



CONSULTANCY AGREEMENT

**City of Gosnells
AND
Contractors Name**

**FOR
Contract Name**

REFERENCE SCHEDULE

Commencement Date	
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Term	example 3 years or 6 months <p style="text-align: center;">--- OR ---</p> Starting on the Commencement Date and ending on .
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Principal (and addresses for service of notices)	Name:	City of Gosnells (ABN 18 374 412 891)
	Address:	2120 Albany Highway, GOSNELLS WA 6110
	Email:	council@gosnells.wa.gov.au
	Phone:	08 9397 3000

Consultant (and addresses for service of notices)	Name:	
	ACN/ABN:	
	Address:	
	Email:	
	Phone:	

Principal's Representative (Contract Manager)	Name:	
	Address:	
	Email:	
	Phone:	

Consultant's Representative	Name:	
	Address:	
	Email:	
	Phone:	

Consultant's Key Personnel and their roles in relation to the Services	
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Services and Deliverables	<i>Description of Services and Deliverables, including any information required and timescales for such under clause 14.2</i>	<i>Completion Timeframes</i>
	Detail the service here. --- OR --- Refer attached specification.	Detail the timeframes here. --- OR --- Refer attached specification.

Fees and Due Dates for Payment	insert fees and how they are calculated	
	Payment Terms	14 days from invoice date

Insurances	Insurance	Required	Amount
	Public liability	Yes <input type="checkbox"/> No <input type="checkbox"/>	\$20,000,000
	Workers' compensation	Yes <input type="checkbox"/> No <input type="checkbox"/>	As required by Law
	Professional indemnity	Yes <input type="checkbox"/> No <input type="checkbox"/>	\$2,000,000
Under clause 22.3(c)(ii), the period professional indemnity insurances must be maintained after this Agreement is terminated or expires is: 7 years.			

Liquidated Damages	Do Liquidated Damages apply in this Agreement? Yes <input type="checkbox"/> No <input type="checkbox"/>	
	<i>Specify the genuine pre-estimated amount, payable by the Consultant to the Principal per day</i>	\$ per day
	<i>Specify the period of days (if other than 90 days) for which the Liquidated Damages are to apply</i>	days

Special Conditions (if any)	
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STANDARD TERMS AND CONDITIONS

1. APPOINTMENT OF CONSULTANT AND SUPPLY OF SERVICES

- 1.1 The Principal appoints the Consultant to supply the Services to the Principal in consideration for the Fees and subject to the terms and conditions of this Agreement.
- 1.2 The Consultant must diligently carry out the work and supply the Services under this Agreement and must not, except as permitted by this Agreement, delay, suspend, or fail to maintain reasonable progress in the performance of that work and supply of the Services.
- 1.3 The Consultant must perform the Services to the standard of skill, care and diligence expected of a skilled and competent professional practising in the particular field relevant to the Services, or such higher standard as the Consultant has represented in writing to the Principal in relation to this Agreement.
- 1.4 The Parties agree that the supply of Services by the Consultant to the Principal is non-exclusive, and that the Consultant may, in its absolute discretion, provide services (whether similar to the Services or otherwise) to other third-party customers or clients, provided that the provision of such services to third parties does not conflict with or otherwise adversely affect the Consultant's obligations to the Principal under this Agreement.

2. TERM

- 2.1 This Agreement commences on the Commencement Date and continues for the Term, unless terminated earlier in accordance with this Agreement.
- 2.2 The Principal may extend the Term provided the Principal gives the Consultant written notice of its intention to do so before the end of the then-current Term.
- 2.3 If the Term is extended in accordance with this clause 2, this Agreement continues in force for the duration of the extended Term.

3. KEY PERSONNEL

3.1 General

- (a) Subject to clause 3.1(c), the Consultant must provide the Services using the Key Personnel.
- (b) The Consultant must ensure that the Key Personnel:
 - (i) are competent and have all necessary and appropriate skills, training, background and valid qualifications to carry out the duties and responsibilities of their positions and the tasks allocated to them;

- (ii) behave in a professional and responsible manner at all times, and perform the Services with due care and skill and in accordance with best industry practice; and

- (iii) understand and agree to the requirements of this Agreement, which are relevant to them.

- (c) The Consultant must not remove or replace any Key Personnel without the Principal's prior written consent, except as a consequence of resignation, death, illness or incapacity of the relevant Key Personnel.

- (d) The Principal may, while acting in good faith and reasonably, at its discretion and without giving a reason, direct the Consultant to remove Key Personnel from providing the Services. The Consultant must promptly arrange for replacement of the Key Personnel with Personnel of equivalent or superior qualifications, competence and experience to the Key Personnel being replaced.

- (e) Where the Key Personnel are removed or replaced as a requirement of either Party, the Consultant:

- (i) must not charge the Principal for any costs involved, including travel expenses, in providing the replacement Personnel or removing the unsatisfactory Key Personnel;

- (ii) must repay the Principal the full cost incurred by the Principal in any training undertaken by the removed Key Personnel; and

- (iii) must ensure the removed Key Personnel conduct a handover to the replacement Personnel and the Consultant must not charge the Principal for the time cost of the removed Personnel for the duration of such handover.

3.2 Key Personnel are the Consultant's Personnel

- (a) The Key Personnel are Personnel of the Consultant and are not Personnel of the Principal.

- (b) The Consultant is solely responsible for all of its Personnel (including Key Personnel) and must comply with any Laws relating to the employment of its Personnel, including superannuation requirements, payment of tax instalment deductions and all Taxes including fringe benefits and payroll tax registration requirements, conditions on payment of wages, requirements to maintain records and payment of all remuneration (including

salaries, wages, leave entitlements, superannuation and all other benefits).

- (c) If the Principal becomes liable for any of the payments in clause 3.2(b), the Consultant indemnifies the Principal from and against any Claims the Principal suffers, incurs or is liable for arising out of or in connection with such payments.
- (d) The Consultant and its Personnel have no Claim upon the Principal in respect of:
 - (i) remuneration to the Consultant's Personnel including superannuation, leave, other entitlements, Taxes or duties;
 - (ii) Claims under workers' compensation; and
 - (iii) Claims under any other law affecting or relating to the relationship between an employer and employee.
- (e) The Consultant remains liable to the Principal for all acts and omissions of the Consultant's Personnel as if they were the acts and omissions of the Consultant.

3.3 Manner of Performance

- (a) The Consultant will ensure that the Key Personnel:
 - (i) provide the Services in a careful, diligent, proper and efficient manner in accordance with the highest professional standards applying to the Services;
 - (ii) will act with the utmost good faith in all dealings with the Principal; and
 - (iii) in providing the Services, cause as little disruption as possible to the business activities of the Principal and its Personnel.
- (b) The Principal may give Directions to the Consultant or its Key Personnel at any time.
- (c) A Direction may be given orally by the Principal except where this Agreement otherwise provides.
- (d) The Principal must give the Consultant Directions necessary for the performance of the Services in a timely manner.
- (e) The Consultant must comply with all Directions given by the Principal under this Agreement.
- (f) If the Consultant in writing requests the Principal to confirm an oral Direction, the Consultant is not bound to comply with the Direction until the Principal confirms it in writing.

3.4 Access to Principal's Systems

- (a) The Principal may provide the Consultant and its Key Personnel with access to and use of its information technology and communications systems, including development, test and production environments (**IT Systems**) to enable the Consultant to provide the Services.
- (b) If the Consultant and its Key Personnel are granted such access and use under clause 3.4(a), the Consultant must, and must ensure that its Personnel who have access to the IT Systems:
 - (i) access and use only the part of the Principal's IT Systems for which they are specifically authorised and no other part of the Principal's IT Systems;
 - (ii) access and use the Principal's IT Systems only to perform their obligations under this Agreement and not for any other purpose; and
 - (iii) comply with any policies notified to them by the Principal from time to time.
- (c) If the Consultant and its Key Personnel are granted such access and use under clause 3.4(a), the Consultant must not, and must ensure that its Personnel who have access do not:
 - (i) use the Principal's IT Systems directly or indirectly for any activity or transmit any information or material unlawfully or which is obscene, indecent, uses offensive language, defames or offends any person;
 - (ii) tamper with, hinder the operation of or make unauthorised modifications to the Principal's IT Systems;
 - (iii) delegate any right of access to the Principal's IT Systems to any other third party without the Principal's prior written approval;
 - (iv) copy or collect in any way any data from the Principal's IT Systems, other than as necessary to perform their obligations under this Agreement;
 - (v) knowingly, recklessly or negligently transmit any virus or other disabling feature to or from the Principal's IT Systems;
 - (vi) remove, disable or modify any security, antivirus or other software in the Principal's IT Systems;
 - (vii) connect or expose the Principal's IT Systems to any other network including the Internet;

- (viii) damage or modify any of the Principal's hardware; or
- (ix) upload anything onto the Principal's IT Systems without the Principal's prior written consent.

(d) The Consultant acknowledges and agrees that the Principal may monitor the activities of the Consultant and its relevant Personnel in performing its obligations under this Agreement, including by computer surveillance, and the Consultant will notify its relevant Personnel of this.

4. COOPERATION WITH THIRD PARTIES

The Consultant must use reasonable endeavours to liaise, cooperate and confer with the Principal's Personnel, other contractors and consultants in order to coordinate its Services with the services of those Personnel, other contractors and consultants to supply the Services and produce the Deliverables.

5. ALTERNATIVE SUPPLY

5.1 If the Consultant is unable to supply the Services and/or Deliverables in accordance with this Agreement, then the Principal may at its option (and without limiting any other remedy available to the Principal) obtain the Services and/or Deliverables from a third party, including from the Consultant's competitors (**Alternative Purchases**).

5.2 The Consultant will be responsible for and must pay the Principal all incremental costs associated with sourcing Alternative Purchases from an alternate consultant or supplier.

6. REPORTING AND CONTRACT MANAGEMENT

6.1 Each Party appoints their representative specified in the Reference Schedule to manage the relationship between the parties under this Agreement.

6.2 The parties will ensure that the contract representatives meet at the times and places as required by the Principal to discuss the Consultant's performance of, and any issues arising under, this Agreement.

6.3 The Consultant must at no additional cost to the Principal provide the Principal with written reports at the intervals and containing the information specified in the Reference Schedule, or otherwise as required by the Principal, regarding the Consultant's performance under this Agreement.

6.4 Either Party may terminate the appointment of its representative by notice in writing to the other Party. The notice must promptly identify and provide contact details for the Party's new representative.

6.5 Unless the Principal objects to the Consultant's proposed representative on reasonable grounds in writing within three (3) Business Days, or as otherwise

agreed in writing, the termination and new appointment will take effect five (5) Business Days after service of the notice under this clause 6.

7. FEES, INVOICING AND PAYMENT

7.1 The Fees for the Services are specified in the Reference Schedule.

7.2 The Principal agrees to pay the Fees to the Consultant in accordance with this Agreement.

7.3 The Consultant will invoice the Principal for the Fees:
(a) at the times set out in the Reference Schedule; or

(b) if no times are set out in the Reference Schedule, by the last Business Day of each month (and in such event, only one invoice may be tendered per month).

7.4 The Fees are inclusive of all costs and expenses incurred by the Consultant and no further amounts are payable by the Principal unless otherwise agreed in writing by the Principal.

7.5 Subject to clauses 7.6 and 8, the Principal will pay any correctly rendered undisputed invoice issued by the Consultant:

(a) within the payment period specified in the Reference Schedule; or

(b) if no payment period is specified in the Reference Schedule, within 30 days after the Principal receives the invoice.

7.6 An invoice is correctly rendered if:

(a) the amount claimed in the invoice is due for payment in accordance with the Reference Schedule;

(b) it is accompanied by verifying documentation, if required by the Principal;

(c) includes both Purchase Order and Contract Number (if applicable);

(d) the Consultant has complied with its obligations under this Agreement as at the date of the invoice; and

(e) the invoice is a Tax Invoice in the proper form for the purposes of GST.

7.7 If any part of any invoice is found to have been rendered incorrectly after payment has been made by the Principal, then to the extent that it has been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Consultant, as the case may be.

7.8 All invoices, prices and payments must be stated and made in Australian currency.

7.9 Without limiting recourse to other available means, any overpayments by the Principal may be offset

against any amount subsequently due by the Principal to the Consultant.

7.10 Payment by the Principal is on account and is not evidence of the value of work completed, an admission of liability nor evidence that the Services have been executed satisfactorily.

7.11 Nothing in this clause 7 limits the Consultant's rights under clause 33.

8. DISPUTED INVOICES

8.1 If the Principal disputes the amount of any invoice, the Principal may, on written notice to the Consultant, withhold or suspend payment of any disputed part of the invoice until the dispute is resolved.

8.2 The Consultant must continue to perform the Consultant's obligations under this Agreement in the event of a dispute about an invoice, while that dispute is resolved.

8.3 Any disputes about an invoice must be resolved in accordance with the dispute resolution procedure in clause 35.

8.4 The Principal must:

- (a) pay any non-disputed amounts in accordance with clause 7; and
- (b) pay any disputed amounts that are subsequently found to be correctly payable, either within the payment period for that invoice, or promptly if such payment period has expired.

9. LIQUIDATED DAMAGES

9.1 The Consultant must, if specified in the Reference Schedule, pay to the Principal the Liquidated Damages for a delay in providing the Services, to the extent the delay was caused or contributed to by the Consultant.

9.2 Each Party acknowledges that the Liquidated Damages amount is a genuine and realistic pre-estimate of the loss and damage the Principal will suffer as a result of a delay.

9.3 Liquidated Damages are payable by the Consultant to the Principal until the earliest of the following:

- (a) completion of the Services by the Consultant, which is the subject of the delay;
- (b) a period of ninety (90) days, or as otherwise specified in the Reference Schedule, has expired; or
- (c) some other period as otherwise agreed in writing between the Principal and the Consultant.

9.4 Where the Principal has granted an extension of time, no Liquidated Damages are payable for the period of extension. However, if the Consultant has paid the applicable Liquidated Damages prior to the extension

of time being granted, then the Principal may repay the Consultant any Liquidated Damages for the period during which the extension has been granted.

9.5 During any period where Liquidated Damages are payable, the Liquidated Damages may not be the sole measure of the Principal's loss and damage for the Consultant's delay in performing or completing the Deliverables.

9.6 Exercise of rights pursuant to this clause 9 shall be without prejudice to any other right of action or remedy, which has accrued or may accrue to the Principal.

10. GST

10.1 If the Fee is stated to be GST exclusive, the Principal must pay the Fee plus the applicable GST.

10.2 If any supply under this Agreement is a Taxable Supply, then the Party making the supply may, at the same time that an invoice is rendered for the agreed consideration for the Taxable Supply, recover the amount of GST payable on that Taxable Supply, subject to the issue of a valid Tax Invoice.

11. CONSULTATION AND REVIEW

11.1 The Consultant must consult regularly with the Principal, and attend meetings and briefings reasonably required by the Principal in connection with the Services.

11.2 The Consultant must allow the Principal to review and discuss the Services, and any Deliverables (whether complete or in progress) produced by the Consultant in performing the Services.

11.3 The Consultant remains responsible for the Services despite any review or acceptance of any of the Services by the Principal.

12. WARRANTIES

12.1 The Consultant warrants, and it is a condition of this Agreement, that:

- (a) it will supply, and will ensure that the Key Personnel supply, the Services in a good, proper and professional manner, and to best practice and standards of care, skill, judgment and diligence expected of a consultant experienced in supplying the same or similar Services;
- (b) it will comply, and will ensure that the Key Personnel comply, with all Laws and standards relating to the supply of the Services, including the Principal's standards, policies, procedures and directions, and obtain all necessary consents and approvals to supply the Services;
- (c) all Services will be performed by suitably qualified and experienced Personnel;

- (d) the Services and Deliverables will be fit for the purpose for which they are supplied;
- (e) the supply of the Services, and the use of any of the Deliverables by the Principal, does not and will not:
 - (i) contravene any Laws; and
 - (ii) infringe the rights of a third party (including any Intellectual Property Rights); and
- (f) it will ensure that the Principal will obtain the benefit of all warranties given by all manufacturers, sub-contractors, contractors and other relevant third parties in relation to the Deliverables.

13. TITLE AND RISK

- 13.1 Title to any Deliverables passes to the Principal upon the earlier of delivery of those Deliverables or the payment of the Fees by the Principal to the Consultant.
- 13.2 Deliverables required for or generated during the supply of the Services remains at the Consultant's risk so long as such Documents and Deliverables are in the Consultant's possession, custody or control.

14. TIME

- 14.1 Time is of the essence in this Agreement.
- 14.2 Subject to clause 14.3, the Consultant must complete the Services by the time stated in the Reference Schedule.
- 14.3 The Principal may, in its absolute discretion, grant the Consultant a reasonable extension of time (which must be granted by the Principal in writing) for any delay to completion of the Services caused by:
 - (a) an act or omission of the Principal or its Personnel (including a Variation directed by the Principal);
 - (b) a Force Majeure Event; or
 - (c) any event or circumstance for which another provision of this Agreement provides that the Consultant may be entitled to an extension of time, provided that the Consultant notifies the Principal of the delay and its cause promptly after the Consultant becomes aware of the delay or its cause and provides reasonable evidence of the cause and duration of the delay.
- 14.4 If so agreed under clause 14.3, the Principal must pay the Consultant's reasonable costs of and incidental to delay caused by any of the following events for which an extension of time has been granted under clause 14.3:

- (a) any material breach of this Agreement or negligent or unlawful act or omission of the Principal or its Personnel; or
- (b) a variation directed by the Principal under clause 23.

15. LAWS AND GOVERNMENT AUTHORISATIONS

- 15.1 The Consultant must comply with all Laws and Government Authorisations in carrying out the Services.
- 15.2 The Consultant will be responsible for identifying any and all Government Authorisations, which must be obtained by the Consultant in connection with the supply of the Services and the Consultant or the Consultant's Personnel (as the case may be) must, at the Consultant's cost, obtain all Government Authorisations required to perform this Agreement.
- 15.3 Each Party must, as soon as practicable after becoming aware of any matter or circumstance (including any change in Laws or Government Authorisations) which may adversely affect or has adversely affected the performance of the Services, notify the other Party. The notice must include reasonable detail describing the matter or circumstances and its anticipated effect on the Services.

16. INTELLECTUAL PROPERTY

16.1 Pre-existing material

- (a) No change in ownership of the Intellectual Property Rights in any Pre-Existing Materials is affected by this Agreement.
- (b) The Consultant grants to the Principal a world-wide, non-exclusive, royalty free, perpetual, irrevocable and transferable licence (including a right of sub-licence) to use and commercially utilise the Intellectual Property Rights in the Consultant's Pre-Existing Materials to the extent required to use and exercise the Intellectual Property Rights in the Deliverables.
- (c) The Principal grants to the Consultant a personal, royalty free, non-exclusive, non-transferrable licence for the Term to use the Principal's Pre-Existing Materials only to the extent required to provide Services to the Principal, without the right to grant a further sub-licence.

16.2 Deliverables

- (a) The Consultant absolutely and unconditionally assigns, and must procure that Consultant's Personnel (including Key Personnel) assign, to the Principal, all Intellectual Property Rights in any Deliverables immediately upon creation, free of all Encumbrances and third-party rights.
- (b) The Consultant must, at its own cost, do all things necessary to give effect to the

assignment in clause 16.2(a), including executing any required documents or effecting any required registrations.

- (c) The Principal grants to the Consultant a personal, royalty free, non-exclusive, non-transferable licence for the Term to use the Deliverables only to the extent required to provide the Services, without the right to grant a further sub-licence.

16.3 Key Personnel

Prior to Key Personnel commencing the Services, upon request by the Principal, the Consultant must obtain from the Key Personnel and provide to the Principal, a written assignment from the Key Personnel to the Principal of the Intellectual Property Rights created by the Key Personnel in the performance of the Services.

16.4 Form of Assignment

A suggested form of assignment from the Consultant's Personnel of all Intellectual Property Rights created by the Consultant's Personnel in the performance of the Services is attached to this agreement marked as Annexure A.

17. MORAL RIGHTS CONSENT

- (a) To the extent that a person, other than the Consultant, has Moral Rights in the Services or Deliverables, the Consultant must obtain a Moral Rights Consent from that person, and provide it on request by and in a form acceptable to the Principal.
- (b) A suggested form of Moral Rights Consent is attached to this agreement marked as Annexure B.

18. CONFIDENTIALITY

18.1 Each Party (**Recipient**) must keep confidential, and not disclose, any Confidential Information of the other Party (**Discloser**) except:

- (a) as permitted under this Agreement;
- (b) with the prior written consent of the Discloser;
- (c) to the Recipient's Personnel, professional advisers, auditors and insurers; or
- (d) where the Recipient is compelled to do so by Law, provided that it promptly gives the other Party written notice prior to disclosure.

18.2 The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed in connection with this Agreement.

18.3 The Recipient must:

- (a) maintain effective security measures to protect all Confidential Information in the possession or control of the Recipient from unauthorised access, use, copying or disclosure;

- (b) notify the Discloser immediately in writing if the Recipient becomes aware of any anticipated, suspected or actual breach of this Agreement by the Recipient and take all reasonable steps required to prevent or stop that breach, at the Recipient's expense; and

- (c) reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any anticipated, suspected or actual unauthorised disclosure or misuse of the Confidential Information by the Recipient.

18.4 Upon request from the Principal, the Consultant must procure its Personnel that are engaged in the performance of this Agreement to execute a confidentiality undertaking, agreement or deed in the form acceptable to the Principal.

18.5 The following are exceptions to clauses 18.1 and 18.3:

- (a) that at the time of disclosure, the information is in the public domain;
- (b) information that is required by Law to be communicated to a person who is authorised by law to receive it;
- (c) disclosure to a court, arbitrator, expert, board of enquiry or administrative tribunal in the course of proceedings or determinations by or before them;
- (d) disclosure to any person who is required or authorised by this Agreement to perform any function under this Agreement;
- (e) information that is necessary to be disclosed to any bank or other financial institution in connection with the organisation of that Party's financial affairs;
- (f) information that is necessary to be disclosed to any legal counsel, accountant or other professional adviser in connection with the Party's affairs provided that the discloser is bound by an obligation of confidentiality in regard to the information disclosed; or
- (g) information that is necessary to be disclosed to the Party's Personnel, auditors and other persons for the purpose of all or any of the matters pertaining to this Agreement.

18.6 All records, Documents and other papers (and any copies or extracts and including Confidential Information) made or acquired by the Consultant in relation to the Principal is and remains the sole property of the Principal. All the items specified in this clause 18.6 must be promptly delivered-up to the Principal when the Agreement expires or is terminated.

19. PRIVACY

19.1 The Consultant must:

- (a) in relation to the discharge of its obligations under this Agreement, comply with all the relevant provisions of the Privacy Laws;
- (b) ensure that any Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
- (c) not use Personal Information other than for the purpose of performing its obligations under this Agreement, unless required or authorised by Law;
- (d) not disclose Personal Information without the prior written consent of the Principal, unless required or authorised by Law;
- (e) not transfer nor store any Personal Information outside of Australia without the prior written consent of the Principal;
- (f) ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under this Agreement;
- (g) ensure that its Personnel are aware of the Consultant's obligations under this clause 19 and comply with the same obligations imposed on the Consultant under this clause 19;
- (h) fully cooperate with the Principal to enable the Principal to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints;
- (i) immediately notify the Principal if the Consultant becomes aware that a disclosure of Personal Information is or may be required or authorised by Law; and
- (j) comply with such other privacy and security measures as the Principal reasonably notifies the Consultant in writing from time to time.

19.2 The Consultant must immediately notify the Principal upon becoming aware of a breach of this clause 19.

19.3 Nothing in this clause 19 is intended to limit any obligation of the Consultant under the Privacy Act, that the Consultant may have as an organisation with respect to Personal Information.

19.4 Without limiting Clause 20, the Consultant indemnifies the Principal and must keep the Principal indemnified in respect of all Liabilities incurred by or awarded against the Principal relating to any breach by the Consultant of its obligations under the Privacy Act or this clause 19.

20. INDEMNITY

20.1 To the extent permitted by law, the Consultant indemnifies the Principal and its Personnel (**Indemnified Parties**) from and against any Liabilities which any of the Indemnified Parties pays, suffers, incurs or is liable for arising out of or in connection with:

- (a) any breach of this Agreement by the Consultant;
- (b) the death or personal injury of any person to the extent caused or contributed to by any act or omission of the Consultant or its Personnel;
- (c) loss of, or damage to, any property to the extent caused or contributed to by any act or omission of the Consultant or its Personnel;
- (d) any breach of Law by the Consultant or its Personnel;
- (e) any infringement, or alleged infringement, of a third party's rights (including Intellectual Property Rights); and
- (f) any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation by the Consultant or its Personnel.

20.2 Any liability of the Consultant to indemnify the Indemnified Parties under this clause 20 against any Liabilities sustained by the Indemnified Parties shall be reduced proportionally to the extent that:

- (a) such Liabilities have been caused by an Indemnified Party's failure to comply with their obligations and responsibilities under this Agreement; and/or
- (b) an Indemnified Party's negligence or other wrongful act or omission has contributed to such loss or damage.

20.3 Without limitation to the above indemnity, the Indemnified Parties must use reasonable endeavours to minimise any Liability which is the subject of the above indemnity.

20.4 Clauses 20.1, 20.2 and 20.3 do not exclude any other right of the Principal at law.

21. LIMITATION OF LIABILITY

21.1 Neither Party will be liable to the other Party for any Consequential Loss suffered or incurred by the other Party arising out of or in connection with this Agreement, whether arising under contract, in tort (including negligence) or otherwise.

21.2 Clause 21.1 does not apply to the Consultant's liability under the indemnities in clauses 20.1(b) to (f).

21.3 To the maximum extent permitted by Law, the Principal's maximum aggregate liability to the

Consultant (whether under contract, tort, statute or in equity) arising out of or in connection with this Agreement is limited to the total amount of the Fees paid under this Agreement.

22. INSURANCE

22.1 The Consultant must effect and maintain the insurances specified in the Reference Schedule in the form or forms appropriate to the Consultant's activities and with insurers approved by the Australian Prudential Regulation Authority.

22.2 All the Consultant's required insurances must be effected and in place before commencing the supply of the Services.

22.3 The Consultant's:

- (a) public liability insurance must:
 - (i) be for an amount not less than that set out in the Reference Schedule; and
 - (ii) must be maintained for the entire duration of this Agreement;
- (b) workers' compensation insurance must:
 - (i) be maintained for the entire duration of this Agreement; and
- (c) professional indemnity insurance must:
 - (i) be for an amount not less than that set out in the Reference Schedule;
 - (ii) be maintained for not less than the period specified in the Reference Schedule; and
 - (iii) include provision for one automatic reinstatement of the sum insured.

22.4 The Consultant must provide, on the Principal's request, certificates of currency and such other evidence satisfactory to the Principal of insurance coverage specified in this clause 22.

22.5 Each certificate of currency in respect of each insurance policy required to be provided under clause 22.3 must show:

- (a) the insurance policy numbers;
- (b) the expiry date of each policy; and
- (c) the amount of insurance cover required to be held under this Agreement.

22.6 Without limiting the Consultant's other obligations under this Agreement, if the Consultant fails to promptly provide evidence when required under clause 22.3, the Principal may give the Consultant a written notice requiring the Consultant to provide the evidence required within a specified period being not less than five (5) Business Days from when the notice is served and specifying the Principal's intent to exercise its rights under clause 22.6 if the Consultant does not comply.

22.7 If the Consultant does not comply with clause 22.5, the Principal may:

- (a) effect and maintain the insurances, pay the premiums and deduct these payments from moneys due or to become due to the Consultant from the Principal; and/or
- (b) treat the Consultant's failure to comply with clause 22.5 as a material breach of this Agreement and the provisions of clause 33.2 will apply.

23. VARIATIONS

23.1 The Principal may by written notice to the Consultant without additional charge or costs by Consultant to the Principal request the Consultant to vary the scope of the Services to be supplied under this Agreement (**Variation Notice**).

23.2 Without limiting the generality of clause 23.1, the Principal may vary the Services, to:

- (a) omit any part of the Services;
- (b) increase or decrease the frequency and/or duration of performance of all or any part of the Services; or
- (c) perform additional work.

23.3 Within five (5) Business Days of receiving a Variation Notice, the Consultant will provide to the Principal a reasonable written quotation (**Variation Quotation**) which details:

- (a) the variation as requested by the Variation Notice;
- (b) a reasonable variation (if any) to the Fees including evidence justifying the variation; and
- (c) all relevant specifications, time frames and operational requirements relating to the varied Services additional to but not inconsistent with those in the Variation Notice.

23.4 The Principal may by written notice to the Consultant:

- (a) accept the Variation Quotation within twenty (20) Business Days of receiving it;
- (b) reject the Variation Quotation at any time if that Variation Quotation has not already been accepted; or
- (c) require the Consultant to do the work as set out in the Variation Notice in a reasonable time as agreed by the parties for:
 - (i) fees based on the Fees specified in the Reference Schedule; or
 - (ii) if clause 23.4(c)(i) is not applicable, fees based on the rates usually and then-currently charged by the Consultant in the ordinary course of its business.

23.5 The Principal is not required to pay any additional fees unless and until:

- (a) the Principal accepts the Variation Quotation under clause 23.4(a);
- (b) the Principal requires the Consultant to effect the variation under clause 23.4(c); or
- (c) the parties otherwise agree in writing to the varied terms and fees.

24. AUDIT AND RECORDS

24.1 The Consultant must permit the Principal and/or its auditors access, on reasonable notice and during normal business hours on Business Days, to all records, books, staff, premises and other facilities of the Consultant and its sub-contractors in connection with any audit of the Consultant's performance of this Agreement, including for the purpose of verifying any Fees and other amounts paid or payable under this Agreement.

24.2 The Principal will bear the costs of any audit under clause 24.1 unless the audit reveals that the Consultant has overcharged the Principal by five percent (5%) or more in relation to any particular Services, in which case the Consultant will reimburse the Principal its reasonable costs and expenses of the audit and must promptly reimburse the Principal for the amount of any overcharges.

24.3 If an audit reveals that the Consultant is not complying with its obligations under this Agreement, then the Consultant must take, and must ensure that any relevant Consultant's sub-contractor takes, such actions as are necessary promptly to remedy the non-compliance.

24.4 The Consultant must comply, and ensure that any relevant Consultant's sub-contractor complies, with any reasonable directions or instructions from the Principal as to the manner (including timing) in which such non-compliance referred to in clause 24.3 must be remedied.

24.5 The Consultant must retain, and ensure each of its Personnel retain, all financial and operational records relevant to this Agreement in an auditable and accessible format and otherwise as required by Law during the Term and for a period of at least seven (7) years after this Agreement has been terminated or expired.

25. CONFLICT OF INTEREST

25.1 A conflict of interest in connection with this Agreement includes a conflict between a duty owed by the Consultant to a person and a duty owed by the Consultant to the Principal.

25.2 The Consultant must declare in writing any conflict of interest prior to providing any Services to the Principal or, where Services are already being provided, as soon

as such a conflict, or a significant risk of conflict, comes to the attention of the Consultant.

25.3 The Consultant must monitor and, unless the Principal gives prior written consent to the conflict of interest, avoid the occurrence of any conflict of interest.

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

25.5 A conflict of interest involving the Consultant, or where a conflict is likely to arise, will be treated as a breach of this Agreement by the Consultant and the Principal may proceed under clause 33.2.

26. SUB-CONTRACTING AND ASSIGNMENT

26.1 The Consultant must not sub-contract or assign any of its rights or obligations under this Agreement without the Principal's prior written consent, which consent may be withheld in the Principal's absolute discretion.

26.2 The Principal may, in its absolute discretion, impose such conditions upon any sub-contracting and/or assignment under this clause 26, before consenting to such sub-contracting and/or assignment. Such conditions may include:

- (a) requiring and approving the sub-contractor and/or assignee to have certain insurances;
- (b) requiring the insured person(s) under the preceding sub-clause to evidence such insurances to the Principal by submitting certificates of currency; and
- (c) requiring any sub-contractor to enter into terms similar to these Standard Terms and Conditions with the Consultant,

all to the principal's satisfaction of such.

26.3 The Consultant must ensure that its sub-contractors comply with all Laws and all standards applicable to the performance of the Consultant's obligations under this Agreement.

26.4 To the extent that the Consultant sub-contracts any of its obligations under this Agreement to a third party, the Consultant will remain liable to the Principal for each act and omission of that third party (including its Personnel) in connection with the performance of such obligations as if it were an act or omission of the Consultant.

26.5 The Principal may in its absolute discretion, by giving notice to the Consultant, assign its rights under this Agreement without the Consultant's consent.

27. MODERN SLAVERY

27.1 The Consultant must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services, Deliverables and the performance of this Agreement.

27.2 If at any time the Consultant becomes aware of Modern Slavery practices in the operations and supply chains used in the provision of the Services, Deliverables and the performance of this Agreement, the Consultant must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

28. ANTI-BRIBERY

28.1 In performing their obligations under this Agreement, each Party agrees to comply with any Anti-Bribery and Corruption Laws that are applicable to:

- (a) the Parties;
- (b) this Agreement; or
- (c) the jurisdictions in which the Services and/or obligations under this Agreement are performed or observed.

28.2 The Parties must not commit any act or omission prohibited by Anti-Bribery and Corruption Laws, give or offer to give, receive, or agree to accept, any payment, gift, benefit or other advantage which is given with the intention of inducing the recipient to act improperly, offer, promise or pay facilitation payments or any other act which is otherwise inconsistent with any Anti-Bribery and Corruption Laws.

29. IF THE CONSULTANT IS A TRUSTEE

29.1 If the Consultant enters into this Agreement as the trustee of a trust, the Consultant is bound both personally and as trustee of the trust.

29.2 In respect of any trust of which the Consultant (solely or jointly) is acting or in the future acts as trustee of (**Relevant Trust**) the Consultant covenants and warrants that:

- (a) it has full power and authority pursuant to its constitution (if any) and the deed of trust (**Relevant Trust Deed**) to act when entering into this Agreement and the Consultant has obtained the consents and approvals of all persons necessary to bind the property of the Relevant Trust;
- (b) the Relevant Trust is lawfully and validly constituted and the Relevant Trust Deed has been properly executed;
- (c) the Relevant Trust and the Relevant Trust Deed will not be revoked or varied other than with the prior written consent of the Principal which may not be unreasonably withheld or delayed;
- (d) the assets of the Relevant Trust and the assets of the Consultant will at all times be and remain available to satisfy the Consultant's covenants under this Agreement;

- (e) no action has been taken or proposed to remove it as trustee of the Relevant Trust or alter the powers it has as trustee of the Relevant Trust; and
- (f) no action has been taken or threatened to wind up or terminate the Relevant Trust.

30. FORCE MAJEURE

30.1 Notice of Force Majeure Event

If a Party (the "**Affected Party**") is prevented from, or delayed in, performing this Agreement by a Force Majeure Event and the Affected Party wants to rely on the Force Majeure Event, then it must notify the other Party in writing of the occurrence of the Force Majeure Event and the circumstances resulting or arising from it within ten (10) Business Days after the start of the Force Majeure Event. The notice must give:

- (a) details of the Force Majeure Event;
- (b) details of the Affected Party's obligations under this Agreement which are affected;
- (c) details of the action that the Affected Party has taken and proposes to take to remedy the circumstances or situation arising or resulting from the Force Majeure Event;
- (d) an estimate of the time during which the Affected Party will be unable to carry out the affected obligations due to the Force Majeure Event; and
- (e) where the Consultant is the Affected Party, details of all insurance policies upon which the Affected Party will attempt to rely in making good loss or damage caused by the Force Majeure Event.

30.2 Mitigation of event

The Affected Party will use its best endeavours to remove or relieve any Force Majeure Event and to minimise the delay in the performance of the Affected Party's obligations under this Agreement caused by a Force Majeure Event.

30.3 Information

The Affected Party must keep the other Party informed (not less than daily) of the steps being taken to mitigate the effect of the Force Majeure Event upon the performance of the Affected Party's obligations under this Agreement and of an estimate of the duration of any delays.

30.4 Cessation of Force Majeure Event

Subject to clause 30.6, when the period for which the Affected Party's obligations are affected by a Force Majeure Event ceases the Affected Party must recommence performance of all its obligations under this Agreement as soon as practicable.

30.5 Suspension of obligations

No Party is required to perform its obligations, other than an obligation to pay moneys outstanding prior to the occurrence of a Force Majeure Event, during the currency of a Force Majeure Event to the extent and for the duration that those obligations are unable to be performed by the Force Majeure Event.

30.6 Termination

If a Force Majeure Event occurs and its effect continues for a period of more than thirty (30) days, then, irrespective of whether or not the Services have otherwise been suspended under clause 32, either Party may terminate this Agreement without penalty at any time by giving written notice to the other Party.

31. NO DISPARAGEMENT

Subject to law and the Principal's rights in connection with the enforcement of this Agreement, the Consultant shall not at any time:

- (a) disparage, permit or authorise the disparagement of the Principal, any of its Personnel, clients or suppliers, or of their related entities; or
- (b) otherwise make, permit or authorise the making of any statement in any way relating to or connected with any dispute which is calculated or is reasonably likely to cause damage to the Principal, any of its Personnel, clients or suppliers, or of their related entities (including damage to their respective reputations).

32. SUSPENSION

32.1 By the Principal

- (a) The Principal may suspend the performance of the Services at any time by notice in writing to the Consultant.
- (b) Unless the suspension has been directed due to the Consultant's wrongful conduct, the Principal must pay the Consultant any costs and expenses reasonably incurred by the Consultant as a result of the suspension.
- (c) The Consultant must recommence the Services when reasonably directed to do so by the Principal.
- (d) The Principal is not liable to the Consultant for any Consequential Loss suffered or incurred as a result of the exercise by the Principal of its rights under this clause 32.1.

32.2 By the Consultant

- (a) If a risk to the health or safety to any person arises where the Services are being performed (other than at any premises owned or controlled by the Consultant), the Consultant

may suspend the performance of the Services to the extent necessary to protect affected persons.

- (b) The Consultant must give prompt notice to the Principal of the suspension, the reason for the suspension and, if known by the Consultant, its likely duration.
- (c) The Consultant must recommence the Services as soon as possible and give prompt notice to the Principal.

33. TERMINATION

33.1 This Agreement may be terminated in accordance with clause 30.6 (Force Majeure).

33.2 The Principal may immediately terminate this Agreement (in whole or in part) upon written notice to the Consultant, if:

- (a) the Consultant breaches any obligation under this Agreement, which is capable of remedy, and does not remedy that breach within ten (10) Business Days of receipt of a notice from the Principal specifying the breach and requiring it to be remedied;
- (b) the Consultant commits a breach of this Agreement which is incapable of remedy;
- (c) the Consultant does anything that materially damages, or is likely to materially damage, the brand or reputation of the Principal;
- (d) the Consultant or any of the Key Personnel commit any act of fraud or dishonesty in relation to this Agreement; or
- (e) an Insolvency Event occurs in relation to the Consultant.

33.3 The Principal may at any time on at least thirty (30) days' written notice to the Consultant terminate this Agreement without cause, in which case the Principal's sole liability will be to pay the Consultant for all Services provided up to the effective date of termination.

33.4 The Consultant may immediately terminate this Agreement upon written notice to the Principal if the Principal commits a material breach of an obligation of this Agreement and does not remedy that breach within ten (10) Business Days of receipt of a notice from the Consultant specifying the breach and requiring the breach to be remedied.

34. CONSEQUENCES OF TERMINATION

34.1 As soon as practicable after expiry or termination of this Agreement, the Consultant must:

- (a) provide to the Principal a complete, consolidated copy of all Deliverables produced under this Agreement;

- (b) return to the Principal all equipment, records, Documents and materials provided by the Principal for the purposes of this Agreement, including any security passes and keys;
- (c) return to the Principal (or delete, if return is not reasonably practical) all copies of all Confidential Information and Personal Information provided, or granted access to, by the Principal in its possession or control; and
- (d) for no additional cost or charge, provide such services as the Principal reasonably requests to achieve an orderly, uninterrupted transition of the supply of the Services to the Principal or a new supplier of similar Services appointed by the Principal.

34.2 The clauses that survive termination of this Agreement are specified in clause 38.5.

35. DISPUTE RESOLUTION

35.1 If any dispute arises out of or in connection with this Agreement or the interpretation of its terms (a “Dispute”), a Party may not commence any court proceedings relating to the dispute unless this clause 35 has first been complied with, except where that Party seeks urgent interlocutory relief.

35.2 The Parties will attempt to resolve any Dispute as follows:

- (a) Either Party may notify the other Party in writing of the occurrence of a Dispute and the Parties must meet within five (5) Business Days or such other time as agreed to discuss and attempt to resolve the Dispute.
- (b) On receipt of the notice specified in clause 35.2(a), the Parties must use their reasonable efforts to expeditiously resolve the Dispute.
- (c) If the Parties cannot resolve the Dispute within ten (10) Business Days after the first meeting between the Parties specified in clause 35.2(a), or any further period as the Parties may agree to in writing, the Dispute must (at the instigation of any Party) go to mediation.
- (d) The mediation is to be conducted in accordance with the Australian Disputes Centre’s Mediation Guidelines with a mediator as agreed by the Parties or, failing agreement, as appointed by the Australian Disputes Centre or its nominee.
- (e) The mediation will be confidential, and the Parties must equally bear the mediator’s costs to the Dispute, and each Party must also bear their own legal costs.
- (f) If the Dispute is not resolved at mediation within ten (10) Business Days of the first mediation meeting then any Party is at liberty

to claim their costs against the other Parties, including the costs referred to in clause 35.2(e), and either Party may commence legal proceedings.

35.3 The Parties must continue to perform their obligations under this Agreement, including the delivery of Services and Deliverables, and payment of any Fees, while any Dispute is being resolved in accordance with this clause 35.

36. SERVICE OF NOTICES

36.1 Any communication under or in connection with this Agreement:

- (a) must be to the addresses as specified in the Reference Schedule, or to such other addresses as the Parties may subsequently nominate in writing to the other Party from time to time;
- (b) must be in writing; and
- (c) must be:
 - (i) sent by email to the email address of the addressee, or
 - (ii) delivered or posted by prepaid post to the address of the addressee;
- (d) in accordance with clause 36.2.

36.2 If a notice is sent or delivered in the manner provided in 36.1(c) it must be treated as given to or received by the addressee in the case of:

- (a) delivery by email, at the earlier of the time stated in a read receipt sent by the recipient’s computer or when the message has been delivered to the email address of the addressee, but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place;
- (b) delivery in person, when delivered; or
- (c) delivery by post, on the fifth (5th) Business Day after posting.

37. SPECIAL CONDITIONS

37.1 The Parties agree that they will be bound by any Special Conditions set out in the Reference Schedule.

37.2 In the event of any conflict in the interpretation of the Special Conditions and any part of this Agreement, the order of precedence in clause 38.8 applies.

38. GENERAL

38.1 Relationship

Nothing in this Agreement gives rise to any relationship of agency, partnership, employment or otherwise between the parties.

38.2 Set-off

The Principal may set off against any amount owing to the Consultant any amount owing, or claimed by the Principal to be owing, by the Consultant to the Principal, whether under this Agreement or otherwise

38.3 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with their respective subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

38.4 Reliance

Neither Party has entered into any contract under this Agreement in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in this Agreement.

38.5 Survival of Termination

The following clauses survive and continue after the termination or expiry of this Agreement:

- (a) 16 (Intellectual Property);
- (b) 17 (Moral Rights Consent);
- (c) 18 (Confidentiality);
- (d) 19 (Protective Covenant);
- (e) 20 (Privacy);
- (f) 21 (Indemnity);
- (g) 22 (Limitation of Liability);
- (h) 23 (Insurance);
- (i) 27 (Consequences of Termination);
- (j) 29 (Audit and Records);
- (k) 35 (Dispute Resolution); and
- (l) 36 (Service of Notices).

38.6 Further assurance

Each Party must promptly do anything (including executing any document) and must ensure that its Personnel do anything (including executing any document) that the other Party may reasonably require to give full effect to this Agreement and to perform its obligations under this Agreement.

38.7 Conflict of Provisions

Where any conflict occurs between the provisions contained in this Agreement, such provisions will be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from this Agreement without otherwise diminishing the enforceability of the remaining provisions of this Agreement.

38.8 Inconsistency and Precedence

In the event of any inconsistency between:

- (a) the Special Conditions (if any);
- (b) the Reference Schedule;
- (c) these Standard Terms and Conditions; and
- (d) any other schedules, annexures or attachments,

the document listed first in this clause 38.8 will prevail to the extent of the inconsistency.

38.9 Liability of Parties

If a Party consists of more than one person:

- (a) an obligation of that Party is a joint obligation of all of those persons and a several obligation of each of them; a right given to that Party is a right given jointly and severally to each of those persons, and if exercised by one of them, is deemed to be exercised jointly; and
- (b) a representation, warranty or undertaking made by that Party is made by each of those persons.

38.10 Limitation and Breach

In the event of any breach of this Agreement by the Principal the remedies of the Consultant shall be limited to damages which under no circumstances shall exceed the Fees.

38.11 Public Announcements

- (a) Except as required by any applicable Law or as otherwise permitted by this Agreement, the Consultant must not make any public announcements or disclosures without the Principal's prior written consent.
- (b) If the Principal consents to the making of a public announcement or disclosure under this clause, then the Principal must in writing first approve the wording and the manner or publication of such announcement or disclosure.

38.12 Severability

If any provision of this Agreement at any time is or becomes void or voidable or unenforceable:

- (a) the remaining provisions, if any, will continue in full force and effect; and
- (b) any such void, voidable or unenforceable provision will be replaced by a lawful and enforceable provision which, so far as possible, achieves the same economic and other benefits for the Principal and the Consultant, as the void, unlawful or unenforceable provision was intended to achieve.

38.13 Waiver

A right may only be waived in writing, signed by the Party giving the waiver, and:

- (a) no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

38.14 Amendment

No amendment of this Agreement is effective unless made in writing and signed by each Party.

38.15 Governing law

This Agreement is governed by the laws of Western Australia and each Party submits to the exclusive jurisdiction of the courts of Western Australia.

38.16 Counterparts

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

38.17 Electronic Exchange of Agreement

A Party may exchange an executed counterpart of this Agreement with another Party by sending it by email to the other Party or that other Party's legal representative. In such an instance:

- (a) the exchange by email will be deemed to be an effective exchange of an originally executed counterpart; and
- (b) whilst the Party that provided this Agreement by email is still required to provide an originally executed counterpart to each other Party either by hand or post as soon as possible, the failure or delay in doing so will not affect the validity or effectiveness of this Agreement or the exchange.

39. DEFINITIONS AND INTERPRETATION

39.1 Definitions

In this Agreement, except where the context otherwise requires:

Agreement means this agreement, including these terms and conditions, the Reference Schedule and any other schedules, annexures or attachments.

Anti-Bribery and Corruption Laws means any law prohibiting or relating to bribery, corruption, kickbacks, secret commissions or money laundering, including the *Foreign Corrupt Practices Act 1977* (US),

the *Bribery Act 2010* (UK), the *Criminal Code Act 1995* (Cth), the *Crimes Act 1961* (NZ), the *Secret Commissions Act 1910* (NZ), and any anti-corruption regulations and provisions applicable in any other locations in which the Consultant carries on business.

Australian Consumer Law means the *Australian Consumer Law (Competition and Consumer Act 2010)* (Cth) as enacted and incorporated by each applicable Australian State and Territory.

Australian Disputes Centre means the Australian Disputes Centre Limited (ABN 87 003 042 840) and includes any other body as may replace, supersede or merge with it.

Business Day means any day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.

Commencement Date means:

- (a) the date specified in the Reference Schedule as being the date from which this Agreement takes effect; or
- (b) if no such date is specified, the date on which this Agreement is executed by the Parties, or the date the last Party executed this Agreement if the Parties did not execute this Agreement on the same date.

Confidential Information means information that is by its nature confidential, including information relating to the:

- (a) confidential business information, documents, records, financial information, reports, product specifications, technical information, forecasts, policies, practices and procedures, ratepayer, customer or business strategies of a Party;
- (b) any specifications, discoveries, inventions whether patentable or not, formulas, products, equipment, devices, materials, technical data, trade secrets, know-how and manuals of a Party
- (c) details of Personnel and other service providers of a Party;
- (d) Intellectual Property Rights of either Party;
- (e) the terms of this Agreement;

but does not include information:

- (f) already rightfully known to the receiving Party at the time of disclosure by the other Party; or
- (g) in the public domain other than as a result of disclosure by a Party in breach of its obligations of confidentiality under the Agreement; or
- (h) the receiving Party is required to disclose by law, including the listing rules of any relevant stock exchange.

Consequential Loss means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, loss of goodwill, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

Consultant means the person specified in the Reference Schedule.

Corporations Act means the Corporations Act 2001 (Cth).

Claim includes a claim, demand, action, proceeding, litigation, arbitration, expert determination or judgment however arising.

Deliverables means any Documents, contracts, plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, invoices and any other material specified in this Agreement (and whether embodied in tangible or electronic form) and things required under this Agreement to be handed over by the Consultant to the Principal.

Direction means any agreement, approval, assessment, authorisation, decision, determination, explanation, instruction, order, permission, rejection, request or requirement given or made by the Principal.

Documents includes information stored by electronic, physical and other means.

Fee means the money or other consideration payable under this Agreement for the performance of the Services as adjusted in accordance with this Agreement and includes those amounts stated in the Reference Schedule.

Force Majeure means an event or circumstance which:

- (a) is beyond the reasonable control of either Party;
- (b) is not caused by either Party;
- (c) can occur with or without human intervention; and
- (d) was not reasonably foreseeable by the parties at the time of entering into this Agreement,

the consequences of which could not have been reasonably prevented by the Party affected.

Government Authorisations means all certificates, licences, consents, permits, approvals, authorisations, clearances and requirements required, made or authorised by:

- (a) a Government Body; or
- (b) any Law.

Government Body means any federal, state, or local government, or any ministry, department, court, commission, board, agency, institution or similar entity of any such government.

GST means the tax payable on a taxable supply under A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related legislation.

Intellectual Property Right means all present and future rights conferred by statute, common law or equity in or in relation to inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks, business names, computer software, domain names, formulas, knowhow, recipes, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Insolvency Event means in respect of a Party:

- (a) being a company:
 - (i) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
 - (ii) is insolvent within the meaning of section 95A of the Corporations Act;
 - (iii) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
 - (iv) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
 - (v) has an administrator appointed over all or any of its assets or undertaking, or any step preliminary to the appointment of an administrator is taken;
 - (vi) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking; or
 - (vii) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, or class of them or any of them;

- (b) being an individual, commits an act of bankruptcy or makes a compromise or composition with or assignment of his property in favour of creditors; or

the occurrence of anything analogous or having a substantially similar effect to any of the preceding events.

IP Materials means all things, materials, documents, information and items developed by or on behalf of the Consultant or its Personnel in the course of or in connection with the supply of the Services in any form whatsoever (including electronic form) and includes Intellectual Property Rights.

Key Personnel means the Consultant's Personnel specified in the Reference Schedule.

Law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind

Liquidated Damages means an amount, as agreed between the Parties, as a genuine pre-estimate of loss to be recoverable by the Principal should the Consultant be in breach of this Agreement as specified in the Reference Schedule.

Modern Slavery has the meaning given to it in the Modern Slavery Act 2018 (Cth).

Moral Rights means the rights defined as 'Moral Rights' in the Copyright Act 1968 (Cth).

Moral Rights Consent means a waiver of Moral Rights to the extent permitted by Law and an unconditional consent to any act or omission in relation to the IP Materials by or on behalf of the creator of those IP Materials, or any licensee or subsequent assignee or owner of the copyright in the IP Materials.

Personal Information means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

Personnel means:

- (a) in relation to the Consultant, any of its officers, employees, contractors, sub-contractors, consultants, secondees, agents, and representatives involved either directly or indirectly in the supply of the Services under this Agreement (and includes the Consultant's Key Personnel); and

- (b) in relation to the Consultant, any of its past or present officers, employees, contractors, sub-contractors, consultants, secondees, agents and representatives.

Pre-Existing Materials means all things, goods, materials, Documents, information and items developed by or on behalf of the Consultant or the Principal independently of this Agreement.

Principal means the person specified in the Reference Schedule.

Privacy Act means the Privacy Act 1988 (Cth).

Privacy Law means:

- (a) the Privacy Act including the Australian Privacy Principles; and
(b) any code registered under the Privacy Act or Australian Privacy Principles.

Reference Schedule means the reference schedule so specified at the front of this Agreement.

Services means the services described in, or reasonably inferred from, the Reference Schedule and includes:

- (a) all the Consultant's services to undertake the contracted activities and works;
(b) any and all Deliverables; and
(c) any and all related goods (and where the context so permits shall include any supply of goods)
(d) supplied by the Consultant; and
(e) any variations authorised under this Agreement.

Special Conditions mean the special conditions (if any) to this Agreement as shown in the Reference Schedule and referred to in clause 37.

Standard Terms and Conditions means these terms and conditions.

Taxes means all taxes, levies, rates, charges, duties, imposts of any kind whatsoever, including withholding taxes.

Term means the period commencing on the Commencement Date and ending on:

- (a) the expiry of the term specified on the Reference Schedule; or
(b) if no term is specified on the Reference Schedule, the date on which both parties complete all of their obligations under this Agreement,

as may be extended by the Parties' mutual written agreement in accordance with clause 2.

39.2 Interpretation

In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

- (a) Headings are for convenience only and do not affect the interpretation of this Agreement.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) A reference to:
 - (i) "includes" means without limitation
 - (ii) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to, this Agreement;
 - (vi) this Agreement includes all schedules and attachments to it;
 - (vii) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
 - (viii) any Act of Parliament includes any amendments or re-enactments of the same or any Regulations made under that Act; and
 - (ix) a monetary amount is to Australian dollars (\$AUD).
- (f) To the extent permitted by law, if either Party consists of one or more persons, this Agreement binds such persons jointly and severally.
- (g) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (h) No rule of contract construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of it.

ANNEXURE A

INTELLECTUAL PROPERTY RIGHTS ASSIGNMENT

To be added to the contract when required.

DRAFT

ANNEXURE B

MORAL RIGHTS CONSENT

To be added to the contract when required.

DRAFT

SIGNATURES / EXECUTION

This Agreement binds each of the signatories to the full extent provided under this Agreement, notwithstanding that one or more of the persons named as a party have not executed or may never execute this Agreement or that the execution of this Agreement by any one or more of such persons (other than the person sought to be made liable) is or may become void or voidable.

Consultants who are companies executing this Agreement must, and will be deemed to, do so in accordance with s127 of the *Corporations Act 2001* (Cth) e.g. a sole director signing, any 2 directors signing, or any director and a secretary signing.

Executed as an agreement by the Consultant:

if an individual, by:

Signature(s)	
Name	(PLEASE PRINT)
ABN	
Date	
Witness Signature	
Witness Name	(PLEASE PRINT)
Witness Address	

if a company, executed in accordance with s127 of the Corporations Act 2001, by:

Company Name		
ACN/ABN		
Signature(s)		
	Sole Director / Director / Secretary*	Director
Signatories' Names	(PLEASE PRINT)	(PLEASE PRINT)
Date		

Details of Trust (if applicable)

Name of Trust	
ABN	
Signature(s)	
Name	(PLEASE PRINT)

* delete as applicable

Executed as an agreement by the Principal:

Signed by an authorised person(s) on behalf of the City of Gosnells:

Signature of authorised person	
Name	(PLEASE PRINT)
Title / Office	(PLEASE PRINT)
Date	

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