



Housing Authority

General Conditions for Engagement of a Consultant



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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these General Conditions, except where the context otherwise requires:

Act	means a statute (State or Federal) including amendments and re-enactments and any by-laws or regulations made pursuant to it;
Agreement	means the contract between the Authority and the Consultant for the supply of the Services by the Consultant, the terms and conditions of which are contained in the Letter, the Request, the General Conditions and the Offer;
Authority	means the Housing Authority, a body corporate constituted under the <i>Housing Act 1980</i> (WA);
Business Day	means any day except a Saturday, Sunday or public holiday in Perth, Western Australia;
Client Information	means all information supplied to the Consultant for the purposes of this Agreement;
Commencement Date	means the commencement date for the performance of the Services specified in the Letter or the Request;
Confidential Information	means: <ul style="list-style-type: none">(i) the Client Information;(ii) any information specified to be confidential in the Agreement; and(iii) any information the Consultant knows or ought to know is confidential;
Consequential Loss	means: <ul style="list-style-type: none">(i) any indirect loss or damage;(ii) loss of opportunity;(iii) loss of profit, anticipated profit, business, business opportunities or revenue;(iv) direct expenditure of time by managers and employees consequential upon any loss; or(v) damage to reputation;
Consultant	means the person or entity identified as the Consultant in the Letter;
Consultant's Personnel	means the Consultant's officers, employees, agents, subconsultants and subcontractors;
Consultant's Records	means records and information of any kind, including originals and duplicate copies of all accounts, financial statements, books, files reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the supply of the Services, whether or not it contains Confidential Information, and however such records and information are kept, held, stored or recorded;



Consultant's Covenants	means the covenants expressed or implied in this Agreement to be observed or performed by the Consultant;
Event of Default	means any of the following events: <ul style="list-style-type: none">(i) the Consultant breaches an obligation under this Agreement that cannot be remedied;(ii) the Consultant breaches or fails to observe or perform any other of the Consultant's Covenants and that breach or failure continues after the expiration of 14 days (or any longer period as the Authority may in its absolute discretion specify in the notice) of notice to the Consultant to remedy it;(iii) an Insolvency Event occurs;(iv) the Consultant makes a false representation or breaches a warranty under this Agreement;(v) the Consultant ceases, or threatens to cease to carry on the Services; or(vi) the Consultant or its employees or sub-Consultants is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, \$10,000;
Force Majeure Event	means any of the following events, acts or causes beyond the reasonable control of the Consultant: <ul style="list-style-type: none">(i) act of God, lightning, storm, flood, fire, earthquake, or cyclone;(ii) strike, lockout or other labour dispute; or(iii) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, quarantine or epidemic, except where: <ul style="list-style-type: none">(iv) the cause is the inability to obtain, use or pay moneys for any reason; or(v) the consequence of the cause could have been prevented, overcome or remedied by the exercise by the Consultant of care and diligence normally exercised by duly qualified persons in the performance of comparable work;
General Conditions	means these General Conditions for Engagement of a Consultant;
Indemnified Event	means any of the following events arising from or in connection with the Services or this Agreement: <ul style="list-style-type: none">(i) loss of or damage to property of the Authority;(ii) loss of or damage to property of any third party;(iii) death or injury to any person;(iv) breach of the Consultant's obligations under clause 5 (warranties);(v) breach of the Consultant's obligations under clause 8 (intellectual property);(vi) breach of the Consultant's obligations under clause 9 (confidentiality);(vii) an Insolvency Event; or(viii) any negligent, malicious, fraudulent or unlawful act or omission of the Consultant or the Consultant's Personnel;
Indemnified Payment	means any money paid or incurred by the Authority in respect of an Indemnified Event, including legal and out-of-pocket expenses which may be suffered or incurred in connection with the exercise of a remedy conferred on the Authority under this Agreement;



Insolvency Event	means any of the following events: <ul style="list-style-type: none">(i) the Consultant goes into liquidation or becomes bankrupt or enters into any composition arrangement with or assignment for the benefit of the Consultant's creditors;(ii) a manager, administrator, trustee, receiver, receiver and manager or liquidator is appointed under any Act or instrument or by order of any court in relation to any part of the Consultant's undertakings assets or property; or(iii) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction;
IP Rights	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 and any other right in respect of intellectual property;
Letter	means the letter from the Authority to the Consultant accepting the Consultant's Offer;
New Material	means anything created by the Consultant under this Agreement in which IP Rights subsist;
Offer	means the offer for the supply of the Services provided by the Consultant to the Authority in response to the Request;
Price	means the price for the Services agreed by the parties and specified in the Agreement
Request	means either: <ul style="list-style-type: none">(i) the written request for quotation issued by the Authority to the Consultant for the supply of the Services; or(ii) if no written request for quotation is issued by the Authority, the verbal request for quotation issued by the Authority to the Consultant for the supply of the Services;
Services	means the services described in the Agreement; and
Term	means the initial term of this Agreement and includes any renewal or extension of that term.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph in, or a schedule or an annexure to, this Agreement and a reference to this Agreement includes any schedule or annexure;



- (d) a reference to dollars or \$ is to Australian currency;
- (e) a reference to time is to time in Perth, Western Australia;
- (f) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (k) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (n) headings are for ease of reference only and do not affect interpretation.

2. FORMATION OF AGREEMENT AND TERM

2.1 Formation of Agreement

- (a) The Agreement between the Authority and the Consultant comes into existence when the Authority provides the Letter to the Consultant.
- (b) The Authority engages the Consultant to provide the Services pursuant to the terms and conditions contained in this Agreement for the Term, commencing on the Commencement Date.

2.2 Order of precedence

If there is any inconsistency between the documents comprising this Agreement, then this Agreement will be read in the following order of precedence (in descending order of priority):

- (a) the Letter;
- (b) the Request;
- (c) the General Conditions; and
- (d) the Offer.



2.3 Extension of Term

The Authority may extend the Term, by giving the Consultant notice in writing at any time prior to the expiration of the Term, for the further period specified in the Agreement (if any) and otherwise on the same terms and conditions contained in this Agreement, other than this right of renewal.

3. SCOPE OF WORK

3.1 Services

- (a) The Consultant must perform the Services and comply with all instructions given by the Authority in respect of this Agreement. The Authority is not responsible for any costs resulting from any unauthorised act of the Consultant.
- (b) The Consultant must promptly notify the Authority of any matter which will or is likely to change, or has changed the scope or timing of the Services.

3.2 Additional Works

- (a) If the Authority requests in writing that the Consultant performs work in addition to the Services, then the Authority will pay the Consultant for the additional works at the rate specified in the Agreement, or if no rate is specified, at the rate agreed between the Authority and the Consultant.
- (b) If the parties are unable to agree to a rate within 14 days from the date of the Authority's request, then the rate will be a reasonable rate determined by the Authority.

3.3 Standard of Services

- (a) The Consultant must supply the Services in accordance with the Agreement and if no standards for the Services are specified the Consultant must supply the Services in accordance with the highest standards that usually apply to the supply of the Services and with proper skill, care and diligence.
- (b) The Consultant warrants that the Services, including any documents, reports or other things to be provided to the Authority by the Consultant as part of the Services, will be fit for their stated purpose.
- (c) For the purposes of clause 3.3(b), the stated purpose shall be the purpose expressly stated or otherwise implied from the documents comprising the Agreement.

3.4 Time for performing Services

- (a) Subject to clause 3.4(b), the Consultant must complete the Services by the time or, if the Agreement specifies that different parts of the Services are to be completed by different times, the times, stated in the Agreement.
- (b) The Authority must grant the Consultant a reasonable extension of time for any delay to completion of the Services caused by:
 - (i) an act or omission of the Authority or its officers, employees, agents or other consultants or contractors;
 - (ii) a Force Majeure Event; or
 - (iii) 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 Authority 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.

3.5 Consultant's employees or sub-Consultants

- (a) The Consultant must ensure that its employees or sub-consultants are competent and able to carry out the Services.
- (b) The Consultant must remove any of its employees or sub-consultants from providing the Services if the Authority provides a written notice to the Consultant requiring that person be removed. The Authority must provide a reason for the removal of the person in the notice.

3.6 Key Personnel

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

4. SUSPENSION

- (a) The Authority may suspend the performance of all or any part of the Services at any time by notice in writing to the Consultant.
- (b) The Consultant must recommence the Services when reasonably directed to do so by the Authority.
- (c) Unless the suspension has been directed due to the Consultant's wrongful conduct, the Authority must pay the Consultant any costs and expenses reasonably incurred by the Consultant as a result of the suspension.

5. WARRANTIES AND UNDERTAKINGS

5.1 General Warranties

The Consultant warrants that:

- (a) it has no conflict of interest arising out of this Agreement;
- (b) it is authorised and has the power to enter into this Agreement and perform the Services under this Agreement;
- (c) the Consultant's obligations under this Agreement are valid and binding and are enforceable against the Consultant;
- (d) all information provided by the Consultant to the Authority is true and correct;
- (e) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Consultant which could have a materially adverse effect on the Consultant's ability to provide the Services in accordance with this Agreement;
- (f) neither it, nor any of its employees, have been convicted of a criminal offence that is punishable by imprisonment or detention; and



- (g) there is nothing that prevents the Consultant from complying with the Consultant's obligations under this Agreement.

5.2 Undertakings

The Consultant must:

- (a) take proper care and safe custody of all the Consultant's Records that are in the possession or control of the Consultant;
- (b) promptly notify the Authority if there is any breach of the warranties in clause 5.1;
- (c) act ethically and in accordance with good corporate governance practices in connection with this Agreement at all times;
- (d) comply with all State and Commonwealth laws relevant to the provision of the Services and this Agreement;
- (e) cooperate with the Authority in respect of the administration of this Agreement; and
- (f) use its best endeavours to ensure that the Consultant's employees or sub-consultants do not breach this Agreement.

6. PAYMENT AND INVOICING

- (a) The Authority will pay to the Consultant the Price at the times and in the manner set out in the Letter.
- (b) The Consultant must give to the Authority an account for the Services performed and for the amount of the Price payable for those Services. The account given by the Consultant to the Authority must be set out in a manner that clearly identifies the Services the invoice covers and the amount of the Price payable for those Services.
- (c) Subject to clauses 6(d) and 6(e), the Authority will pay the full amount owing in respect of each account within 30 days of the receipt of the account if the amount in the account is correctly calculated in accordance with this Agreement and properly payable by the Authority.
- (d) If the Authority disputes the amount claimed in an account submitted by the Consultant, the Authority will notify the Consultant in writing within 14 days. If the parties are unable to reach agreement within 14 days of the Authority's notice, the dispute may be determined at the instigation of either party in accordance with the provisions of this Agreement relating to disputes.
- (e) The Authority has no obligation to make any payment to the Consultant unless and until the Services have been supplied to the Authority pursuant to this Agreement or a default under this Agreement has been remedied.
- (f) Payment of moneys will not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but will be a payment on account only, except as provided by clause 6(g)
- (g) Upon the issue of the Consultant's last account for the Services, the Authority will issue a payment certificate stating the amount of the payment which, in the opinion of the Authority, is to be made by the Authority to the Consultant or by the Consultant to the Authority ('**Final Payment Certificate**'). The Authority will set out in the Final Payment Certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Consultant, the reasons for the difference.



- (h) The Final Payment Certificate will be evidence in any proceedings of whatsoever nature and whether under this Agreement or otherwise between the parties arising out of this Agreement, that the Services have been completed in accordance with the terms of this Agreement and that any necessary effect has been given to all the terms of this Agreement which require additions or deductions to be made to sums paid for the Services, except in the case of—
- (i) fraud, dishonesty or fraudulent concealment relating to the Services to any matter dealt with in the Final Payment Certificate;
 - (ii) any defect (including omission) in the Services or any part thereof which was not apparent at the issue of the Final Payment Certificate, or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Payment Certificate; or
 - (iii) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation.

7. GST

- (a) In this clause 7, reference to the words '**GST**', '**consideration**', '**supplier**', '**recipient**', '**supply**', '**tax invoice**' and '**taxable supply**' have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless otherwise specified in the Agreement, any sum payable or consideration due under this Agreement is inclusive of GST.
- (c) If any sum payable or consideration due under this Agreement is expressed as being exclusive of GST, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.
- (d) If a GST amount is charged or varied under this Agreement, the supplier must provide to the recipient a valid tax invoice on or before the time of payment or variation.
- (e) If the amount of GST paid or payable by the supplier on any supply made under this Agreement differs from the amount of GST paid by the recipient as a result of the adjustment made by the Commissioner of Taxation, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as applicable.
- (f) The Consultant will pay to the Authority all duties, taxes and charges other than GST imposed or levied in Australia or overseas in connection with the supply of the Services.

8. INTELLECTUAL PROPERTY RIGHTS

- (a) The Consultant retains the IP Rights created outside the terms of this Agreement and used in performing the Services. The Consultant grants to the Authority a royalty-free, non-exclusive irrevocable licence to use such IP Rights for any purpose for which the Services are provided.
- (b) The Consultant automatically assigns the entire future IP Rights in all New Material to the Authority upon their creation.
- (c) The Authority grants to the Consultant a revocable, royalty-free, non-exclusive licence to use the Client Information and the New Material to the extent necessary to provide the Services. The licence will terminate on the expiration or termination of the Term.
- (d) To the extent the IP Rights in or relating to the New Material are not capable of being vested in the Authority because the Consultant does not own the IP Rights, the Consultant must obtain an irrevocable licence for the Authority to use those IP Rights.



- (e) This clause 8 does not affect the intellectual property rights the Consultant had prior to the date of engagement of the Consultant.
- (f) The Consultant's obligations under this clause 8 are a continuing obligation and must survive the expiration or earlier termination of this Agreement.

9. CONFIDENTIALITY

- (a) The Consultant must keep the Confidential Information confidential. The Consultant must not use or disclose to any person the Confidential Information except:
 - (i) where necessary for the purpose of supplying the Services;
 - (ii) as authorised in writing by the Authority or the Customer (as applicable);
 - (iii) to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the Consultant);
 - (iv) as required by any law, judicial or parliamentary body or governmental agency; or
 - (v) when required (and only to the extent required) to the Consultant's professional advisers, and the Consultant must ensure that such professional advisers are bound by the confidentiality obligations imposed on the Consultant under this clause 9.
- (b) The Consultant's obligations under this clause 9 are a continuing obligation and will survive the expiration or earlier termination of this Agreement.

10. ACCESS

- (a) If the Consultant has custody or control of State records in the supply of the Services in accordance with the *State Records Act 2000* (WA), the Consultant must, to the extent necessary, comply with the Authority's record keeping plan.
- (b) Subject to the Authority providing reasonable prior notice to the Consultant, the Consultant must provide access to the Authority to inspect, audit, examine, copy and use all or any Consultant's Records in its possession and control at its premises or if requested by the Authority deliver the Consultant's Records to the Authority.

11. CONFLICT OF INTEREST

- (a) During the Term of this Agreement, the Consultant will not provide services to any other party if to do so would, or would potentially, create a conflict of interest, without the Authority's written consent.
- (b) If an actual, potential or perceived conflict of interest arises the Consultant must:
 - (i) promptly notify the Authority and any relevant parties that the conflict has arisen and provide full details; and
 - (ii) take reasonable steps in consultation with the Authority and any relevant parties to resolve the conflict.

12. INSURANCE

- (a) The Consultant must effect and maintain the following insurances:
 - (i) public liability insurance covering the legal liability of the Consultant and the Consultant's Personnel arising out of the Services for an amount of not less than \$10 million (or any greater amount specified in the Request) for any one occurrence and unlimited in the number of occurrences happening in the period of insurance;



- (ii) workers' compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than \$50 million for any one occurrence in respect of workers of the Consultant. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers' Compensation and Injury Management Act 1981*; and
 - (iii) professional indemnity insurance covering the legal liability of the Consultant and the Consultant's Personnel under this Agreement, if awarded, arising out of any act, negligence, error or omission made or done by or on behalf of the Consultant, or any subcontractor in connection with this Agreement for an amount of not less than \$1 million (or any greater amount specified in the Request) for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance.
- (b) The professional indemnity insurance referred to in clause 12(a) must be maintained for a period of 6 years following the expiration or earlier termination of this Agreement and must include:
 - (i) fraud and dishonesty;
 - (ii) defamation;
 - (iii) infringement of intellectual property rights;
 - (iv) loss of or damage to documents and data; and
 - (v) breach of the Australian Consumer Law.
- (c) The Consultant must:
 - (i) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause 12(a);
 - (ii) not vary or cancel any insurance required under clause 12(a) or allow it to lapse during the Term; and
 - (iii) not do or allow to be done anything which may void or render void the insurance or entitle the insurer to refuse a claim.
- (d) The Consultant must give to the Authority a copy of the insurance policy specified in clause 12(a) or a certificate of currency if requested by the Authority at any time.
- (e) If the Consultant fails to provide a copy of the insurance policy or a certificate of currency under clause 12(d), the Authority may withhold payment of any money due under this Agreement to the Consultant until the Consultant has complied with clause 12(d).

13. INDEMNITY, LIMITATION OF LIABILITY AND SET OFF

13.1 Indemnity

- (a) The Consultant irrevocably and continually indemnifies the Authority in respect of any and all actions, claims, proceedings, losses, costs, expenses and damage that may be made, brought against, suffered or incurred by the Authority directly or indirectly in connection with any Indemnified Event and for any Indemnified Payments.
- (b) The Consultant's liability under the indemnity in clause 13.1(a) will be reduced proportionally to the extent that any costs, losses, expenses, claims, damages or other liabilities result from the negligence of the Authority or its respective officers, employees or agents.



13.2 Limitation of Liability

To the extent permitted by law, the liability of the Consultant to the Authority arising under or in connection with this Agreement is limited in the aggregate to the amount specified in the Request (if any), except with respect to:

- (a) personal injury (including psychological injury) or death;
- (b) infringement of IP Rights;
- (c) fraudulent, malicious or criminal conduct;
- (d) wilful default; or
- (e) conduct with reckless disregard for the consequences,

of or by the Consultant or the Consultant's Personnel.

13.3 Liability of Authority

- (a) If the Authority breaches this Agreement, the remedies of the Consultant are limited to damages except where:
 - (i) the Authority repudiates the Agreement; or
 - (ii) the Consultant seeks an injunction on the grounds that damages are not an appropriate remedy.
- (b) The Authority is not liable to the Consultant for any Consequential Loss suffered or incurred as a result of any act or omission by the Authority.

13.4 Right of Set Off

The Authority may set off or deduct any amount claimed by the Consultant from any amount owing by the Authority to the Consultant on any account under this Agreement or any other agreement between the Authority and the Consultant.

13.5 Survival

This clause 13 will survive the expiration or earlier termination of this Agreement.

14. DEFAULT AND TERMINATION

14.1 Performance of Services by Authority

- (a) If the Authority is not satisfied with the Services, then, without limiting any other remedy available to the Authority, the Authority may by notice to the Consultant require the Consultant to re-supply the Services at no cost to the Authority.
- (b) If the Consultant fails to provide the Services as required by clause 14.1(a), the Authority may engage another consultant to provide the Services and the Consultant must reimburse the Authority for any additional costs and expenses incurred by the Authority as a result of engaging another consultant.



14.2 Termination for cause

Notwithstanding clause 14.3, the Authority may terminate this Agreement with immediate effect by notice to the Consultant if:

- (a) an Event of Default occurs;
- (b) in the reasonable opinion of the Authority the Services will not be completed by the Consultant in accordance with this Agreement due to any event or circumstances; or
- (c) the Consultant fails, refuses or neglects to comply with any instruction or direction lawfully given to it by the Authority pursuant to this Agreement.

14.3 Termination for convenience

- (a) The Authority may terminate this Agreement by serving a notice on the Consultant requiring that this Agreement terminate on a date specified in the notice being not less than 30 days from the date of the notice.
- (b) If the Authority terminates the Agreement under clause 14.3(a), the Authority must pay the Consultant the proportion of the Price equivalent to the Services provided up to the date of termination and any costs and expenses reasonably incurred by the Consultant as a result of the termination.

14.4 Yield up

On the expiry or earlier termination of this Agreement, the Consultant must:

- (a) deliver to the Authority all the Consultant's Records as required by the Authority;
- (b) not represent that the Consultant is any way connected to the Authority;
- (c) return all of the Confidential Information to the Authority;
- (d) in every other respect co-operate with the Authority as reasonably required by the Authority in order to minimise any loss, damage or inconvenience to the Authority and Consultant resulting from the expiration or termination of this Agreement.

14.5 Authority's further rights on Termination

Nothing in clause 14 must be taken as in any way restricting any right of the Authority to claim and institute proceedings for damages arising out of any breach of this Agreement by the Consultant.

15. DISPUTE RESOLUTION

- (a) If a dispute between the parties arises in connection with this Agreement, then either party may give the other party a written notice of the dispute, adequately identifying and providing details of the dispute.
- (b) Within 10 Business Days after service of a notice of dispute, the parties must confer at least once to resolve the dispute or to agree on methods of doing so. Each party must be represented by a person having authority to settle the dispute or agree to the method of resolution. All conferences under this clause must be conducted in good faith and without prejudice.
- (c) If the dispute has not been resolved within 20 Business Days of service of the notice of dispute, either party may commence legal proceedings or, if agreed in writing by the parties, commence alternative dispute resolution proceedings.



16. NO ASSIGNMENT

- (a) The Consultant must not sell, assign, novate, transfer, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under this Agreement without the written consent of the Authority.
- (b) The obligations on the part of any assignee expressed or implied in any deed of assignment and in favour of the Authority are supplementary to those contained in this Agreement and do not in any way relieve the Consultant from the Consultant's Covenants. Despite any assignment by the Consultant of the benefit of this Agreement the Consultant must remain liable to observe and perform the Consultant's Covenants.

17. SUB-CONSULTANT/CONTRACTOR

- (a) If circumstances arise which require expertise outside the field of practice of the Consultant, the Consultant may, with the prior written approval of the Authority, engage an appropriate sub-consultant to perform relevant Services under this Agreement. The Consultant will be responsible for the engagement of and payment for any Services provided by sub-consultants, and will accept responsibility for those Services.
- (b) The Consultant must ensure that it is a term of any agreement to subcontract that the remuneration and terms of employment of any employee employed by a sub-consultant for the performance of the agreement to subcontract will, for the duration of the agreement to subcontract, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.
- (c) The Consultant must, if requested by the Authority, supply to the Authority a copy of any subcontract, which copy may exclude commercially sensitive information but must indicate that the Consultant has complied with this clause 17.
- (d) The engagement by the Consultant of a sub-consultant does not relieve the Consultant from its obligation to perform the Consultant's obligations under this Agreement.

18. RELATIONSHIP

- (a) The Agreement does not create a relationship of employment, trust, agency, partnership or joint venture between the parties.
- (b) The Consultant must not represent that the Consultant is the employee, agent, partner or joint venture partner of the Authority.

19. NOTICES AND OTHER COMMUNICATIONS

19.1 Service of Notices

A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:

- (a) in writing, in English and given by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Request (as varied by any Notice given by the recipient to the sender) or if no address has been specified, to the recipient's registered office.



19.2 Effective on Receipt

A Notice given in accordance with clause 19.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the third Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

20. GENERAL PROVISIONS

20.1 Waiver

A party does not waive a right, power, or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

20.2 Entire Agreement

The Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

20.3 Counterparts

The Agreement may be executed in counterparts. All executed counterparts together constitute one document.

20.4 Variation

The Agreement may not be varied unless agreed in writing by both parties.

20.5 No Merger

Any right or obligation of any party that is expressed to operate, or will have effect, on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event, but will remain in full force and effect.

20.6 Severability

- (a) The parties agree that a construction of this Agreement results in all provisions being enforceable is to be preferred to a construction that does not so result.
- (b) If, despite the application of clause 20.6(a), a provision of this Agreement is illegal or unenforceable, that provision may be severed, and the remainder of this Agreement will otherwise continue in full force and effect.



20.7 Applicable Law

The Agreement is governed by the law of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

20.8 Cumulative Rights

The rights powers and remedies in this Agreement are in addition to and not exclusive of the rights powers and remedies existing at law or in equity.

20.9 Auditor General

- (a) The powers and duties of the Auditor General are not limited or otherwise affected by the terms and conditions of this Agreement.
- (b) The Consultant must allow the Auditor General or an authorised representative of the Auditor General to have access to and examine the Consultant's Records concerning this Agreement.

20.10 Consent

Except where this Agreement expressly states otherwise, a party may, in its absolute discretion, give (conditionally or unconditionally) or withhold any approval or consent under this Agreement. Nothing in this Agreement requires the party to provide a reason or reasons for giving or refusing its consent.

20.11 Further Assurance

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

20.12 Costs

- (a) Each party must pay its own costs of negotiating, preparing and executing this Agreement (including, if applicable, duty on this Agreement).
- (b) Unless otherwise stated in this Agreement, the Consultant must comply with its obligations under this Agreement at the Consultant's cost.