Force Majeure; or

(e) the occurrence of any event specified in the Contract Specifics as an additional ground for the extension of time,

and provided the Consultant:

(a) could not reasonably have been expected to foresee the delay at the Contract Date;

(b) has taken all reasonable steps to mitigate the delay and the effect of the delay; and

(c) the Consultant's Personnel did not cause the delay, whether by breach of this Contract or otherwise.

20.5 Within 10 Business Days after receipt of a notice provided in accordance with clause 20.3, 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).

20.6 Notwithstanding any other provision in this clause **Error! Reference source not found.**, 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 20.6 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 **Error! Reference source not found.** or otherwise under this 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 20.6.

20.7 The Consultant is not entitled to recover any costs, loss or damages, including 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 of time under this clause **Error! Reference source not found.**.

20.8 The extension to the Date for Completion under this clause **Error! Reference source not found.** is the Consultant's sole entitlement to compensation for all delay or disruption howsoever caused 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 Contract or otherwise) to the extent permissible at Law.

21. Independent contractor

21.1 Nothing in this 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 Contract, the Consultant is an independent contractor and not personnel of the Principal.

22. Warranties

22.1 The Consultant agrees, warrants and represents that it:

(a) has examined carefully this Contract and any other information made available by the Principal to the Consultant prior to the Contract Date;

(b) has, where relevant to the provision of the Services, examined the Site and its surroundings;

(c) has satisfied itself as to the correctness and sufficiency of the Fee, and that the Fee covers the entire cost of complying with all of its obligations under this Contract and of all matters and things necessary for the due and punctual performance and completion of this Contract; and

(d) has 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 the provision of the Services, or the Fee and which was provided or obtainable by the making of reasonable enquiries prior to the Contract Date; and

(e) has and will continue to hold, and ensure that its Personnel hold all necessary licenses and permits which are necessary for the Consultant and its Personnel to have in performing the Services.

22.2 Failure by the Consultant to do all or any of the things set out in clause 22.1 will not relieve the Consultant of its obligation to perform and complete this Contract in accordance with its terms.

22.3 The Consultant represents and warrants that the Services will:

(a) be performed by suitably qualified and experienced Personnel, exercising due skill, care and diligence in the carrying out and completion of the Services;

(b) be performed in accordance with the requirements of this Contract;

(c) be performed with appropriate skill and care and to a high quality consistent with Best Industry Practices;

(d) meet the Standards; and

(e) comply with all applicable Laws, Australian Standards and codes.

22.4 The Consultant represents and warrants that as at the Contract Date, 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.

22.5 The Consultant further gives each of the Other Warranties in respect of the Services performed by the Consultant under this Contract.

22.6 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 Contract Date.

22.7 If, during the Term, the Principal identifies any Defective Services, 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).

22.8 Any Services that are re-performed or made good by the Consultant under this clause 22 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.

22.9 The remedies provided in this clause **Error! Reference source not found.** do not exclude any other remedies provided by Law.

23. Insurance

23.1 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 **Error! Reference source not found.**):

(a) on the terms and conditions set out in this clause **Error! Reference source not found.** and otherwise on terms acceptable to the Principal, acting reasonably; 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.

23.2 The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance under clause 23.1.

23.3 Without limiting clause 23.1, 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 **Error! Reference source not found.** if it lapses or if cover is exhausted;

(c) ensure that any party to whom work is subcontracted under this 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.

23.4 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 23.11 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.

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

23.6 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 Contract.

23.7 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 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 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 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 Contract where the Principal is not a named insured.

23.8 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 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 Contract.

23.9 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.

23.10 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.

23.11 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 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 Contract.

23.12 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.

23.13 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 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 Contract. Nothing in this clause **Error! Reference source not found.** 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.

23.14 If the Consultant fails to effect and maintain the Insurances in accordance with this 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.

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

23.16 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 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.

23.17 The Insurances are primary, and not secondary, to the indemnities referred to in this 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 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 Contract before the insurer considers or meets the relevant claim.

23.18 The Consultant may be required, at the discretion of the Principal, to provide the Principal with a risk management plan relating to this Contract in accordance with AS ISO 31000:2018.

24. Liability and indemnities

24.1 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 the Consultant in this Contract or any of the other terms and conditions of this 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 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 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 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.

24.2 The Consultant's obligation to indemnify under clause 24.1 is reduced to the extent that any loss or damage was caused by an act or omission of the Principal or the Principal's Personnel (not being an act or omission authorised under the Contract).

24.3 Every exemption, limitation, defence, immunity or other benefit contained in this 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.

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

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

24.6 Subject to clause 24.8, 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 Contract.

24.7 Subject to clause 24.8, the Consultant's total liability under this Contract will not exceed the amount (if applicable) set out in the Contract Specifics as the Aggregate Limit of Liability.

24.8 Clauses 24.6 and 24.7 do not limit the Consultant's liability:

(a) under clauses 1.1.1(f) and 1.1.1(h);

(b) in cases of fraud, wilful misconduct or illegal or unlawful acts; or

(c) to the extent that a policy of insurance required to be effected by the Consultant under this Contract responds to the liability, or would respond but for an act or omission of the Consultant which prevents or limits the relevant policy of insurance from responding

24.9 To the extent permissible at Law, 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 Contract or the Consultant's Personnel.

25. Intellectual property

25.1 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 and having the benefit of the Services, the subject matter of the Services and this Contract.

25.2 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 Contract.

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

25.4 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 Contract.

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

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

25.7 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.

25.8 The Consultant agrees to provide all reasonable assistance the Principal may require regarding investigating, preventing and prosecuting any infringement or alleged infringement of the:

(a) Principal Background IP; or

(b) Project IP.

25.9 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 Contract and such payments and royalties shall be included in the Fee.

25.10 Upon completion of the Services or termination of this 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.

25.11 The obligations in this clause **Error! Reference source not found.** continue after the termination of this Contract.

26. Moral rights

26.1 This clause **Error! Reference source not found.** applies if specified in the Contract Specifics.

26.2 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.

26.3 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.

27. Confidential information

27.1 Subject to clause 27.4, 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 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 Contract.

27.2 If the Consultant discloses Principal's Confidential Information under clause 1.1.1(a) or 1.1.1(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 27.1.

27.3 The Consultant must not use any Principal's Confidential Information, except for the purpose of performing its obligations under this Contract or as otherwise required by operation of Law.

27.4 Clauses 27.1, 27.2 and 27.3 do not apply to the Excluded Information.

27.5 The obligations under this clause **Error! Reference source not found.** survive termination or expiry of this Contract.

28. Media

28.1 The Consultant must refer to the Principal any enquiries from the media concerning the Services or the Principal's business and activities.

28.2 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 Contract or the Principal's business and activities without the Principal's Representative's written approval (which shall not be unreasonably withheld).

29. Taxes

29.1 The Consultant is responsible for any Taxes which are levied on, in respect of, or in connection with the performance of the Services.

29.2 The Consultant must promptly on request provide the Principal with documentary evidence of the Consultant's payment of the Taxes referred to in clause 29.1.

30. Force Majeure

30.1 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 Contract or is delayed in performing those obligations:

(a) the affected party must promptly 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 1.1.1(a), will be suspended but only so far as, and for so long as, the performance of those obligations are 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.

30.2 During the period for which an obligation of the Consultant is suspended pursuant to clause 1.1.1(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.

30.3 When the Event of Force Majeure no longer affects the performance of the obligations referred to in clause 30.1, the affected party must as soon as reasonably practicable recommence the performance of the affected obligations.

30.4 Subject to clause **Error! Reference source not found.**, neither party is liable to the other 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 due to an Event of Force Majeure.

30.5 If an Event of Force Majeure which is the subject of a notice under clause 1.1.1(a) continues uninterrupted for more than 60 days, then either party may terminate this Contract on written notice to the other party, in which case clauses 32.5 to 32.9apply.

31. Default

31.1 The Consultant will be in default under this Contract ("Consultant Default") if:

(a) the Consultant:

i. breaches any term of this Contract and

ii. fails to remedy such breach within the time frame specified in the written notice from the Principal to the Consultant detailing the breach and requiring the Consultant to remedy the breach (which time frame shall be not less than 14 days);

(b) the Consultant or any of the Consultant's Personnel are found guilty of any criminal act related or relevant to the Services or their performance of the Services;

(c) the Consultant fails or refuses to comply with any reasonable instruction or Direction which the Principal's Representative is entitled to give and that default is not remedied within 7 Business Days after receipt of written notice from the Principal's Representative identifying the default and requiring the Consultant to comply (or such longer period as the Principal's Representative may determine at its discretion); or

(d) the Consultant becomes Insolvent.

31.2 The Principal will, subject to clause 31.3, be in default under this Contract ("Principal Default") if the Principal:

(a) breaches term of this Contract; and

(b) fails to remedy such breach within of the time frame specified in the written notice from the Consultant to the Principal detailing the breach and requiring the Principal to remedy the breach (which time frame shall be not less than 14 days).

31.3 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 **Error! Reference source not found.**, that failure will not constitute a Principal Default.

32. Termination

32.1 In the event of a Consultant Default, the Principal may, by giving written notice to the Consultant, immediately terminate this Contract.

32.2 Subject to clause 32.3, in the event of a Principal Default, the Consultant may, by giving written notice to the Principal, immediately terminate the Contract.

32.3 If the Principal Default is a failure to pay any amount due and payable under the Contract, then the Consultant may suspend performance of all or any part of the Services until the Principal's Default is remedied, and if the Principal's Default is not remedied within a further [14] days of suspension under this clause, the Consultant may be giving written notice to the Principal, immediately terminate the Contract.

32.4 In addition to its rights under clause 32.1, the Principal may terminate this Contract:

(a) immediately by giving written notice to the Consultant if, in the Principal's opinion acting reasonably, continued connection or involvement with the Consultant will, or is reasonably likely to, have a detrimental impact on the reputation of the Principal;

(b) for any reason, at its complete discretion, by giving at least 30 days prior written notice.

32.5 Where this Contract is terminated 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;

(e) promptly return any of the Principal's property or documents that the Principal owns or in which the Principal has an interest;

(f) provide a set of all Design Documents and Deliverables existing at the date of termination (whether completed or not), in hard copy and native file format; and

(g) take any other action that the Principal may reasonably request in relation to the termination.

32.6 In the event of termination of this 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 **Error! Reference source not found.**); and

(b) for all Services properly completed in accordance with this Contract up to the date of termination.

32.7 Where the Contract is terminated pursuant to clause 1.1.1(b) or 30.5, then in addition to the amounts payable under clause 32.6, the Consultant shall be entitled to be paid any costs and expenses reasonably incurred by the Consultant directly due to the termination.

32.8 The amounts set out in clause 32.5 and 32.6 represent the only amounts that the Consultant may recover from the Principal following a termination of this Contract.

32.9 Any expiration or termination of this 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, 11.11, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.** and 43.6, which survive termination of this Contract.

33. Suspension

33.1 The Principal's Representative may, at any time and for any reason, by notice in writing to the Consultant Direct the Consultant to suspend performance of the whole or any part of the performance of the Services.

33.2 Upon receipt of a notice of suspension from the Principal's Representative pursuant to clause 33.1, the Consultant must suspend performance of the relevant Services until such time as the Principal's Representative Directs the Consultant in writing to resume performance of the relevant Services, following which the Consultant must promptly recommence the performance of those Services in accordance with this Contract. The Consultant must do everything possible to minimise any cost or expense to it which is consequent on the suspension.

33.3 Unless otherwise agreed, the Principal must, subject to clause 33.4, pay to the Consultant any costs and expenses actually, directly and reasonably incurred by the Consultant as a direct consequence of the suspension under clause 33.1, or a suspension by the Consultant under clause 1(b) or clause 1.1.1(b).

33.4 Where the suspension is:

(a) as result of an Event of Force Majeure; or

(b) necessary because of an act, default or omission of the Consultant or any of the Consultant's Personnel,

the Consultant is not entitled to any payment or compensation for costs arising out of or in connection with the suspension, whether arising in contract, tort or otherwise.

33.5 As soon as the Principal determines that the reason for any suspension under clause 33.1 no longer applies, the Principal shall instruct the Consultant to recommence performance of the relevant Services

suspended under clause 33.1 and the Consultant must promptly recommence performance in accordance with this Contract.

33.6 Where the suspension is due to the cause set out in clause 1.1.1(b), the Consultant is not entitled to an adjustment to the Date for Completion.

33.7 Where suspension of the Services under the Contract is not due to any act, default or omission of the Consultant or any of the Consultant's Personnel, and the suspension continues for a consecutive period of more than 60 days, then:

(a) the Consultant may issue a notice under this clause providing the Principal with written notice of the Consultant's intention to terminate by a specified date, such date to be not less than 14 days from the date of the Principal's receipt of the notice;

(b) if by the date specified in the notice, the Principal has not lifted the suspension, the Consultant may by further notice in writing immediately terminate the Contract and the provisions of clauses 32.5, 32.6 and 32.7 will apply.

34. Dispute resolution

34.1 If a Dispute arises between the parties, then:

(a) a party affected by the Dispute must notify the other party in writing of the nature and extent of the Dispute (**Dispute Notice**);

(b) the parties must confer within 10 Business Days of receipt of the Dispute Notice and use their best endeavours to resolve the Dispute (**Initial Dispute Meeting**);

(c) If the Dispute is not resolved within 10 Business Days of the Dispute Notice being received (or such later period as the parties may agree), either party may require, and the other party must attend, a meeting of the senior representatives of the parties (**Senior Representative Meeting**) with the objective of settling the Dispute,

34.2 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.

34.3 Each party must procure that a senior representative of that party attends the Senior Representative Meeting with authority to negotiate the issues in dispute (subject to any necessary corporate or other action required to authorise and bind a party to any resolution). Each senior representative must use their best endeavours to resolve the Dispute .

34.4 If the Senior Representative Meeting fails to resolve a Dispute within 15 Business Days of the Senior Representative Meeting (including obtaining any necessary authorisation) or a Senior Representative Meeting has not taken place within the time required under clause 34.2, then:

(a) within a further 15 Business Days the Parties may agree, where the Dispute relates to a technical matter, to refer to Expert Determination and the provisions of clause 35 will apply;

(b) where clause 1.1.1(a) does not apply either party may commence court proceedings in relation to the Dispute.

34.5 A party must comply with the process set out in clauses 34.1 to 34.4 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 **Error! Reference source not found.**.

34.6 Notwithstanding the existence of a Dispute, the parties must continue to perform their respective obligations under this Contract.

34.7 Where a Dispute concerns whether the Services comply with the requirements of this Contract and is not resolved following the process set out in clauses 34.1 to 34.5, the parties may, by agreement, refer

the Dispute for resolution by an Expert in accordance with the process set out in clause **Error! Reference source not found.**.

34.8 For the purposes of this clause:

(a) 'technical matter' means a matter which is capable of determination by reference to technical expertise, knowledge or practice, other than a financial matter or legal matter;

(b) 'financial matter' means a matter which is capable of determination by audit or reference to financial or accounting records, knowledge or practice; and

(c) 'legal matter' means a matter which is capable of determination by reference to legal expertise, knowledge, or practice.

35. Expert determination

35.1 This clause applies where the Parties have agreed to refer the Dispute to expert determination pursuant to clause 34.4(a).

35.2 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 35.1. 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.

35.3 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.

35.4 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.

35.5 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.

35.6 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.

35.7 The Expert's determination is conclusive and binding on the parties in the absence of manifest error.

36. Assignment and sub-contracting

36.1 The Consultant must not assign or novate its rights and obligations under this 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.

36.2 The Principal has the right to assign or novate any or all of its rights and obligations under this Contract.

36.3 The Consultant must not subcontract any of its obligations under this Contract without the Principal's prior written consent, which consent shall not be unreasonably withheld, but may be imposed with reasonable conditions.

36.4 Any approval to subcontract given by the Principal will not relieve the Consultant of any of its liabilities or obligations under this Contract.

36.5 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.

36.6 Without limiting subclause 36.3, where the Consultant is granted approval to subcontract, the Consultant must ensure that the terms of the subcontract incorporate the applicable terms from this Contract.

37. Personal Properties Securities Act (Cth)

37.1 For the purposes of this clause **Error! Reference source not found.**:

(a) the **"Principal's Personal Property"** means all personal property the subject of a security interest granted under this 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.

37.2 If the Principal determines that this 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.

37.3 The Consultant agrees that 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.

37.4 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 or the Services provided under this Contract 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.

37.5 The Consultant must not:

(a) create or grant 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 that is not part of the Services; 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.

37.6 Everything the Consultant is required to do under this clause **Error! Reference source not found.** will be at the Consultant's expense.

37.7 The Consultant and the Principal agree that this 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 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.

38. Priority

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

38.2 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.

38.3 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.

38.4 If the Consultant considers that there is any ambiguity or discrepancy in the documents comprising the 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 38.4 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 38.4 which is consistent with clauses 38.1 to 38.3.

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

39. Record Keeping Requirements

39.1 The requirements in this clause **Error! Reference source not found.** are the minimum requirements the Consultant must follow and do not limit any other obligations of the Consultant under this Contract (including clause **Error! Reference source not found.**).

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

(a) any records which the Consultant is required to keep in order to comply with its obligations under this 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 Contract,

and such records must:

(a) include appropriate audit trails for transactions performed;

(b) be kept in a manner that permits them to be conveniently and properly audited;

(c) 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;

(d) be controlled, as applicable, using:

i. version control; and

ii. date of last update and by whom;

(e) be made available to the Principal on request; and

(f) be governed by an appropriate retention and disposal management plan.

39.3 The Consultant acknowledges that the records it holds in connection with this Contract may be subject to a request under the Freedom of Information Act and / or the PRIS Act received by the Principal, and such records are to be immediately returned to the Principal by the Consultant (at its own cost and expense) for review and disclosure (where application) in such circumstances. If the return of the records impacts on the Consultant's performance of its obligations under this Contract, the Principal will consider any concerns the Consultant may raise.

39.4 The Consultant must (at its own cost and expense), for the duration of this Contract and any further period the Consultant is required to retain such records in accordance with clause 39.5, 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), the PRIS Act 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 Contract.

39.5 The Consultant must, in respect of records created during the term of this Contract, retain such records for the retention period set out for that class of record in the General Retention and Disposal Authority for Local Government Information DA 2023-005.

40. Notices

40.1 Any notice, approval, consent or other communication (**"Notice"**) in relation to this 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 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 registered post with a required signature on receipt 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.

40.2 Notices sent by email need not be marked for attention in the way stated in clause 40.1 and are taken to be signed by the named sender.

40.3 Despite clause 1.1.1.1.1.1.1.1iii and 40.2, a Notice under clause **Error! Reference source not found.**, **Error! Reference source not found.** or **Error! Reference source not found.**, or a written communication of whatsoever nature in relation to the SOP Act must not be sent by email.

40.4 Notices take effect from the time they are received or taken to be received under clause 40.5 (whichever happens first) unless a later time is specified.

40.5 Notices are taken to be received:

(a) if sent by registered post, on signature of receipt of delivery; 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.

40.6 Despite clauses 40.4 and 40.5, if Notices are received or taken to be received under clause 40.5 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.

41. Entire Agreement

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

42. Industrial arrangements

42.1 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 Contract.

43. Other matters

43.1 If the whole or any part of a provision of this Contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this 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 Contract or is contrary to public policy.

43.2 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 Contract expressly states otherwise.

43.3 If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

43.4 The rights and remedies provided in this Contract are in addition to other rights and remedies given by law independently of this Contract.

43.5 Except as, and to the extent, expressly stated otherwise in this Contract, a provision of this 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.

43.6 The indemnities in this Contract are continuing obligations, independent from the other obligations of the parties under this Contract and continue after this Contract ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Contract.

43.7 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 Contract and the transactions contemplated by it.

43.8 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 Contract or any part of it.

43.9 The Consultant must obtain at its own expense any necessary Licences or permits and comply with applicable Laws in supplying the Services.

43.10 The Principal's rights, remedies and powers under this Contract are in addition to any rights, remedies and powers provided by Law.

43.11 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.

44. Governing Law

44.1 This 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.

45. Counterparts

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

46. Privacy and Personal Information handling

46.1 Both parties agree to comply with:

(a) the PRIS Act (including the IPPs and / or any applicable Privacy Code of Practice); and

(b) any direction, request, notice, investigation, enforcement action, determination and / or order made by the relevant Government Agency to the party (in accordance with the relevant Government Agency's powers under the PRIS Act).

46.2 The Consultant agrees that, for the purpose of this Contract, it is an IPP Entity.

46.3 The Consultant must comply with:

(a) the Principal's Policies relating to privacy, information handling, information sharing and Information Breaches;

(b) any other reasonable direction relating to privacy and / or information handling given to the Consultant by the Principal;

(c) its obligations (if any) under or arising pursuant to the *Privacy Act 1988* (Cth) to the extent relevant to this Contract.

46.4 The Consultant understands and agrees that the IPPs apply to any act done or practice engaged in by the Consultant for the purposes of the Contract in the same way and to the same extent as they would apply if the act were done or practice were engaged in by the Principal.

46.5 The Consultant must:

(a) not engage in any act or practice that would cause the Principal to be in breach of the PRIS Act or applicable Privacy Code of Practice;

(b) ensure Personal Information held by the Consultant in connection with the Services and Deliverables provided under this Contract is:

i. stored securely and within Australian borders;

ii. only used by the Consultant, and the Consultant's Personnel, in connection with this Contract for the purpose of providing the Services and the Deliverables;

iii. only made available to the Consultant's Personnel on a need-to-know basis as necessary for the Consultant's performance of its obligations under this Contract;

(c) ensure that the Consultant's Personnel so required to handle Personal Information in connection with this Contract for the purpose of providing the Services and the Deliverables are made aware of the Consultant's obligations under this Contract;

(d) ensure that any subcontract entered into with a subcontractor for the purpose of fulfilling the Consultant's obligations under this Contract contains the same or equivalent terms as those required under this clause **Error! Reference source not found.** and those under clauses **Error! Reference source not found.**, 47 and 48.

46.6 If the Consultant receives:

(a) a complaint about an act or practice of the Consultant that may be an interference with the privacy of an individual; or

(b) a request to access and / or correct Personal Information held by the Consultant in connection with the Services and Deliverables provided under this Contract,

(c) as soon as practicable, upon receiving a privacy-related complaint or, it must:

i. notify the Principal of the complaint or request;

ii. consult with the Principal in relation to dealing with the complaint or request; and

iii. comply with any privacy guidelines in relation to the complaint or request under the relevant IPP and all lawful directions from the Principal.

47. Privacy impact assessment

47.1 For the purpose of this clause, ***significant impact on the privacy of individuals*** has the meaning given to it in the PRIS Act (or other instruments made under the PRIS Act) and the Principal's Policies, and includes:

(a) the collection, use or disclosure of sensitive information on a large scale;

(b) ongoing or real-time tracking of an individual's geolocation; and

(c) the use of biometric templates or biometric information for the purpose of verification or identification.

47.2 Where the Consultant proposes to carry out a function or activity for the purpose of this Contract, which involves the handling of Personal Information and is likely to have a significant impact on the privacy of individuals, the Consultant must:

(a) conduct a privacy impact assessment of the function or activity; and

(b) prepare a written report on the assessment, which complies with the requirements relating to privacy impact assessments set out in the PRIS Act, and sets out:

i. an assessment of the likelihood that the performance of the function or activity will result in an interference with the privacy of any individual;

ii. the impact that the performance of the function or activity might have on the privacy of individuals;

iii. recommendations for managing, minimising or eliminating that impact; and

iv. any other information the Consultant considers relevant.

48. Information Breach

48.1 If the Consultant becomes aware of, or reasonably suspects, an Information Breach has occurred, the Consultant must:

(a) immediately notify and consult with the Principal;

(b) immediately take all reasonable steps to contain the suspected Information Breach; and

(c) take all reasonable steps to mitigate any harm caused by the suspected Information Breach.

48.2 As soon as reasonably practicable, but in any case within 30 days after the day on which the Consultant becomes aware of, or reasonably suspects, an Information Breach has occurred, the Consultant must:

(a) conduct an assessment, in compliance with the requirements relating to information breaches set out in the PRIS Act, for the purposes of determining whether a Notifiable Information Breach has occurred or there are reasonable grounds to believe that a Notifiable Information Breach has occurred; and

(b) prepare a written report on the assessment.

48.3 As soon as practical, the Consultant must:

(a) provide a copy of the written report to the Principal;

(b) consult with the Principal regarding which party will make the relevant notifications under clause 48.4 (**notifying party**); and

(c) otherwise, as and when requested by the Principal, provide the Principal with all necessary information relating to the Information Breach as required by the Principal for its record keeping and reporting purposes.

48.4 Where the assessment conducted under clause 48.2 determines that a Notifiable Information Breach has occurred, or that there are reasonable grounds to believe that a Notifiable Information Breach has occurred, the notifying party must, as soon as practicable after such determination, give written notice of the Notifiable Information Breach to the relevant Government Agency and any affected individuals, in compliance with the requirements relating to Notifiable Information Breaches as set out in the PRIS Act (unless an exception set out under the PRIS Act so applies).