**GENERAL CONDITIONS OF CONTRACT FOR THE CONSULTANCY SERVICES UNDER A PURCHASE ORDER**

**Recitals**

1. The Client wishes to engage the Consultant to perform the Services.
2. The Consultant has agreed to provide the Services in accordance with this agreement.

# Definitions and interpretation

## Definitions

In this agreement:

**Accepted** has the meaning given in clause 13.4(b) or 13.6(d) (as the case may be).

**Agreement IP** means all Intellectual Property (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of the Services (including all Intellectual Property developed by or on behalf of the Consultant in performing the Services and any such Intellectual Property in the Deliverables).

**Agreement Particulars** means the particulars of this agreement as set out in Schedule 1.

**Approval** means:

### any certificate, licence, consent, permit, approval, authority or requirement of any Authority having jurisdiction in connection with the performance of the Services, the Project or any aspect of the performance of this agreement;

### any conditions attaching to anything referred to in paragraph (a);

### any fees or charges payable with respect to anything referred to in paragraphs (a) or (b); and

### excludes any approval, consent, permit or authorisation of the Client unless expressly issued under a Legislative Requirement.

**Authority** means any national, state, territorial, local, regional or municipal government, ministry, governmental department or authority, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body having jurisdiction over the performance of the Services, the Project or any aspect of the performance of this agreement.

**Business Day** means:

### for the purposes of clause 21 and clause 25, a day other than:

#### a Saturday, Sunday or Public Holiday; and

#### any other day that falls between 22 December in any year and 10 January in the following year (inclusive); and

### for any other purposes, a day that is not a Saturday, Sunday or Public Holiday in Perth, Western Australia.

**Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment or Loss however arising and whether based in contract, tort or statute or any other Law and whether involving a third party or a party to this agreement.

**Client Information** has the meaning given in clause 15(a).

**Client Representative** means the person specified in Item 2 of the Agreement Particulars or any replacement pursuant to clause 7.

**Client's Background IP** means any Intellectual Property owned by the Client or any of its Related Bodies Corporate (or licensed to the Client or any of its Related Bodies Corporate by any third party) which:

### is in existence before the date of this agreement or which is acquired or created by the Client after the date of this agreement other than in connection with this agreement; and

### the Client or any of its Related Bodies Corporate makes available, contributes, brings to or uses in connection with this agreement, including the Client Information.

**Client's Policies and Procedures** means the Client's policies, standards and rules of conduct applicable to the performance of the Services or the Site that are put in place or amended by the Client or its Related Body Corporate and communicated to the Consultant.

**Commercialise** means, in relation to Intellectual Property, (except in strict compliance with this agreement):

### to use, manufacture, sell, hire, promote, market or otherwise exploit a product or process, or to provide a service;

### to use or disclose any know-how or confidential information comprised in the Intellectual Property; and

### in respect of any copyright work or other subject matter in which copyright subsists, to exercise any of the rights of a copyright owner in relation to any work or other subject matter comprised in the Intellectual Property,

including licensing any person to do any of the above or incorporating a company to do any of the above.

**Confidential Information** means any or all:

### in respect of the Client, information provided by the Client or any of its Personnel to the Consultant to facilitate the performance of this agreement (including the Client Information);

### in respect of the Client, information emanating from or belonging to the Client or any customer, supplier, contractor, agent, joint venture party, partner, licensor or licensee of the Client, which the Consultant or its Personnel acquire during the performance of this agreement;

### information that concerns the business, operations, finances, plans, Personnel or customers of a party; and

### the terms of this agreement,

but excludes information:

### that is or becomes public knowledge other than by breach of this agreement;

### that has been independently developed by a third party and provided to a party without breach of this agreement; and

### that has been independently developed by a party without breach of this agreement.

**Consultancy Fee** means:

### where the parties have agreed that the Services are to be carried out for a lump sum, the Fixed Fee;

### where the parties have agreed that the Services are to be carried out on the basis of the Schedule of Rates, the sum of the products ascertained by multiplying the rates and costs in the Schedule of Rates by the corresponding quantities up to the maximum amount of the Total Fee; and

### where the parties have agreed that the Services are to be carried out partly for a Fixed Fee and partly on the basis of the Schedule of Rates, the aggregate of the sums referred to in paragraphs (a) and (b) above.

**Consultant Representative** means the person specified in Item 4 of the Agreement Particulars or any replacement pursuant to clause 8.

**Consultant's Background IP** means any Intellectual Property owned by the Consultant (or licensed to the Consultant by a third party) which:

### is in existence before the date of this agreement or which is acquired or created by the Consultant after the date of this agreement other than in connection with this agreement; and

### the Consultant makes available, contributes, brings to or uses in connection with this agreement.

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

**Date for Delivery** means, with respect to a Deliverable, the date applicable to that Deliverable specified in Item 11 of the Agreement Particulars.

**Defect** means, with respect to a Deliverable, it is not in accordance with this agreement, or it is damaged, deficient, faulty or incomplete.

**Delay Event** means:

### any breach of this agreement by the Client;

### a suspension pursuant to a Suspension Notice issued by the Client pursuant to clause 17 for a reason other than an act, omission or default of the Consultant or its Personnel;

### a Variation that entitles the Consultant to an extension of the Date for Delivery; and

### any other event specified in Item 10 of the Agreement Particulars to be an additional Delay Event.

**Deliverables** means all Materials (including any Design) prepared by or on behalf of the Consultant required as part of the Services and to be provided by the Consultant to the Client (including all Deliverables referred to in the Scope of Services).

**Design** means the design accepted or deemed to be accepted pursuant to clause 13.6.

**Design Obligations** means the Consultant's obligations set out in clause 13.6.

**Dispute** has the meaning given in clause 37.1(a).

**Dispute Notice** has the meaning give in clause 37.1(a).

**End Date** means the earlier of:

### the date on which the Client Representative has (or is deemed to have) Accepted all Deliverables; and

### the date on which this agreement is terminated pursuant to clause 21.

**Fixed Fee** means the Fixed Fee specified in Item 6 of the Agreement Particulars.

**Form of Payment Schedule** means the form of Payment Schedule set out in Schedule 4.

**Good Industry Practice** means performance:

### as would ordinarily be expected of a Relevant Consultant;

### in a manner which is:

#### efficient, professional and cost effective;

#### safe to the environment; and

#### by skilled, experienced and professional persons, using equipment and procedures and adopting industry standards that would be used and adopted by a Relevant Consultant.

**GST** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

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

**GST Law** has the same meaning as in the GST Act.

**Insolvency Event** means the occurrence of any one or more of the following events regarding any party to this agreement:

### a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;

### a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the court, or other person of similar function has been appointed regarding all or any material asset of the party;

### a security holder, mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor; or

### an event has taken place with respect to the party which would make it, or deem it to be, insolvent under any law applicable to it.

**Intellectual Property** means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks including any application or right to apply for registration of any of those rights and any other right in respect of intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

**Key Person** means each person identified in Item 13 of the Agreement Particulars.

**Laws** means:

### Legislative Requirements; and

### common law and principles of equity recognised by the courts of Western Australia,

### but excludes Approvals.

### **Legislative Requirement** means any Act, Ordinance, regulation, by-law, order, award, proclamation of the Commonwealth, a State, a Territory or any other Authority in Australia.

**Letter of Award** means the letter from the Client to the Consultant awarding the Consultant this agreement, which may be substituted or accompanied by an Order.

**Liability** means any liability or obligation (whether actual, contingent or prospective) including any Loss, irrespective of when the acts, events or things giving rise to the liability or obligation occurred.

**Loss** includes any loss, damage, cost, charge, liability (including Tax liability) or expense.

**Mandatory Insurance** has the meaning given in clause 19.2(a).

**Materials** means any document, information, data or other material (in whatever form), including any:

### software;

### firmware;

### documented methodology, process or procedure;

### reports, user manuals, user guides, operation manuals or instructions.

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth).

**Notice-Based Time Bar Provision** has the meaning given in section 16(1) of the Security of Payment Act.

**Order** means a purchase order from the Client requiring the performance of the Services by the Consultant, however, will not include a purchase order issued under clause 12.4(g) in relation to a Variation.

**Other Contractors** means any contractor or consultant of any level engaged by the Client or any of its Related Bodies Corporate to perform activities in connection with the Services or affected by the Services (but excluding the Consultant and the Consultant’s Personnel).

**Payment Claim** means a claim by the Consultant for a progress payment.

**Payment Schedule** means the Payment Schedule that the Client issues to the Consultant pursuant to clause 25. The Payment Schedule may, but is not required to, be in the form of the Form of Payment Schedule.

**Personnel** means:

### in relation to the Client:

#### the Client's Related Bodies Corporate, its Other Contractors and its employees, officers and agents; and

#### all Related Bodies Corporate, employees, officers, agents and consultants of:

##### the Client's Related Bodies Corporate; and

##### Other Contractors;

### in relation to the Consultant:

#### the Consultant’s Related Bodies Corporate, its Subcontractors and its employees, officers and agents; and

#### all Related Bodies Corporate, employees, officers, agents and consultants of:

##### the Consultant’s Related Bodies Corporate;

##### Subcontractors; or

##### any other contractors, consultants or agents of the Consultant.

**Project** means the project described in Item 5 of the Agreement Particulars.

**Project Control Group** means the 'Project Control Group' established by the Client to oversee the Project.

**Proposed Variation** has the meaning given in clause 12.4(a).

**Provisional Sum** means any amount stated as a provisional sum in a Letter of Award or any Order, having the meaning given in clause 27.

**Public Holiday** means, in relation to an area, a day that is appointed or declared a public holiday for that area by or under the *Public and Bank Holidays Act 1972* (WA).

**Reasonable Steps** means taking reasonable actions in accordance with Good Industry Practice.

**Recipient Created Tax Invoice** has the meaning given in the GST Act.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Relevant Consultant** means a consultant that exercises the degree of skill, quality, care, diligence and prudence that would reasonably be expected of a competent and experienced consultant undertaking services and obligations similar to the performance of the Services under this agreement.

**Request for Tender** means the Request for Tender in Schedule 2.

**Schedule of Rates** means the Schedule of Rates in Schedule 3.

**Scheduled Amount** means, with respect to a Payment Claim:

### the amount shown in the corresponding Payment Schedule as payable by the Client to the Consultant with respect to that Payment Claim; or

### if no Payment Schedule has been issued in accordance with clause 25.2(c) with respect to that Payment Claim, the amount of that Payment Claim.

**Scope of Services** means the Scope of Services in Schedule 2.

**Section** means each Section identified in Item 9 of the Agreement Particulars.

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

**Senior Manager** means, with respect to a party and a Dispute, a representative of the Consultant having the authority to negotiate and settle a Dispute on behalf of the Consultant and a representative of the Client having the authority to negotiate and settle a Dispute on behalf of the Client (which authority may be subject to further or subsequent approval from the Client's council).

**Services** means the services to be performed by the Consultant under this agreement, as set out in the Scope of Services, and includes:

### the supply of all Materials and labour required to perform the Services;

### the delivery of the Deliverables;

### any work, activity or the supply of any goods necessary or incidental to the performance of the Services or to comply with this agreement; and

### Variations.

**Site** means any area that the Client makes available to the Consultant for the performance of the Services.

**Special Conditions** means the special conditions, if any, set out in Item 16 of the Agreement Particulars.

**Standards** means any relevant standard published by Standards Australia of 20 Bridge Street, Sydney, New South Wales 2000 and other industry standards commonly used in connection to services similar to the Services.

**Start Date** means the date specified in Item 7 of the Agreement Particulars.

**Stated Purpose** means the purpose stated in Item 12of the Agreement Particulars, any other purpose set out in the Scope of Services and any purpose reasonably inferred from this agreement.

**Subcontractor** means a contractor or consultant of any level engaged by the Consultant or another Subcontractor to perform part of the Services.

**Suspension Notice** has the meaning given in clause 17(a).

**Tax** means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition.

**Tax Invoice** has the meaning given in the GST Act.

**Term** means the period starting on the Start Date and ending on the End Date.

**Total Fee** means:

### where the parties have agreed that the Services are to be carried out for a Fixed Fee, the Fixed Fee;

### where the parties have agreed that the Services are to be carried out on the basis of the Schedule of Rates, the Total Fee specified in Item 6 of the Agreement Particulars; and

### where the parties have agreed that the Services are to be carried out partly for a Fixed Fee and partly on the basis of the Schedule of Rates, the aggregate of the sums referred to in paragraphs (a) and (b) above,

### in each case, as adjusted in accordance with this agreement.

**Variation** means any change to the Services, including any increase, decrease, addition to, or omission from, the Services (including omission for the purpose of or with the intention of having another person perform that part of the Services) or any change in the character, quantity or quality of the Services.

**Variation Form** means a notice substantially in the form set out in Schedule 5.

**WHS Contractor Guidelines** means the City of Nedlands guidelines developed to assist contractors and their workers to work safety while engaging work for, or on behalf of, the Client.

**WHS Laws** means all workplace, health and safety related Law, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Authority and standards, where any part of the Consultant’s obligations under this agreement are being performed. This includes the *Work Health and Safety Act 2020* (WA) and the *Work Health and Safety (General) Regulations 2022* (WA), in addition to any other relevant Law.

## Interpretation

In this agreement, unless the context otherwise requires:

### a reference to:

#### one gender includes the others;

#### the singular includes the plural and the plural includes the singular;

#### a clause, schedule or annexure is a reference to a clause of, schedule or annexure to this agreement and references to this agreement include any schedule or annexure;

#### any contract (including this agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated;

#### a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

#### a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;

#### a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;

#### a group of persons is a reference to any two or more of them taken together and to each of them individually;

#### an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;

#### time is a reference to legal time in Perth, Western Australia;

#### a reference to a day or a month means a calendar day or calendar month; and

#### money (including ‘$’, ‘AUD’ or ‘dollars’) is to Australian currency;

### unless expressly stated, no party enters into this agreement as agent for any other person (or otherwise on their behalf or for their benefit);

### the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;

### the words 'cost' and 'expense' includes legal costs on a full indemnity basis;

### headings and the table of contents are for convenience only and do not form part of this agreement or affect its interpretation;

### if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

### the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;

### if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;

### if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;

### unless the Client is expressly required under this agreement to act reasonably in exercising a power, right or remedy, or undertaking any action, or reaching any conclusion, the Client can exercise any power, right or remedy, or undertake any action, or reach any conclusion in its absolute and unfettered discretion;

### unless the Client Representative is expressly required under this agreement to act reasonably in exercising a power, right or remedy, or undertaking any action, or reaching any conclusion, the Client Representative can exercise any power, right or remedy, or undertake any action, or reach any conclusion in its absolute and unfettered discretion, including acting in the sole interest of the Client;

### where the Consultant is required under this agreement to perform an obligation, matter or thing, or discharge a liability, the Consultant must do so at its own cost, unless expressly provided otherwise;

### where there are two or more persons in a party each are bound jointly and severally; and

### a provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

# Agreement and order of precedence

## Agreement

This agreement comprises:

### the Letter of Award;

### the Special Conditions;

### clauses 1 to 38 (inclusive) of these terms and conditions;

### Schedule 1 (Agreement Particulars);

### Schedule 2 (Request for Tender);

### Schedule 2 (Scope of Services);

### Schedule 3 (Schedule of Rates);

### Schedule 4 (Form of Payment Schedule);

### Schedule 5 (Variation Form);

### Schedule 6 (Deed of Novation); and

### any other documents stated to form part of this agreement in Item 15 of the Agreement Particulars.

## Order of precedence

To the extent of any inconsistency between the documents forming part of this agreement, a document higher in the list in clause 2.1 prevails over each lower document.

## Formation of agreement

This agreement is deemed to be formed on the date of the Letter of Award.

## Discrepancies

### The Consultant must, if it finds any error, omission, ambiguity, discrepancy or inconsistency (**Discrepancy**) between any document comprising this agreement, immediately give written notice to the Client, who will direct the Consultant as to the interpretation which must be followed.

### If:

#### the Client's direction under clause 2.4(a) is inconsistent with the order of precedence set out in clause 2.1; and

#### the Discrepancy could not have reasonably been identified and allowed for by the Consultant exercising Good Industry Practice at the time of tender,

#### then the Total Fee will be adjusted to allow for any increase or decrease in costs incurred by the Consultant in carrying out the Services which directly result from the Consultant's compliance with the Client's direction under clause 2.4(a).

### The Consultant must provide to the Client Representative all quotations, invoices, timesheets and other documents relevant to substantiate the change to the Total Fee under clause 2.4(b).

### The Consultant will not be entitled to any remedy for the Client's direction as to the interpretation of a Discrepancy except as provided for in this clause 2.4.

# Services before agreement

If the Consultant has performed services before the date of this agreement that will form part of the Services after the date of this agreement (**Services before agreement**), this agreement, to the exclusion of all other terms and conditions, applies to such Services before agreement as if they were Services performed after the date of this agreement.

# Services non-exclusive

The Consultant acknowledges and agrees that this agreement is non-exclusive and nothing in this agreement prevents the Client from appointing, at any time, any other person to supply services that are the same or similar to the Services.

# Novation

If directed by the Client Representative, the Consultant, without being entitled to compensation, must promptly (and in any event within 3 Business Days following the direction) execute a deed of novation in the form set out in Schedule 6, such deed being between the Client, the Consultant and the Client's nominee.

# Performance of the Services

## Performance generally

### The Consultant must commence the performance of the Services on the Start Date and diligently progress the Services and ensure that each Deliverable is delivered to the Client by the Date for Delivery.

### The Consultant must perform the Services:

#### in accordance with:

##### this agreement (including the Scope of Services);

##### Good Industry Practice;

##### all Laws and Approvals;

##### the Client's Policies and Procedures;

##### the directions of the Client Representative; and

##### using the Key People; and

#### for the Consultancy Fee up to, and not exceeding, the Total Fee.

### Except as directed by the Client Representative, the Consultant must obtain all Approvals necessary for the performance of the Services.

### If a Legislative Requirement is in conflict with a term of this agreement, the Consultant must notify the Client Representative in writing. If such Legislative Requirement necessitates a change to the Services, the Client Representative may, acting reasonably, direct the Consultant as to how the inconsistency must be addressed. Such inconsistency will be at the Consultant's risk and the direction will not entitle the Consultant to any adjustment of the Total Fee, Dates for Delivery or other compensation or allowance in respect of cost or time.

### If the Services are to be performed in Sections, the Consultant must not commence the Services forming part of a Section without the Client Representative's prior written approval. If the Consultant performs Services forming part of a Section without the Client Representative's prior written approval, for the purposes of any Payment Claim, those Services will be deemed to have a value of $0.00 unless the Client Representative agrees otherwise in writing.

## Deliverables

The Consultant must ensure that the Deliverables:

### comply with the requirements of this agreement (including the Scope of Services);

### comply with all Laws and Approvals; and

### are fit for the Stated Purpose.

## Consultant's warranties

The Consultant warrants that:

### the Consultant and its Personnel engaged in connection with the performance of the Services will at all times be suitably qualified and experienced and will execute and complete the Services in accordance with Good Industry Practice;

### except as expressly stated in this agreement, the Total Fee includes all liabilities, charges and costs in connection with the performance of the Services; and

### except as expressly stated in this agreement, the Dates for Delivery make allowance for the risks, contingencies and other circumstances arising in connection with the Services.

## Obligations unaffected

The Consultant's obligations and warranties in this clause 6 and clause 13 are unaffected by any Variation.

# The Client Representative

### The Client may change the Client Representative at any time and must notify the Consultant of any change.

### The Client Representative has the authority to commit the Client in all matters under this agreement and can exercise the functions of issuing to and receiving from the Consultant all notices, information, instructions and decisions with respect to this agreement.

### Except as expressly stated in this agreement, the Client Representative has no powers to amend this agreement, or to relieve the Consultant of any of its obligations under this agreement.

### Notwithstanding the appointment of the Client Representative, the Client may (but is not required to) exercise any right, function or power of the Client or the Client Representative whether expressed to be a right, function or power of the Client or the Client Representative.

### The Client Representative may issue directions to the Consultant in accordance with this agreement and the Consultant must comply with all such directions.

### The Consultant acknowledges that the Client Representative may be an employee of the Client or may have a general commercial relationship with the Client beyond the performance of the role of the Client Representative under this agreement. The Consultant must not bring any claim against the Client by reason of the relationship between the Client and the Client Representative.

### Without limiting anything else in this clause 7, the parties acknowledge and agree that, unless the Client notifies the Consultant otherwise, the Client Representative acts as the Client's agent for the purposes of receiving Payment Claims and issuing Payment Schedules and carrying out all other functions of the Client under the Security of Payment Act.

# The Consultant Representative

### The Consultant may, after obtaining the prior written consent of the Client, change the Consultant Representative at any time and must notify the Client of any change.

### The Consultant Representative has the authority to commit the Consultant in all matters under this agreement and is responsible for issuing to and receiving from the Client all notices, information, instructions and decisions with respect to this agreement. Information within the knowledge of the Consultant Representative is deemed to be within the knowledge of the Consultant.

### The Consultant must ensure that the Client Representative has reasonable access to the Consultant Representative.

# Key People

### The Consultant must, during the Term, engage the Key People to perform the Services in the roles specified in Item 13 of the Agreement Particulars.

### The Consultant must ensure that the Key People:

#### are fit for work and suitably qualified and experience (with at least but not limited to 5 years) trained (including trained in respect of health and safety) and experienced to undertake and carry out the work they are allocated in accordance with this agreement;

#### each devote their best efforts and attention to the performance of the Services;

#### comply with:

##### all Laws, Standards and Approvals;

##### the Client's Policies and Procedures; and

##### the directions of the Client Representative.

### The Consultant must not add to or replace any of the Key People without the Client's prior written approval, unless:

#### the replacement is necessary due to any resignation, termination for cause, retirement, death, disability or taking of leave of the Key Person; or

#### the Client, at its absolute discretion, directs the replacement,

in which case, the Consultant must promptly replace the relevant Key Person with a person approved by the Client and of comparable skill, experience, expertise and qualification.

# Site Access and Safety

## Site access

### The Client will give the Consultant and the Consultant’s Personnel access to the Site to the extent reasonably required by the Consultant to perform the Services in accordance with this agreement.

### The Consultant acknowledges that it and its Personnel may have to share access to the Site with the Client and the Client's Personnel, and it has taken this into account in agreeing the Total Fee and the Dates for Delivery.

### If any of the Consultant Personnel fail to comply with:

#### all Laws and Approvals; or

#### the Client's Policies and Procedures,

applicable at the Site, the Client may deny those Personnel access to the Site and, upon being requested by the Client in writing, the Consultant must:

#### correct the non-compliance promptly;

#### take any necessary steps to avoid it happening again; and

#### remove its Personnel responsible for the non-compliance from the Site,

and the Consultant is not entitled to any extension of the Dates for Delivery or increase in the Total Fee in connection with such denial of access. As soon as practicable after the Consultant has complied with clauses 10(c)(iii), 10(c)(iv) and 10(c)(v), the Client must grant the Consultant and its Personnel (other than the Personnel removed pursuant to clause 10(c)(v)) access to the Site in accordance with clause 10.1.

## Safety obligations

### The Consultant must:

#### do all things reasonably necessary to ensure that the Services are executed in a manner that is safe and not likely to cause injury or illness to any person;

#### perform all relevant functions and fulfil all relevant duties applicable to the role of the Consultant under this agreement including notification of incidents as may be required under WHS Laws;

#### unless otherwise directed by the Client in writing, perform the functions and fulfil the relevant duties of 'principal contractor' (as that term is defined under WHS Laws); and

#### agree, follow and sign (if required) the WHS Contractor Guidelines when performing its obligations under the Contract.

### Where any injury, property damage, accident or incident which is notifiable under any Legislative Requirement occurs, the Consultant must:

#### as soon as practicable, but in any event within 24 hours, notify the Client in writing of that injury, property damage, accident or incident; and

#### provide the Client with any further information requested by the Client.

### Without limiting clause 21, the Client may suspend the whole or part of the performance of the parties’ obligations under this agreement following any breach by the Consultant of this clause 10.2 which gives rise to circumstances which:

#### present actual or potential risk of life or serious injury; or

#### are otherwise required to be notified under WHS Laws.

# Quality Assurance Plan and other plans and schedules

## Quality Assurance Plan

### If the Client Representative directs, the Consultant must, within 5 Business Days or such other period as may be agreed by the parties, submit to the Client Representative a proposed quality assurance plan, setting out how the Consultant will manage and monitor the quality of all aspects of its performance of the Services (**Quality Assurance Plan**).

### The proposed Quality Assurance Plan must be prepared in accordance with Good Industry Practice and be consistent with the Client's Policies and Procedures.

### Within 5 Business Days of receipt of the draft Quality Assurance Plan, or such other period as may be agreed by the parties, the Client Representative must notify the Consultant that:

#### the Client Representative accepts the proposed Quality Assurance Plan; or

#### the Client Representative requires the Consultant to make changes to the proposed Quality Assurance Plan.

### If the Client Representative does not issue the Consultant a notice within the time required under clause 11(c), the Client Representative is deemed to have issued a notice that it accepts the proposed Quality Assurance Plan.

### The Consultant must incorporate into the proposed Quality Assurance Plan any changes the Client Representative requires provided the changes are reasonably required by the Client Representative in order to ensure the Quality Assurance Plan complies with clause 11(b) and resubmit the amended proposed Quality Assurance Plan for acceptance in accordance with clause 11(c).

### The Consultant must comply with the accepted Quality Assurance Plan.

## Other plans or schedules

### If the Client Representative directs, the Consultant must, within 5 Business Days or such other period as may be agreed by the parties, submit to the Client Representative any other plans or schedules required by this agreement, including but not limited to any plans or schedules required to be submitted under the:

#### Scope of Services;

#### Agreement Particulars;

#### Special Conditions; or

#### Client's Policies and Procedures.

### The provisions of clauses 11.1(b) to 11.1(f) (inclusive) apply to any plans or schedules required under clause 11.2(a) as if they are a Quality Assurance Plan.

# Variations

## Consultant not to vary the Services

The Consultant must not vary the Services except as directed by the Client Representative in a Variation Form issued to the Consultant and signed by or on behalf of the Client Representative.

## Client may direct Variations

The Client Representative may (whether or not it has given the Consultant notice of a Proposed Variation) at any time prior to the End Date, direct the Consultant to perform a Variation and the Consultant must comply with the direction.

## No invalidation

No Variation directed under this clause 12 invalidates or repudiates this agreement.

## Variation Proposal

### The Client Representative may provide a notice of a proposed Variation to the Consultant, detailing relevant aspects of the proposed Variation (**Proposed Variation**).

### On receipt of a Proposed Variation, the Consultant must provide a response within 5 Business Days:

#### detailing all the services, deliverables and work which the Consultant will need to undertake to execute the Proposed Variation;

#### pricing all aspects of the Proposed Variation and setting out the adjusted Total Fee;

#### setting out the impact (if any) on the Dates for Delivery; and

#### expressly noting any excluded services, deliverables or work not priced by the Consultant,

(**Proposed Variation Response**).

### The Consultant must bear the cost of preparing a Proposed Variation Response.

### Any services, deliverables or work which could be reasonably inferred to form part of the requirements of a Proposed Variation is deemed to have been priced within a Proposed Variation Response, unless such services, deliverables or work is expressly noted as an exclusion.

### The Client Representative may at any time in its absolute discretion direct a Variation the subject of a Proposed Variation Response by issuing the Consultant a Variation Form and such Variation Form may specify that the Client:

#### subject to clause 12.4(f), accepts the Proposed Variation Response that the Consultant provided; or

#### rejects the Proposed Variation Response that the Consultant provided, in which case the Variation will be valued in accordance with clause 12.5.

### Unless otherwise stated in the Variation Form, acceptance of the Proposed Variation Response under clause 12.4(e)(i) will not be deemed to accept the impact on the Dates for Delivery, and any adjustment to the Dates for Delivery will be in accordance with clause 16.

### The adjustment to the Total Fee resulting from a Variation will be confirmed by the Client in a purchase order issued by the Client or the Client's Representative to the Consultant in relation to the relevant Variation.

## Valuation

### If the Client has issued a Variation Form to the Consultant in accordance with clause 12.2, 12.4(e)(ii) or 12.6(b)(i) in respect of the Services, the Consultant is entitled to Claim an adjustment to the Total Fee in accordance with this clause 12.5.

### The Total Fee must be adjusted to reflect the value of the varied Services which must be agreed between the parties. Where there is no agreement, the value will be calculated by the Client Representative as follows:

#### where applicable rates and costs are included in this agreement, by applying those rates and costs;

#### where applicable rates and costs are not included in this agreement, the Client Representative’s assessment of the fair and reasonable price for the varied Services.

### In order that the Client Representative may make the assessment under clause 12.5(b), the Consultant must provide to the Client Representative all quotations, invoices, timesheets and other documents relevant to the actual cost to the Consultant of carrying out the varied Services (although the Consultant acknowledges that the actual cost of carrying out the varied Services will be used as an indication only of the reasonable price of the varied Services).

## If direction constitutes a Variation

### If the Consultant considers that a direction given by the Client or the Client Representative, other than a direction in a Variation Form, constitutes a Variation that will affect the Total Fee (where the Consultant is entitled to an adjustment to the Total Fee) or a Date for Delivery (where the Consultant is entitled to an adjustment to the Dates for Delivery), it must within 5 Business Days and in any event before complying with the direction, notify the Client, identifying the relevant direction and the estimated impact on the Total Fee and the Dates for Delivery.

### As soon as reasonably practicable after receiving a notice under clause 12.6(a), the Client Representative must either:

#### direct the Consultant to comply with the direction by issuing a Variation Form to that effect, in which case the Total Fee will be adjusted in accordance with clause 12.5 and the Dates for Delivery will be adjusted in accordance with clause 16;

#### direct the Consultant to comply with the direction on the basis that the Client does not consider it to constitute a Variation, after which the Consultant must comply with the direction but may issue a notice of dispute under clause 37.1(a); or

#### withdraw the direction.

# Deliverables

## Development and submission of Deliverables

The Consultant must:

### produce, update and deliver all Deliverables to the Client in accordance with this clause 13 and this agreement; and

### deliver to the Client Representative each completed Deliverable by the Date for Delivery.

## Review, Acceptance or non-Acceptance of Deliverables

The Client Representative may:

### review; and

### Accept or not Accept;

each Deliverable in accordance with this clause 13.

## Deliverable Review

Without obligation to do so, the Client Representative may provide the Consultant with such comment, information or advice as it considers appropriate to provide. Any comment, information or advice provided:

### is intended to be of assistance to the Consultant and must not be construed as a direction from the Client Representative to the Consultant;

### is not acceptance of Services that do not conform to this agreement;

### does not waive any provisions of or release the Consultant from its obligations under this agreement; and

### does not affect any warranty or obligation on the part of the Consultant under this agreement or otherwise at Law.

## Deliverable Acceptance

### This clause 13.4 applies to Deliverables other than any draft design required pursuant to the Design Obligations.

### The Client Representative may, within 10 Business Days (or such other time as may be agreed by the parties in writing from time to time) of its receipt, notify the Consultant in writing that the Deliverable is either accepted (**Accepted**) or not Accepted.

### If the Client Representative does not notify the Consultant that a Deliverable is Accepted or not Accepted within the time required pursuant to clause 13.4(b), the Client Representative is deemed to have notified the Consultant that the Deliverable is not Accepted.

### If the Client Representative provides the Consultant with notice of non-Acceptance of a Deliverable, then the Client Representative must notify the Consultant in writing of the reasons for non-Acceptance and may provide details of any corrective action to be taken by the Consultant before the Deliverable will be reconsidered for Acceptance. The Consultant shall, within 5 Business Days (or such other duration as may be agreed by the parties in writing from time to time), deliver the corrected Deliverable for Acceptance.

### If the Consultant submits the corrected Deliverable as conforming to the requirements of this agreement, the Client Representative is entitled to exercise the rights provided by this clause 13 as if the Deliverable had been submitted by the Consultant for the first time (provided that the period for review shall be 5 Business Days rather than 10 Business Days).

## Certification

Whenever requested by the Client Representative:

### a Deliverable prepared by or on behalf of the Consultant in the course of providing the Services must be certified by one of the Key People (or such other person approved by the Client Representative acting reasonably) as having been prepared by Personnel with appropriate qualifications and experience and otherwise as having satisfied all requirements of this agreement; and

### the Consultant must provide any certificate or certification in respect of the Deliverables required by this agreement.

## Design Obligations

### If Item 8 of the Agreement Particulars states that the Services include the Design Obligations, the provisions of this clause 13.6 apply.

### The Consultant must:

#### prepare the draft design for acceptance in accordance with clause 13.6(d); and

#### provide the Client Representative with the draft design**.**

### The draft design must comply with the Scope of Services and otherwise be in accordance with this agreement.

### The Client Representative may, within 10 Business Days (or such other time as may be agreed by the parties in writing from time to time) of its receipt, notify the Consultant in writing that the draft design is either accepted (**Accepted**) or not Accepted.

### If the Client Representative does not notify the Consultant that the draft design is Accepted or not Accepted within the time required pursuant to clause 13.6(d), the Client Representative is deemed to have notified the Consultant that the draft design is not Accepted.

### If the Client Representative provides the Consultant with notice of non-Acceptance of the draft design, then the Client Representative must notify the Consultant in writing of the reasons for non-Acceptance and may provide details of any corrective action to be taken by the Consultant before the draft design will be reconsidered for Acceptance. The Consultant shall, within 5 Business Days (or such other duration as may be agreed by the parties), deliver the corrected draft design for Acceptance.

### If the Consultant submits the corrected draft design as conforming to the requirements of this agreement, the Client Representative is entitled to exercise the rights provided by this clause 13 as if the draft design had been submitted by the Consultant for the first time.

### The Consultant warrants and agrees that the Design will be:

#### fit for and conform to the Stated Purpose;

#### prepared professionally and in accordance with high standards of design and practice; and

#### free from any Defect, inconsistency, ambiguity or discrepancy.

### The Consultant acknowledges and agrees that:

#### the Client has entered into this agreement in reliance on the representations by, and obligations of, the Consultant under this agreement; and

#### as between the Client and the Consultant, the Consultant is responsible for all design work.

# Non-compliant Services

## Rectification of non-compliant Services

If a Deliverable is Defective, the Client may, at its option, at any time within 12 months after the End Date, direct the Consultant to take such steps as are necessary to rectify the Defect and the Consultant agrees that no Consultancy Fee is payable to the Consultant by the Client for any rectification work.

## Consultant’s obligations not effected

The Client's rights under this clause 14 do not in any way change or affect the Consultant’s obligations under this agreement or affect the Client's rights to claim for any Loss the Client may suffer or incur because of the Consultant’s failure to fulfil its obligations under this agreement or the Client's other rights under this agreement or at Law.

## Survival

This clause 14 survives expiry or termination of this agreement.

# Client Information

### If the Client (or person on its behalf) provides the Consultant with any Material (whether before or after the date of this agreement) for the purpose of, or in the course of, the performance of the Services (**Client Information**):

#### it remains the property of the Client and must be returned to the Client within 14 Business Days of written demand;

#### it must not be used, copied or reproduced for any purpose other than the performance of the Services.

### Unless the Client Representative specifies in writing that the Consultant can rely upon an item of the Client Information:

#### the Client Information is provided to the Consultant for the Consultant’s convenience;

#### the Consultant must not rely on it for any purpose; and

#### the Client does not warrant, guarantee or make any representation as to Client Information, including its accuracy, completeness or adequacy for the purposes of this agreement.

### If the Consultant discovers any error in, omission in, inconsistency in or between, ambiguity in or discrepancy in or between any Client Information, it must notify the Client Representative without delay.

### If the Consultant gives notice under clause 15(c), the Client Representative must:

#### give a direction to the Consultant as to the resolution of the error, omission, inconsistency, ambiguity or discrepancy in the Client Information; or

#### give a direction to the Consultant to proceed notwithstanding the Consultant’s notice.

### The Consultant is entitled to an adjustment of Total Fee and/or Dates for Delivery in relation to a direction under clause 15(d) if:

#### the Client Representative specified in writing that the Consultant can rely on that Client Information;

#### the direction given by the Client Representative under clause 15(d) constitutes a material amendment to the Scope of Services; and

#### it was not reasonably practicable for the Consultant, exercising Good Industry Practice, to identify the relevant error, omission, inconsistency, ambiguity or discrepancy in the Client Information prior to the date of this agreement.

# Extension of Time

### The Consultant may request, by notice in writing to the Client Representative setting out the facts on which the request is based (including the cause of the delay and the mitigation actions taken), an extension of the Dates for Delivery (**Extension Request**).

### The Client Representative is only required to grant the Consultant an extension of the Dates for Delivery if:

#### the Consultant has been or will be delayed in delivering the Deliverables by the Dates for Delivery because of a Delay Event;

#### the Consultant has, within 5 Business Days of when the Consultant became aware of the Delay Event, given the Client Representative notice identifying the Delay Event and the anticipated impact on the Dates for Delivery; and

#### the Consultant has implemented Reasonable Steps to prevent and mitigate the delay.

### If two or more events would have caused the same delay in the Services and the events include a Delay Event and an event that is not a Delay Event (**Concurrent Delay**), the Consultant is not entitled to any extension of the Dates for Delivery with respect to the Concurrent Delay.

### An extension of time granted pursuant to clause 16(b) must reflect the Client Representative’s assessment of the actual impact of the event on the Dates for Delivery.

### If:

#### the Client Representative grants an extension of time pursuant to clause 16(d); and

#### the Total Fee has not been adjusted on account of that extension in accordance with clause 12.5,

the Client Representative must adjust Total Fee by adding the verified additional costs the Consultant incurs as a direct consequence of the delay.

### The Client Representative may at any time, and for any reason and at its sole discretion, by notice to the Consultant, extend the Dates for Delivery but the Client Representative is under no obligation to extend, or to consider if it should extend, the Dates for Delivery.

### No act or omission of the Client or its Personnel or principle of Law (including the 'prevention principle') will cause the Dates for Delivery to be set at large but nothing in this clause prejudices any right the Consultant may have to damages.

### Except as expressly set out in this agreement, the Consultant is not entitled to any extension of time, compensation or allowance in connection with delay or disruption to the Services.

# Suspension

### The Client Representative may from time to time direct the Consultant to suspend the performance of some or all of the Services (**Suspension Notice**). A Suspension Notice must set out the Services that are suspended and the expected duration of the suspension.

### The Client Representative must keep any period of suspension to the minimum period the Client reasonably requires.

### The Consultant must, without delay, comply with a Suspension Notice.

### The Client Representative may, from time to time, direct the Consultant to recommence the performance of any of the Services suspended pursuant to a Suspension Notice and the Consultant must, without delay, comply with such a direction.

# Indemnity

### The Consultant must indemnify the Client, its Related Bodies Corporate and the employees, officers and agents of the Client or its Related Bodies Corporate from and against any Claim suffered or incurred by the Client, its Related Bodies Corporate or the employees, officers or agents of the Client or its Related Bodies Corporate arising out of or in connection with:

#### any loss of or damage to real or personal property;

#### any personal injury, illness or death;

#### breach of this agreement; or

#### any breach of any Legislative Requirement or Approval,

### caused by the Consultant or its Personnel arising out of, or in connection with, the Services.

### The Consultant's liability to indemnify the Client under clause 18(a) will be reduced proportionally to the extent:

#### negligent acts or omissions of the Client or its Personnel contributed to the Claim suffered or incurred by the Client; and

#### the Client has failed to act reasonably to mitigate the amount of the Claim.

# Insurance

## Insurance by the Consultant

The Consultant must, at its cost, procure, maintain and keep current:

### public liability insurance:

#### throughout the Term;

#### either:

##### in the joint names of the Consultant and the Client; or

##### extended to indemnify the Client as principal to the extent of its vicarious liability arising out of the negligent acts or omissions of the Consultant or any of its Personnel in providing the Services;

#### covering legal liability for loss of or damage to and loss of use of any property and personal injury, death or illness to any person (other than liability required under workers' compensation Law) arising out of or in connection with the Services;

#### for an amount not less than:

##### the amount specified in Item 14 of the Agreement Particulars for any one occurrence; and

##### the amount specified in Item 14 of the Agreement Particulars for all claims in the aggregate;

### professional indemnity insurance:

#### effective from the Start Date and maintained for a period of at least 7 years after the End Date or alternatively with 7-year run-off cover;

#### covering liability arising from a breach of professional duty in the conduct and execution of the professional activities, services and duties of the insured parties;

#### for an amount not less than:

##### the amount specified in Item 14 of the Agreement Particulars for any one claim; and

##### the amount specified in Item 14 of the Agreement Particulars for all claims in the aggregate during any one 12 month period of insurance; and

#### extended to include:

##### fraud, dishonesty, defamation, breach of confidentiality and breach or infringement of Intellectual Property;

##### loss of or damage to documents, data, software and computer programs;

##### breach of chapters 2 and 3 of the Australian Consumer Law and the Australian Consumer Law (WA) and any similar Legislative Requirement in any other State or Territory in so far as it relates to the provision the Services; and

##### an indemnity in the favour of the Client to the extent of its vicarious liability arising out of the negligent acts or omissions of the insured parties; and

### insurance of employees:

#### effective from the Start Date until at least the date that is 12 months after the End Date;

#### covering all claims and liabilities under any Laws for the death or disability of any person employed by the Consultant;

#### extended to indemnify the Client and its Personnel for their statutory and common law liability to natural persons employed or engaged by the Consultant; and

#### with a common law component for the amount not less than $50,000,000 arising from one event.

## Insurance policy requirements

### The insurance policies referred to in clause 19.1 (**Mandatory Insurances**) must be obtained from a reputable and solvent insurer with a financial rating of at least A- as rated by Standard & Poor's (Australia) Pty Limited or an equivalent rating from another internationally recognised rating agency.

### The Consultant must:

#### promptly reinstate any Mandatory Insurance that lapses, is cancelled or if its cover is exhausted;

#### ensure that each Mandatory Insurance:

##### is primary with respect to the interests of the Client and that any other insurance or self-insurance arrangements maintained by the Client is excess to and not contributory with the Mandatory Insurance;

##### provides that where the Client is a named insured or is entitled to cover under any of the insurance policies, the insurers waive all rights of subrogation against the Client;

##### includes a cross liability clause for the benefit of the Client so that the policy operates in the same manner as if there were a separate policy of insurance covering each such party (without changing the overall limit of indemnity);

##### provide that any breach of the conditions of the insurance policy by an insured other than the Client, must not in any way prejudice or diminish any rights which the Client has under the insurance policy;

##### provide that a notice of claim under the policy must be accepted by the insurer as a notice of a claim given by the Client; and

##### state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia have exclusive jurisdiction in any dispute under the policy.

## Subcontractors

The Consultant must ensure that its Subcontractors are insured as required by this clause 19:

### as appropriate (including as to amounts of insurance and type of insurance) given the nature of the work to be performed by them, as if they were the Consultant; and

### in each case to the satisfaction of the Client Representative (acting reasonably).

## Disclosing insurance coverage

### The Consultant must:

#### notify the Client Representative of the details of the Mandatory Insurances prior to the Start Date and as and when requested by the Client Representative;

#### at each time a Mandatory Insurance is renewed or varied, and upon the request of the Client Representative, provide the Client Representative with certificates of currency and other documentation to demonstrate compliance by the Consultant with clauses 19.1, 19.2 and 19.3; and

#### provide the Client Representative with 10 Business Days' prior notice of any material change in or cancellation or expiration of coverage.

## Failure to procure and maintain insurance

If the Consultant fails to procure, maintain and keep current the Mandatory Insurance in accordance with this agreement or to ensure its Subcontractors are insured in accordance with clause 19.3, the Client may (but is not obliged to) procure and maintain any such insurance and the cost of doing so will be a debt due and immediately payable from the Consultant to the Client.

## Notification of claims

If an event occurs in connection with the Services which, in the opinion of the Consultant gives rise to a claim that is covered under any Mandatory Insurance or insurance effected pursuant to clause 19.3, the Consultant must notify the Client Representative and must fully inform it as to the progress of any such claim to the extent that this is possible.

## Claims and proceeds

### If the Client Representative requests, the Consultant must promptly make and pursue a claim under its Mandatory Insurance where:

#### liability, loss or damage has occurred and is covered under any of the Consultant’s insurance policies (**Loss or Damage**);

#### there are reasonable prospects of the claim succeeding; and

#### some or all of the proceeds from a successful claim could be applied towards any Loss or Damage,

however, this clause does not apply in circumstances where the Consultant is ready, willing and able to pay for the Loss or Damage on its own account.

### The Consultant must apply all proceeds of any insurance claim under this clause 19.7 towards the Loss or Damage.

## Effect of insurance

The taking out of insurance by the Consultant does not in any way affect or limit its contractual rights, obligations or liabilities under this agreement.

# Apportionment Act

### To the extent permitted by Law, the operation of Part 1F of the *Civil Liability Act 2002* (WA) (**Part 1F**) is excluded in relation to any and all Claims, rights and obligations arising under or in connection with this agreement howsoever such Claims, rights or obligations are sought to be enforced.

### The parties agree that their Claims, rights and obligations will be those which would exist if Part 1F did not apply.

# Termination

### If the Client or the Consultant suffers an Insolvency Event, subject to Chapter 5 of the Corporations Act, the other party may terminate this agreement with immediate effect by notice to the affected party.

### If the Consultant is in breach of any of its obligations under this agreement and the Client has given the Consultant a notice specifying the breach and requiring the Consultant to rectify it within a reasonable period (which must be at least 15 Business Days) and, within that period, the Consultant has not rectified the breach to the Client's satisfaction (acting reasonably), the Client may terminate this agreement with immediate effect by notice to the Consultant.

### If the Client terminates the agreement under clause 21(b), the Client's rights and remedies are the same as they would have been if the Consultant had repudiated this agreement and the Client had elected to treat this agreement as at an end and recover damages.

### The Client may terminate this agreement with immediate effect by notice to the Consultant if the Consultant is in breach of clause 31.

### If the Client terminates this agreement pursuant to clause 21(b) or clause 31 and it is later determined by the Client or under a Dispute resolution process that the Client was not entitled to do so, such termination will be considered a termination for convenience under clause 21(g).

### The Consultant may terminate this agreement by giving the Client 20 Business Days' written notice if the Client has not paid an amount due and payable pursuant to clause 25 for a period of 20 Business Days or longer after the amount became due and payable and the Consultant has issued the Client a notice requiring it to be paid. However, no termination notice issued under this clause 21(f) will terminate this agreement if it would otherwise take effect at any time after the Client has paid the amount due and payable.

### The Client may terminate this agreement at any time for any reason by giving the Consultant 20 Business Days' written notice. Subject to any rights of set off or deduction that the Client may have, following termination pursuant to this clause 21(g), the Client's only obligation (and sole liability resulting from such termination) is to pay the Consultant for:

#### the Services which have been performed in accordance with this agreement prior to the date of termination (and not included in any other payment to the Consultant); and

#### the reasonable costs to the Consultant of complying with the Client's directions on or after termination.

### After the End Date, the Consultant must:

#### if the Client Representative directs, deliver all Deliverables (whether complete or not) to the Client;

#### use all reasonable endeavours to minimise the cost to the Client of termination;

#### except to the extent the Client directs, immediately stop using all Client Information; and

#### if the Client directs, return to the Client or destroy all copies in any form of the Client Information in the possession or control of the Consultant or any of its Personnel, however the Consultant may retain Client Information to the extent required by any Legislative Requirement.

### Clause 21 sets out the parties' sole rights to terminate this agreement, including at Law or otherwise.

# Intellectual property

## Consultant's Warranty

### The Consultant warrants that:

#### the Consultant is able to license the Consultant's Background IP and assign the Agreement IP as described in clauses 22.2(b) and 22.4;

#### the Consultant has not entered into any agreement regarding, or otherwise dealt with in any way, the Consultant's Background IP or the Agreement IP that is inconsistent with the rights granted to the Client;

#### use by the Client, or by another person with the permission of the Client, of the Consultant's Background IP and Agreement IP in accordance with this agreement will not infringe the Intellectual Property Rights of any third party or breach any Law;

#### neither the Client, nor any other person acting with the permission of the Client, is liable to pay any third party any licence or other fee in respect of the use of the Consultant's Background IP or Agreement IP; and

#### the Consultant has obtained from any third party involved in the creation of, or whose Intellectual Property Rights forms part of, the Agreement IP, all necessary consents to ensure the Client and any person claiming an interest in the Agreement IP through the Client do not infringe any Intellectual Property Rights.

### The Consultant repeats the warranties in clause 22.1(a):

#### on the date of this agreement;

#### upon the grant of the licence of the Consultant's Background IP pursuant to clause 22.2(b);

#### upon the addition of Consultant's Background IP to the licence granted pursuant to clause 22.2(b); and

#### the assignment of the Agreement IP pursuant to clause 22.4.

## Consultant's Background IP

### Subject to the terms and conditions of this clause 22, the Consultant's Background IP remains vested in the Consultant.

### The Consultant grants to the Client, its Related Bodies Corporate and any person authorised by the Client, a non-exclusive, worldwide, perpetual, royalty-free, irrevocable, assignable, transferable, sublicensable licence to use all rights in the Consultant's Background IP for any purpose in connection with this agreement, the Agreement IP or the Services.

## Client's Background IP

### The Client's Background IP remains vested in the Client.

### The Client grants to the Consultant a non-exclusive, royalty-free, revocable, non-assignable, non-transferable, (subject to clause 22.3(c)) sublicensable licence to use the Agreement IP, the Client Information and the Client's Background IP to the extent required to perform the Consultant's obligations under this agreement.

### The Consultant must not, without the Client's prior written agreement, sublicense the Consultant's rights under clause 22.3(b).

## Agreement IP

### Subject to clause 22.4(b), the Consultant acknowledges and agrees that all rights, title and interest in the Agreement IP is owned by and vests on creation in the Client.

### To the extent that any Agreement IP is not assignable at the time of its creation, it is assigned immediately upon those rights becoming assignable, and the Consultant must hold those rights solely for the benefit of the Client until such time as they are assigned under this agreement.

### The Consultant must, if required by the Client, do all further things necessary to comply with, and give effect to, clauses 22.4(a) and 22.4(b).

## Infringement of Intellectual Property Rights

The Consultant must:

### notify the Client as soon as the Consultant becomes aware of any suspected, threatened or actual infringement of any Intellectual Property arising by reason of the performance of the Services; and

### provide all reasonable assistance the Client may request to protect its rights in the Agreement IP or the Client's Background IP.

## Moral Rights

The Consultant has or must obtain a consent from each of its Personnel engaged in the performance of the Services a waiver of any Moral Rights in or relating to the Deliverables and provide the Client with written evidence of such consent upon request.

## General Acknowledgement

The Consultant expressly acknowledges and agrees that the Consultant has not been granted any rights relating to Commercialisation of the Client's Background IP or the Agreement IP.

# Confidentiality

## Announcements

The Consultant must not make any media or other announcement or releases relating to this agreement, the Services, the Project or the Site without the Client's prior written approval of the form, content and manner of the announcement or release, except to the extent that the announcement or release is required to be made by the Consultant by any Legislative Requirement, Authority or by a stock exchange.

## No disclosure

Each party must ensure that it does not disclose any Confidential Information to any third party without the prior consent of the other party. However, disclosure is permitted:

### to employees, legal advisers, auditors, financiers, insurers or other consultants (including technical and engineering advisers and consultants) of the party requiring the information for the purposes of this agreement;

### if required by a Legislative Requirement;

### if required in connection with legal proceedings or any Dispute resolution processes related to this agreement;

### if required by any Authority whether in connection with the granting of any licence or otherwise;

### if the information was independently created or received from a third party, provided:

#### the disclosure of that information by the third party was on terms that do not restrict or limit the recipient’s use of that information; and

#### the disclosure of that information by the third party did not, to the recipient’s knowledge, contravene an obligation of confidence owed by that third party to any person;

### if made to a third party who is a potential assignee or transferee of any rights or obligations of a party under this agreement who has signed an undertaking to keep any disclosed information confidential; or

### if the disclosure of the relevant information is expressly dealt with elsewhere in this agreement.

## Deliverables

Nothing in this clause 23 prevents or limits the Client (including its Personnel, licensees and successors-in-title) from exercising all of its rights in the Consultant's Background IP or the Agreement IP granted under this agreement, or otherwise enjoying the full benefit of the Deliverables.

## Disclosure only as necessitated

Each party must take all steps reasonably necessary to ensure that the Confidential Information obtained is known only to such persons who need to acquire such knowledge in the course of their duties.

## Party disclosing to take steps to ensure confidential nature is maintained

### A party making a permitted disclosure under this clause 23 must take all reasonable steps to ensure that the person to whom disclosure is made keeps confidential all Confidential Information disclosed.

### A party (**Onward** **Discloser**) making a permitted disclosure under this clause 23 to any person (**Onward** **Recipient**) is responsible for any act or omission of the Onward Recipient that breaches or would have breached this agreement as if the act or omission had been made by the Onward Discloser.

## Own use

This clause 23 does not prevent a party from using its own Confidential Information for any purpose.

## Survival

This clause 23 survives expiry or termination of this agreement.

# Reputation

Without limiting the Consultant's right to make any Claim or defend any Claim or any obligation of the Consultant under any Law, the Consultant must not knowingly do or permit anything which is likely to damage the name or reputation, or invite adverse public criticism, of the Client, its Related Bodies Corporate or its or their employees, officers or agents.

# Payment

## Total Fee

### The Consultant must perform the Services for the Consultancy Fee up to a maximum amount of the Total Fee. The Consultancy Fee and Total Fee are fixed and will not be subject to rise and fall or any other adjustment except as expressly stated in this agreement.

### The Consultant has no entitlement to Claim from the Client, and the Client has no obligation to pay the Consultant, any part of the Consultancy Fee in excess of the Total Fee.

### To the extent that a Payment Claim, when aggregated with all previous Scheduled Amounts payable to the Consultant, claims an amount on account of the Consultancy Fee in excess of the Total Fee, that part of the Payment Claim attributable to the excess will be deemed to have a value of $0.00.

## Payment Claims

### On the last Business Day of each calendar month, the Consultant may give the Client a Payment Claim for the Services performed in that month.

### An early Payment Claim is deemed to be made on the date for making that claim under clause 25.2(a) above.

### Within 10 Business Days after receiving a valid Payment Claim, the Client Representative must issue to the Consultant a Payment Schedule evidencing the Client Representative's opinion of the money due from the Client to the Consultant in respect of the Payment Claim and the reasons for any difference.

### Within 20 Business Days after receipt of a valid Payment Claim, the Client must pay to the Consultant the amount evidenced in the Payment Schedule.

### Within 12 Business Days of giving a Payment Claim, the Consultant must give the Client a Tax Invoice for the Scheduled Amount.

### The issue of a Payment Schedule or the making of any payment by the Client under this agreement is not:

#### evidence or an admission that the Services have been performed in accordance with this agreement;

#### an admission of liability; or

#### acceptance of the Services,

#### and is payment on account only.

## Interest

### Interest is calculated on any overdue money from and including the due date for payment of the money until, but excluding, the date on which payment is made in full and interest may be recovered by the party to whom it is payable as a debt due and payable.

### For the purposes of this clause 25.3 **interest** means the higher of:

#### the rate of 6% per annum; and

#### the minimum rate required by the Security of Payment Act.

# Set off

Whenever in this agreement the Consultant is responsible or liable for any Loss, the Client Representative, for and on behalf of the Client, is entitled to issue a certificate as to its assessment of that amount, which will:

### be prima facie evidence of the amount due to the Client; and

### a debt immediately due and payable by the Consultant to the Client,

and then the Client may:

### set off that amount as against any money that may be or become due and payable to the Consultant under this agreement or otherwise; and/or

### recover that amount (or the balance of that amount after exercising its right of set off under clause 26(c))as a debt.

# Provisional Sums

### A Provisional Sum included in this agreement shall not itself be payable by the Client but where, pursuant to a direction by the Client, the Services to which the Provisional Sum relates is carried out or supplied by the Consultant, the Services shall be priced (subject to clause 27(c)) in the same manner as a Variation in accordance with clauses 12.5(b) and 12.5(c), and the difference shall be added to or deducted from the Total Fee.

### Notwithstanding clause 27(a) but subject to clause 27(c), where any part of such Services are carried out or supplied by a Sub-contractor, the adjustment to the Total Fee shall be:

#### the amount payable by the Consultant to the Sub-contractor for the Services; plus

#### a reasonable amount on account of profit and overheads.

### Despite the valuation methods stated in clauses 27(a) and 27(b), the Client is not required to pay any amount in respect of a Provisional Sum which exceeds the Provisional Sum by more than 10%.

# GST

This clause applies if a party to this agreement is, or becomes, liable to pay GST regarding any Supply of goods, services or anything else under this agreement.

## Definitions

Capitalised expressions which are not defined in this agreement but which have a defined meaning in the GST Act have the same meaning in this clause.

## GST payable in addition to consideration

If a party (**Supplier**) makes a Taxable Supply under this agreement, then the Recipient of the Taxable Supply, must pay the Supplier the GST payable on the Taxable Supply in addition to the consideration for the Supply.

## Payment of GST

Subject to the Supplier issuing a Tax Invoice to the Recipient, the Recipient must pay the GST on the Taxable Supply under this agreement to the Supplier at the same time as the Recipient pays the consideration for the Supply to the Supplier.

## Reimbursement or indemnity

Despite any other provision of this agreement, if the whole or part of any consideration under this agreement is a reimbursement or an indemnity to one party of an expense, loss, outgoing or liability incurred or to be incurred by the other party, the consideration excludes any GST included in such expense, loss, outgoing or liability incurred or to be incurred for which the other party can claim an Input Tax Credit. The other party will be assumed to be entitled to a full Input Tax Credit unless it can establish otherwise.

## Adjustment Events

If an Adjustment Event occurs regarding a Supply under this agreement, the Supplier must issue to the Recipient an Adjustment Note regarding the Adjustment Event within seven days of the Supplier becoming aware of the Adjustment Event.

## Additional amount

If the Adjustment Note gives effect to an Increasing Adjustment, the Recipient must pay to the Supplier the GST component of the Increasing Adjustment not later than the 14th Business Day of the month following the month in which the Adjustment Note is issued to the Recipient.

## Credit or refund

If the Adjustment Note gives effect to a Decreasing Adjustment, the Supplier must pay to the Recipient the GST component of the Decreasing Adjustment not later than the 14th Business Day of the month following the month in which the Adjustment Note is issued to the Recipient.

# Project Control Group

The Consultant must:

### without limiting any other provision of this agreement, cooperate with the Client's Other Contractors working on the Project, including providing them with reasonable access to information; and

### at the times reasonably requested by the Client's Representative, ensure that the Consultant's Personnel identified by the Client's Representative attend meetings of the Project Control Group and deliver such information, documents and presentations as the Client's Representative reasonably requires.

# Notices

## Service of notices

A notice under this agreement must be:

### in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient’s address specified in the Agreement Particulars; and

### delivered by personal service (which includes delivery by courier), sent by pre-paid mail or transmitted by email, or any other lawful means.

## Effect of receipt

### A notice given in accordance with this clause 30 is treated as having been given and received:

#### if personally delivered, on delivery;

#### if sent by pre-paid mail, on the 5th Business Day after the date of posting (or the 7th Business Day after the date of posting if sent to or from an address outside Australia);

#### if sent by email, at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender’s or the recipient’s email server that the email was not delivered,

except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

### A party may change its, or its representative's, address for the delivery of notices by notifying that change to the other party. The notification is effective on the later of the date specified in the notice or five Business Days after the notice is given.

# Business Integrity

The Consultant must not, and must ensure that its Personnel and any other person acting for or on its behalf, do not:

### give anything of value (which is not properly due) to the other party or its Personnel that is contrary to fair dealing; or

### provide or offer a benefit (which is not properly due) to a public official (within or outside Australia) in order to retain or obtain an improper advantage.

# No partnership or employment

### Nothing in this agreement is intended to create a partnership between the Consultant and the Client. The Consultant acknowledges that it has no authority to bind the Client without the Client's written consent.

### This agreement does not constitute the relationship of employee and employer between the Consultant and the Client or between the Consultant's Personnel and the Client and the parties acknowledge that the Consultant enters into this agreement as an independent contractor and retains the ultimate responsibility for the management and direction of its Personnel in relation to the provision of the Services.

# Assignment and Subcontracting

### The Consultant must not assign or otherwise deal with the whole or any part of this agreement without the prior written consent of the Client and any purported assignment in breach of this clause 33(a) is void.

### The Client may at any time, without needing to obtain the Consultant’s consent, assign or novate some, or all, of its rights and/or obligations under or in relation to this agreement to any person.

### The Consultant must promptly execute any document required by the Client to give effect to any assignment or novation of the rights and/or obligations referred to in clause 33(b) and the Consultant appoints the Client as its attorney to do anything necessary to effect such assignment or novation including the execution of any document.

### The Consultant must not subcontract the performance of any of its obligations under this agreement without the Client Representative's prior written consent.

### The engagement of a Subcontractor by the Consultant does not relieve the Consultant from its obligations under this agreement. The Consultant is responsible for the acts and omissions of its Personnel as if they were the acts and omissions of the Consultant.

# Records and Audit

### The Consultant must:

#### keep adequate records in sufficient detail to enable its compliance with this agreement to be verified;

#### permit the Client and its auditors to:

##### after the Client has given the Consultant at least 2 Business Days' notice of an intention to do so, examine the records at any time during the Consultant's usual business hours; and

##### after the Client has given the Consultant at least 5 Business Days' notice of an intention to do so, conduct an audit to verify compliance, but no more than once each 12 month period from the Start Date during the Term (unless the Consultant has not been performing or is not performing obligations under this agreement).

### If the Client or its auditors intend to conduct an audit under clause 34(a)(ii):

#### the Client must provide the Consultant with a copy of its auditing terms of reference at least 2 Business Days before the audit; and

#### the Client and its auditors must conduct the audit in a manner that does not preclude the Consultant from supplying the Services in accordance with this agreement.

### If any audit indicates that the Consultant has not complied with this agreement (excluding a trivial non-compliance), without affecting any of the Client's other rights and remedies, the Consultant must pay to the Client, within 5 Business Days of receiving an invoice from the Client:

#### if the non-compliance includes an overpayment by the Client, the amount of that overpayment and any applicable interest; and

#### the Client's reasonable costs of the audit.

# Notice-Based Time Bars

### The Consultant acknowledges that it has reviewed all Notice-Based Time Bar Provisions in this agreement and agrees that compliance with them is:

#### reasonably possible; and

#### not unreasonably onerous.

### If, during the performance of this agreement, the Consultant considers that it cannot comply with a Notice-Based Time Bar Provision as it applies:

#### to a particular entitlement; and

#### set of circumstance giving rise to that particular entitlement,

the Consultant may, before the notice is due under that provision, give the Client Representative a notice:

#### identifying the relevant Notice-Based Time Bar Provision;

#### identifying the:

##### particular entitlement;

##### the set of circumstances giving rise to that particular entitlement; and

##### the reasons the Consultant considers it cannot comply with the Notice-Based Time Bar Provision; and

#### stating how the Consultant considers the Notice-Based Time Bar Provision should be adjusted so that the Consultant can comply with it.

### If the Consultant gives the Client Representative a notice in accordance with clause 35(b), the Client Representative may in its absolute discretion, by notice to the Consultant, adjust the Notice Based Time Bar Provision in any way it considers appropriate.

### Any notice that the Client Representative gives pursuant to clause 35(c) adjusts the Notice-Based Time Bar Provision only:

#### as it applies to the particular entitlement; and

#### to the specific set of circumstances giving rise to that particular entitlement,

#### identified in that notice.

# Notice of claims

### No later than 20 Business Days after the Consultant becomes aware of a Claim it has against the Client under or in connection with this agreement, the Consultant must notify the Client of the basis and quantum of the Claim.

### This clause does not apply to any Claim (including a Payment Claim), the communication of which is provided for by another clause of this agreement.

### If the Consultant fails to give the Client a notice in accordance with clause 36(a) such Claim is forever barred and invalidated.

# Disputes

## Dispute Notice and response

### In the event of a Dispute, a party may provide a written notice to the other party identifying the nature of the Dispute and containing enough information to enable the other party to reasonably understand the facts relevant to the Dispute (**Dispute Notice**).

### Within 15 Business Days of receipt of the Dispute Notice, the parties shall meet to seek to negotiate, in good faith, a resolution to the Dispute.

### In the event that the Dispute remains unresolved after the time period referred to in clause 37.1(b), either party may, at any time after giving notice to the other party of its intention to do so, refer the Dispute for arbitration in accordance with clause 37.2.

## Arbitration

An arbitration under this clause 37 shall:

### be conducted by a single arbitrator to be appointed, in the absence of agreement by the parties within 5 Business Days after the giving of a notice under clause 37.1(c), by the Chairperson (or his or her nominee) for the time being of the dispute resolution organisation known as the Resolution Institute;

### be conducted according to the rules proposed by the appointed arbitrator; and

### be conducted during a period of 10 Business Days (or such longer period as the parties may agree in writing) from the acceptance by the arbitrator of his or her appointment.

## Resolution and interlocutory relief

### The parties shall each pay their own costs of the arbitration and will each pay half of the arbitrator’s fees and costs.

### If the parties are unable to resolve the Dispute within the arbitration period stipulated in, or agreed under, clause 37.2(c), either party may take whatever other action is available to it under this agreement or at Law, including initiating proceedings in a court of competent jurisdiction.

### Nothing in this clause 37 precludes a party from seeking interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.

### To avoid doubt, nothing in this clause 37 affects or limits a party’s right to apply for an adjudication under the Security of Payment Act.

# General

## Legal costs

Except as expressly stated otherwise in this agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this agreement.

## Review and approval

Without limiting clause 13.3, the Consultant agrees that no review (or failure to review), approval, statement of satisfaction or comment by or on behalf of the Client with respect to the Services or any Deliverables including any acceptance of a proposed Quality Assurance Plan or draft design:

### constitutes a direction by the Client or the Client Representative; or

### waives or varies any of the Consultant’s obligations under this agreement.

## General right to information

The Client may, from time to time, request the Consultant to provide it with any information and documents relating to the Services or the Consultant’s compliance with this agreement and the Consultant must comply with such a request by providing the information and documents to the Client on an open book basis within 3 Business Days of a request.

## Governing law and jurisdiction

### This agreement is governed by and is to be construed in accordance with the laws applicable in Western Australia.

### Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## Severability

### If a provision of this agreement is illegal or unenforceable in any relevant jurisdiction but would not be illegal or unenforceable if it were read down, it must be read down to the extent required to make it legal and enforceable for the purposes of that jurisdiction.

### Subject to clause 38.5(c), if a provision of this agreement is illegal or unenforceable in any relevant jurisdiction and cannot be read down or, having been read down, is still illegal or unenforceable, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this agreement.

### Clause 38.5(a) does not apply if severing the provision:

#### materially alters the:

##### scope and nature of this agreement; or

##### the relative commercial or financial positions of the parties; or

#### would be contrary to public policy.

## Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this agreement and to perform its obligations under it.

## Rights cumulative

Except as expressly stated otherwise in this agreement, the rights of a party under this agreement are cumulative and are in addition to any other rights of that party under this agreement or at Law.

## Waiver and exercise of rights

### A single or partial exercise or waiver by a party of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.

### A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

## Survival

All provisions of this agreement which, expressly or by implication from their nature, are intended to survive expiry or termination of this agreement, will survive such expiry or termination, including any provisions relating to:

### confidentiality;

### Intellectual Property Rights;

### any indemnity; and

### any right or obligation arising on termination of this agreement.

## Amendment

This agreement may only be varied or replaced by an agreement executed by the parties.

## Indemnities

All obligations to indemnify under this agreement are independent and survive termination of this agreement and crystallise as a debt immediately due and payable on notice by the Client of the occurrence of an event the subject of the indemnity, whether or not the Client has yet incurred any Loss.

## Counterparts

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

## Entire understanding

### This agreement contains the entire understanding between the parties as to the subject matter of this agreement.

### All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this agreement are merged in and superseded by this agreement and are of no effect. No party is liable to any other party in respect of those matters.

### No oral explanation or information provided by any party to another:

#### affects the meaning or interpretation of this agreement; or

#### constitutes any collateral agreement, warranty or understanding between any of the parties.

1.

Agreement Particulars

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Description** | **Clause\*** | **Particulars** |
| 1.
 | **Client Details** | 30 | **Name:** | City of Nedlands (ABN 92 614 728 214)  |
| **Address:** | 71 Stirling Hwy, Nedlands, WA 6009 |
| **Email:** | [insert] |
| 1.
 | **Client Representative** | 1.1, 7, 30 | **Name:** | [insert] |
| **Address:** | [insert] |
| **Email:** | [insert] |
| 1.
 | **Consultant Details** | 30 | **Name:** | [Insert Consultant's name] |
| **Address:** | [Insert Consultant's address] |
| **Email:** | [Insert Consultant's email] |
| 1.
 | **Consultant Representative** | 1.1, 8, 30 | **Name:** | [Insert Consultant Representative's name] |
| **Address:** | [Insert Consultant Representative's address] |
| **Email:** | [Insert Consultant Representative's email] |
| 1.
 | **Project** | 1.1 | [insert description] |
| 1.
 | **Consultancy Fee** | 1.1, 25 | **Section** | **Fixed Fee (ex GST)** | **Total Fee (ex GST)** |
| [insert] | [insert] | [insert] |
| [insert] | [insert] | [insert] |
| 1.
 | **Start Date** | 1.1, 3 | [insert]*If nothing stated, the date of the Letter of Award.* |
| 1.
 | **Design Obligations** | 13.6 | [Insert whether the Design Obligations form part of the Services]*If nothing stated, the Design Obligations do not form part of the Services.* |
| 1.
 | **Sections** | 1.1, 6.1(e) | **Section 1:** | [insert]*If nothing inserted, the Services are not to be performed in Sections.* |
| **Section 2:** | [insert] |
| **Section 3:** | [insert] |
| 1.
 | **Additional Delay Events** | 1.1, 16 | [insert]*If nothing stated there are no additional Delay Events.* |
| 1.
 | **Dates for Delivery** | 1.1, 6.1(a) | **Deliverable** | **Date for Delivery** |
| [insert] | [insert]*If nothing inserted, the Consultant must deliver the Deliverables as soon as reasonably practicable.* |
| [insert] | [insert] |
| 1.
 | **Stated Purpose** | 1.1, 6.2(c), 13.6(h)(i) | [insert the purpose of undertaking the Project / Services] |
| 1.
 | **Key People** | 1.1, 6.1(b)(i)(F), 9 | **Name** | **Role** |
| [insert]*If nothing inserted, there are no Key People* | [insert] |
|  |  |
| 1.
 | **Insurance** | 19.1 | **Public Liability** |
| **Limit of cover for one occurrence:** | [insert] |
| **Limit of cover for all claims in the aggregate:** | [insert] |
| **Professional Indemnity** |
| **Limit of cover for one occurrence:** | [insert] |
| **Limit of cover for all claims in the aggregate during any one 12 month period of insurance:** | [insert] |
| 1.
 | **Other documents forming part of this agreement** | 2.1(k) |  |
| 1.
 | **Special Conditions** | 1.1, 2.1 |  |

\* Included for convenience only

1.

Request for Tender

[insert]

Scope of Services

[insert]

1.

Schedule of Rates

[insert]

1.

Form of Payment Schedule

**Payment Schedule**

The Form of Payment Schedule will be the Client's standard form as amended from time to time, which is available, as at the date of this agreement, via the following link:

1.

Variation Form

1. This Variation Form is a Variation Form for the purposes of clause 12 of the Consultancy Agreement identified below.
2. The Client Representative directs the Variation to the Services as set out below.

|  |  |
| --- | --- |
| **Client:** | **City of Nedlands (ABN 92 614 728 214)** of 71 Stirling Hwy, Nedlands, WA 6009 |
| **Consultant:** | [Insert Consultant's name, ABN and address] |
| **Consultancy agreement:** | [Insert description of Consultancy agreement by reference to the parties and the date of the agreement] |
| **Contract Number:** | [Insert contract number for Consultancy agreement] |
| **Date of Variation Form:** | [Insert date this Variation Form is issued to the Consultant] |
| **Description of Variation** | **Price (excluding GST)** |
|  | $ |
| **Proposed Variation Response:** | [Insert reference to, or attach, any Variation Response under clause 9 applicable to the Variation required by this Variation Form or state that the Total Fee are to be adjusted in accordance with clause 12.4(e)(ii)] |
| **New Dates for Delivery (if applicable):** | [Insert new Dates for Delivery of the Deliverables]  |
| **New Consultancy Fee, Total Fee and /or Fixed Fee:** | [To be confirmed in a purchase order once assessed in accordance with clause 12.] |
| **Approved By:** | **Signature:** | …………………...………………………………. |
| **Name:** | …………………...………………………………. |
| **Position:** | …………………...………………………………. |
| **Date:** | …………………...………………………………. |

1.

Deed of Novation

This Deed made this ……………………………………. day of ………………………. 20………. between

……………………………………………………………………………. (**Client**)

of …………………………………………………………………… ABN ……..……………….

and

 ……….……………………………………………………………………… (**Incoming Party**)

of …………………………………………………………………… ABN …….….…………….

and

……………………………….………………………………………………. (**Consultant**)

of ………………………...………………….……………………..... ABN ……...………..…….

witnesses that:

**RECITALS**

A. The Client has engaged the Consultant pursuant to the Consultancy Agreement described in Item 1 of the Schedule to carry out the Services, a description of which is set out in Item 2 of the Schedule.

B. The Client desires to novate its rights and obligations under the Consultancy Agreement to the Incoming Party.

C. The parties have agreed to novate the Consultancy Agreement on the terms and conditions of this Deed.

**OPERATIVE PARTS**

1. Definitions and Interpretations

In this Deed, unless the context otherwise requires:

|  |  |
| --- | --- |
| **Consultancy Agreement** | means the agreement described in Item 1 of the Schedule. |
| **Item** | means an item in the Schedule. |
| **Schedule** | means the schedule to this deed.  |
| **Deed** | means this document and includes its schedules and annexures (if any). |

In this Deed, unless the context otherwise requires:

* + 1. words defined in the Consultancy Agreement and used in this Deed have the meaning given to them in the Consultancy Agreement; and
		2. words importing the singular number include the plural number and vice versa.
1. Novation

On and from the date of this Deed,the parties agree as follows:

* + 1. the Client and the Consultant mutually agree to terminate the Consultancy Agreement on the terms of this Deed;
		2. the Incoming Party and the Consultant agree that they hereby enter into a new contract on the same terms and conditions as the Consultancy Agreement, save and except that:
			1. the Incoming Party shall be named in substitution of the Client so that each reference to the Client shall be a reference to the Incoming Party;
			2. the obligations of the Incoming Party and the Consultant will be as if the Incoming Party had executed the Consultancy Agreement instead of the Client; and
			3. the Consultant hereby indemnifies and holds harmless the Incoming Party from all claims, costs, expenses and losses (including without limitation consequential loss) arising out of or incidental to any Services which may have been performed by the Consultant under the Consultancy Agreement prior to its termination under clause 2(a) of this Deed; and
		3. the Incoming Party warrants to the Client that it shall be wholly responsible for the due and proper performance of all of the Services whether carried out before or after the date of this Deed.
1. Release and Payments to Consultant
	* 1. On and from the date of this Deed, the Consultant releases and forever discharges the Client from the Client's obligations under or in connection with the Consultancy Agreement whether arising prior to, on or after, the date of this Deed.
		2. The parties hereby acknowledge that as at the date of this Deed, the Client has paid the Consultant pursuant to the Consultancy Agreement the sum set out in Item 5 of the Schedule and that no monies are owing to the Consultant by the Client.
2. Indemnity by Client

The Client indemnifies the Incoming Party against any Claim the Consultant makes against the Incoming Party with respect to any matter, act or omission of the Client in connection with the Consultancy Agreement occurring before the date of this Deed.

1. Indemnity by Incoming Party

The Incoming Party indemnifies the Client against any Claim the Consultant makes against the Client with respect to any matter, act or omission of the Incoming Party in connection with the Consultancy Agreement occurring on or after the date of this Deed.

1. Consultant's covenants

Without limiting any provision of the Consultancy Agreement, the Consultant covenants to each of the Incoming Party and the Client that:

* + 1. it has performed its obligations under the Consultancy Agreement to the date of this Deed in accordance with all the requirements of the Consultancy Agreement, including the Scope of Services;
		2. it has used and will continue to use skill, care and diligence as contemplated by the Consultancy Agreement so as to ensure that all Services supplied by the Consultant fulfil the requirements of the Consultancy Agreement;
		3. there are no Defects, ambiguities discrepancies or inconsistencies in the Deliverables prepared by the Consultant as at the date of this Deed;
		4. the Deliverables prepared by the Consultant as at the date of this Deed comply with all Laws and Approvals; and
		5. it will, at its own cost, rectify any Defects, ambiguities, discrepancies or inconsistencies in the Deliverables (including but not limited to the Deliverables prepared by the Consultant prior to the date of this Deed).

The Consultant acknowledges and agrees that the Incoming Party has relied on the covenants in this clause when entering into his Deed.

1. Assignment

This Deed is personal between the parties and neither party may assign any right under this Deed except with, and in strict compliance with any condition of, the prior written consent of each other party.

1. Further Assurances

The parties shall execute all documents and do all things necessary to vest in the Incoming Party the Consultancy Agreement or otherwise to give effect to the terms of this Deed.

1. Governing law and jurisdiction

This Deed shall be construed in accordance with the laws of Western Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State.

1. Notices

A party may give a notice or communication (**Notice**) under this Deed by delivering such Notice to the addresses provided in Item 6 of the Schedule. Such Notice may be sent by prepaid post, delivered by hand or emailed to the relevant email address with the Notice attached in PDF format.

If a party gives the Notice by post the Notice will be taken as given on the second Business Day after the Notice is posted.

If a party gives the Notice by email the Notice will be taken as given when the email is delivered to the server of the recipient party.

A party may give Notice of another address (within Australia) to the other parties and the new address shall be the address for service of the party for the purpose of this clause 10.

1. Schedule

|  |  |
| --- | --- |
| Item 1:(Recital A) | The agreement between the Client and the Consultant dated [Insert agreement date] for $[Insert Total Fee], having the Contract Number [Insert Contract Number] |
| Item 2:(Recital A) | Brief description of the Services in the Consultancy Agreement: [Insert] |
| Item 3:(Clause 3) | $[Insert amount paid to the Consultant] |
| Item 4:(Clause 10) | Client address for service and nominated recipient:[Insert Client address and recipient]Consultant address for service and nominated recipient:[Insert Consultant address and recipient]Incoming Party address for service and nominated recipient:[Insert Incoming Party address and recipient] |

**Executed by the parties as a Deed**:

|  |
| --- |
| **Executed** by **City of Nedlands (ABN 92 614 728 214)** in accordance with section 9.49A(4) of the *Local Government Act 1995* (WA): |
| Authorised Officer |
|  |
| Name of Authorised Officer BLOCK LETTERS |
| Date  |

|  |  |  |
| --- | --- | --- |
| **[Insert Consultant's name] (ACN** [Insert Consultant's ACN]) in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |
| Director |  | \*Director/\*Company Secretary |
|  |  |  |
| Name of Director |  | Name of \*Director/\*Company Secretary |
|  |  |  |
| Date  |  | Date |

|  |  |  |
| --- | --- | --- |
| **[Insert Incoming Party's name] (ACN** [insert Incoming Party's ACN]) in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |
| Director |  | \*Director/\*Company Secretary |
|  |  |  |
| Name of Director |  | Name of \*Director/\*Company Secretary |
|  |  |  |
| Date  |  | Date |