**General Conditions for Engagement of a Consultant**

**September 2024**

***NOTE TO USER (TO BE REMOVED BEFORE ISSUE)***

***1. USE OF THIS TEMPLATE***

* This template is to be used for the engagement of Consultants for services procured to directly enable the construction works. For example, architects, engineers, quantity surveyors, Superintendent’s Representative etc. Please ask Procurement for further guidance if necessary.

***2. WORK HEALTH AND SAFETY***

* This template assumes that there is another entity appointed as the Principal Contractor (for the purpose of a “construction project” under the WHS Legislation).
* It assumes that DoC does not intend to appoint this consultant as the Principal Contractor.
* It is assumed that the engaged Consultant is not performing construction works that are a “construction project” for the purpose of WHS Legislation.
* If it is intended or necessary to appoint this consultant as the Principal Contractor then additional provisions are required.

**TABLE OF CONTENTS**

[1. DEFINITIONS AND INTERPRETATION 8](#_Toc178243709)

[1.1 Definitions 8](#_Toc178243710)

[1.2 Interpretation 13](#_Toc178243711)

[2. SCOPE OF CONTRACT AND HEAD AGREEMENT 14](#_Toc178243712)

[2.1 Services 14](#_Toc178243713)

[2.2 Pricing 14](#_Toc178243714)

[2.3 Term of Contract 14](#_Toc178243715)

[2.4 Scope of Head Agreement 14](#_Toc178243716)

[2.5 Term of Head Agreement 14](#_Toc178243717)

[2.6 Extension of Head Agreement 14](#_Toc178243718)

[3. FORMATION OF CONTRACT AND HEAD AGREEMENT 15](#_Toc178243719)

[3.1 Formation of Contract 15](#_Toc178243720)

[3.2 Formation of Head Agreement 15](#_Toc178243721)

[3.3 Constitution of Contract 15](#_Toc178243722)

[3.4 Generally 16](#_Toc178243723)

[3.5 Orders 16](#_Toc178243724)

[3.6 Supply of Services 16](#_Toc178243725)

[3.7 Variation of Head Agreement 17](#_Toc178243726)

[3.8 Variation of Order 17](#_Toc178243727)

[3.9 Effect of Expiration or Termination of the Head Agreement 17](#_Toc178243728)

[The Principal and the Consultant agree that: 17](#_Toc178243729)

[3.10 Effect of Expiration or Termination of Orders 17](#_Toc178243730)

[3.11 Dealing with Head Agreement 17](#_Toc178243731)

[3.12 Change Panel 17](#_Toc178243732)

[3.13 Order of precedence – Head Agreement Documents 17](#_Toc178243733)

[3.14 Order of precedence –Contract Documents 18](#_Toc178243734)

[4. SUPPLY OF SERVICES AND CONTRACTING SERVICES 18](#_Toc178243735)

[4.1 Supply of Services 18](#_Toc178243736)

[4.2 Additional Services 18](#_Toc178243737)

[4.3 Standard of Services 19](#_Toc178243738)

[4.4 Time for performing Services 19](#_Toc178243739)

[4.5 Consultant's Personnel 19](#_Toc178243740)

[4.6 Key Personnel 20](#_Toc178243741)

[4.7 Police Clearance 20](#_Toc178243742)

[5. SUSPENSION 20](#_Toc178243743)

[5.1 Suspension - Contract 20](#_Toc178243744)

[5.2 Suspension – Head Agreement 20](#_Toc178243745)

[6. WARRANTIES AND UNDERTAKINGS 21](#_Toc178243746)

[6.1 General Warranties 21](#_Toc178243747)

[6.2 Consultant Warranties 21](#_Toc178243748)

[6.3 Undertakings 21](#_Toc178243749)

[7. PAYMENT AND INVOICING 22](#_Toc178243750)

[8. GST 23](#_Toc178243751)

[9. INTELLECTUAL PROPERTY RIGHTS 24](#_Toc178243752)

[10. CONFIDENTIALITY 24](#_Toc178243753)

[11. ACCESS 24](#_Toc178243754)

[12. CONFLICT OF INTEREST 25](#_Toc178243755)

[13. INSURANCE 25](#_Toc178243756)

[13.1 Head Agreement Insurance Requirements 25](#_Toc178243757)

[13.2 Contract Insurance Requirements 25](#_Toc178243758)

[13.3 Reputable and Solvent Insurer 26](#_Toc178243759)

[13.4 Maintenance of Insurance 26](#_Toc178243760)

[13.5 Evidence of Insurance 26](#_Toc178243761)

[13.6 Failure to Prove Insurance 26](#_Toc178243762)

[13.7 Incidents and claims 26](#_Toc178243763)

[13.8 Continuing Obligation 26](#_Toc178243764)

[13.9 No Limitation of Other Liabilities 27](#_Toc178243765)

[14. INDEMNITY, LIMITATION OF LIABILITY AND SET OFF 27](#_Toc178243766)

[14.1 Indemnity 27](#_Toc178243767)

[14.2 Limitation of Liability 27](#_Toc178243768)

[14.3 Liability of Principal 27](#_Toc178243769)

[14.4 Right of Set Off 28](#_Toc178243770)

[14.5 Survival 28](#_Toc178243771)

[15. PERFORMANCE MANAGEMENT 28](#_Toc178243772)

[16. GOVERNMENT POLICY 28](#_Toc178243773)

[17. WORK HEALTH AND SAFETY 28](#_Toc178243774)

[18. DEFAULT AND TERMINATION 28](#_Toc178243775)

[18.1 Performance of Services by Principal 28](#_Toc178243776)

[18.2 Termination of Contract for cause 29](#_Toc178243777)

[18.3 Termination of Contract for convenience 29](#_Toc178243778)

[18.4 Consequences of Expiration or Termination - Contract 29](#_Toc178243779)

[18.5 Principal's further rights on Termination 29](#_Toc178243780)

[18.6 Termination – Head Agreement 29](#_Toc178243781)

[18.7 Consequences of Expiration or Termination – Head Agreement 30](#_Toc178243782)

[19. DISPUTE RESOLUTION 30](#_Toc178243783)

[20. NO ASSIGNMENT 30](#_Toc178243784)

[21. NOVATION 30](#_Toc178243785)

[22. SUB-CONSULTANT/CONTRACTOR 31](#_Toc178243786)

[23. RELATIONSHIP 31](#_Toc178243787)

[24. NOTICES AND OTHER COMMUNICATIONS 32](#_Toc178243788)

[24.1 Service of Notices 32](#_Toc178243789)

[24.2 Effective on Receipt 32](#_Toc178243790)

[25. GENERAL PROVISIONS 32](#_Toc178243791)

[25.1 Waiver 32](#_Toc178243792)

[25.2 Entire Agreement 32](#_Toc178243793)

[25.3 Counterparts 32](#_Toc178243794)

[25.4 Variation 33](#_Toc178243795)

[25.5 No Merger 33](#_Toc178243796)

[25.6 Severability 33](#_Toc178243797)

[25.7 Applicable Law 33](#_Toc178243798)

[25.8 Cumulative Rights 33](#_Toc178243799)

[25.9 Auditor General 33](#_Toc178243800)

[25.10 Consent 33](#_Toc178243801)

[25.11 Further Assurance 34](#_Toc178243802)

[25.12 Costs 34](#_Toc178243803)

[25.13 Trusts 34](#_Toc178243804)

[Annexure A – Deed of Novation 1](#_Toc178243805)

# DEFINITIONS AND INTERPRETATION

## 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;

**Building Contract** means the contract for construction of the project the subject of the Services;

**Business Day** means any day except a Saturday, Sunday or public holiday in Perth, Western Australia;

**Buying Rules** means the defined processes used by the Principal to purchases Services under a Panel Arrangement (if any), which may be changed from time to time during the Term at the Principal’s discretion. The Buying Rules at the date of the Panel Arrangement are set out in Schedule 5 of the Request

**Principal Information** means all information supplied to the Consultant for the purposes of this Contract;

**Commencement Date** means the commencement date for the performance of the Services specified in the Letter or, if not otherwise specified in the Letter, in the Request;

**Confidential Information** means:

1. the Client Information;
2. any information specified to be confidential in the Contract; and
3. any information the Consultant knows or ought to know is confidential;

**Consequential Loss** means**:**

1. any indirect loss or damage;
2. loss of opportunity;
3. loss of profit, anticipated profit, business, business opportunities or revenue;
4. direct expenditure of time by managers and employees consequential upon any loss; or
5. damage to reputation;

**Consultant** means the person or entity identified as the Consultant in the Letter;

**Consultant Background IP** means IP Rights owned by or licensed to the Consultant (including know-how and technical information) which exist prior to the date of the Contract or are developed or acquired by the Consultant independently of this Contract, which are used by the Consultant in the provision of the Services and / or performance of the Services or otherwise made available to the Principal under or in connection with this Contract.

**Consultant's Covenants** means the covenants and obligations expressed or implied in this Contract to be observed or performed by the Consultant;

**Consultant’s Personnel** means the Consultant’s Workers (including subconsultants and subcontractors) and the directors, officers, employees, representatives, volunteers and agents of the Consultant and each of the Consultant’s Workers engaged in relation to the provision of the Services;

**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;

**Contract** means the contract between the Principal and the Consultant for the supply of the Services by the Consultant, the terms and conditions of which are contained in the Contract Documents

**Contract Details** means the relevant Schedule in Schedule 1 to the Request describing the specific requirement of the Principles in respect of the Services to be delivered by the Consultant.

**Contract Documents** means either:

### if the parties are required to execute a Formal Instrument of Agreement, including when buying off a Panel Arrangement, then the documents set out in the Formal Instrument of Agreement; or

### the documents as set out in the Letter including when buying off a Panel Arrangement; or

### if not specified in the Formal Instrument of Agreement (if any) or otherwise in the Letter, then the following documents constitute a Contract between the Principal and the Consultant

#### the Formal Instrument of Agreement (if any);

#### the Letter and/or Order;

#### when buying off a Panel Arrangement, the price list in the Head Agreement, where applicable to the goods and services the subject of the Contract

#### when buying off a Panel Arrangement, the letter awarding the Head Agreement;

#### the Contract Details;

#### these General Conditions

#### the Request, including any addenda; and

#### the Tender:

**Contract Term** means the term specified in the Contract Details, as adjusted pursuant to these General Conditions

**Contractor** means the party which enters into the Building Contract with the Principal;

**Event of Default** means any of the following events:

1. the Consultant breaches an obligation under this Contract that cannot be remedied;
2. 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 Principal may in its absolute discretion specify in the notice) of notice to the Consultant to remedy it;
3. an Insolvency Event occurs, subject to any restrictions on their enforcement under Part 5.1, Part 5.2 or Division 17 of Part 5.3A Corporations Act 2001 (Cth);
4. the Consultant makes a false representation or breaches a warranty under this Contract;
5. the Consultant ceases, or threatens to cease to carry on the Services;
6. the Consultant becomes a debarred supplier (or having been a debarred supplier as the commencement of the Contract) as defined in section 32 of the *Procurement Act 2020* (WA), subcontracts, or allows a sub-consultant to subcontract, with a debarred supplier as defined in section 32 of the *Procurement Act 2020* (WA), or fails to terminate a subcontract, or ensure that a sub-consultant terminates a subcontract, with a party that has become a debarred supplier as defined in section 32 of the *Procurement Act 2020* (WA); or
7. 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:

1. act of God, lightning, storm, flood, fire, earthquake, or cyclone;
2. strike or lockout, excluding industrial action which is solely in respect of a difference or dispute between the Contractor and its Subcontractors and their respective employees; or
3. 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, epidemic or pandemic,

except where:

1. the cause is the inability to obtain, use or pay moneys for any reason; or
2. 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;

**Formal Instrument of**

**Agreement** means the formal instrument of agreement executed by the parties in respect of the engagement by the Principal of the Consultant for the performance of the Services;

**General Conditions** means these General Conditions for Engagement of a Consultant;

**Head Agreement** means any head agreement entered into between the Principal and the Consultant under a Panel Arrangement.

**Head Agreement Details** means the relevant Schedule under Schedule 1 in the Request describing the specific requirements of the Principal in respect of the Services to be delivered by the Consultant under Contracts.

**Head Agreement Documents** means:

1. the letter or other instrument issued by the Principal accepting the Consultant’s Tender which may also specify:
   1. any amendments to these General Conditions, the Head Agreement or the Contract or any of them;
   2. any other terms and conditions which are to form part of the Head Agreement or Contract or both; and

which the Principal and the Consultant have agreed;

1. the Head Agreement Details
2. these General Conditions
3. the Request; including any addenda; and
4. the Tender.

**Head Agreement Term** means the term of the Head Agreement setout in the Head Agreement Details as adjusted pursuant to these General Conditions.

**Indemnified Event** means any of the following events arising from or in connection with the Services or this Contract:

1. loss of or damage to property of the Principal;
2. loss of or damage to property of any third party;
3. death or injury to any person;
4. breach of the Consultant’s obligations under clause 5 (warranties);
5. breach of the Consultant’s obligations under clause 8 (intellectual property);
6. breach of the Consultant’s obligations under clause 9 (confidentiality);
7. an Insolvency Event; or
8. 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 Principal 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 Principal under this Contract;

**Insolvency Event** means any of the following events:

1. 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;
2. 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
3. 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;

**Legislative** **Requirements** means:

1. any legislation or subordinate legislation;
2. any approvals or permits;
3. any codes or standards

applicable to the Services and/or the Site.

**Letter** means the letter from the Principal to the Consultant accepting the Consultant's Tender;

**Native File Format** means the file structure of an electronic document as defined by the original software or application from which the document was created including reference to the name and version of the software or application used;

**New Material** means anything created by the Consultant pursuant to or in respect of this Contract, in which IP Rights subsist, to be supplied to the Principal and includes without limitation electronic copies in PDF and Native File Format prepared by the Consultant pursuant to or in respect of this Contract;

**Order** means a Contract for the Services made by the Principal under a Head Agreement.

**Panel** means the panel of suppliers of the services established under clauses 3.2, where each supplier must provide Services to Principals in accordance with the Head Agreement and the relevant Contract.

**Panel Arrangement** means the arrangement for the supply of Services by Panel members to the Principal.

**Panel Member** means a successful Consultant or other entity who has been appointed as a member of the Panel

**Price** means theprice for the Services that is:

#### specified in the Contract or Head Agreement; or

#### Determined by applying any formula or method that is specified in the Contract or Head Agreement.

**Principal** means the person (if any) specified as the Principal in the Contract, Head Agreement, or both (as applicable);

**Principal’s Personnel** means the officers, employees, representatives, agents, consultants and contractors (other than the Consultant) of the Principal;

**RCTI Agreement** means a Recipient Created Tax Invoice Agreement.

**Records** means records and information of any kind, including original and 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 provision of the Services, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

**Request** means:

1. the written request for tender or request for quotation issued by the Principal to the Consultant for the supply of the Services; or
2. if no written request for tender or quotation is issued by the Principal, the verbal request for quotation issued by the Principal to the Consultant for the supply of the Services;

**Schedule** means a schedule to the Request

**Services** means the services to be performed by the Consultant as described in the Contract or Head Agreement;

**Site** means the site forconstruction of the project the subject of the Services; and

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

**Specified Personnel** means the Consultant Personnel specified in the Contract.

**Tender**  means the tender submitted by the Consultant in response to the Request;

**Term** means the initial term of the Contract or Head Agreement or both of them as the context requires and includes any extension of that initial term.

**WHS**  means work health and safety;

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

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

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

1. any relevant Australian Standards;
2. any relevant Codes of Practice or guidance material published by the Western Australian Department of Mines, Industry Regulation and Safety, or other relevant WHS Regulator or authority and
3. any licences, terms or conditions imposed by any government, or relevant WHS Regulator or authority;

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

## Interpretation

In this Contract, except where the context otherwise requires:

### the singular includes the plural and vice versa, and a gender includes other genders;

### a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;

### a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

### if the Consultant consists of a partnership or joint venture, then:

#### an obligation imposed on the Consultant under the Head Agreement or the Contract binds each person who comprises the Consultant jointly and severally;

#### each person who comprises the Consultant is deemed to agree to do all things necessary to enable the obligations imposed on the Consultant under the Head Agreement or the Contract to be undertaken; and

#### the act of one person who comprises the Consultant binds the other persons who comprises the Consultant; and

#### an Event of Default by one person who comprises the Consultant constitutes and Event of Default by the Consultant

### 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;

### another grammatical form of a defined word or expression has a corresponding meaning;

### a reference to the Head Agreement or the Contract or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identify of, the Principal or the Consultant.

### 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 Contract and a reference to this Contract includes any schedule or annexure;

### a reference to dollars or $ is to Australian currency;

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

### a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party’s executors, administrators, successors and permitted assigns and substitutes;

### 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;

### the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

### 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;

### a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;

### 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

### headings are for ease of reference only and do not affect interpretation.

# SCOPE OF CONTRACT AND HEAD AGREEMENT

## Services

### **If this is a Panel Arrangement the Head Agreement constitutes a standing offer whereby the Principal may acquire Services specified in the Head Agreement from the Consultant**

### **If this is not a Panel Arrangement, the Contract is for the Services specified in the Contract Documents.**

## Pricing

The Price is:

### in the case of a Panel Arrangement, determined by reference to the Head Agreement and any Order; or

### if not a Panel Arrangement, determined by reference to the Contract.

## Term of Contract

The Contract is for the Contract Term.

## Scope of Head Agreement

The Principal and the Consultant agree that:

### the Consultant must maintain an offer throughout the Head Agreement Term to supply the Services to Principal, which offer may be accepted by a Principal at any time during the Head Agreement Term, on the terms and conditions set out in the Head Agreement; and

### the Head Agreement only confers on the Consultant the right to enter into a Contract:

#### for the supply of the Services described in the Head Agreement; and

#### that conform to:

1. the price list contained in the Head Agreement;
2. the Contract Details; and
3. the General Conditions

## Term of Head Agreement

The Head Agreement is for the Head Agreement Term.

## Extension of Head Agreement

The Principal has the option or options (exercisable in its absolute discretion) to extend the Head Agreement Term for the period or periods (as applicable) specified in the Head Agreement.

If the Principal wishes to exercise an option under this clause, then the Principal must give the Consultant a notice:

### By the date or dates specified in the Head Agreement; or

### If no period is specified in the Head Agreement, at least 20 Business Days before the expiry of the Head Agreement Term,

stating that the Head Agreement is to be extended and the period of extension.

If the Principal exercises an option under this clause, then references to “the Head Agreement Term” or, if applicable “the Term” in these General Conditions are to be read as including the period of extension of the Head Agreement Term.

# FORMATION OF CONTRACT AND HEAD AGREEMENT

### In this clause 3, if this is a Panel Arrangement the sub-clause 3.3 to 3.14 are part of the Head Agreement and Contract. Where it is not a Panel Arrangement, then clauses 3.4 to 3.13 (inclusive) are not applicable to the Contract.

## Formation of Contract

The Contract between the Principal and the Consultant comes into existence as follows:

### if the parties are required to execute a Formal Instrument of Agreement, then upon the parties executing the Formal Instrument of Agreement;

### when the Consultant receives a Letter; or

### when the Consultant receives an Order.

Subject to clause 3.3, the terms of the Contract are contained in the Contract Documents.

## Formation of Head Agreement

A Head Agreement comes into existence when the Principal accepts the Consultant’s Tender in respect of a Panel Arrangement, whether by letter or other instrument.

The terms of a Head Agreement are contained in the Head Agreement Documents.

## Constitution of Contract

The Principal and the Consultant agree that:

### The following documents constitute a contract between the relevant Principal and the Consultant:

#### if the parties are required to execute a Formal Instrument of Agreement, including when buying off a Panel Arrangement, then upon the parties executing the Formal Instrument of agreements, the documents set out in the Formal Instrument of Agreement; or

#### the documents as set out in the Letter or an Order including when buying off a Panel Arrangement; or

#### if not specified in the Formal Instrument of Agreement (if any) or otherwise in the Letter or an Order, then the following documents constitute a Contract between the Principal and the Consultant

#### the Formal Instrument of Agreement (if any);

#### the Letter and/or when buying off a Panel Arrangement, the Order;

#### when buying off a Panel Arrangement, the price list in the Head Agreement;

#### when buying off a Panel Arrangement, the letter awarding the Head Agreement;

#### the Contract Details;

#### these General Conditions

#### the Request, including any addenda; and

#### the Tender.

### a Contract will commence of the date the Services are ordered; and

### where the Contract is created under a Head Agreement, each Contract must be for the provision of Services described in the Head Agreement.

## Generally

### The Principal reserves the right:

#### To appoint as many Panel Members as it sees fit; and

#### At any time and from time to time, to supplement the Panel with additional Panel Members.

### Each Panel Member acknowledges that, without limiting the Buying Rules:

#### The Principal may request Services from any Panel Member;

#### the Principal does not make any representation that the Principal will procure or seek to procure the Services, or any volume of Services from a Panel Member;

#### the Customer will request Services from a Panel Member by submitting an Order to proceed to that Panel Member;

#### a Panel member may not receive any Orders from the Principal during the Term; and

#### appointment to a Panel does not give a Panel Member an exclusive right to provide the Services to the Principal.

### On termination of a Panel Member’s contract under clause 18.6, that Panel Member is immediately removed from the Panel and is prohibited from re-joining the Panel under sub-clause (a)(ii).

## Orders

The Principal and the Consultant agree that:

### the Principal may submit an Order to the Consultant at any time during the Head Agreement Term; and

### any order submitted by a Principal to the Consultant is deemed to be an Order for the purposes of the Head Agreement and the Contract, whether or not all details have been included in the order and whether or not the order is identified as an Order.

## Supply of Services

The Principal and the Consultant agree that:

### if the Consultant receives an Order it must provide the Services in accordance with the Order and the Head Agreement;

### unless the Principal otherwise agree, the Consultant will not provide any Services to the Principal which are capable of being provided under a Contract unless those Services are provided under the terms and conditions of the Head Agreement; and

### unless the Principal otherwise agrees and notwithstanding any agreement or arrangement between the Consultant and the Principal to the contrary, any Services provided to Principal which are capable of being provided under the Head Agreement are deemed to be provided pursuant, and on the terms and conditions of the Head Agreement and the Principal will be a Principal for the purposes of the Head Agreement and the deemed Order.

## Variation of Head Agreement

The Head Agreement may only be varied in writing executed by the Principal and the Consultant.

## Variation of Order

The Principal and the Consultant agree that an Order can be varied on the condition that the variation is within the scope of the Head Agreement and that it does not erode, undermine or in any way conflict with the Head Agreement.

## Effect of Expiration or Termination of the Head Agreement

## The Principal and the Consultant agree that:

### Expiration or termination of the Head Agreement will not affect any existing Order;

### If the Head Agreement expires or is terminated, then the Consultant may not enter into any new Orders after the date of expiration or termination; and

### The Consultant will not be entitled to any compensation for loss or damages for future profits or loss of income as a result of, or in connection with, the expiration or termination of the Head Agreement

## Effect of Expiration or Termination of Orders

The Principal and the Consultant agree that**:**

### Expiration or termination of an Order will not affect the Head Agreement; and

### The Consultant will not be entitled to any compensation from the Principal for loss or damages for future profits or loss of income as a result of, or in connection with, the expiration or termination of the Order.

## Dealing with Head Agreement

If the Head Agreement is assigned or novated from the Consultant to a third party, then The Principal and the Consultant agree that the Contract is deemed to be assigned or novated from the Consultant to the third party; and

## Change Panel

The Principal reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Panel or any member of the Panel.

## Order of precedence – Head Agreement Documents

The Head Agreement Documents shall be read in the order of precedence:

### specified in the Head Agreement Documents; or

### if no order of precedence is specified in the Head Agreement Documents, then the Head Agreement Documents shall be read in descending order of precedence as listed in the definition of Head Agreement Documents in clause 1.1.

Where any inconsistency occurs between the provisions contained in two or more Head Agreement Documents, the Head Agreement Document lower in the order of precedence shall where possible be read down to resolve the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Head Agreement Document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

## Order of precedence –Contract Documents

The Contract Documents shall be read in the order of precedence:

### specified in the Contract Documents; or

### if no order of precedence is specified in the Contract Documents, then the Contract Documents shall be read in descending order of precedence as listed in the definition of Contract Document in clause 1.1

Where any inconsistency occurs between the provisions contained in two or more Contract Documents, the Contract Document lower in the order of precedence shall where possible be read down to resolve the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Contract Document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

# SUPPLY OF SERVICES AND CONTRACTING SERVICES

## Supply of Services

(a) The Consultant must perform the Services in accordance with all applicable Legislative Requirements and comply with all instructions given by the Principal in respect of the Contract or Head Agreement. The Principal is not responsible for any costs resulting from any unauthorised act of the Consultant.

(b) The Consultant must promptly notify the Principal of any matter which will or is likely to change or has changed the scope or timing of the Services.

## Additional Services

### Subject to clause 3.6, if the Principal requests in writing that the Consultant perform services in addition to the Services, then the Principal will pay the Consultant for the additional Services as follows:

#### as expressly agreed by the Parties in writing;

#### If the parties are unable to agree to within 14 days from the date of the Principal’s request, then:

#### where the Contract or Head Agreement includes applicable rates or prices for the additional Services then that rate or price;

#### where the Contract or Head Agreement does not include any applicable rates or prices, the amount will be a reasonable amount determined by the Principal. To the extent that there are rates and prices expressly identified in this Contract but such rates and prices are not directly and specifically relevant to the additional Services, the Principal may, acting reasonably, have regard to those rates and prices in determining what is a reasonable rate or price.

### Where the Consultant considers that it has been directed to perform services in addition to the Services, and such direction does not expressly state that it is a variation to the Services, then the Consultant must promptly (and in any event before commencing the alleged varied Services), notify the Principal and await further confirmation from the Principal before proceeding. Compliance with this subclause is a condition precedent to an entitlement to claim payment for the varied Services.

## Standard of Services

### The Consultant must supply the Services in accordance with the Contract 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 from a competent consultant exercising proper skill, care and diligence.

### The Consultant warrants that the Services, including any documents, reports or other things to be provided to the Principal by the Consultant as part of the Services, will be fit for their stated purpose.

### For the purposes of clause 4.3(b), the stated purpose shall be the purpose expressly stated or otherwise implied from the documents comprising the Contract.

## Time for performing Services

### Subject to clause 4.4(b), the Consultant must complete the Services:

* + - 1. by the time or, if the Contract specifies that different parts of the Services are to be completed by different times, the times, stated in the Contract;
      2. where no time is specified , by the expiry of the Contract Term;
      3. where the Contract does not specify a time for performance, or a Contract Term, diligently and with due expedition and without delay.

### The Consultant must notify the Principal in writing within 7 days after the Consultant becomes aware of a potential delay.

### The Principal must grant the Consultant a reasonable extension of time for any delay to completion of the Services caused by:

* + - 1. an act or omission of the Principal or its officers, employees, agents or other consultants or contractors;
      2. a Force Majeure Event; or
      3. any event or circumstance for which another provision of this Contract provides that the Consultant may be entitled to an extension of time,

provided that, as a condition of the grant of an extension of time, the Consultant:

* + - 1. notifies the Principal of the potential delay and its cause promptly and, in any event, within 7 days after the Consultant becomes aware of the potential delay or its cause;
      2. is actually delayed in carrying out the Services; and
      3. provides evidence, to the satisfaction of the Principal acting reasonably, of the cause and duration of the delay within 14 days of the delay ending.

### The Consultant shall not be entitled to an adjustment to the Price, or any additional payment, merely by reason of being granted an extension of time under this Contract or otherwise being delayed in the provision of the Services. Where the Consultant is granted an extension of time under this Contract the Consultant will be entitled to its actual costs directly and reasonably incurred by reason of the delay provided that:

* + - 1. the delay was caused by the Principal; and
      2. the Consultant makes a claim for payment of its delay costs within 14 days of the delay ending.

Compliance with this subclause € is a condition precedent to any entitlement to costs arising from delayed or prolonged Services. Compensation under this clause is the Consultant’s sole remedy for any claim for payment relating to delay or prolongation of Services.

## Consultant's Personnel

### The Consultant must ensure that the Consultant’s Personnel are competent and able to carry out the Services.

### The Consultant shall not subcontract or allow a sub-consultant to subcontract work to a debarred supplier as defined in section 32 of the Procurement Act 2020 (WA).

### The Consultant must remove any of the Consultant’s Personnel from providing the Services if the Principal provides a written notice to the Consultant requiring that person be removed, including on the grounds of being a debarred supplier. The Principal must provide a reason for the removal of the person in the notice.

## Key Personnel

The Consultant must provide the key personnel stated in the Tender (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 Principal and arrange a replacement of at least similar experience, skill and competency approved by the Principal (such approval not to be unreasonably withheld or delayed).

## Police Clearance

***This clause applies where the Head Agreement and/or Contract Details Schedules provides that it applies.***

The Principal may request the Consultant, at any time and from time to time, to obtain and provide it with an Australia-wide police clearance in respect of any Consultant Personnel.

The Consultant must comply with that request within thirty (30) Business Days of such request.

If any police clearance evidences that any Consultant Personnel has committed a criminal offence punishable by imprisonment or detention, then the Principal may, without prejudice to their other rights under the Contract or Head Agreement, request the Consultant to promptly remove that Consultant Personnel from involvement in the Contract or Head Agreement as the case requires.

If the Consultant is required to remove any Consultant Personnel under this clause, the Consultant must, at its own cost, promptly remove that Consultant Personnel from all involvement in the Contract or the Head Agreement and arrange for replacement of that Consultant Personnel.

# SUSPENSION

## Suspension - Contract

### The Principal may suspend the performance of all or any part of the Services at any time by notice in writing to the Consultant.

### The Consultant must recommence the Services when reasonably directed to do so by the Principal.

### Unless the suspension has been directed due to the Consultant’s wrongful conduct, the Principal must pay the Consultant any direct costs and expenses reasonably incurred by the Consultant as a result of the suspension.

## Suspension – Head Agreement

### The Principal may suspend the Head Agreement (except for clauses 1, 6, 9, 10, 12, 13, 14, 18, 21, 23, 25) for a period not exceeding 3 months except to the extent that the right is stayed by operation of section 415D, 434J or 451E of the Corporations Act.

### The Principal may end the suspension at any time by notice to the Consultant.

### At the end of the suspension, the rights and obligations of the Principal and the Consultant under the Head Agreement recommence.

### No suspension of the Head Agreement entitles the Consultant to any compensation.

# WARRANTIES AND UNDERTAKINGS

## General Warranties

The Consultant warrants that:

### it has no conflict of interest arising out of or in connection with the Contract or Head Agreement;

### it is authorised and has the power to enter into a Head Agreement, Contract, or both (as applicable) and perform the Services under the relevant Contracts;

### the Consultant's obligations under this Head Agreement, Contract, or both (as applicable) are valid and binding and are enforceable against the Consultant;

### all information provided by the Consultant to the Principal is true and correct;

### 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 the Head Agreement, Contract, or both (as applicable);

### neither it, nor any of its employees, have been convicted of a criminal offence that is punishable by imprisonment or detention; and

### there is nothing that prevents the Consultant from complying with the Consultant's obligations under the Head Agreement, Contract, or both (as applicable).

## Consultant Warranties

Without limiting the generality of clause 6.1, the Consultant warrants to the Principal that the Consultant, at all times:

### shall be suitably qualified and experienced; and

### possesses the commercial and technical competence of, and perform the Services to the standard of skill, care and diligence expected of a reasonably competent consultant providing services of a similar nature to those provided under this Contract;

## Undertakings

The Consultant must:

### take proper care and safe custody of all the Consultant's Records that are in the possession or control of the Consultant;

### promptly notify the Principal if there is any breach of the warranties in clause 6.1;

### act ethically and in accordance with good corporate governance practices in connection with this Contract at all times;

### comply with all State and Commonwealth laws relevant to the provision of the Services and this Contract;

### cooperate with the Principal in respect of the administration of this Contract; and

### use its best endeavours to ensure that the Consultant's Personnel do not breach this Contract.

# PAYMENT AND INVOICING

### The Consultant may make a claim for payment of the Price in accordance with, and at the times set out in the Contract.

### A valid payment claim must:

#### identify the Services performed;

#### separately identify any variations for which payment is claimed;

#### set out details of the Price, the amount being claimed for payment and amounts previously paid and include the value of the Services carried out by the Consultant in the performance of the Contract, together with all amounts then due to the Contractor arising out of or in connection with the Contract;

#### be supported by evidence of the amount due to the Consultant and such other information as the Principal may reasonably require; and

#### where an RCTI Agreement does not form part of the Contract, be in the form of a valid tax invoice (and include, without limitation, a clear invoice number for unique identification).

### The Principal shall assess the value of work which is the subject of a payment claim (including a final claim for payment under clause 7(i)) and in assessing the value of work, the Principal shall have regard to:

#### the Price;

#### the Services completed by the Consultant as at the date of the claim for payment;

#### the Services that are incomplete by the Consultant as at the date of the claim for payment; and

#### any Services that are defective as at the date of the claim for payment, including the estimated cost of rectifying the defect.

### Subject to the provisions of this Contract, within 20 Business Days after the later of:

#### receipt of a valid payment claim; or

#### receipt of a re-issued tax invoice pursuant to subclause(e);

the Principal shall pay the Consultant the amount claimed or such lesser amount that the Principal considers is due and payable, and where the amount paid is less than the amount claimed, the Principal shall provide reasons.

### Where the Principal disputes the amount claimed by the Consultant in the payment claim, and the Consultant has issued a tax invoice under clause 7(b)(v), the Principal will prior to the time for payment required under the Contract, notify the Consultant of the undisputed amount and without limiting either party’s rights under clause 17, the Consultant must issue a revised tax invoice for that amount.

### This subclause (f) only applies if a payment claim (including a Final Payment Claim) is disputed by the Principal, and such claim is endorsed as a claim for payment under the SOP Act, in which case the Principal will within 10 Business Days of receipt of such a payment claim, notify the Consultant in writing identifying:

#### the payment claim to which it relates;

#### the amount that the Principal proposes to pay the Consultant (and where the Principal does not propose to make any payment, a statement to that effect);

#### reasons for not paying the full amount claimed by the Consultant; and

#### any set-off, withholding or deduction against the payment claim that the Principal has applied, whether arising out of or in connection with the Contract (or at law); and

and take any other steps the Principal considers, at its discretion, are reasonably required to respond to the claim. Any response pursuant to this subclause (f) will be deemed to be a payment schedule for the purpose of the SOP Act.

### The Principal shall not be obliged to make any payment:

#### for Services that are defective or deficient and is entitled to set-off against any payment due to the Consultant, the estimated or actual costs of rectifying the defective or deficient Services;

#### where the Consultant has not complied with clause 7(b).

### Payment of moneys will not be evidence of the value of work or an admission of liability or evidence that Services have been executed satisfactorily but will be a payment on account only.

### The Consultant’s final claim for payment of Services shall be issued on completion of the Services and noted as being the “Final Claim for Payment”. The Final Claim for Payment must:

#### set out the final amount claimed by the Consultant under the Contract;

#### separately identify any variations for which payment is claimed;

#### set out details of the Price, the amount being claimed for payment and amounts previously paid;

#### set out any issues in dispute between the parties, which may impact on the amount due and payable to the Consultant under or in connection with this Contract; and

#### if an RCTI Agreement does not form part of the Contract, be in the form of a valid tax invoice (and include, without limitation, a clear invoice number for unique identification).

### Subject to payment, the submission of the Final Claim for Payment will be evidence in any proceedings of whatsoever nature, whether under this Contract or otherwise, that the Consultant is not owed any further payment under the Contract except to the extent of any disputes notified in the Final Claim for Payment.

### The Consultant shall not be entitled to claim payment for any disbursements except where expressly stated otherwise in this Contract.

# GST

### 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).

### Unless otherwise specified in the Contract, any sum payable or consideration due under this Contract is inclusive of GST.

### If any sum payable or consideration due under this Contract 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.

### If a GST amount is charged or varied under this Contract, the supplier must provide to the recipient a valid tax invoice on or before the time of payment or variation.

### If the amount of GST paid or payable by the supplier on any supply made under this Contract 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.

### The Consultant will pay to the Principal all duties, taxes and charges other than GST imposed or levied in Australia or overseas in connection with the supply of the Services.

### The Consultant shall, if requested by the Principal, sign (and return to the Principal) the Recipient Created Tax Invoice Agreement.

# INTELLECTUAL PROPERTY RIGHTS

### The Consultant automatically assigns all IP Rights in all New Material to the Principal upon their creation.

### To the extent the IP Rights in or relating to the New Material are not capable of being vested in the Principal because the Consultant does not own the IP Rights, the Consultant must obtain an irrevocable licence for the Principal to use those IP Rights for any purpose for which the Services are provided.

### The Principal 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 Contract.

### This clause 8 does not affect the IP Rights of the Consultant in connection with the Consultant Background IP used in performing the Services. The Consultant retains the IP Rights in the Consultant Background IP and grants to the Principal a royalty-free, non-exclusive irrevocable licence to use the Consultant Background IP Rights for any purpose for which the Services are provided.

### The Consultant's obligations under this clause 9 are a continuing obligation and must survive the expiration or earlier termination of this Contract.

# CONFIDENTIALITY

### The Consultant must keep the Confidential Information confidential. The Consultant must not use or disclose to any person the Confidential Information except:

#### where necessary for the purpose of supplying the Services;

#### as authorised in writing by the Principal;

#### to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the Consultant);

#### as required by any law, judicial or parliamentary body or governmental agency; or

#### 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 10.

### The Consultant's obligations under this clause 10 are a continuing obligation and will survive the expiration or earlier termination of this Contract.

# ACCESS

### Subject to the Principal:

### Giving reasonable prior notice to the Consultant; and

### Complying with all reasonable directions and procedures of the Consultant relating to occupational health, safety, security and confidentiality in connection with Consultant’s premises,

The Consultant must allow the Principal to:

### Have reasonable access to any premises used or occupied by the Consultant in connection with the Services;

### have reasonable access to all Consultant’s Records in the custody or control of the Consultant;

### examine, audit, copy and use any of the Consultant’s Records in the custody or control of the Consultant;

### photograph, film or otherwise record anything done by the Consultant in supply the Services, if reasonably required by the Principal; and

### The Consultant must keep accurate, complete and current written Records in respect of the Head Agreement and Contract, including:

#### The type of Services, including the separate tasks, supplied to the Principal on each day during the Head Contract Term and any Contract Term;

#### The time that the Consultant spent providing the Services on each day during the Term; and

#### The name and title of all Consultant Personnel who provided the Services or were responsible for supervising the provision of the Services.

The Consultant must comply with the directions of the Principal in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term.

The Consultant must keep all Records for at least 7 years after the later of the expiry or termination of the Head Agreement, or the last of the Contracts, as the case may be.

The Consultant must do everything necessary to obtain any third-party consents which are required to enable the Principal to have access to the Consultant’s Records under this clause 11.

This clause 11 survives expiration or termination of the Head Agreement and Contract.

# CONFLICT OF INTEREST

### For the duration of the Head Agreement, Contract, or both (as applicable), 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 Principal’s written consent.

### If an actual, potential or perceived conflict of interest arises the Consultant must:

#### promptly notify the Principal and any relevant parties that the conflict has arisen and provide full details; and

#### take reasonable steps in consultation with the Principal and any relevant parties to resolve the conflict.

# INSURANCE

## Head Agreement Insurance Requirements

The Consultant must take out and maintain insurance in relation to all insurable liabilities of the Consultant under the Head Agreement as specified in the Head Agreement Details.

The insurance required under this clause 13.1 must be on the terms, for the period of time and for the amounts specified in the Head Agreement Details.

## Contract Insurance Requirements

The Consultant must:

### take out an maintain insurance in relation to all insurable liabilities of the Consult under the Contract as specified in the Contract Details. The insurance required under the clause 13.2 must be on the terms, for the period of time and for the amounts specified in the Contract Details.

### Where, subject to clause 18, the Consultant subcontracts any part of the Services, the Consultant shall ensure that the sub-consultants effect insurance on similar terms to that set out in this clause. The Consultant shall, on request by the Principal, provide evidence of the insurances effected by the sub-consultant.

## Reputable and Solvent Insurer

Any policy of insurance taken out by the Consultant must be taken out with a reputable and solvent insurer acceptable to the Principal which carriers on insurance business in Australia and is authorised in Australia to operate as an insurance company

## Maintenance of Insurance

The Consultant must:

### Punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clauses 13.1 and 13.2;

### not vary or cancel any insurance required under clauses 13.1 and 13.2 or as otherwise required under the Contract or the Head Agreement or allow it to lapse during the Term of either of them as the case may be or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and

### without limiting clause 13.4(b), promptly reinstate any insurance required under clause 13.1 and 13.2 if it lapses or if cover is exhausted.

## Evidence of Insurance

The Consultant must give to the Principal sufficient evidence of the insurance required under clause 13.1 and 13.2 as the case required (including, if requested, a copy of any policy, schedules, exclusions and endorsements) and provide a certificate of currency of insurance as requested by the Principal at any time.

## Failure to Prove Insurance

If the Consultant does not comply with Clause 13.2, 13.3, 13.4 or 13.5 then without limiting any other remedy available to the Principal, the Principal may withhold payment of any money due under the Contract to the Consultant until the Consultant has complied.

## Incidents and claims

If the Principal or the Consultant becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under 13.1 or 13.2, it must as soon as reasonably practicable notify the Principal and the Consultant (as applicable) in writing of that event or incident.

Failure to comply with this clause 13.7 will not invalidate or otherwise affect any indemnities, liabilities and releases of the Contract.

## Continuing Obligation

The Consultant must maintain the insurances required under clause 13.1 for the period specified in the Head Agreement

The Consultant must maintain the insurance required under clause 13.2 for the period specified in the Contract

If no period is specified in the Contract or the Head Agreement, then:

### The insurances (except for the professional indemnity insurance) required under clause 13.1 and 13.2 are to be maintained throughout the Term; and

### The professional indemnity insurance (if any) required under clause 13.2 is to be maintained throughout the Term and for a period of 6 years after the expiration or termination of the Contract.

The obligations of the Consultant under this clause 26 are continuing obligations and survive expiration or termination of the Contract and the Head Agreement for so long as the obligations of the Consultant under this clause 13.8 continue

## No Limitation of Other Liabilities

Nothing in this clause 13 limits the Consultant’s other liabilities under the Contract or the Head Agreement or restricts the Consultant from insuring for sums or risks greater than those required under the Contract or the Head Agreement.

# INDEMNITY, LIMITATION OF LIABILITY AND SET OFF

## Indemnity

### To the extent permitted by law, the Consultant irrevocably and continually indemnifies the Principal 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 Principal directly or indirectly in connection with any Indemnified Event and for any Indemnified Payments.

### 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 Principal or the Principal’s Personnel.

## Limitation of Liability

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

### personal injury (including psychological injury) or death;

### infringement of IP Rights;

### fraudulent, malicious or criminal conduct;

### wilful default; or

### conduct with reckless disregard for the consequences, of or by the Consultant or the Consultant’s Personnel.

Where no amount is specified in the Request, the Consultant’s liability is not capped.

## Liability of Principal

### If the Principal breaches this Contract or Head Agreement, the remedies of the Consultant are limited to damages except where:

#### the Principal repudiates the Contract or Head Agreement; or

#### the Consultant seeks an injunction on the grounds that damages are not an appropriate remedy.

### The Principal is not liable to the Consultant for any Consequential Loss suffered or incurred as a result of any act or omission by the Principal.

## Right of Set Off

The Principal may set off or deduct any amount claimed by the Consultant from any amount owing by the Principal to the Consultant on any account under the Contract or any other agreement between the Principal and the Consultant, whether arising under the Contract or otherwise at law.

## Survival

This clause 14 will survive the expiration or earlier termination of either the Contract or Head Agreement.

# PERFORMANCE MANAGEMENT

The parties agree to duly and punctually comply with any performance management requirements contained in the Contract or the Head Agreement

# GOVERNMENT POLICY

The Consultant must comply with obligations under Government procurement policies specified in the Contract Details and the Head Agreement Details, if any.

# WORK HEALTH AND SAFETY

### The Consultant acknowledges that the Principal is relying on the Consultant’s skill and experience in the Services to perform the Contract safely and in accordance with the WHS Requirements.

### The Consultant must ensure that the Consultant’s Personnel:

#### are competent and have the necessary skills, qualifications, licences and experience to perform their work safely; and

#### understand and will comply with the WHS Requirements when providing the Services.

### The Consultant must ensure it complies with all applicable WHS Legislation.

# DEFAULT AND TERMINATION

## Performance of Services by Principal

### If, acting reasonably, the Principal considers that the Services have not been performed in accordance with the Contract, then, without limiting any other remedy available to the Principal, the Principal may by notice to the Consultant:

#### identify the Services which have not been performed in accordance with the Contract, including the non-compliances with the Contract; and

#### require the Consultant to rectify or remedy the Services and identify the time within which the Services need to be rectified or remedied.

### If the Consultant fails to rectify or remedy the Services in accordance with the Principal’s notice in clause 15.1(a), the Principal may engage another consultant to provide the Services and the Consultant must reimburse the Principal for any additional costs and expenses incurred by the Principal as a result of engaging another consultant. The Principal is entitled to set off the additional costs and expenses incurred by the Principal under this clause (b) against any amounts payable to the Consultant under this Contract.

## Termination of Contract for cause

Without limitation to clause 18.3, the Principal may terminate a Contract with immediate effect by notice to the Consultant if:

### An Event of Default occurs except to the extent that the right is stayed by operation of section 41;

### in the reasonable opinion of the Principal the Services will not be completed by the Consultant in accordance with this Contract due to any event or circumstances; or

### the Consultant fails, refuses or neglects to comply with any instruction or direction lawfully given to it by the Principal pursuant to this Contract.

## Termination of Contract for convenience

### The Principal may terminate this Contract for any reason, and at its complete discretion, by serving a notice on the Consultant requiring that this Contract terminate on a date specified in the notice being not less than 30 days from the date of the notice.

### If the Principal terminates the Contract under clause 18.3(a), the Principal 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. This shall be the Consultant’s sole compensation arising from or in connection with termination pursuant to this clause 18.3.

### Where the Principal terminates under this clause 18.3 the Principal shall be entitled to have the Services, or any part thereof carried out by a third party.

## Consequences of Expiration or Termination - Contract

On the expiry or earlier termination of a Contract, the Consultant must:

### deliver to the Principal all the Consultant's Records as required by the Principal;

### not represent that the Consultant is in any way connected to the Principal;

### return all of the Confidential Information to the Principal; and

### in every other respect co-operate with the Principal as reasonably required by the Principal in order to minimise any loss, damage or inconvenience to the Principal and Consultant resulting from the expiration or termination of this Contract

## Principal's further rights on Termination

### Nothing in clause 18 in any way restricts any right of the Principal to set-off any sum or to claim and institute proceedings for damages arising out of any breach of the Contract by the Consultant.

### The Principal shall be entitled to engage any other entity to carry out all or part of the Services upon termination of the Contract

## Termination – Head Agreement

The Principal may terminate the Head Agreement by notice to the Consultant at any time after an Event of Default occurs except to the extent that the right is stayed by operation of section 415D, 434J or 451E of the Corporations Act.

## Consequences of Expiration or Termination – Head Agreement

The expiration or termination of the Head Agreement does not affect any rights, liabilities or obligations of the Principal or the Consultant as a result of anything occurring before the expiration or termination.

The expiration or termination of the Head Agreement does not affect any Contract the subject of an Order, as set out in clause 3.9.

On expiration or termination of the Head Agreement, the Consultant must:

### Deliver to the Principal all Records as required by the Principal;

### Not represent that the Consultant is in any way connected to the Prinicpal;

### Return all of the Principal’s Confidential Information to the Principal; and

### In every other respect co-operate with the Principal as reasonably required by the Principal in order to minimise any loss, damage or inconvenience to the Principal resulting from the expiration or termination of the Head Agreement.

The Consultant’s obligations under (a), (b) and (c) do not apply to the extent necessary to allow the Consultant to complete any Contract the subject of an Order which continues after expiration or termination of the Head Agreement. On completion of any Contracts after expiration or termination of the Head Agreement, the Consultant must comply with all obligations under this clause 18.7.

# DISPUTE RESOLUTION

### If a dispute between the parties arises in connection with this Contract, then either party may give the other party a written notice of the dispute, adequately identifying and providing details of the dispute.

### Within 10 Business Days after service of a notice of dispute, the parties must confer at least once to resolve the dispute. 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.

### 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.

# NO ASSIGNMENT

### 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 Contract or Head Agreement without the written consent of the Principal, which consent will not be unreasonably withheld.

### The obligations on the part of any assignee expressed or implied in any deed of assignment and in favour of the Principal are supplementary to those contained in this Contract and do not in any way relieve the Consultant from the Consultant's Covenants. Despite any assignment by the Consultant of the benefit of the Contract or Head Agreement the Consultant must remain liable to observe and perform the Consultant's Covenants.

# NOVATION

### Where the Principal enters into a design and construct contract with the Contractor:

#### where directed by the Principal, the Consultant shall execute a Deed of Novation in the form attached to this Contract, being a deed between the Principal, the Consultant and the Contractor.

#### Unless agreed otherwise, the Principal shall pay the Consultant for Services performed to the date of novation. The Consultant shall not be entitled to any payment or compensation arising out of or in connection with compliance with this clause.

### The Consultant acknowledges and agree that where the Principal entity is required to change, arising out of or in connection with a restructure within government, the Principal may:

#### direct the Consultant to execute a Deed of Novation (of the Head Agreement, or any Contract, or both) in the form attached to this Contract, being a deed between the Principal, the Consultant and the incoming Principal;

#### where novation of a Contract occurs pursuant to this subclause (b), then the Principal shall pay the Consultant for Services performed to the date of novation; and

#### where novation of the Head Agreement is directed pursuant to this clause (b), the Consultant shall not be entitled to any payment or compensation arising out of or in connection with novation of the Head Agreement pursuant to this clause.

# SUB-CONSULTANT/CONTRACTOR

### If circumstances arise which require expertise outside the field of practice of the Consultant, the Consultant may, with the prior written approval of the Principal (which approval is at the Principal’s discretion), engage an appropriate sub-consultant to perform relevant Services under this Contract. 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. For the avoidance of doubt, the Consultant shall not be entitled to any adjustment to the Price arising out of or in connection with this subclause (a) unless expressly agreed otherwise with the Principal.

### 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.

### The Consultant must, if requested by the Principal, supply to the Principal a copy of any subcontract, which copy may exclude commercially sensitive information but must indicate that the Consultant has complied with this clause22.

### 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 Contract.

# RELATIONSHIP

### The Contract or Head Agreement as the case may be, does not create a relationship of employment, trust, agency, partnership or joint venture between the parties.

### The Consultant must not represent that the Consultant is the employee, agent, partner or joint venture partner of the Principal.

# NOTICES AND OTHER COMMUNICATIONS

## Service of Notices

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

### in writing, in English and given by a person duly authorised by the sender; and

### hand delivered or sent by prepaid post to the recipient's address for Notices specified in the Letter (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.

## Effective on Receipt

### A Notice given in accordance with clause 21.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

#### if hand delivered, on delivery;

#### 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); or

#### 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.

### Notwithstanding anything to the contrary, a notice or document that is authorised or required under the SOP Act to be given or served on a person, including an application for adjudication or payment claim pursuant to section 22 of the SOP Act, will be deemed to have been given and received if it is sent in accordance with clause 21 and sent by email to the Project Manager identified in the Request.

# GENERAL PROVISIONS

## 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.

## Entire Agreement

The Contract and the Head Agreement as the case may be, 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.

## Counterparts

The Contract and the Head Agreement as the case may be, may be executed in counterparts. All executed counterparts together constitute one document.

## Variation

The Contract and Head Agreement as the case may be, may not be varied unless agreed in writing by both parties.

## 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 Contract or Head Agreement , for any reason, will not merge on the occurrence of that event, but will remain in full force and effect.

## Severability

### The parties agree that a construction of this Contract or Head Agreement which results in all provisions being enforceable is to be preferred to a construction that does not so result.

### If, despite the application of clause 25.6(a), a provision of this Contract is illegal or unenforceable, only that portion of the provision that is void, illegal or unenforceable may be severed, and the remainder of the provision and this Contract will otherwise continue in full force and effect.

## Applicable Law

The Contract and the Head Agreement as the case may be, 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.

## Cumulative Rights

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

## Auditor General

### The powers and duties of the Auditor General are not limited or otherwise affected by the terms and conditions of this Contract.

### 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 Contract.

## Consent

### Whenever the consent of the Principal is required under the Head Agreement:

#### That consent may be given or withheld by the Principal in the Principal’s absolute discretion and may be given subject to such conditions as the Principal may determine;

#### The Principal is not required to provide a reason or reasons for giving or refusing its consent; and

#### The Consultant agrees that any failure by it to comply with or perform a condition imposed under clause 25.10 (a)(i) will constitute a breach of condition by the Consultant under the Head Agreement.

### Whenever the consent of the Principal is required under this Contract:

#### That consent may be given or withheld by the Principal in the Principal’s absolute discretion and may be given subject to such conditions as the Principal may determine.

#### The Principal is not required to provide a reason or reasons for given or refusing its consent; and

#### The Consultant agrees that any failure by it to comply with or perform a condition imposed under clause 25.10 (b)(i) will constitute a breach of a condition by the Consultant under the Contract.

## Further Assurance

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract or the Head Agreement as the case requires.

## Costs

### Each party must pay its own costs of negotiating, preparing and executing this Contract and the Head Agreement (including, if applicable, duty on this Contract and Head Agreement).

### Unless otherwise stated in this Contract, the Consultant must comply with its obligations under this Contract and the Head Agreement at the Consultant's cost.

## Trusts

### If the Consultant has entered into a Contract or the Head Agreement in the capacity of trustee whether or not the Principal has any notice of the trust, the Consultant:

#### Is taken to enter into the Contract and the Head Agreement both as trustee and in the Consultant’s personal capacity and acknowledges that the Consultant is personally liable for the performance of the Consultant’s obligations under the Contract and the Head Agreement;

#### Will take any action necessary to ensure the assets of the trusts are available to satisfy any claim by the Principal for any default by the Consultant;

#### Warrants that:

#### The Consultant has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under the Contract and the Head Agreement;

#### The assets of the trust are sufficient to satisfy the right of indemnity referred to in clause 25.13(c)(i) and all other obligations in respect of which the Consultant has a right to be indemnified out of those assets; and

#### The Consultant has the power and authority under the terms of the trust to enter into the Contract or the Head Agreement.

Annexure A – Deed of Novation

1. Deed of Novation

Housing Authority, a body corporate constituted under the Housing Act 1980 (WA)

ACN [Insert ACN]

Outgoing Party

1. and

[Insert Name]  
ACN [Insert ACN]

Incoming Party

1. and

[Insert Name]

ACN [Insert ACN]  
Continuing Party

**TABLE OF CONTENTS**

[1. DEFINITIONS AND INTERPRETATIONS 3](#_Toc114830858)

[1.1 Definitions 3](#_Toc114830859)

[1.2 Interpretation 3](#_Toc114830860)

[2. NOVATION 4](#_Toc114830861)

[3. RELEASE 4](#_Toc114830862)

[4. CONSENT 5](#_Toc114830863)

[5. WARRANTIES AND REPRESENTATIONS 5](#_Toc114830864)

[6. TAXES, COSTS AND EXPENSES 5](#_Toc114830865)

[7. NOTICES 5](#_Toc114830866)

[7.1 Delivery 5](#_Toc114830867)

[7.2 Effect and delivery 6](#_Toc114830868)

[8. GOVERNING CLAUSES 6](#_Toc114830869)

[8.1 Governing law and jurisdiction 6](#_Toc114830870)

[8.2 Variation 6](#_Toc114830871)

[8.3 Rights are cumulative 6](#_Toc114830872)

[8.4 Severance 6](#_Toc114830873)

[8.5 No waiver 6](#_Toc114830874)

[8.6 Entire agreement 7](#_Toc114830875)

[8.7 Further assurance 7](#_Toc114830876)

[8.8 Counterparts 7](#_Toc114830877)

Date 2025

Parties

|  |  |
| --- | --- |
| **Outgoing Party** | **Housing Authority** **a body corporate constituted under the Housing Act 1980 (WA)** of 5 Newman Court, Fremantle, Western Australia |
| **Incoming Party** | **[Insert name] [Insert ACN]** [Insert address] |
| **Continuing Party** | **[Insert name] [Insert ACN]** [Insert address] |

Recitals

1. The Outgoing Party and the Continuing Party are parties to the Contract.
2. The Outgoing Party has agreed to assign its rights and transfer its obligations under the Contract to the Incoming Party.
3. The Parties have agreed to novate the Contract upon the terms of this deed.
4. This deedis supplemental to the Contract.
5. **This deed provides**

1. DEFINITIONS AND INTERPRETATIONS
   1. Definitions

In this deed:

**Building** Contract means the design and construct contract between the Outgoing Party and the Incoming Party.

**Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in the city of Perth, Western Australia.

**Contract** means the contract between the Outgoing Party and the Continuing Party dated [insert date].

**Effective Date** means the date of this deed.

**Party** means a party to this deed.

* 1. Interpretation

1. This interpretation clause applies unless inconsistent with the context.
2. If a word or phrase is defined, then its other grammatical forms have a corresponding meaning.
3. The singular includes the plural and vice versa.
4. A reference to a gender includes any gender.
5. A reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this deed.
6. The word includes and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in this deed.
7. A reference to a document includes a variation or replacement of it.
8. A reference to a statute includes its subordinate legislation and a modification, replacement or re-enactment of either.
9. A reference to this deed includes an annexure.
10. A reference to person includes a reference to:
11. an individual, a body corporate, a trust, a partnership, a joint venture, an unincorporated body or other entity, whether or not it is a separate legal entity;
12. if the person is an individual, the person’s personal representatives and assigns; and
13. if the person is not an individual, the person’s successors and assigns.
14. A reference to a thing, including a right, is a reference to either the whole thing or a part of the thing.
15. Part performance of an obligation does not constitute performance of an obligation.
16. An agreement, representation or term of this deed in favour of or on the part of two or more people, benefits or binds them jointly and severally.
17. A reference to time is to Perth, Western Australia time.
18. If the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day.
19. A reference to a day is a reference to the period which starts at midnight and ends 24 hours later.
20. If a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.

1. NOVATION

On and from the Effective Date, the Parties novate the Contract so that:

1. the Incoming Party is substituted in place of the Outgoing Party under the Contract;
2. all references to the Outgoing Party in the Contract shall be read as a reference to the Incoming Party;
3. the Incoming Party undertakes to perform the obligations and be bound by the liabilities of the Outgoing Party under the Contract to the extent they are not performed;
4. the Continuing Party has the same rights against and owes the same obligations to the Incoming Party under the Contract as it did against the Outgoing Party prior to the Effective Date, as if the Incoming Party were an original party to the Contract in place of the Outgoing Party.

1. RELEASE

With effect on and from the Effective Date the Continuing Party releases and discharges the Outgoing Party from all obligations, liabilities, damages, losses, costs and expenses, and all claims, actions or proceedings, against the Outgoing Party, under or in respect of the Contract arising on or after the Effective Date.

1. CONSENT
2. The Continuing Party consents to the novation of the Contract under the Contract to the Incoming Party on the terms of this deed.
3. The Outgoing Party consents to being substituted by the Incoming Party as a party to the Contract and agrees to comply with all of the obligations of the Outgoing Party and be bound by the liabilities of the Outgoing Party due and arising under the Contract before the Effective Date.
4. The Continuing Party acknowledges and agrees that:
5. the Incoming Party may, pursuant to the terms of the Building Contract, be obliged to operate a project bank account mechanism, pursuant to which a dedicated trust account is established (by the Incoming Party) to facilitate payments directly from the Outgoing Party to the dedicated bank account and promptly thereafter to the participating subcontractors and consultants (**Project Bank Account**); and
6. where a Project Bank Account is effected under the Building Contract, the Continuing Party acknowledges and agrees that payments made by the Incoming Party after the Effective Date may be made to the Continuing Party through the Project Bank Account; and
7. the Continuing Party will do all things, and provide all such information as is reasonably necessary to allow the Continuing Party to administer payments under the Contract through the Project Bank Account.

1. WARRANTIES AND REPRESENTATIONS

Each party represents and warrants to that at the date of this deed:

1. it has the power and authority to enter into and perform its obligations under this deed;
2. it is duly incorporated and validly exists under the law of its place of incorporation;
3. it has taken all necessary action to authorise the execution, delivery and performance of this deed; and
4. this deed constitutes its legal, valid and binding obligations and is enforceable on it in accordance with its terms.

1. TAXES, COSTS AND EXPENSES

Each party must pay its own legal and other costs and expenses in relation to preparation and execution of this deed and a related document.

1. NOTICES
   1. Delivery
2. Subject to a written agreement, which expressly states that the parties may communicate in a different way, the parties must communicate by written notice.
3. A party must send a notice to the other party at the address listed on page 1.
4. A party may vary its address by sending a written notice to the other party.
5. A party must use the new address from the time that it receives the notice.
6. To deliver a notice under this deed, a party must hand deliver or post it to the other party’s address, or if a party has authorised notice by facsimile, then by facsimile to the facsimile number so authorised.
   1. Effect and delivery
7. A notice takes effect at the time stated in the notice.
8. If no time is stated then a notice sent by post is deemed to be received:
9. 3 days after posting if within Australia; and
10. 7 days after posting if posted to or from a place outside Australia;
11. If no time is stated, a notice sent by fax is deemed to be received:
12. at 5.00pm on the Business Day that the notice is sent; or
13. if sent after 5.00pm, then on the next Business Day.

1. GOVERNING CLAUSES
   1. Governing law and jurisdiction
2. The law of Western Australia governs this deed.
3. The parties submit to the exclusive jurisdiction of the courts of Western Australia, the Federal Circuit Court and the Federal Court of Australia.
   1. Variation

The parties can only vary this deed if the variation is in writing and each party signs.

* 1. Rights are cumulative

A party’s rights under this deed are in addition to its rights at law.

* 1. Severance

1. If a provision of this deed is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision must be ignored in the interpretation of this deed.
2. The remaining provisions of this deed remain in full force and effect.
   1. No waiver
3. A party granting a waiver of a right relating to this deed must give written notice of that waiver to the party that benefits from the waiver.
4. A party's failure, partial failure or delay in exercising a right relating to this deed is not a waiver of that right.
5. A party may not claim that another party’s delay or failure to exercise a right relating to this deed:
6. constitutes a waiver of that right; or
7. is a defence to its own action or inaction.
8. The parties may not waive or vary this clause.
   1. Entire agreement

This deed constitutes the entire agreement in respect of its subject matter between the parties and supersedes all previous discussions, undertakings and agreements.

* 1. Further assurance

Each party must do everything necessary to give full effect to this deed.

* 1. Counterparts

1. The parties may execute this deed in any number of counterparts, which taken together constitute one instrument.
2. The parties may exchange counterparts by scanning the entire duly executed counterpart and emailing it to the other party.
3. Executed as a deed

**Outgoing Party**

|  |  |  |
| --- | --- | --- |
| **The common seal** of **Housing Authority** **ABN 56 167 671 885** was hereunto affixed to this agreement in the presence of: | )  )  ) |  |
|  |  |  |
| Appointed Officer |  | Appointed Officer |
|  |  |  |
| Full Name (please print) |  | Full Name (please print) |
|  |  |  |
| Position |  | Position |

**Incoming Party**

|  |  |  |
| --- | --- | --- |
| **Executed as a deed by [insert] ACN [insert]** under s 127 of the Corporations Act: | )  )  ) |  |
|  |  |  |
| Signature of Director |  | Signature of Director/Company Secretary  (Delete title which does not apply) |
|  |  |  |
| Print name in full |  | Print name in full |

**Continuing Party**

|  |  |  |
| --- | --- | --- |
| **Executed as a deed by [insert]**  **ACN [insert]** under s 127 of the Corporations Act: | )  )  ) |  |
|  |  |  |
| Signature of Director |  | Signature of Director/Company Secretary  (Delete title which does not apply) |
|  |  |  |
| Print name in full |  | Print name in full |