Project File No: **[## insert]**

Project ID: **[## insert]**

Engagement ID: **[## insert]**

Document ID: **[## insert]**

**[## Insert Project Name] – [## insert description of consultancy services (e.g. architectural services)]**

**Consultancy Agreement  
related to construction  
(Long form)**

[insert]

Principal

[insert]

Consultant

[***Guidance Notes (located throughout this document) and items that you need to complete are shown in yellow shading. Ensure you remove guidance notes before releasing this document.]***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Revision:** | **Date:** | **Clause reference:** | **Details:** | **Endorsed by:** |
| June 2018 | 28/June 2018 | Not applicable | New document issued. | DTF |

The copyright in this Consultancy Agreement (Long form) is owned by the State of Victoria (Department of Treasury and Finance).

© State of Victoria 2018

[](http://creativecommons.org/licenses/by/3.0/au/)

You are free to re-use this Consultancy Agreement (Long form) under a [Creative Commons Attribution 4.0 licence](http://creativecommons.org/licenses/by/4.0/), provided you credit the State of Victoria (Department of Treasury and Finance) as author, indicate if changes were made and comply with the other licence terms. The licence does not apply to any branding, including Government logos.

Copyright queries may be directed to [IPpolicy@dtf.vic.gov.au](mailto:IPpolicy@dtf.vic.gov.au)

Contents

[1. Definitions and interpretation 1](#_Toc518135146)

[1.1 Definitions 1](#_Toc518135147)

[1.2 Interpretation 11](#_Toc518135148)

[1.3 Calculation of time 11](#_Toc518135149)

[1.4 No bias against drafter 12](#_Toc518135150)

[1.5 Provisions limiting or excluding liability 12](#_Toc518135151)

[2. General obligations of the Consultant 12](#_Toc518135152)

[2.1 Performance of the Services 12](#_Toc518135153)

[2.2 Consultant's acknowledgements 12](#_Toc518135154)

[2.3 Standard of care 13](#_Toc518135155)

[2.4 No authority to act 13](#_Toc518135156)

[2.5 Consultant to inform itself 13](#_Toc518135157)

[2.6 Co‑ordination with Other Contractors 13](#_Toc518135158)

[2.7 Access 14](#_Toc518135159)

[2.8 Conflict of interest 14](#_Toc518135160)

[2.9 Subcontracting 14](#_Toc518135161)

[2.10 Assignment 15](#_Toc518135162)

[2.11 Novation 15](#_Toc518135163)

[2.12 Comply with Statutory Requirements and Principal's Policies and Procedures 15](#_Toc518135164)

[2.13 Work health and safety 15](#_Toc518135165)

[2.14 Non-conforming cladding 16](#_Toc518135166)

[3. Specific obligations of the Consultant related to the Services 16](#_Toc518135167)

[3.1 Application 16](#_Toc518135168)

[3.2 Design and quality 16](#_Toc518135169)

[3.3 Additional work, health and safety obligations 17](#_Toc518135170)

[3.4 Consultant Statement 17](#_Toc518135171)

[3.5 No authority to give directions or waive requirements 17](#_Toc518135172)

[3.6 Interpretation of the Brief 17](#_Toc518135173)

[3.7 Co-ordination with other Projects/Programs 18](#_Toc518135174)

[3.8 Services not included 18](#_Toc518135175)

[3.9 Site Restrictions 18](#_Toc518135176)

[3.10 Cost Control 18](#_Toc518135177)

[3.11 Proactive review of all Project Contractor Documentation 19](#_Toc518135178)

[4. General obligations of the Principal 19](#_Toc518135179)

[4.1 Payment of Fee 19](#_Toc518135180)

[4.2 Provision of information 20](#_Toc518135181)

[4.3 Site access 20](#_Toc518135182)

[4.4 Assignment 20](#_Toc518135183)

[5. Personnel 20](#_Toc518135184)

[5.1 Principal's Representative 20](#_Toc518135185)

[5.2 Consultant's personnel 21](#_Toc518135186)

[5.3 Key People 21](#_Toc518135187)

[5.4 Removal of persons 21](#_Toc518135188)

[5.5 Compliance with Code of Conduct 21](#_Toc518135189)

[6. Insurance 22](#_Toc518135190)

[6.1 Consultant insurance obligations 22](#_Toc518135191)

[6.2 Failure to insure 23](#_Toc518135192)

[6.3 Period of insurance 23](#_Toc518135193)

[6.4 Notice of potential claim 23](#_Toc518135194)

[6.5 Cross liability 23](#_Toc518135195)

[7. Documentation 24](#_Toc518135196)

[7.1 Order of precedence 24](#_Toc518135197)

[7.2 Principal's Material and ownership of Principal's Material 24](#_Toc518135198)

[7.3 Preparation of Deliverables 24](#_Toc518135199)

[7.4 Prepare Deliverables within Principal's budget 25](#_Toc518135200)

[7.5 Discrepancies 26](#_Toc518135201)

[7.6 Principal's Representative may review Deliverables 26](#_Toc518135202)

[7.7 No obligation to review 26](#_Toc518135203)

[7.8 No alteration of Deliverables 27](#_Toc518135204)

[7.9 Copies of Deliverables 27](#_Toc518135205)

[8. Intellectual Property 27](#_Toc518135206)

[8.1 Intellectual Property Rights 27](#_Toc518135207)

[8.2 Existing IP Rights or Third Party IP Rights 27](#_Toc518135208)

[8.3 Data 28](#_Toc518135209)

[8.4 Intellectual Property Right warranty 28](#_Toc518135210)

[8.5 Moral Rights 28](#_Toc518135211)

[8.6 Survive termination 29](#_Toc518135212)

[9. Confidentiality, Media and Privacy 29](#_Toc518135213)

[9.1 Confidentiality 29](#_Toc518135214)

[9.2 Media 31](#_Toc518135215)

[9.3 Privacy 31](#_Toc518135216)

[9.4 Survive termination 31](#_Toc518135217)

[10. Quality 31](#_Toc518135218)

[10.1 Quality assurance 31](#_Toc518135219)

[10.2 Non-complying Deliverables or Services 32](#_Toc518135220)

[10.3 Re-performance of the non-complying Services 32](#_Toc518135221)

[10.4 Notice of errors 32](#_Toc518135222)

[11. Time 33](#_Toc518135223)

[11.1 Progress 33](#_Toc518135224)

[11.2 Consultant's Program 33](#_Toc518135225)

[11.3 Suspension 34](#_Toc518135226)

[11.4 Notice of matters impacting progress 34](#_Toc518135227)

[12. Variation 35](#_Toc518135228)

[12.1 Variation Price Request 35](#_Toc518135229)

[12.2 Variation Order 35](#_Toc518135230)

[12.3 Cost of Variation 35](#_Toc518135231)

[12.4 Rates and prices 36](#_Toc518135232)

[12.5 Omissions 36](#_Toc518135233)

[12.6 Notice of Directions 36](#_Toc518135234)

[13. Payment 37](#_Toc518135235)

[13.1 Payment obligation 37](#_Toc518135236)

[13.2 Payment Claims 37](#_Toc518135237)

[13.3 Form of Payment Claims 37](#_Toc518135238)

[13.4 Payment Statements 37](#_Toc518135239)

[13.5 Final Payment Claim and Final Payment Statement 38](#_Toc518135240)

[13.6 Payment 39](#_Toc518135241)

[13.7 Payment on account 39](#_Toc518135242)

[13.8 Correction of Payment Statements 39](#_Toc518135243)

[13.9 Interest 39](#_Toc518135244)

[13.10 Right of set‑off 39](#_Toc518135245)

[13.11 Payment of workers and subconsultants 40](#_Toc518135246)

[13.12 SOP Act 40](#_Toc518135247)

[13.13 Downstream SOP Act issues 41](#_Toc518135248)

[13.14 Provisional Sums 42](#_Toc518135249)

[14. Goods and Services Tax 42](#_Toc518135250)

[14.1 Interpretation 42](#_Toc518135251)

[14.2 GST exclusive 42](#_Toc518135252)

[14.3 Reimbursements and similar payments 42](#_Toc518135253)

[14.4 GST payable 43](#_Toc518135254)

[14.5 Variation 43](#_Toc518135255)

[15. Notices 43](#_Toc518135256)

[15.1 Delivery of notices 43](#_Toc518135257)

[15.2 When notice taken to be received 44](#_Toc518135258)

[15.3 Notices sent by more than one method of communication 44](#_Toc518135259)

[15.4 Document Management System 44](#_Toc518135260)

[16. Termination 45](#_Toc518135261)

[16.1 Preservation of rights 45](#_Toc518135262)

[16.2 Consultant default 45](#_Toc518135263)

[16.3 Principal default 45](#_Toc518135264)

[16.4 Contents of notice of default 45](#_Toc518135265)

[16.5 Termination for insolvency or breach 46](#_Toc518135266)

[16.6 Removal of suspension 46](#_Toc518135267)

[16.7 Principal's entitlements after termination 46](#_Toc518135268)

[16.8 Termination for convenience 47](#_Toc518135269)

[16.9 Costs 47](#_Toc518135270)

[17. Dispute resolution 47](#_Toc518135271)

[17.1 Disputes 47](#_Toc518135272)

[17.2 Notice of dispute 48](#_Toc518135273)

[17.3 Executive Negotiation 48](#_Toc518135274)

[17.4 Mediation 48](#_Toc518135275)

[17.5 Expert Determination 49](#_Toc518135276)

[17.6 Arbitration 49](#_Toc518135277)

[17.7 Survive termination 50](#_Toc518135278)

[17.8 Continuation of Services 50](#_Toc518135279)

[17.9 Summary relief 50](#_Toc518135280)

[17.10 Proportionate Liability Scheme 50](#_Toc518135281)

[18. Indemnity and limitation of liability 51](#_Toc518135282)

[18.1 General indemnity 51](#_Toc518135283)

[18.2 Intellectual Property and Moral Rights indemnity 51](#_Toc518135284)

[18.3 Downstream SOP Act indemnity 51](#_Toc518135285)

[18.4 Not used 52](#_Toc518135286)

[18.5 Not used 52](#_Toc518135287)

[19. Records, Reporting and Financial Information 52](#_Toc518135288)

[19.1 Consultant’s Records 52](#_Toc518135289)

[19.2 Meetings and Reporting 52](#_Toc518135290)

[19.3 Shared Reporting Process 53](#_Toc518135291)

[19.4 Evidence of financial standing or financial arrangements 54](#_Toc518135292)

[20. Victorian Industry Participation Policy 54](#_Toc518135293)

[20.1 Application 54](#_Toc518135294)

[20.2 Local Jobs First - Victorian Industry Participation Policy 55](#_Toc518135295)

[20.3 Revised VIPP Plan 55](#_Toc518135296)

[20.4 Reporting 55](#_Toc518135297)

[20.5 Verification of Supplier's compliance with VIPP Plan 56](#_Toc518135298)

[20.6 Use of VIPP information 56](#_Toc518135299)

[20.7 Local Industry Development Plan (LIDP) 56](#_Toc518135300)

[20.8 Revised LIDP 57](#_Toc518135301)

[20.9 Reporting 57](#_Toc518135302)

[20.10 Verification of Consultant's compliance with LIDP Plan 57](#_Toc518135303)

[20.11 Use of VIPP information 58](#_Toc518135304)

[20.12 Interaction Reference Number 58](#_Toc518135305)

[20.13 Record keeping and monitoring 59](#_Toc518135306)

[20.14 Use of VIPP information 59](#_Toc518135307)

[21. General 59](#_Toc518135308)

[21.1 Governing law 59](#_Toc518135309)

[21.2 Jurisdiction 59](#_Toc518135310)

[21.3 Amendments 60](#_Toc518135311)

[21.4 Waiver 60](#_Toc518135312)

[21.5 No representation or reliance 60](#_Toc518135313)

[21.6 Indemnities 60](#_Toc518135314)

[21.7 Counterparts 60](#_Toc518135315)

[21.8 Expense 60](#_Toc518135316)

[21.9 Severance 60](#_Toc518135317)

[21.10 Taxes 61](#_Toc518135318)

[21.11 No partnership, joint venture or other fiduciary relationship 61](#_Toc518135319)

[21.12 Joint and several liability 61](#_Toc518135320)

[21.13 Entire agreement 61](#_Toc518135321)

[21.14 Prior work 61](#_Toc518135322)

[21.15 Employment Policy 61](#_Toc518135323)

[21.16 Probity Event 62](#_Toc518135324)

[21.17 Auditing 62](#_Toc518135325)

[Schedule 1 - Agreement Particulars 65](#_Toc518135326)

[Schedule 2 - Fees and Expenses 72](#_Toc518135327)

[Schedule 3 - Key People 74](#_Toc518135328)

[Schedule 4 - Deed of Novation 75](#_Toc518135329)

[Schedule 5 - Confidentiality Undertaking 85](#_Toc518135330)

[Schedule 6 - Statutory Declaration 87](#_Toc518135331)

[Schedule 7 - VIPP Schedules 88](#_Toc518135332)

[Schedule 8 - Consultant Statement 93](#_Toc518135333)

Consultancy Agreement

Date

**Parties [Insert] ACN [Insert]** of **[Insert]** (**Principal**)

**[Insert] ACN [Insert]** of **[Insert]** (**Consultant**)

**Background**

1. The Principal wishes to engage the Consultant to perform the Services in accordance with the Agreement.
2. The Principal and the Consultant agree that the Consultant will perform the Services for the Principal in accordance with the Agreement.

**Operative provisions**

# Definitions and interpretation

## Definitions

1. In the Agreement:
2. **Agreement** means the agreement between the Principal and the Consultant constituted by the Agreement Documents.
3. **Agreement Documents** means:
   1. this document (including the Schedules);
   2. the Brief; and
   3. the documents (if any) listed in Item 4.
4. **Agreement Particulars** means the particulars set out in Schedule 1.
5. **Approval** means any licence, permit, consent, approval, authorisation, determination, certificate, permission or the like from any Authority or under any law, or any requirement made under any law, which must be obtained or satisfied (as the case may be) to:
   1. perform the Services; or
   2. occupy and use the completed Works, to the extent that Approvals in connection with the Services are required for that purpose.
6. **Associate** means, in relation to a person, any officer, agent, adviser, consultant, contractor or employee of that person.
7. **Authority** means any:
   1. government or any governmental, semi‑governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality;
   2. person having a right to impose a requirement, or whose consent is required, under law in connection with any part of the Services; or
   3. person having jurisdiction over, or ownership of, the Works.
8. **Award Date** means the date on which the Agreement has been completed and executed by the Principal and the Consultant.
9. **Brief** means the document or documents identified in Item 2 as constituting the Brief.
10. **Budget Excess** has the meaning given in clause 7.4(b)(i).
11. **Business Day** means a day:
    1. that is not a Saturday, Sunday or public holiday;
    2. on which banks are open for business generally in Melbourne, Victoria; and
    3. that is not a day that is wholly or partially observed as a public holiday throughout Victoria.
12. **Cladding Guideline** means the guideline titled "Minister’s Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products" issued pursuant to section 188(1)(c) of the *Building Act 1993* (Vic) on 13 March 2018, as amended or replaced from time to time.
13. **Claim** includes any claim, action, demand or proceeding (including by way of contribution or indemnity), whether for any claim for an extension of time to a Milestone Date, an increase in the Fee, the payment of money (including damages) or any other relief or remedy, and whether:
    1. under, arising out of, or in any way in connection with, the Agreement;
    2. arising out of or in connection with, the Services or either party's conduct before the Commencement Date; or
    3. otherwise at law including:
       1. under statute;
       2. in tort for negligence or otherwise, including negligent misrepresentation; or
       3. for restitution, including restitution based on unjust enrichment.
14. **Code of Conduct** means the Code of Conduct for Victorian Public Sector Employees 2015 (as amended from time to time) issued by the Victorian Public Sector Standards Commissioner pursuant to section 61 of the Public Administration Act 2004 (Vic).
15. **Code of Practice** means any code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic) or the *Health Records Act 2001* (Vic) (as applicable).
16. **Commencement Date** means the earlier of:
    1. the Award Date; and
    2. the date on which the Consultant commenced performance of the Services.
17. **Confidential Information** means all Deliverables and the Principal's Materials and other Information disclosed to the Consultant by the Principal, the Principal's Representative or any other person acting on behalf of the Principal, for or in connection with the Services, whether the Principal's Materials or other Information was:
    1. disclosed orally, in writing or in electronic or machine readable form;
    2. disclosed or created before, on or after the date of this Agreement;
    3. disclosed as a result of discussions between the parties concerning or arising out of the Services; or
    4. disclosed by the Principal, the Principal's Representative or by a person acting on behalf of the Principal.
18. **Consultant Statement** means a written statement in the terms set out in Schedule 8. This definition applies if indicated in Item 17.
19. **Consultant's Program** has the meaning given in clause 11.2(b)(i). This definition applies if indicated in Item 30.
20. **Consultant's Records** has the meaning given in clause 19.1.
21. **Consultant's Representative** means the person identified as the Consultant's Representative in Item 3 or any other person from time to time appointed as Consultant's Representative in accordance with clause 5.3.
22. **Contestable Items** means goods or services the subject of this Agreement for which there are competitive international suppliers and Australia and New Zealand suppliers. The Contestable Items are set out in Attachment 3 to Schedule 7. This definition applies if either Alternative 1 or Alternative 2 in Item 54 apply.
23. **Copyright Act** means the *Copyright Act 1968* (Cth).
24. **Data** means all point and array information, text, drawings, statistics, tests, analysis and other materials (including geological, geotechnical and environmental information, maps, images, survey results and drill core and cutting samples) embodied in any form which is:
    1. supplied by or on behalf of the Principal in connection with this Agreement (**Input Data**); or
    2. generated, recorded, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or for the purpose of this Agreement.
25. **Deed of Novation** means the deed of novation set out in Schedule 4.
26. **Default Notice** has the meaning given in clause 16.4.
27. **Deliverables** means all documents and materials brought, or required to be brought, into existence by the Consultant, as part of, or for the purpose of, the performance of the Services including drawings, designs, sketches, diagrams, advices, statements, specifications, models, samples, patterns, equipment, reports, technical information, plans, charts, calculations, computations, tables, schedules, data (stored by any means), software, photographs and finishes boards.
28. **Design Obligations** has the meaning given in clause 3.1(a).

**Direction** includes any agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement and **Direct** has a corresponding meaning.

**Discrepancy** means any error, omission, inconsistency, discrepancy, ambiguity, inadequacy, contradiction or deficiency.

1. **Dispute** has the meaning given in clause 17.1.

**DMS Contract** means a contract for the Document Management System between the Consultant and the provider of the Document Management System.

1. **Document Management System** means the document management system stated in Item 12, if any.

**Existing IP Rights** means the Intellectual Property Rights in any original ideas, equipment processes or systems of the Consultant that were brought into existence before the Commencement Date and were not created for the performance of the Services under the Agreement.

1. **Expense** means those expenses and disbursements described in section 2 of Schedule 2 (if any).
2. **Fee** means the fee stated or calculated in accordance with section 1 of Schedule 2, inclusive of all expenses, disbursements (other than the Expenses) and any Provisional Sums (if any), as adjusted under the Agreement.
3. **Final Payment Claim** has the meaning given in clause 13.5(a).
4. **Final Payment Statement** has the meaning given in clause 13.5(b)
5. **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
6. **Health Information** has the meaning set out in section 3 of the Health Records Act 2001 (Vic).
7. **Industry Capability Network** or **ICN** means Industry Capability Network (ICN) Victoria (ACN 007 058 120) (ABN 20 007 058 120). This definition applies if Alternative 1, Alternative 2 or Alternative 3 in Item 54 applies.
8. **Information** means information, documents or particulars whether provided orally, in writing or in electronic or machine readable form.
9. **Insolvency Event** means:
   1. a person informs the other party in writing, or its creditors generally, that the person is insolvent or is unable to proceed with the Agreement for financial reasons;
   2. execution is levied against a person by a creditor;
   3. in relation to an individual person or a partnership including an individual person, the person:
      1. commits an act of bankruptcy;
      2. has a bankruptcy petition presented against him or her or presents his or her own petition;
      3. is made bankrupt;
      4. makes a proposal for a scheme of arrangement or a composition; or
      5. has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor’s petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
   4. in relation to a corporation any one of the following:
      1. notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
      2. the corporation entering a deed of company arrangement with creditors;
      3. a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
      4. an application is made to a court for the winding up of the corporation and not stayed within 14 days;
      5. a winding up order is made in respect of the corporation;
      6. the corporation resolves by special resolution that it be wound up voluntarily (other than for a members’ voluntary winding‑up); or
      7. a mortgagee of any property of the corporation takes possession of that property.
10. **Intellectual Property Rights** includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks or names (including service marks), designs (whether or not registered or registrable), confidential information (including trade secrets and know‑how), circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields and all rights to register, rights in applications for the registration of and rights to extend or renew the registration of any of the foregoing, whether created before, on or after the Award Date and whether existing in Australia or otherwise.
11. **Item** means an item in the Agreement Particulars.

**Interaction Reference Number (IRN)** means the number issued by ICN to the Consultant. This definition applies if Alternative 3 in Item 54 applies.

1. **IRN Form** means the form submitted by the Consultant to ICN via the VMC in accordance with clause 20.12(b). This definition applies if Alternative 3 in Item 54 applies.
2. **Key People** means the Consultant's Representative and each person listed in Schedule 3.
3. **LIDP** means the Local Industry Development Plan set out in Schedule 7. This definition applies if Alternative 2 in Item 54 applies.
4. **LIDP Monitoring Table** means the table included as Attachment 2 of Schedule 7. This definition applies if Alternative 2 in Item 54 applies.
5. **Loss** means any:
   1. loss, cost (including legal costs, deductibles or increased premiums), expense, fee, compensation, charge, damage (including damages at common law or in equity), liability, debt or other amount; or
   2. to the extent not prohibited by law, fine or penalty,
6. whether direct, indirect, consequential (including pure economic loss), present, future, fixed, unascertained, actual or contingent.
7. **Mediator** has the meaning given in clause 17.4(c). This definition applies if indicated in Item 41.
8. **Milestone** means an event or stage in the performance of the Services as described in Item 6.
9. **Milestone Date** means a completion date for a Milestone as identified in Item 6.
10. **Moral Right** has the meaning given in section 189 of the Copyright Act, and if any work is used in any jurisdiction other than in Australia, any similar rights capable of protection under the laws of that jurisdiction.
11. **Notice** has the meaning given in clause 15.1.
12. **Notice of Dispute** has the meaning given in clause 17.2.
13. **Other Contractor** means any consultant, contractor, supplier or other person engaged by the Principal, other than the Consultant and its subconsultants.
14. **Overpayment** has the meaning given in clause 13.12(c)(ii).
15. **Payment Claim** has the meaning given in clause 13.2.
16. **Payment Statement** has the meaning given in clause 13.4.
17. **Personal Information** means information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
18. **Principal's Budget** means the amount specified in Item 7 being the Principal's budget for the Works or that part of the Works to which the Services relate (as the case may be).
19. **Principal's Material** means all documents and materials provided to the Consultant by the Principal from time to time, including documents and materials provided in accordance with clause 7.2 and any other documents, equipment, machinery and data (stored by any means).
20. **Principal's Policies and Procedures** means:
    1. all policies and procedures issued by the Principal, State of Victoria, a government department or a municipal, public or statutory authority in relation to the Services of the type being performed under this Agreement or the conduct of a person such as the Consultant in carrying out such work, which are either:
       1. publicly available; or
       2. provided to the Consultant by or on behalf of the Principal; and
    2. any policies and procedures included in Item 8.
21. **Principal's Program** means any program, as amended from time to time, prepared by or on behalf of the Principal setting out the times for the completion of the whole or any part of the Services or the Works and provided by the Principal to the Consultant.
22. **Principal's Representative** means the person identified as the Principal's Representative in Item 9 or any other person from time to time substituted by the Principal in accordance with clause 5.1(d).
23. **Prior Work** has the meaning given in clause 21.14.
24. **Probity Event** means the occurrence of any of the following events that relates to the Consultant or an Associate of the Consultant which:
    1. has or may have a material adverse effect on, or on the perception of, the character, integrity or honesty of the Consultant or the relevant Associate of the Consultant;
    2. has or may have a material adverse effect on:
       1. the public interest;
       2. public confidence in the Project; or
       3. the reputation of the Principal or the Project.
25. **Professional Indemnity Insurance** means a policy of professional indemnity insurance which covers claims for any breach of professional duty (whether owed in contract or otherwise) by the Consultant or any of its subconsultants arising out of or in connection with the performance of the Services.
26. **Project** means the project to be undertaken as described in Item 1 in respect of which the Services are to be provided.
27. **Project Contractor** means any person who is engaged by the Principal to deliver any aspect of the Project under a Project Contract. This definition applies if indicated in Item 16.
28. **Project Contracts** means the contracts described in Item 10. This definition applies if indicated in Item 16.
29. **Project Contractor Documentation** means:
    1. all material brought or required to be brought into existence by a Project Contractor as part of, or for the purpose of, carrying out any part of the Project Contract including documents, notices, drawings, specifications, reports, models, samples and calculations, equipment, technical information, plans, charts, tables, schedules, data (stored by any means), photographs and finishes boards; and
    2. without limiting paragraph (a), includes:
       1. design documentation prepared under a Project Contract;
       2. programs and cost plans issued under a Project Contract;
       3. if required by the Project Contract, subcontract documentation;
       4. all notices purporting to be issued under a Project Contract, including those seeking additional time or money;
       5. payment claims purporting to be issued under a Project Contract; and
       6. all other Claims (as defined in each Project Contract).

This definition applies if indicated in Item 16.

1. **Project Management Obligations** has the meaning given in clause 3.1(b).
2. **Proportionate Liability Scheme** means Part IVAA of the *Wrongs Act 1958* (Vic).
3. **Provisional Sum** means the monetary sum, contingency sum or prime cost allowances set out in Section 3 of Schedule 2 for the performance of each Provisional Sum Item.
4. **Provisional Sum Item** means the services, activities, works or items described in Section 3 of Schedule 2.
5. **Privacy Principles** means the:
   1. information privacy principles so identified and set out in the *Privacy and Data Protection Act 2014* (Vic); and
   2. health privacy principles so identified and set out in the *Health Records Act 2001* (Vic),

as applicable.

**Public Audit** means any audit, investigation or enquiry conducted by a Public Auditor or pursuant to any Public Audit Legislation.

1. **Public Audit Legislation** means Section 94A of the *Constitution Act 1975* (Vic) and the *Audit Act 1994* (Vic) or any other applicable legislation.

**Public Auditor** means any auditor or officer appointed under any Public Audit Legislation or any authorised nominee or representative of such auditor or officer.

**Public Liability Insurance** means a policy of public liability insurance in the name of the Consultant which:

* 1. covers the:
     1. Consultant for its rights, interests and liabilities to third parties arising out of, or in any way in connection with, the performance of the Services; and
     2. liability of the Consultant to the Principal for loss of or damage to property (including loss of use of property, whether damaged or not) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy); and
  2. indemnifies the Principal and any party named in Item 23 as one of the class of persons constituting the 'Insured' (except to the extent that any liability is due to or results from the negligence of the Principal or any party named in Item 23 (as applicable)).

1. **Public Sector Employee** has the same meaning as set out in section 4 of the Public Administration Act 2004 (Vic).
2. **Reference Letter** means the letter provided by ICN to the Consultant after the Consultant has consulted with ICN regarding opportunities for local industry for the Project. This definition applies if either Alternative 2 or Alternative 3 in Item 54 applies.
3. **Remedy Period** has the meaning given in clause 16.4.
4. **Representative** includes an employee, agent, officer, director, auditor, adviser, partner, consultant, subconsultant, joint venturer, contractor or subcontractor.
5. **Required Purpose** means that the Deliverables meet all:
   1. applicable requirements under law; and
   2. purposes stated in or which can be reasonably ascertained from any of the documents described or set out in the Brief or Item 4.
6. **Responsible Minister** means the Minister with responsibility for administering the *Victorian Industry Participation Policy Act 2003* (Vic). This definition applies if Alternative 1, Alternative 2 or Alternative 3 in Item 54 applies.
7. **Revised LIDP** has the meaning given in clause 20.8(a). This definition applies if Alternative 2 in Item 54 applies.
8. **Revised VIPP Plan** has the meaning given in clause 20.3(a). This definition applies if Alternative 1 in Item 54 applies.
9. **Risk Register** means, where a structure (or any part) is designed by the Consultant in the performance of the Services, a register which:
   1. identifies and details all hazards and risks to the health or safety of persons who carry out construction work on the structure (or part) (including hazards and risks notified to the Consultant by the Principal or the Principal's Representative); and
   2. in respect of each identified hazard and risk, states whether or not it has been considered in the preparation of the design and, if it:
      1. has been considered, details the steps taken in the preparation of the design to either eliminate or mitigate the hazard or risk; or
      2. has not been considered, provides reasons why and identifies what steps will be taken by the Consultant to either eliminate or mitigate the hazard or risk and when they will be taken.

This definition applies if indicated in Item 15.

1. **Schedule** means a schedule to this Agreement.
2. **Services** means the professional services described in, or reasonably to be inferred from, the Brief and all other obligations and work to be performed by the Consultant to comply with its obligations under the Agreement.
3. **Shared Reporting Contract** has the meaning given in clause 19.3(a). This definition applies if indicated in Item 52.
4. **Shared Reporting Information** has the meaning given in clause 19.2(c)(ii). This definition applies if indicated in Item 52.
5. **Shared Reporting Process** has the meaning given in clause 19.3(b). This definition applies if indicated in Item 52.
6. **Site** means the site identified in Item 5.
7. **SOP Act** means the *Building and Construction Industry Security of Payment Act 2002* (Vic).
8. **Statutory Requirements** means:
   1. any law applicable to the Works or the performance of the Services, including statutes, ordinances, regulations, by‑laws and other subordinate legislation; and
   2. Approvals (including any conditions or requirements under them).
9. **Taxes** means all taxes, levies, imposts, deductions, charges and withholdings assessed, imposed, collected or withheld under any legislation and, in each case, all interest, fines, penalties, charges, fees or other amounts in respect of them.
10. **Third Party IP Rights** means any Intellectual Property Rights in or relating to the Deliverables that are not capable of being vested in the Principal because the Consultant does not own and is unable to acquire those Intellectual Property Rights.
11. **Variation** means, unless otherwise stated in the Agreement, any change to the Services, including any addition, increase, decrease, omission or deletion to or from the Services.
12. **Variation Order** means a written notice which is given by the Principal's Representative to the Consultant under clause 12.2 and is expressly entitled 'Variation Order'.
13. **Variation Price** **Request** means a written notice which is given by the Principal's Representative to the Consultant under clause 12.1(a), is expressly entitled 'Variation Price Request' and sets out details of a proposed Variation to the Services.
14. **VIPP means the Victorian Industry Participation Policy made pursuant to section 4 of the *Victorian Industry Participation Policy Act 2003* (Vic).** This definition applies if Alternative 1, Alternative 2 or Alternative 3 in Item 54 applies.

**VIPP Commitments** means the commitments of the Consultant, if any, as set out in the Reference Letter. This definition applies if either Alternative 2 or Alternative 3 in Item 54 apply.

1. **VIPP Management Centre** or **VMC** means the online system developed to manage the application of VIPP by suppliers and Government agencies. This definition applies if Alternative 3 in Item 54 applies.
2. **VIPP Monitoring Table** means the table included as Attachment 2 of Schedule 7. This definition applies if Alternative 1 in Item 54 applies.
3. **VIPP Plan** means the VIPP Plan set out in Attachment 1 of Schedule 7. This definition applies if Alternative 1 in Item 54 applies.
4. **Workers Compensation Insurance** means a policy of insurance that:
   1. insures against liability for death of or injury to persons employed by the Consultant, including liability by statute and at common law; and
   2. to the extent permitted by law, indemnifies the Principal for its statutory liability to the Consultant's employees.
5. **WHS Act** means the *Occupational Health and Safety Act 2004* (Vic).
6. **WHS Legislation** means the WHS Act and the WHS Regulation.
7. **WHS Regulation** means the *Occupational Health and Safety Act Regulations 2017* (Vic).
8. **Works** means the development described in Item 11.
9. **Works Required Purpose** means the Works meet all:
   1. applicable requirements under law; and
   2. purposes stated in or which can be reasonably ascertained from any of the documents described or set out in the Brief or Item 4.

## Interpretation

1. In this Agreement:

### headings are for convenience only and do not affect interpretation;

1. and unless the context indicates a contrary intention:

### **person** includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

### a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;

### a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;

### a reference to a statute includes its deleted legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

### a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

### a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;

### if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

### **includes** in any form is not a word of limitation;

### the meaning of **or** will be that of the inclusive, being one, some or all of a number of possibilities;

### a reference to **$** or **dollar** is to Australian currency;

### the Principal and the Principal's Representative may grant, refuse or grant subject to conditions any consent or approval required from the Principal or the Principal's Representative in their absolute discretion; and

### the term 'may' when used in the context of a power, right or remedy exercisable by the Principal or the Principal's Representative means that the Principal and the Principal's Representative can each exercise that power, right or remedy in their absolute and unfettered discretion and the Principal and the Principal's Representative have no obligation to do so.

## Calculation of time

1. In this Agreement, unless the context indicates a contrary intention:

### references to time are to local time in Melbourne, Victoria;

### where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;

### a reference to a 'month' is a reference to a period beginning in one calendar month and ending in the next calendar month on the day numerically corresponding to the day of the calendar month on which that period began, but if there is no numerically corresponding day, it will end on the last day in the next calendar month; and

### if the day on or by which anything is to be done in accordance with this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

## No bias against drafter

1. No term or provision of this Agreement is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

## Provisions limiting or excluding liability

1. Any provision of the Agreement which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by law.

# General obligations of the Consultant

## Performance of the Services

1. The Consultant must:

### perform the Services in accordance with, and comply with all of its obligations under:

#### the Agreement; and

#### where the Project Management Obligations apply, the Project Contracts;

### comply with all Directions of the Principal or the Principal's Representative given or purported to be given under this Agreement; and

### do all things necessary and necessarily incidental for the performance of the Services.

## Consultant's acknowledgements

1. The Consultant acknowledges and agrees that:

### it has represented to the Principal that it has:

#### the professional skill and expertise necessary to perform the Services in accordance with the Agreement; and

#### experience in performing services equivalent to the Services; and

### the Principal:

#### has entered into the Agreement relying on the Consultant's representations referred to in clause 2.2(a); and

#### is entitled to and will rely on the professional skill, care, diligence and expertise of the Consultant in the performance of the Services.

## Standard of care

1. The Consultant must:

### exercise the standard of skill, care, diligence and expertise in the performance of the Services that would be expected of a professional and experienced provider of services equivalent to the Services;

### procure that each of its subconsultants exercises the standard of skill, care, diligence and expertise in the performance of the part of the Services being performed by that subconsultant that would be expected of a professional and experienced provider of services equivalent to the relevant part of the Services;

### prepare the Deliverables so that they comply with all of the requirements of the Agreement;

### perform the Services in a timely and efficient manner; and

### exercise the utmost good faith in the best interests of the Principal and keep the Principal fully and regularly informed about all matters affecting, likely to affect or otherwise relating to the performance of the Services or the Works.

## No authority to act

### Unless otherwise expressly authorised by the Principal in writing, the Consultant has no authority to, and must not:

#### enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Principal; or

#### do anything to bind or commit the Principal in any manner, whether as a disclosed agent of the Principal or otherwise.

### Without limiting clause 21.11, the Consultant is an independent consultant and is not, and must not purport to be, a partner or joint venturer of the Principal.

## Consultant to inform itself

1. The Consultant must regularly:

### inform itself of the Principal's requirements for the Services and the Works;

### without limiting clause 2.5(a), refer to the Principal's Material and the Principal's Program (if any is provided); and

### consult the Principal.

## Co‑ordination with Other Contractors

1. The Consultant must:

### fully co‑operate with the Project Contractors and Other Contractors;

### carefully co‑ordinate and integrate the performance of the Services the activities of the Project Contractors and with Other Contractors;

### perform the Services so as to avoid interfering with, disrupting or delaying the Project Contractors and Other Contractors; and

### provide information, advice, support and co‑operation to each of the Principal and the Other Contractors to the extent necessary to facilitate the timely completion of Other Contractors' services, works or activities.

## Access

1. The Consultant must at all reasonable times:

### give to the Principal's Representative or any other person authorised in writing by the Principal's Representative, access to any premises where the Services or part of the Services are being performed; and

### permit the Principal's Representative and persons referred to in clause 2.7(a) to inspect the performance of the Services and the preparation of any of the Deliverables or other material relevant to the performance of the Services.

## Conflict of interest

1. The Consultant:

### confirms that as at the Commencement Date, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement;

### must use its best endeavours to ensure that no conflict of interest exists or arises in the performance of the obligations of any subconsultant; and

### if any conflict of interest or risk of a conflict of interest arises, must:

#### immediately notify the Principal's Representative in writing of that conflict or risk; and

#### take all steps required by the Principal's Representative to remove, avoid or minimise the conflict or risk.

## Subcontracting

1. The Consultant:

### must not subcontract all of the Services and, without the prior written approval of the Principal's Representative must not subcontract any of the Services , except to a subconsultant named in Item 13 to perform those Services identified in Item 13;

### will be fully responsible for the performance of all of the Services despite subcontracting any of the Services;

### will be vicariously liable to the Principal for all acts, omissions and defaults of its subconsultants (and those of the employees and agents of its subconsultants) relating to, or in any way connected with the performance of the Services; and

### must include in each subcontract provisions which oblige the subconsultants to:

#### execute a deed of novation if so required by the Principal under clause 16.7(a);

#### effect and maintain the insurances required by clause 6.1(b); and

#### give the notices required by clause 6.4(c).

## Assignment

### The Consultant must not, without the prior written consent of the Principal, assign or otherwise transfer any of its rights under this Agreement.

### The Principal may assign or transfer any of the Principal's rights or obligations under this Agreement at any time, without the consent of the Consultant.

## Novation

### The Principal may at any time novate the Agreement to an Other Contractor and the Consultant irrevocably consents to any such novation and the terms of the Deed of Novation.

### If Directed by the Principal to do so, the Consultant must (without any entitlement to compensation) duly execute and deliver to the Principal 3 copies of the Deed of Novation not later than 5 Business Days after receipt of the Principal's Direction.

### The Consultant irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and execute, sign, send and deliver in the name of the Consultant the Deed of Novation (and all notices, deeds and documents necessary to give effect to the novation and bind the Consultant accordingly) if the Consultant fails to comply with clause 2.11(b).

## Comply with Statutory Requirements and Principal's Policies and Procedures

1. The Consultant must:

### comply with all applicable Statutory Requirements in performing the Services;

### without limiting clause 2.12(a):

#### apply for, obtain, satisfy and maintain all Approvals, except those specified in Item 14 which have been or will be obtained by the Principal; and

#### provide all notices and pay all fees and other amounts which are required to be paid in respect of the performance of the Services;

### as soon as practicable (and not later than 5 Business Days after receipt), provide the Principal's Representative with copies of all documents (including the Approvals and other notices) issued to the Consultant by any Authority in connection with the performance of the Services or the Works;

### if requested by the Principal to do so, assist the Principal in obtaining those Approvals specified in Item 14 (including by the preparation of documentation);

### comply with all Principal's Policies and Procedures in performing the Services.

### 

## Work health and safety

1. Without limiting the Consultant's obligations under any other provision of this Agreement, the Consultant must:

### comply, and procure that its subconsultants and any other person engaged by the Consultant for the performance of any part of the Services comply, with the WHS Legislation, including obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter; and

### exercise a duty of the utmost good faith to the Principal in carrying out the Services to enable the Principal to discharge the Principal's duties under the WHS Legislation;

### carry out the Services to ensure the health and safety of persons is not put at risk;

### whenever requested by the Principal's Representative or required by the WHS Legislation, demonstrate compliance with the WHS Legislation, including by providing evidence of any Approvals, prescribed qualifications or experience or any other information relevant to work health and safety matters.

## Non-conforming cladding

1. If the Consultant becomes aware of the use of any Prescribed Combustible Product (as that term is defined in the Cladding Guidelines) on the Project, the Consultant must immediately notify the Principal's Representative.

# Specific obligations of the Consultant related to the Services

## Application

### Clauses 3.2 to 3.4 apply if indicated in Item 15 (collectively, the **Design Obligations**).

### Clauses 3.5 to 3.11 apply if indicated in Item 16 (collectively, the **Project Management Obligations**).

## Design and quality

### Without limiting the Consultant's obligations under any other provision of this Agreement, the Consultant must:

### design the parts of the Works which the Agreement requires it to design in accordance with the Brief and the other requirements of the Agreement, including by the preparation of all relevant Deliverables;

### prepare the Deliverables so that the Works when constructed in accordance with the Deliverables meet the Works Required Purpose; and

### ensure that any design solution must not include the installation into any building of Type A or Type B Construction, a Prescribed Combustible Product as part of an External Wall (including as an attachment) unless the Consultant has obtained a determination of the Building Appeals Board that the installation of the Prescribed Combustible Product complies with the *Building Act 1993* (Vic) and the regulations made under that Act; and

### indemnify the Principal from and against any loss, damage, expense or Claim (including any third party Claim against the Principal) arising out of or in connection with any breach by the Consultant of its obligations under clause 3.2(c).

### Terms which have a defined or special meaning in the Cladding Guideline have that meaning where used in clauses 3.2(c) and 3.2(d).

## Additional work, health and safety obligations

1. Without limiting the Consultant's obligations under any other provision of this Agreement, the Consultant must:

### comply, and procure that its subconsultants and any other person engaged by the Consultant for the performance of any part of the Services comply, with the WHS Legislation, including obligations under the WHS Legislation (relating to designers);

### consult with the Principal in relation to any design to allow the Principal to discharge the Principal's duties under the WHS Legislation;

### before commencing performance of the Services, prepare and submit a Risk Register to the Principal; and

### ensure the Risk Register submitted to the Principal under clause 3.3(c) is updated, as necessary, to reflect the design development process and submit the updated Risk Register to the Principal at regular intervals.

## Consultant Statement

### This clause 3.4 applies if indicated in Item 17.

### If the Consultant is required to inspect the Works, the Consultant must, at the intervals stated in Item 17 (if any) and whenever requested to do so by the Principal:

#### conduct inspections of any Works being undertaken in respect of the Project during their performance and upon their completion; and

#### submit a Consultant Statement to the Principal.

## No authority to give directions or waive requirements

1. The Consultant has no authority to:

### give directions to the Project Contractors, other than as expressly set out in this Agreement or the Project Contracts;

### waive or vary any requirements of a Project Contract; or

### discharge or release a party from any of its obligations under a Project Contract.

## Interpretation of the Brief

### Requirements contained in the Brief, whether or not they include the expression "the Consultant must" or "the Consultant shall" or any equivalent expression, will be deemed to be requirements to be satisfied by the Consultant, unless stated otherwise.

### The Brief sets out the Principal's minimum requirements, which must be met or exceeded by the Consultant in performing the Services. Nothing contained in the Brief will operate to limit or exclude the Consultant's obligations under this Agreement.

### To the extent of any Discrepancy between the Brief and any other requirement of this Agreement (including any other requirement of the Brief), subject to clause 7.1, whichever requirement provides the greater or higher requirement, standard, quality, level of service, quantum or scope (as applicable) will prevail.

## Co-ordination with other Projects/Programs

1. The Consultant:

### acknowledges that the Project is part of the project or program set out in Item 18;

### must perform the Services in a manner which ensures that the way in which the Project is delivered maximizes the Principal's objectives for the delivery of the Project and the project or program set out in Item 18, including the delivery of the maximum scope of work within budget and on time; and

### without limiting clause 3.7(b), must attend such meetings, provide such documents and information, consider and respond to such proposals and do all such other things as the Principal's Representative may require for the purposes of clause 3.7(b).

## Services not included

1. The services set out in Item 19 to be carried out in relation to the Project are not included in the Services and will be carried out by the Principal or by other persons (including Other Contractors).

## Site Restrictions

1. Any Site based Services must be performed subject to the restrictions in Item 20.

## Cost Control

### The Consultant must:

#### use its best endeavours to ensure that the Project is completed in accordance with the Principal's requirements for the lowest possible cost;

#### review the cost plan(s) for the Project with the Principal's Representative on a regular basis (including at all times required by the Principal's Representative) to:

##### ensure that the cost of the Project is in accordance with any cost plans for the Project approved by the Principal; and

##### advise the Principal's Representative how the design or any other aspect of the Project could be modified to ensure that the cost of the Project is in accordance with approved cost plans; and

#### initiate a system of cost control (to the satisfaction of the Principal's Representative) throughout design and construction of the Project for the purposes of clause 3.10(a)(i) and (without limitation) advise the Principal's Representative as to all alternative steps available where:

##### the tenders for any package of work forming part of the Project exceed the amount included for that work in the relevant approved cost plan; or

##### the out-turn cost incurred under any Project Contract exceeds (or appears likely to exceed) the amount included for that contract in the relevant approved cost plan.

### Without limiting clause 3.10(a), in performing the Services during the Planning Phase (if any), the Consultant must identify all project structuring, packaging, scoping, choice of delivery method, risk allocation, procurement, programming, costing and other issues which could have an effect on the out-turn cost of the Project.

## Proactive review of all Project Contractor Documentation

1. The Consultant must:

### promptly and fully review all Project Contractor Documentation for compliance with the relevant Project Contract before submitting that Project Contractor Documentation to the Principal;

### not submit Project Contractor Documentation to the Principal unless it has been fully reviewed and complies with the relevant Project Contract;

### if any Project Contractor Documentation does not fully comply with the relevant Project Contract, provide the Project Contractor with all comments and other assistance necessary and appropriate to enable the Project Contractor to amend and finalise the Project Contractor Documentation so that it complies with the relevant Project Contract;

### in any event, provide the review of the Project Contractor Documentation to the Principal advising of the actions required to finalise the documentation;

### for the purposes of this clause, be responsible for coordinating the finalisation of all Project Contractor Documentation, including by providing and directing all necessary personnel to administer, supervise, review, coordinate and control finalisation of all Project Contractor Documentation at a rate of progress so that the relevant Project Contractor complies with his obligations under the relevant Project Contract;

### if the Consultant requires any information, guidance, or other direction from the Principal for the purpose of finalising its review of, or enabling the Project Contractor to finalise any Project Contractor Documentation, promptly request the information, guidance or direction from the Principal;

### proactively program and manage the development, review and finalisation of all Project Contractor Documentation with the relevant Project Contractor so as to ensure that there are no delays to the completion of the project and that value for money for the Principal is otherwise maximised;

### when Project Contractor Documentation is submitted to the Principal, provide recommendations and advice in respect of such Project Contractor Documentation to the Principal; and

### otherwise do all things necessary to ensure that the Principal is able to efficiently and effectively review all Project Contractor Documentation.

# General obligations of the Principal

## Payment of Fee

1. The Principal must pay the Consultant the Fee subject to and in accordance with the terms of the Agreement.

## Provision of information

### If the Consultant reasonably considers that, for the purpose of performing the Services, it requires Information in addition to the Principal's Material, it must give written notice to the Principal's Representative specifying the Information together with reasons why it is required.

### The Principal must use its best endeavours to provide or procure the provision of the Information if it considers it is reasonably required by the Consultant.

## Site access

### If the Consultant reasonably requires access to the Site or any other property within the control of the Principal for the purpose of performing the Services (or any part), it must give written notice to that effect to the Principal.

### Subject to any agreement or arrangement between the Principal and any third party, as soon as reasonably practicable after receipt of a notice under clause 4.3(a) the Principal must provide the Consultant with access to the Site, and any other property within the control of the Principal, to the extent required for the performance of the Services.

### When accessing the Site or any other property, the Consultant must comply (and procure that its subconsultants and any persons for whom the Consultant is responsible comply) with all Directions given, and all procedures and policies relating to work health, safety and security notified, to the Consultant by the Principal or the Principal's Representative.

## Assignment

1. The Principal may at any time, without the prior written consent of the Consultant, assign or otherwise transfer any of its rights under this Agreement to any other party.

# Personnel

## Principal's Representative

### The Principal's Representative will administer this Agreement on behalf of the Principal and:

#### will exercise all rights, powers, authority and functions under this Agreement; and

#### may exercise all rights, powers, authority and functions of the Principal under this Agreement,

#### and does so as the agent of the Principal (and not as an independent certifier, assessor or valuer).

### The Consultant must comply with all Directions of the Principal's Representative given or purported to be given under a provision of this Agreement.

### Except where the Agreement otherwise expressly provides, the Principal's Representative may give a Direction orally but will as soon as practicable confirm it in writing.

### The Principal may at any time replace the person appointed as Principal's Representative and notify the Consultant of that replacement.

### The Principal may at any time:

#### delegate the exercise of any power or authority of the Principal to a person other than the then appointed Principal's Representative; and

#### vary or terminate any power or authority it has delegated,

#### and must promptly notify the Consultant of the identity of each delegate and the powers or any such variation or termination.

## Consultant's personnel

### The Consultant must ensure that all persons engaged by it in connection with the Services are appropriately qualified, competent and experienced in the provision of services equivalent to the Services.

### A Direction is deemed to be given to the Consultant if it is given to the Consultant's Representative.

## Key People

### The Consultant:

#### must employ the Key People in the roles and performing the responsibilities specified in Schedule 3;

#### subject to clause 5.3(a)(iii),must ensure that the Key People are used by the Consultant and must not replace Key People without the prior written consent of the Principal’s Representative's, which approval will not be unreasonably withheld; and

#### may replace any Key People who are no longer available to perform the Services due to illness, death, resignation or otherwise leaving the employment of the Consultant.

### Where clauses 5.3(a)(ii) or 5.3(a)(iii) permit Key People to be replaced, the Consultant must replace Key People with person(s) of equivalent skills and experience.

## Removal of persons

### The Principal's Representative may, by notice in writing, Direct the Consultant to remove any person from the performance of the Services.

### The Consultant must ensure that a person the subject of a Direction under clause 5.4(a) is not again employed in connection with the Services.

## Compliance with Code of Conduct

1. Where, in the course of providing the Services or working on the Project, the Consultant, or its subconsultants and any other person engaged by the Consultant for the performance of the Services:

### supervise Public Sector Employees;

### undertake work that is of a similar nature to the work undertaken by Public Sector Employees at premises or a location generally regarded as a public sector workplace; or

### use or have access to public sector resources or information that are not normally accessible or available to the public,

### the Consultant must comply, and must ensure that its subconsultants and any other person engaged by the Consultant for the performance of the Services comply, with the Code of Conduct.

# Insurance

## Consultant insurance obligations

1. The Consultant must:

### as from the Commencement Date, effect or have in place and thereafter maintain the following policies of insurance with insurers and on terms approved in writing by the Principal's Representative (which approval shall not be unreasonably withheld):

#### Professional Indemnity Insurance for an amount as is stated in Item 21(a);

#### if required by Item 21(b), Public Liability Insurance for an amount per occurrence as is stated in Item 21(c); and

#### Workers Compensation Insurance and any other insurance that the Consultant is required to effect under any Statutory Requirement for an amount or amounts required by law;

### ensure that each of its subconsultants has in force and maintains:

#### a professional indemnity insurance policy for an amount as is specified in Item 21(d) or otherwise as Directed by the Principal's Representative; and

#### similar insurance to the Workers Compensation Insurance covering the subconsultants' employees;

### not later than the Commencement Date and within 2 Business Days after receipt of any request from the Principal's Representative to do so, provide the Principal's Representative with evidence of any required insurance, including any certificates of currency and copies of insurance policies;

### include in its policies of Professional Indemnity Insurance and Public Liability Insurance provisions which require the insurer to give the Principal:

#### whenever the insurer gives an insured a notice under or in connection with the policy, a copy of that notice at the same time it is given to the insured; and

#### 20 Business Days prior written notice of any notice of cancellation intended to be given by the insurer;

### punctually pay all premiums;

### not do, permit to be done or omit to do anything which prejudices any insurance;

### rectify anything which might prejudice any insurance;

### immediately reinstate an insurance policy if it lapses;

### not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;

### immediately notify the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled;

### give full, true and particular information to the insurer of all matters and things the non‑disclosure of which might in any way compromise or affect any insurance policy or the payment of all or any benefits under the insurance policy; and

### maintain the insurance policies required under this clause 6.1 with an insurer and on terms both approved in writing by the Principal.

## Failure to insure

1. If the Consultant fails to:

### provide copies of any insurance policy together with evidence satisfactory to the Principal's Representative that the policy is current; or

### effect insurance with insurers and on terms satisfactory to the Principal's Representative,

1. as required by clause 6.1, the Principal may, without prejudice to any other rights it may have, take out the relevant insurance policies itself and the cost incurred by the Principal in doing so, will be a debt immediately due and payable from the Consultant to the Principal.

## Period of insurance

1. The Consultant must maintain (or cause to be maintained):

### the policies of Public Liability Insurance and Workers Compensation Insurance until completion of the Services; and

### the policy of Professional Indemnity Insurance (and any policy of professional indemnity insurance effected by a subconsultant) until the expiration of the period specified in Item 22 following completion of the Services.

## Notice of potential claim

1. The Consultant must:

### promptly inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by the Agreement in respect of the Services and in any event not later than 5 Business Days after the occurrence;

### keep the Principal informed of subsequent developments concerning the claim; and

### oblige its subconsultants to similarly inform the Consultant and the Principal in respect of occurrences which may give rise to a claim by them.

## Cross liability

1. If the Item 23 requires that the Public Liability Insurance names more than one insured, the Consultant must ensure that the Public Liability Insurance policy includes a clause by which the insurer agrees:

### that the term 'insured' and all insuring agreements and endorsements (with the exception of the overall limit of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;

### to waive all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;

### that any failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;

### that any non‑disclosure, misrepresentation (whether fraudulent or otherwise), breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim on the policy; and

### that a notice to the insurer by one insured will be deemed to be notice by all insured parties.

# Documentation

## Order of precedence

### Subject to clause 7.1(b), the order of precedence set out in Item 24 applies to resolve any Discrepancy in or between any one or more of the Agreement Documents.

### To the extent that an Agreement Document or any part imposes a greater or higher requirement, standard, quality, level of service, quantum or scope than any other Agreement Document or part, unless the context otherwise requires, that greater or higher requirement, standard, quality, level of service, quantum or scope prevails**.**

## Principal's Material and ownership of Principal's Material

### The Principal must give the Consultant the documents, and the number of copies of those documents, both specified in Item 25.

### As soon as practicable after receipt, the Consultant must review the Principal's Material and promptly notify the Principal's Representative of any Discrepancy identified by the Consultant.

### The Principal's Material will remain the property of the Principal.

### The Consultant must:

#### if the Principal informs the Consultant of any Principal's Material in which third parties hold the copyright and of any conditions attaching to the use of that material, use that material only in accordance with those conditions;

#### protect and keep safe and secure all Principal's Material provided to it by or on behalf of the Principal, and only use, copy or reproduce the Principal's Material for the purpose of performing the Services and complying with the Consultant's obligations under this Agreement; and

#### on the earlier of completion of the Services or termination of the Agreement, promptly return all Principal's Material to the Principal.

## Preparation of Deliverables

1. The Consultant must:

### submit the Deliverables to the Principal's Representative progressively and:

#### to the extent applicable, in accordance with the Principal's Program (if any is provided) and any Milestone Dates; and

#### if and to the extent clause 7.3(a) does not apply, when reasonably Directed by the Principal's Representative to do so; and

### prepare the Deliverables:

#### in accordance with the Agreement and all applicable Statutory Requirements;

#### so that they are:

##### fit for the Required Purpose;

##### free from any Discrepancies; and

##### to the extent that they address like or interrelated subject matter, coordinated and consistent (including with any designs prepared by Other Contractors);

#### so as not to infringe the Intellectual Property Rights or Moral Rights of any person; and

#### having regard to the nature of the Services, the conditions of the Site, existing services and utilities and any other constraints.

## Prepare Deliverables within Principal's budget

### If a Principal's Budget is specified in Item 7, the Consultant must prepare the Deliverables so that the Principal is able to obtain more than one tender for the Works (or part of the Works to which the Services relate, as the case may be) for an amount not exceeding the Principal's Budget.

### If at any time during the performance of the Services (whether on receipt of tenders for the Works or otherwise), the Consultant considers that the Principal's Budget will be or is likely to be exceeded, the Consultant must give a written notice to the Principal to that effect which:

#### states the amount by which the Consultant considers the Principal's Budget will be or is likely to be exceeded (**Budget Excess**);and

#### sets out the Consultant's recommendations to avoid or minimise the Budget Excess.

### After receipt of a notice under clause 7.4(b), the Principal may, in its sole discretion, by written notice to the Consultant:

#### Direct that Deliverables be changed or revised so as to avoid or minimise the Budget Excess;

#### approve the Budget Excess;

#### change the Principal's Budget;

#### accept some or all of the Consultant's recommendations under clause 7.4(b)(ii) (with or without amendment); or

#### otherwise Direct the Consultant in connection with the Principal's Budget or the Budget Excess.

### If the Consultant has complied with its obligations under the Agreement and considers that a Direction received under clause 7.4(c)(i) constitutes or requires the performance of a Variation, then the Consultant must, if it wishes to make a Claim against the Principal arising out of or in connection with the Direction, comply with clause 1212.6.

## Discrepancies

### If during the period in Item 26, either party or an Other Contractor identifies any Discrepancy in the Deliverables, the Consultant must revise or amend the Deliverables to remedy or resolve the Discrepancy.

### If the Design Obligations apply and remedying or resolving a Discrepancy in the Deliverables involves effecting a material change or making a determination in relation to the design intent of the Services or the Works as stated in or reasonably able to be ascertained from the Agreement Documents, the Consultant must:

#### consult the Principal before effecting that remedy or resolution; and

#### comply with any Direction given by the Principal for the purposes of remedying or resolving the Discrepancy.

### The Consultant will not be entitled to make any Claim against the Principal arising out of or in connection with its obligations under this clause 7.5 (including compliance with any Direction under clause 7.5(b)(ii)).

## Principal's Representative may review Deliverables

### The Principal's Representative may:

#### review any Deliverables submitted (or resubmitted) by the Consultant; and

#### if it considers that any Deliverable does not comply with the Agreement, give written notice to the Consultant rejecting that Deliverable,

not later than 10 Business Days after receipt.

### The Consultant must:

#### comply with its obligations under clause 10.2(a) and 10.3; and

#### not proceed with any Deliverables unless the 10 Business Days in clause 7.6(a) has expired and the Principal's Representative has not given a notice under clause 7.6(a)(ii).

## No obligation to review

### Despite clause 7.6, neither the Principal nor the Principal's Representative are obliged to review, comment on, consent to, approve or reject, or assume or owe any duty of care to the Consultant for, the Deliverables submitted (or resubmitted) by the Consultant, including for any Discrepancies or compliance with the Agreement.

### No review of, comment on, consent to or approval or rejection of or Direction in relation to any Deliverables (or any failure to do any one or more of those things) by the Principal or the Principal's Representative will:

#### relieve the Consultant from, or alter or affect, the Consultant's liabilities or obligations; or

#### prejudice the Principal's rights against the Consultant,

whether arising under the Agreement or otherwise at law.

## No alteration of Deliverables

1. The Consultant must not make any alteration to any Deliverables submitted under clause 7.6 and not rejected by the Principal's Representative under clause 7.6(a)(ii), without the Principal's Representative's prior written approval.

## Copies of Deliverables

1. For the purposes of clause 7.6, the Consultant must submit or resubmit to the Principal's Representative the number of copies specified in Item 27 of any of the Deliverables.

# Intellectual Property

## Intellectual Property Rights

### The alternative applying for this clause 8.1 is as set out in Item 28.

1. **ALTERNATIVE 1: LICENCE**

### the Consultant:

#### retains the Intellectual Property Rights in or in relation to the Deliverables; and

#### grants (or must procure the grant) to the Principal of an irrevocable, royalty-free, perpetual and fully assignable licence (including the right to sublicense) to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Deliverables and to exercise Intellectual Property Rights in the Deliverables and for any purpose related to the Services or the Works.

### The licence under clause 8.1(b)(ii) arises immediately on creation of the Deliverables.

1. **ALTERNATIVE 2: OWNERSHIP**

### The Intellectual Property Rights in or relating to the Deliverables (excluding Existing IP Rights and Third Party IP Rights) vest absolutely in the Principal immediately on creation of the Deliverables and the Consultant must do everything necessary to perfect that vesting.

### The Principal grants to the Consultant a royalty-free, non-exclusive licence (including the right to sublicense) to use the Deliverables and to exercise Intellectual Property Rights in the Deliverables solely for the purpose of carrying out the Services.

## Existing IP Rights or Third Party IP Rights

To the extent the Intellectual Property Rights in or relating to the Deliverables are Existing IP Rights or Third Party IP Rights, the Consultant grants, or must procure the grant, to the Principal of an irrevocable, royalty-free, perpetual and fully assignable licence (including the right to sublicense):

### to use, reproduce, modify, adapt, develop, communicate to the public or otherwise exploit the Deliverables and to exercise Existing IP Rights and Third Party IP Rights in the Deliverables in connection with any purpose whatsoever whether or not related to the Services or the Works; and

### without limiting clause 8.2(b), to use the Existing IP Rights and the Third Party IP Rights to the extent necessary for the Principal to access, use, publish or store any Data vested in the Principal in accordance with clause 8.3.

## Data

### All Data hereby vests in the Principal, and the Principal grants to the Consultant an irrevocable licence with the right to sub-licence to its contractors the right to use Data solely for the purpose of carrying out the Services.

### The Consultant must do everything possible to perfect such vesting including:

#### assign to the Principal from the date of creation all Intellectual Property Rights in Data created or obtained by or on behalf of the Principal for the purpose of the Agreement; and

#### upon completion of the Services, give the Principal possession of all Data in such form and by such means as the Principal reasonably requires.

### The Consultant must only use, copy or supply Data to the extent necessary to perform its obligations under the Agreement.

## Intellectual Property Right warranty

1. The Consultant represents and warrants that:

### the Consultant owns all Intellectual Property Rights in the Deliverables or, to the extent that it does not, is entitled to grant the assignments and licences required by this Agreement;

### the use by the Principal or any sub-licensee or sub-sub-licensee of the Deliverables in accordance with this Agreement will not infringe the rights (including Intellectual Property Rights and Moral Rights) of any third party;

### neither the Principal nor any sub-licensee or sub-sub-licensee is liable to pay any third party any licence or other fee in respect of the use of the Deliverables, whether by reason of Intellectual Property Rights or Moral Rights of that third party or otherwise; and

### the use by the Principal or by any sub-licensee or sub-sub-licensee of the Deliverables in accordance with this Agreement will not breach any laws.

## Moral Rights

1. The Consultant must:

### not infringe any Moral Right of any author of any work in performing the Services;

### to the extent permitted by law and on terms reasonably required by the Principal, obtain an irrevocable and unconditional:

#### written consent (which is valid and effective under the Copyright Act):

##### for the benefit of the Principal and any person nominated or authorised by the Principal and the Consultant;

##### signed by the author of any work to be incorporated into the Deliverables, or used during, or as part of the Services; and

##### including any necessary consents from its employees, subconsultants, and any employees of its subconsultants,

##### to the doing, or authorising the doing of, an act or making, or authorising the making of, an omission (whether occurring before or after this consent is given) anywhere in the world which, but for the consent, infringes or may infringe that author's Moral Rights in the work; and

#### waiver of any and all Moral Rights to which that author may be entitled anywhere in the world in relation to the work; and

### in procuring consents and waivers under clause 8.5(b), not (and must not encourage or permit anyone else to), apply any duress to any person or make a statement to any person knowing that:

#### the statement is false or misleading in a material way; or

#### a matter or thing has been omitted from the statement, without which the statement is false or misleading in a material way.

1. Where used in this clause 8.5, the term **work** has the meaning given to it in section 189 of the Copyright Act.

## Survive termination

1. Clause 8, and the assignments and licences granted to the Principal under them, will survive any termination or completion of the Agreement.

# Confidentiality, Media and Privacy

## Confidentiality

### Subject to clause 9.1(b), the Consultant must:

#### keep the Confidential Information confidential and do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information;

#### not use, or allow the use of, any part of the Confidential Information other than for the purpose of performing the Services and otherwise complying with its obligations under this Agreement;

#### keep the Confidential Information out of any computer, database, or other electronic means of data or information storage except for a computer, database, or other electronic means of data or electronic storage exclusively controlled by the Consultant;

#### establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure; and

#### immediately notify the Principal of any potential, suspected or actual unauthorised use, copying or disclosure of the Confidential Information.

### Without limiting the Consultant's obligations under clause 9.3, the Consultant may disclose Confidential Information:

#### with the prior written consent of the Principal;

#### subject to clause 9.1(c), to a Representative; or

#### to the extent that the disclosure or announcement is required:

##### subject to clause 9.1(d), to comply with any applicable Statutory Requirement or any requirement of any regulatory body (including any relevant stock exchange);

##### to enable the Consultant to obtain professional legal, financial or insurance advice; or

##### for the Consultant to perform its obligations under this Agreement.

### Before disclosing any portion of the Confidential Information to any of its Representatives the Consultant must:

#### inform the Principal of the name and title of the Representatives to whom the Confidential Information is to be disclosed;

#### ensure that any Representative to which it discloses Confidential Information agrees to keep the Confidential Information confidential and otherwise comply with this clause 9.1 as if the Representative were the Consultant; and

#### without limiting the Consultant's obligations under clause 9.1(c)(ii), if requested by the Principal, obtain a signed undertaking from each of the Representatives that are to be given access to the Confidential Information in the form of the undertaking included in Schedule 5 and deliver each of the signed undertakings to the Principal.

### Before the Consultant discloses any Confidential Information under any Statutory Requirement or any requirement of any regulatory body (including any relevant stock exchange), the Consultant must give the Principal:

#### sufficient notice to enable it to seek a protective order or other remedy; and

#### all assistance and co-operation which the Principal considers necessary to prevent or minimise disclosure of the Confidential Information.

### The Consultant acknowledges that compliance with clause 9.1(d) does not release the Consultant or its Representatives from their obligations under this clause 9.1.

### Subject to clause 9.1(g), on the earlier of the completion of the Services or the termination of this Agreement, if requested by the Principal, the Consultant must:

#### return to the Principal, or to any third party nominated by the Principal, the Confidential Information and the Principal's Materials; and

#### after providing all Confidential Information and other material to the Principal and subject to the Public Records Act 1973 (Vic), erase from any equipment (whether computer equipment or otherwise) the Confidential Information and Principal's Materials.

### If the Principal requires the return of all Confidential Information and the Principal's Materials in accordance with clause 9.1(f), the Consultant may retain one hard copy (which may be scanned and stored by electronic means) of the Confidential Information or the Principal's Materials for its own internal quality control, business continuity, auditing, compliance, insurance, document retention policy and dispute resolution purposes.

### The Consultant acknowledges that:

#### damages will not be a sufficient remedy for the Principal for any breach of this clause 9.1; and

#### the Principal will be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this clause 9.1 by the Consultant, in addition to any other remedies available to the Principal at law or in equity.

## Media

1. The Consultant must:

### not disclose any information concerning the Agreement for distribution through any communications media without the Principal's prior written approval; and

### refer to the Principal any enquiries from any media concerning the Agreement.

## Privacy

### The Consultant agrees in respect of Personal Information or Health Information (as applicable) held in connection with this Agreement that it will be bound by the Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Consultant for the purposes of this Agreement, in the same way and to the same extent as the Principal would have been bound by the Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by the Principal.

### The Consultant must immediately notify the Principal where the Consultant becomes aware of a breach or possible breach of the obligations referred to in clauses 9.3(a) by the Consultant or any of its subconsultants, employees or agents.

## Survive termination

1. Clauses 8 to 9.3 (both inclusive), and the assignments and licences granted to the Principal under them, will survive any termination or completion of the Agreement.

# Quality

## Quality assurance

1. The Consultant:

### must implement the quality assurance system specified in Item 29;

### whenever requested by the Principal's Representative to do so, must give the Principal's Representative access to the quality system of the Consultant and its subconsultants so that the Principal's Representative may conduct monitoring and quality auditing;

### will not be relieved of any of its obligations or liabilities arising under the Agreement or otherwise at law as a result of:

#### the implementation of, and compliance with, the quality assurance requirements of the Agreement;

#### any Direction of the Principal's Representative concerning the Consultant’s quality assurance system or its compliance or non‑compliance with that system; or

#### any audit or other monitoring by the Principal's Representative of the Consultant’s compliance with the quality assurance system; and

### acknowledges and agrees that neither the Principal nor the Principal's Representative is obliged, or owes any duty of care to the Consultant, to conduct monitoring and quality auditing of, or to give any Direction in connection with the Consultant’s quality assurance system or its compliance or non‑compliance with that system.

## Non-complying Deliverables or Services

1. The Principal's Representative may, if it receives a notice from the Consultant under clause 10.4 or otherwise discovers or believes that any Deliverables or any Services have not been performed in accordance with the Agreement, give the Consultant a Direction specifying the non-complying Deliverables or Services and doing one or more of the following:

### requiring the Consultant to:

#### amend the Deliverables or re-perform the non-complying Services within a specified time period; and

#### take all steps that are reasonably necessary to:

##### mitigate the effect on the Principal of the failure to prepare the Deliverables or perform the Services in accordance with the Agreement; and

##### put the Principal (as closely as possible) in the position in which it would have been if the Consultant had prepared the Deliverables or performed the Services in accordance with the Agreement; or

### advising the Consultant that the Principal accepts the non-complying Deliverables or Services, in which event any Loss suffered or incurred by the Principal as a result of the non-compliance will be a debt immediately due and payable from the Consultant to the Principal.

## Re-performance of the non-complying Services

1. If a Direction is given under clause 10.2(a) the Consultant must, at its cost, amend the Deliverables or re-perform the non-complying Services:

### within the time specified in the Principal's Representative's Direction; and

### so as to minimise the delay and disruption to the performance of the Services and the Works.

## Notice of errors

### If the Consultant becomes aware of any error, omission or defect in any continuing or completed aspects of the Works or the Services, the Consultant must, as soon as practicable (and not later than 5 Business Days after becoming so aware) give written notice of that matter to the Principal's Representative.

### A notice under clause 10.4(a) must set out details of, and the Consultant's recommendations for resolving, the error, omission or defect.

# Time

## Progress

1. The Consultant must:

### perform the Services in a proactive, diligent and expeditious manner;

### if applicable, complete each Milestone by the relevant Milestone Date; and

### where the Project Management Obligations apply and without being limited by clause 11.1(b), perform the Services within any time limits specified in the Project Contracts.

## Consultant's Program

### This clause 11.2 applies if indicated in Item 30.

### The Consultant must:

#### within 10 Business Days of the Commencement Date, or at such other time as may be approved in writing by the Principal, submit to the Principal for the Principal's approval a detailed program which complies with clause 11.2(d) (**Consultant's Program**);

#### update the Consultant's Program at intervals not exceeding that specified in Item 31 to take account of the actual progress of the Services and submit the updated Consultant's Program to the Principal for the Principal's approval; and

#### perform the Services in accordance with the latest approved Consultant's Program unless otherwise approved in writing by the Principal.

### The Principal must within 10 Business Days of receipt of the Consultant's Program, give notice to the Consultant of its acceptance, rejection, or required amendments to the Consultant's Program. The Consultant must amend and resubmit the Consultant's Program until such time as the Principal accepts the Consultant's Program. If the Principal fails to respond within 10 Business Days of receipt of the Consultant's Program, the Consultant's Program is rejected.

### The Consultant's Program must:

#### be based on the Principal's Program (if any is provided);

#### identify Milestones and Milestone Dates;

#### identify each discrete component of and major activity comprised in the Services;

#### identify time periods for obtaining all Approvals;

#### contain the details required by the Agreement; and

#### contain any other information reasonably requested by the Principal's Representative.

### No review of, comment on, consent to or approval or rejection of or Direction in relation to a proposed Consultant's Program (or any failure to do any one or more of those things) by the Principal's Representative will:

#### relieve the Consultant from or alter its liabilities or obligations under the Agreement (including the obligation to complete each Milestone by the relevant Milestone Date) or prejudice the Principal's rights against the Consultant;

#### evidence or constitute the granting of an extension of time or a Direction by the Principal's Representative to accelerate, disrupt, prolong or vary any or all of the Services; or

#### affect the time for performance of the Principal's or Principal's Representative's Agreement obligations.

## Suspension

### The Principal's Representative:

#### may Direct the Consultant to suspend and, after a suspension has been Directed, to re-commence all or a part of the Services; and

#### is not required to exercise the Principal's Representative's power under clause 11.3(a)(i) for the benefit of the Consultant.

### The Consultant must not suspend the Services other than in accordance with clause 16.5 or in the exercise of a right under the SOP Act.

### If the Services are suspended by the Principal under this clause 11.3:

#### subject to clause 11.3(e), the Consultant will not be entitled to make any Claim against the Principal arising out of or in connection with the suspension, including for the Fee during any period where the Services are suspended; and

#### if a suspension exceeds a period of 90 consecutive days the Principal must either:

##### lift the suspension; or

##### terminate this Agreement in accordance with clause 11.3(d).

### If the Principal elects to terminate under clause 11.3(c)(ii)B and the suspension under this clause 11.3 is caused by:

#### the Consultant's failure carry out its obligations under this Agreement, the Principal must issue a notice to terminate this Agreement under clause 16.5; or

#### any other event, the Principal must issue a notice to terminate this Agreement under clause 16.8.

### Clause 11.3(c)(i) does not limit any right or remedy the Consultant may have under clause 16.9 if this Agreement is terminated under clause 11.3(d)(ii).

## Notice of matters impacting progress

### If the Consultant becomes aware of any event or matter which:

#### will or may change the timing of the performance of the Services; or

#### affects or may affect the Consultant's ability to perform the Services in accordance with the approved Consultant's Program,

* 1. then the Consultant must as soon as practicable (and not later than 5 Business Days after becoming aware of the event or matter), give written notice of it to the Principal's Representative.

### A written notice under clause 11.4(a) must contain:

#### particulars of the event or matter and its likely impact; and

#### the Consultant's recommendation as to how to minimise the impact of the event or matter on the timing of the performance of the Services and the Works.

### The Consultant must, at its cost, use best endeavours to avoid or minimise the impact of an event or matter notified under clause 11.4(a) and comply with any Directions given by the Principal's Representative for that purpose.

# Variation

## Variation Price Request

### The Principal's Representative may at any time and from time to time issue a Variation Price Request to the Consultant.

### Within 14 days of the receipt of a Variation Price Request the Consultant must provide the Principal's Representative with a written notice in which the Consultant sets out:

#### the proposed adjustment (if any) to the Fee to carry out the proposed Variation; and

#### the effect (if any) which the proposed Variation will have on the then approved Consultant's Program.

## Variation Order

### Whether or not the Principal's Representative has issued a Variation Price Request under clause 12.1, the Principal's Representative may at any time and from time to time Direct the Consultant to carry out a Variation by issuing a Variation Order in which the Principal's Representative will state that the Fee will be adjusted by the amount:

#### set out in the Consultant's notice under clause 12.1(b) (if any); or

#### to be determined by the Principal's Representative under clause 12.3(b) or clause 12.3(c).

### No Variation, individually or in aggregate with other Variations, will invalidate or constitute a repudiation of the Agreement irrespective of the nature, extent or value of the services the subject of the Variation.

## Cost of Variation

1. The Fee will be adjusted for Variations the subject of a Variation Order by:

### where clause 12.2(a)(i) applies, the amount set out in the Consultant's notice under clause 12.1(b);

### if clause 12.3(a) does not apply, an amount determined by the Principal's Representative using the hourly rates or other rates or prices set out in Item 32 to the extent the Principal's Representative determines they are applicable to, or that it is reasonable to use them for the purpose of valuing, the Variation; or

### to the extent clause 12.3(b) does not apply, a reasonable amount:

#### to be agreed between the parties; or

#### failing agreement, determined by the Principal's Representative.

## Rates and prices

1. The hourly and other rates and prices in Item 32 include and are deemed to include all:

### labour, materials, overheads and profit related to the work the subject of the Variation and compliance with the Consultant's obligations under the Agreement; and

### costs and expenses which will be incurred by the Consultant arising out of or in connection with the Variation.

## Omissions

1. If a Variation the subject of a Direction by the Principal's Representative omits, deletes or decreases any part of the Services, the Principal may thereafter carry out that part either itself or by engaging an Other Contractor to do so.

## Notice of Directions

### If the Consultant considers that a Direction of the Principal or the Principal's Representative, other than a Variation Order, constitutes or requires the performance of a Variation then the Consultant must, if it wishes to make a Claim against the Principal arising out of or in connection with the Direction, within 5 Business Days of:

#### receipt of (and before commencing work on the subject matter of) the Direction, give written notice to the Principal's Representative that it considers the Direction constitutes or requires the performance of a Variation; and

#### giving the notice under clause 12.6(a)(i), submit a written Claim to the Principal's Representative which sets out:

##### detailed particulars of the Direction and any other facts, matters or things on which the Claim is based;

##### the facts relied on in support of the Claim in sufficient detail to permit verification; and

##### the amount claimed and how it has been calculated.

### As soon as practicable after receipt of a Claim under clause 12.6(a)(ii), the Principal's Representative will either issue a Variation Order or give written notice to the Consultant:

#### withdrawing the Direction the subject of the Consultant's Claim; or

#### advising that the Direction the subject of the Consultant's Claim does not constitute or require the performance of a Variation, in which event the Consultant must proceed to comply with that Direction.

### The Consultant will not be entitled to make any Claim against the Principal arising out of or in connection with any Direction it considers constitutes or requires the performance of a Variation unless it complies strictly with clause 12.6(a).

# Payment

## Payment obligation

1. Subject to clause 13.10 and to any other right to set‑off which the Principal may have, the Principal must pay the Consultant:

### the Fee;

### the Expenses; and

### any other amounts which are payable by the Principal to the Consultant under the Agreement.

## Payment Claims

1. The Consultant must give the Principal's Representative claims for payment on account of the Fee and the Expenses (each a **Payment Claim**):

### at the times stated in Item 33;

### in the format reasonably required by the Principal's Representative; and

### in accordance with clause 13.3.

## Form of Payment Claims

1. Each Payment Claim must set out and include:

### evidence as reasonably required by the Principal's Representative of the value of the Services completed in accordance with the Agreement to the date of the claim and the amount claimed;

### details of any Variations included in the claim;

### certified copies of invoices and receipts verifying any Expenses;

### the statutory declaration and other documentation required by clause 13.11; and

### any other information reasonably requested by the Principal's Representative.

## Payment Statements

### The Principal's Representative must within 10 Business Days of receiving a Payment Claim under clause 13.2, or otherwise in accordance with clause 13.5(b), give the Consultant (with a copy to the Principal), on behalf of the Principal, a payment statement which (**Payment Statement**):

#### identifies the relevant Payment Claim;

#### states the value of the Services completed in accordance with the Agreement;

#### states the amount already paid to the Consultant;

#### states the amount the Principal is entitled to retain, deduct, withhold or set-off under this Agreement;

#### states the amount (if any) which the Principal believes to be then payable by the Principal to the Consultant on account of the Fee, the Expenses and otherwise in accordance with the Agreement and which the Principal proposes to pay to the Consultant; and

#### if the amount in clause 13.4(a)(v) is less than the amount claimed in the Payment Claim:

##### states the reason why the amount in clause 13.4(a)(v) is less than the amount claimed in the Payment Claim; and

##### if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, states the reason for the retention, deduction, withholding or setting-off.

### The issue of a Payment Statement by the Principal's Representative does not constitute approval of any Services and must not be taken as an admission or evidence that the part of the Services the subject of the Payment Statement has been satisfactorily performed in accordance with the Agreement.

### Failure by the Principal's Representative to set out in a Payment Statement an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Consultant by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off that amount.

## Final Payment Claim and Final Payment Statement

### Upon completion of the Services and within the time required under clause 13.2(a), the Consultant must give to the Principal's Representative its final Payment Claim (**Final Payment Claim**). Without limitation to clause 13.2, the Consultant must include in the Final Payment Claim all other Claims whatsoever in connection with the Agreement which the Consultant may have against the Principal. All such Claims, which have not already been barred under the Agreement or otherwise, will be barred after the expiration of the period for lodging a Final Payment Claim unless included in the Final Payment Claim and the Principal will be taken as released and forever discharged from such Claims.

### Within 10 Business Days of receipt of the Consultant's Final Payment Claim or, where the Consultant fails to provide a Final Payment Claim, the expiration of relevant period for the Consultant to submit a Final Payment Claim, the Principal's Representative must issue to the Consultant a final Payment Statement (**Final Payment Statement**). In addition to the requirements set out in clause 13.4, the Final Payment Statement will state the final amount, if any, due to the Consultant or from the Consultant to the Principal under or arising out of or in connection with the Agreement.

## Payment

### Subject to clause 13.10, the Principal must within the time period stated in Item 34 after receiving a Payment Claim under clause 13.2, pay the Consultant the amount set out as then payable in the Payment Statement.

### If a Payment Statement shows an amount owing by the Consultant to the Principal, the Consultant must pay the Principal that amount within time period stated in Item 34 after the date of the Consultant's Payment Claim under clause 13.2.

## Payment on account

1. Any payment of moneys under clause 13.6 is not:

### evidence of the value of Services or that Services have been satisfactorily performed in accordance with the Agreement;

### an admission of liability; or

### an approval by the Principal or the Principal's Representative of the Consultant’s performance or compliance with the Agreement,

1. but is only to be taken as payment on account.

## Correction of Payment Statements

1. The Principal's Representative may, in any Payment Statement, do any one or more of:

### correct any error in any previous Payment Statement; and

### modify any previous Payment Statement.

## Interest

1. The Principal must pay simple interest at the rate stated in Item 35 on any:

### amount which is payable by the Principal, but which is not paid by the Principal within the time required by the Agreement; and

### damages.

1. This will be the Consultant’s sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

## Right of set‑off

### The Principal may at any time and from time to time deduct from moneys otherwise due to the Consultant:

#### any debt or other moneys due from the Consultant to the Principal (including any debt due from the Consultant to the Principal under the SOP Act); or

#### the amount of any claim to money which the Principal may have against the Consultant whether for damages or otherwise,

* 1. whether under the Agreement or otherwise at law relating to the Services.

### The Principal's rights under this clause 13.10 are in addition to and do not limit or affect any other rights of the Principal under the Agreement or at law and nothing in the clause affects the right of the Principal to recover from the Consultant the whole of the debt or claim in question or any balance that remains owing.

### Failure by the Principal to deduct from moneys otherwise due to the Consultant any amount which the Principal is entitled to deduct under this clause 13.10 or at law, will not prejudice the Principal’s right to subsequently exercise its right of deduction under this clause.

### Clause 13.10 will survive any termination or completion of the Agreement.

## Payment of workers and subconsultants

### The Consultant must, with each Payment Claim, give to the Principal's Representative:

#### a statutory declaration (together with any supporting evidence that may reasonably be required by the Principal's Representative) regarding payment to employees engaged by the Consultant in connection with the Services and subconsultants, in the form set out at Schedule 6;

#### documentary evidence that, as at the date of the Payment Claim, all moneys then due and payable to workers of subconsultants have been paid in respect of their employment in respect of the Services; and

#### copies of all relevant certificates of currency in respect of workers compensation insurance which the Consultant has in place in connection with the Services.

### The Consultant acknowledges and agrees that:

#### the portion of each payment made by the Principal to the Consultant on account of the Fee and Expenses which are for amounts payable to subconsultants under their subcontracts are held by the Consultant on trust for those subconsultants; and

#### the Consultant must pay all subconsultants promptly in accordance with the relevant subcontracts.

## SOP Act

### The Consultant agrees with the Principal that, to the extent permitted by and for the purposes of the SOP Act (where relevant), each:

#### date prescribed in clause 13.2 as a date on which the Consultant is entitled to make a Payment Claim is a 'reference date' (as defined in the SOP Act);

#### Payment Statement given by the Principal's Representative under clause 13.4 constitutes a 'payment schedule' (as defined in the SOP Act); and

#### amount stated as then payable by the Principal in a Payment Statement is, subject to clause 13.10, the amount of the 'progress payment' (as defined in the SOP Act) calculated in accordance with the terms of the Agreement.

### For the purposes of and to the extent permitted by the SOP Act, the Consultant irrevocably chooses the person identified in Item 36 to be the 'authorised nominating authority' (as defined in the SOP Act).

### When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Consultant:

#### the amount must be taken into account by the Principal's Representative in issuing a Payment Statement under clause 13.4; and

#### if it is subsequently determined that the Consultant was not entitled to payment of some or all of the adjudicated amount or if the adjudicator's determination is quashed, overturned or declared to be void (**Overpayment**):

##### the Overpayment will be a debt immediately due and payable by the Consultant to the Principal; and

##### the Consultant must pay the Principal the Overpayment on demand and in respect of that payment is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.

### Without limiting clause 13.4(c), failure by the Principal's Representative to set out in a Payment Statement issued under the SOP Act or otherwise an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable by the Principal to the Consultant will not prejudice:

#### the ability or power of the Principal's Representative to set out in a subsequent Payment Statement an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable by the Principal to the Consultant; or

#### the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Agreement or otherwise at law or in equity.

## Downstream SOP Act issues

### In relation to subconsultants engaged by the Consultant in the performance of the Services, the Consultant must:

#### immediately give the Principal a copy of any notice the Consultant receives from a subconsultant under the SOP Act;

#### ensure that each subconsultant immediately gives the Principal a copy of any notice that the subconsultant receives from another party under the SOP Act (including the Consultant); and

#### immediately notify the Principal if it becomes aware that a subconsultant is entitled, to or intends to, suspend work or services under a subcontract pursuant to the SOP Act.

### If the Principal becomes aware that a subconsultant is entitled to suspend work or services pursuant to the SOP Act, the Principal may pay the subconsultant such money as is or may be owing to the subconsultant in respect of that work or services, and any amount paid by the Principal will be a debt due from the Consultant to the Principal. To the extent reasonably practicable, the Principal must notify the Consultant prior to making any payment referred to in this clause 13.13(b).

## Provisional Sums

### For each Provisional Sum Item, the Principal's Representative must give the Consultant a direction either:

#### requiring the Consultant to perform the relevant Provisional Sum Item; or

#### deleting it from the Agreement.

### If the Principal's Representative has not given the Consultant a direction in respect of a Provisional Sum Item under clause 13.14(a) upon completion of all other Services, then the Provisional Sum Item will be deemed to be deleted from the Services.

### A Provisional Sum included in the Agreement is not payable by the Principal unless the Principal's Representative directs the Consultant to perform that Provisional Sum Item under clause (a). If the Principal's Representative direct the Consultant to perform a Provisional Sum Item:

#### the Consultant must perform or supply that Provision Sum Item; and

#### the Fee will be adjusted by the Principal's Representative by the deleting the Provisional Sum to which the Provisional Sum Item relates and by adding of an amount agreed or determined in accordance with clause 11.3(c) as if it was a Variation.

### If, at the direction of the Principal's Representative under clause 13.14(a) or by reason of the operation of clause 13.14(b), a Provisional Sum Item is deleted from the Services, the Fee must be reduced by the Provisional Sum corresponding to that Provisional Sum Item.

# Goods and Services Tax

## Interpretation

### In this clause 14, words and phrases that are defined in the GST Act have the meanings as given in that Act.

### Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.

## GST exclusive

### Unless otherwise expressly stated, all consideration to be provided under or in connection with this Agreement other than under this clause 14 is exclusive of GST.

### Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 14.

## Reimbursements and similar payments

1. If a party is required under this Agreement to reimburse or pay another party an amount calculated by reference to a cost, expense, or amount paid or incurred by that other party, the reimbursement or payment will be limited to the total cost, expense or amount less the amount of any input tax credit entitlement arising in respect of any acquisition to which that cost, expense or amount relates.

## GST payable

1. If GST is payable in relation to a supply made under or in connection with this Agreement, then the party (**Recipient**) providing consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the GST payable in relation to that supply at the same time as any other consideration is to be first provided for that supply subject to the issue of a tax invoice by the Supplier to the Recipient.

## Variation

### If the GST payable in relation to a supply made under or in connection with this Agreement varies from the additional amount paid by the Recipient under clause 14.4, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.

### Any payment, credit or refund under clause 14.5 is deemed to be a payment, credit or refund of the additional amount payable under clause 14.4.

### Where there is an adjustment event, the Supplier must issue an adjustment note to the Recipient as soon as the Supplier becomes aware of the adjustment event.

# Notices

## Delivery of notices

1. A communication (including any Direction, notice, consent, approval, request or demand) under or in connection with this Agreement (**Notice**) must:

### be given to a party using one of the following methods (and no other method), unless otherwise expressly stated in the Agreement:

#### hand delivery;

#### express post; or

#### if Item 38 provides that notices may be sent electronically, by electronic mail;

### be given to a party using the address, electronic address or other details for the party as set out in Item 37 or Item 38 (as applicable) (or as otherwise notified by that party to each other party from time to time under this clause 15):

### be in legible writing and in English;

### (in the case of communications other than electronic mail) be signed by the sending party or by a person duly authorised by the sending party; and

### (in the case of electronic mail):

#### state the name of the sending party or a person duly authorised by the sending party and state that the electronic mail is a communication under or in connection with this Agreement; and

#### if the electronic mail contains attachments, ensure the attachments are in PDF or other non-modifiable format that the receiving party can open, view and download at no additional cost,

* 1. and communications sent by electronic mail are taken to be signed by the named sender.

## When notice taken to be received

1. A Notice is taken to be given by the sender and received by the recipient:

### (in the case of delivery by hand) on the date it is delivered to the recipient;

### (in the case of prepaid express post) on the sixth Business Day after the date of posting; and

### (in the case of electronic mail whether or not containing attachments) upon receipt by the sender of an electronic acknowledgement from the recipient's information system showing that the electronic mail or any of its attachments have been opened by the recipient, but if the electronic acknowledgement is not on a Business Day or is after 6.00pm on a Business Day, the notice is taken to be received at 8.00am the next Business Day.

## Notices sent by more than one method of communication

### Without limiting anything else in this clause 15, if the Notice is a notice given under clauses 6.4, 10.4, 11.4, 12.6, 13, 16.3 or 17 and Item 38 provides that Notices may be sent electronically, such Notice must also be delivered by hand or prepaid post in addition to being delivered electronically and will be deemed to be received on the later of the relevant time periods set out in clause 15.2.

### Subject to clause 15.3(a), if a Notice delivered or sent under this clause 15 is delivered or sent by more than one method, the Notice is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with clause 15.2.

## Document Management System

1. This Clause 15.4 applies if indicated in Item 39.
2. Before the Consultant commences the performance of the Services, the Consultant must enter into the DMS Contract.
3. Prior to entering into the DMS Contract, the Consultant must:

### obtain the Principal's prior approval to the terms of the DMS Contract; and

### provide the Principal with a written authorisation addressed to the provider of the Document Management System to release a copy of, or allow access to, any document on the Document Management System to the Principal at any time.

1. The Consultant is responsible for:

### providing the Principal and any subconsultants, employees or agents of the Principal with access to the Document Management System; and

### paying all costs and charges necessary to facilitate full use of the Document Management System by the Principal, the Consultant or any of their subconsultants, employees or agents.

1. The Consultant acknowledges and agrees that transmission of a document through the Document Management System does not constitute valid delivery or notification pursuant to Clause 15.1.
2. Unless otherwise directed by the Principal, the Consultant must use the Document Management System for the issue and receipt of all documents in connection with or relevant to or arising from the Agreement and the performance of the Services. The Consultant must ensure that any document not transmitted via the Document Management System is uploaded to the Document Management System.
3. The Principal may use any documents on the Document Management System in connection with the performance of the Services or to enforce its rights under the Agreement or otherwise.

If the Document Management System is unavailable for any reason, the Consultant must at its cost use alternative methods to transmit documents until such time as the Document Management System is available again. When the Document Management System becomes available again, the Consultant must, immediately re-transmit by the Document Management System any documents transmitted by alternative methods during the period of unavailability.

# Termination

## Preservation of rights

1. Neither this clause 16 nor any act or omission of a party under this clause 16 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Agreement.

## Consultant default

1. The Principal may give the Consultant a Default Notice under clause 16.4 if the Consultant:

### fails to commence the Services in accordance with the requirements of the Agreement;

### abandons the Services or otherwise demonstrates an intention not to continue with the performance of its obligations under the Agreement;

### fails to execute the Deed of Novation as required by clause 2.11;

### fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 6;

### suspends the Services in breach of clause 11.3 or otherwise does not proceed with the Services in accordance with clause 11.1;

### fails to comply with clause 2.3;

### fails to comply with any Statutory Requirements as required by clause 2.12;

### fails to provide a statutory declaration or other documentation as required by clause 13.11;

### does not comply with any Direction of the Principal or Principal's Representative made or purported to be made in accordance with the Agreement; or

### is otherwise in material breach of the Agreement.

## Principal default

1. The Consultant may give the Principal a Default Notice under clause 16.4 if the Principal fails to pay the Consultant an amount due and payable under the Agreement.

## Contents of notice of default

1. A notice under this clause 16.4 (**Default Notice**) must be in writing and:

### delivered by prepaid express post;

### state that it is a notice under clause 16.4;

### specify the breach relied on; and

### state that the party giving the notice requires the other party to remedy the breach within 21 days of receiving the notice (**Remedy Period**).

## Termination for insolvency or breach

1. If:

### an Insolvency Event occurs in relation to the Consultant, or where the Consultant comprises 2 or more persons, in relation to any one of those persons; or

### a party does not remedy a breach of Agreement the subject of a Default Notice under clause 16.4 within the Remedy Period,

1. then where that party is the:

### Consultant, the Principal may by written notice to the Consultant terminate the Agreement; or

### Principal, the Consultant may by written notice to the Principal:

#### suspend the whole or any part of the Services; and

#### if within 21 days of the date on which the Consultant gives notice of suspension under clause 16.5(d)(i) the Principal fails to remedy the breach, terminate the Agreement.

## Removal of suspension

1. The Consultant:

### must remove a suspension under clause 16.5(d) if the Principal remedies the breach or makes arrangements reasonably satisfactory to the Consultant; and

### may at any time it sees fit remove a suspension under clause 16.5(d),

1. after which clause 11.3(c)(ii) will apply.

## Principal's entitlements after termination

1. If the Principal terminates the Agreement under clause 16.5 or if the Consultant repudiates the Agreement and the Principal otherwise terminates the Agreement:

### the Consultant must novate to the Principal (or the Principal's nominee), any or all subcontracts between the Consultant and its subconsultants as required by the Principal;

### the Principal will not be obliged to make any further payments to the Consultant, including any money the subject of a Payment Claim under clause 13.2 or a Payment Statement under clause 13.4; and

### the amount of any Loss incurred or suffered by the Principal arising out of or in connection with the termination will be a debt immediately due and payable by the Consultant to the Principal.

## Termination for convenience

1. Without prejudice to any of the Principal's other rights under this Agreement, the Principal may:

### at any time for its sole convenience, and for any reason (regardless of default), by written notice to the Consultant terminate the Agreement effective from the time stated in the Principal’s notice (or if no time is stated, at the time the notice is given to the Consultant); and

### after giving a notice under clause 16.8(a), complete the Services either itself or by engaging Other Contractors.

## Costs

### If:

#### the Consultant terminates the Agreement under clause 16.5(d); or

#### the Principal terminates the Agreement under clause 16.8,

the Consultant will be entitled to payment of the following amounts as determined by the Principal's Representative:

#### for Services performed prior to the date of termination, the amount which would have been payable if the Agreement had not been terminated and the Consultant submitted a Payment Claim for Services performed up to the date of termination; and

#### the amount reasonably and properly incurred by the Consultant in anticipation of completing the Services, provided that the amount is verified by documentary evidence provided by the Consultant and does not exceed the amount specified in Item 40,

* 1. less any amounts that the Principal is entitled to retain, deduct, withhold or set-off under the Agreement or otherwise at law.

### The amount to which the Consultant is entitled under clause 16.9(a) will be a limitation on the Principal’s liability to the Consultant arising out of or in connection with the termination of the Agreement under clauses 16.5(d) or 16.8 and the Consultant will not be entitled to make against the Principal, and forever releases and discharges the Principal from, any Claim arising out of or in in connection with the termination of the Agreement under clauses 16.5(d) and 16.8, other than for the amount payable under clause 16.9(a).

### This clause 16.9 will survive the termination of the Agreement by the Principal under clause 16.8.

# Dispute resolution

## Disputes

1. Any dispute or difference (**Dispute**) between the Consultant and the Principal arising out of or in connection with the Agreement, or either party's conduct before the Agreement, must be resolved in accordance with the procedure in this clause 17.

## Notice of dispute

1. If a Dispute arises, either party may give a notice in writing to the other party (with a copy to the Principal's Representative) expressly stating that it is given under this clause 17.2 (**Notice of Dispute**) and specifying:

### the Dispute;

### the legal basis for and particulars of the Dispute; and

### the position which the party believes is correct.

## Executive Negotiation

1. Within 10 Business Days of service of a Notice of Dispute, the parties must meet and undertake genuine and good faith negotiations with the view to resolving the Dispute and if they cannot resolve the Dispute, endeavour to agree on a procedure to resolve the Dispute. At any such meeting each party must be represented by a person having authority to resolve the Dispute.

## Mediation

### This clause 17.4 applies if indicated in Item 41.

### If a Dispute is not resolved by the expiry of 20 Business Days after a Notice of Dispute is given under clause 17.2, the Dispute is referred to mediation.

### Any Dispute which is referred to mediation will be conducted before (**Mediator**):

#### a person to be agreed between the parties; or

#### failing agreement within 5 Business Days after the referral of the Dispute to mediation, a mediator nominated by the person named in Item 42.

### The parties must promptly enter into an agreement with the Mediator on terms reasonably required by the Mediator.

### The mediation must be conducted at the place, and in accordance with the rules, both stated in Item 43.

### Each party will:

#### use reasonable endeavours to settle the Dispute;

#### cooperate in good faith with the Mediator and each other in the conduct of the mediation;

#### bear its own costs in respect of any mediation; and

#### pay one-half of the Mediator's costs.

### After the expiration of the later of 20 Business Days from the appointment of the mediator and 40 Business Days of the Notice of Dispute (or other period as agreed between the parties), a party that has complied with this clause 17.4 may terminate the mediation process by giving notice to the other party.

### If the Dispute has not been resolved at the mediation contemplated by this clause 17.4 within 60 Business Days of the Notice of Dispute or the mediation process is terminated in accordance with this clause 17.4, then either party may refer the Dispute to expert determination (if applicable) or arbitration.

## Expert Determination

### This clause 17.5 applies if indicated in Item 44.

### If the Dispute is not resolved within 20 Business Days after a Notice of Dispute is given under clause 17.2, or if Item 43 provides that Disputes will be referred to mediation, at the time that clause 17.4(h) provides that Disputes may be referred to expert determination, the Dispute must be referred to expert determination.

### Any Dispute which is referred to expert determination will be conducted before an independent industry expert to be:

#### agreed between the parties; or

#### failing agreement within 5 Business Days of referral of the Dispute to expert determination, nominated by the person or organisation stated in Item 45.

### The expert determination will be conducted in accordance with the rules in Item 46 and any agreement between the parties.

### The parties agree that the expert determination is not an arbitration and the expert is not an arbitrator. The expert:

#### is required to reach a decision from his or her own knowledge and expertise; and

#### may open up, review, decide and substitute any statement made by the Principal's Representative in respect of any Dispute that has been referred to him or her.

### Each party will:

#### bear its own costs in respect of any expert determination; and

#### pay one-half of the expert's costs.

### The determination of the expert will be substituted for any decision of the Principal's Representative and will be final and binding on the parties.

## Arbitration

### The parties are to agree the rules of arbitration or, failing agreement within 5 Business Days of referral of the Dispute to arbitration, the arbitration will be conducted in accordance with the rules in Item 47.

### The seat of the arbitration will be Melbourne, Australia.

### The language of the arbitration will be English.

### The number of arbitrators will be one.

**ALTERNATIVE 1: FINAL AND BINDING**

### If Item 48 indicates that Alternative 1 applies, any award will be final and binding on the parties.

**ALTERNATIVE 2: APPEAL FROM ARBITRATION**

### If Item 48 indicates that this clause 17.6(f) applies, to the extent that the *Commercial Arbitration Act 2011* (Vic) applies to an arbitration commenced under this clause 17.6, either party may, under section 34A of the *Commercial Arbitration Act 2011* (Vic), bring an appeal to the Supreme Court of Victoria on a question of law arising out of the arbitrator's award.

### The arbitrator may award whatever interest the arbitrator considers reasonable.

### If one party has overpaid the other, whether pursuant to a Principal's Representative certificate or not and whether under a mistake of law or fact, the arbitrator may order repayment together with interest.

## Survive termination

1. This clause 17 will survive the termination, expiry or completion of the Agreement.

## Continuation of Services

1. Despite the existence of a Dispute the Consultant must:

### continue to perform the Services; and

### otherwise comply with its obligations under the Agreement and any Direction of Principal or the Principal's Representative given under, or purported to be given under, the Agreement.

## Summary relief

1. Nothing in this clause 17 prejudices the right of a party to institute proceedings to enforce payment due under the Agreement or to seek urgent injunctive relief.

## Proportionate Liability Scheme

1. To the extent permitted by law:

### the Proportionate Liability Scheme is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise;

### the rights, obligations and liabilities of the Consultant relating to proportionate liability are as specified in this Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced in contract, in tort or otherwise; and

### the Consultant:

#### must, in each subcontract into which it enters with a subconsultant for the carrying out of any part of the Services, include a term that (to the extent permitted by law) excludes the application of the Proportionate Liability Scheme in relation to all and any rights, obligations or liabilities of either party under each subcontract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise; and

#### is responsible for, and obligated to the Principal to prevent any of its subconsultants from failing to take reasonable care in connection with the Services.

# Indemnity and limitation of liability

## General indemnity

### The Consultant must indemnify the Principal on demand from and against any Claim or Loss arising out of or in connection with any:

#### breach of this Agreement by the Consultant;

#### loss of (including loss of use of) or damage to property of the Principal (whether owned, leased or licensed), including the Principal's Material; or

#### liability to or Claims by any person against the Principal in respect of loss of or damage to any property or injury to or death of persons,

* 1. arising out of or in connection with the performance of the Services or any act or omission of the Consultant or its subconsultants, employees or agents.

### The Consultant's liability to indemnify the Principal under clause 18.1(a) will be reduced proportionally to the extent that a negligent or wrongful act or omission of the Principal or any of the Principal's employees, agents or Other Contractors contributed to the loss, damage, injury or death.

## Intellectual Property and Moral Rights indemnity

### The Consultant must indemnify the Principal on demand from and against any Claim or Loss arising out of or in connection with any:

#### actual or alleged infringement or violation of any Intellectual Property Rights, Moral Rights or other rights of any person by:

##### the Consultant, its subconsultants or any of their officers, employees, servants or agents arising out of or in connection with the Services or the Deliverables;

##### the use by the Principal (or by any sub-licensee or sub-sub-licensee) of the Deliverables; or

##### any change, distortion, destruction, alteration, relocation or destruction of the Deliverables or the work or any 2 or 3 dimensional reproduction of the Deliverables or the work; or

#### breach by the Consultant of clause 8.4.

### Where used in this clause 18.2, the term 'work' has the meaning given to it in section 189 of the Copyright Act.

## Downstream SOP Act indemnity

### To the maximum extent permitted by Law, the Consultant must indemnify the Principal on demand from and against any Claim or Loss arising out of or in connection with any:

#### suspension pursuant to the SOP Act by a subconsultant of work or services which forms part of the Services;

#### a failure by the Consultant to comply with clause 13.13(a); and

#### notice or claim under the SOP Act being served on the Principal by a subconsultant exercising a lien or charge over any part of the Services.

### The Consultant’s liability to indemnify the Principal under clause 18.3(a) will be reduced proportionally to the extent that a negligent or wrongful act or omission of the Principal caused or contributed to the liability.

## Not used

## Not used

# Records, Reporting and Financial Information

## Consultant’s Records

1. The Consultant must create and maintain complete and accurate accounts, records (including information stored by computer and other devices) and time sheets relating to the performance of the Services and otherwise in connection with the Agreement, as would be expected of a professional and experienced, provider of services engaged in respect of services of a similar nature to the Services (**Consultant’s Records**). The Consultant will ensure that the Consultant's Records are available to the Principal, the Principal's Representative and any person authorised by the Principal or the Principal's Representative at any time during business hours for examination, audit, inspection, transcription and copying. The Consultant will also give the Principal's Representative (or other person authorised by the Principal's Representative) access to, or provide verified copies of, any information which may be reasonably required by the Principal to assess any Claim by the Consultant. The Consultant must keep the Consultant’s Records for a minimum of 7 years, or any other period directed in writing by the Principal's Representative, after the earlier to occur of:

### the expiry of the last Milestone Date; and

### the termination of the Contract.

## Meetings and Reporting

### The Consultant must:

#### meet monthly (or at such other times as the Principal's Representative may require) with the Principal's Representative and any other persons whom the Principal's Representative nominates;

#### discuss the Regular Performance Reports it has prepared under clause 19.2(b) and such other matters as are stated in the Brief or as are required by the Principal's Representative from time to time; and

#### promptly and fully respond to any questions which the Principal's Representative asks in relation to any report.

### The Consultant must submit written reports regarding the Consultant's performance under the Agreement (**Regular Performance Reports**) to the Principal's Representative regularly, either monthly at the end of each calendar month, or at least 7 days prior to each meeting under clause 19.2(a), or as otherwise directed by the Principal (as relevant) while the work under the Agreement is being undertaken in such form as required by the Brief or as otherwise required by the Principal or the Principal's Representative from time to time and which must include at a minimum:

#### any details required by the Brief;

#### detailed particulars on the progress of the Services and the Deliverables, including key activities, the status of all Deliverables, the status of all Approvals and any deviations from the Consultant's Program;

#### detailed particulars of all:

##### payment claims, payment statements and payments;

##### Variation Price Requests, responses, Variation Orders and proposed adjustments to the Fee;

##### written claims and notices given and received under clause 11 in respect of any suspension or matters impacting progress;

##### other [Claims](http://www.defence.gov.au/estatemanagement/Support/SuiteContracts/DSC/DSCConditionsOfContractApr18.doc#Claim) made by the [[Consultant](#Consultant)](http://www.defence.gov.au/estatemanagement/Support/SuiteContracts/DSC/DSCConditionsOfContractApr18.doc#Consultant) (including in respect of [[Statutory Requirements](#StatutoryRequirements)](http://www.defence.gov.au/estatemanagement/Support/SuiteContracts/DSC/DSCConditionsOfContractApr18.doc#StatutoryRequirements) and the resolution of Discrepancies under clause 7.1);

##### calls, attendances, recommendations and actions taken in respect of non-complying [[Services](#Services)](http://www.defence.gov.au/estatemanagement/Support/SuiteContracts/DSC/DSCConditionsOfContractApr18.doc#Services) (in accordance with clause 10.3);

##### notices under clauses 6.4 or 12.6; and

##### disputes under clause 17;

#### detailed particulars of any risks, opportunities, issues or matters which in the Consultant's opinion are significantly impacting, or have the potential to significantly impact, the Services or the Works (in terms of time, cost or quality) and the preventative and remedial action which has been, is being or is proposed to be taken in respect of such risks, opportunities, issues or matters;

#### any other matters required by the Principal's Representative; and

#### any other information listed in Item 51.

### If the Agreement is a Shared Reporting Contract under clause 19.3(a), the Consultant must:

#### cooperate with, and provide any assistance reasonably required by, the Principal's Representative in relation to the Shared Reporting Process; and

#### without limiting clause 19.3(a), provide to the Principal's Representative any information required by the Principal's Representative from time to time, within the time requested, for the purposes of the Shared Reporting Process (**Shared Reporting Information**).

## Shared Reporting Process

1. The Consultant acknowledges and agrees that:

### the Agreement will be subject to the Shared Reporting Regime if the Fee exceeds the threshold identified in Item 52 (**Shared Reporting Contract**); and

### if the Agreement is a Shared Reporting Contract under clause 19.3(a), then details of the Consultant's performance under the Contract, including the Regular Performance Reports and the Shared Reporting Information, may be made available by the Principal to other government departments or agencies or municipal, public or statutory authorities (**Shared Reporting Process**), and taken into account by the Principal or those other government departments or agencies or authorities when considering the Consultant for future tendering and contracting opportunities.

## Evidence of financial standing or financial arrangements

### The Consultant warrants to the Principal that the Consultant at all times will have sufficient financial capacity to meet all of its obligations under this Agreement.

### Without limiting clause 19.2(a), the Consultant must:

#### within 85 Business Days after the close of each financial year, provide the Principal with certified copies of the audited financial statements for the previous financial year for the Consultant;

#### within 20 Business Days after the end of 1 January or 1 July each year, give to the Principal certified copies of cashflow and profit and loss statements for the Consultant; and

#### as and when requested by the Principal from time to time, promptly and in any event within the period stated in the Principal's request, provide the Principal with:

##### a copy of such evidence reasonably required by the Principal which demonstrates the Consultant's financial capacity to meet all of its obligations under the Agreement; or

##### reasonable evidence that financial arrangements have been made and are being maintained which will enable the Consultant to meet all of its obligations in accordance with the Contract. If the Consultant or any of its Related Bodies Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) intends to make any material change to these financial arrangements, the Consultant must give notice to the Principal with detailed particulars.

### The Consultant must promptly notify the Principal of:

#### any material change to any information provided by the Consultant under clause 19.4(a); or

#### any material change in the Consultant's financial standing which may affect, or is likely to affect, its financial capacity to meet all of its obligations under the Agreement.

### The Consultant must assist and fully co-operate with the requirements or requests of the Principal, the Principal's Representative or any of their agents or employees in relation to any review of any information provided by the Consultant under this clause 19.4(a) and the Consultant's financial capacity, or the Consultant's financial arrangements, to meet all of its obligations under the Agreement.

# Victorian Industry Participation Policy

## Application

### This clause 20 applies if indicated in Item 53.

### If this clause 20 applies, the alternative indicated in Item 54 applies.

**ALTERNATIVE 1: STANDARD PROJECTS**

## Local Jobs First - Victorian Industry Participation Policy

### The Consultant must, in performing its obligations under this Agreement, comply with the VIPP Plan.

### The Consultant acknowledges and agrees that its obligations as set out in the VIPP Plan apply from the commencement of the Services until the later of completion of the Services and the date upon which the Consultant fulfils all of its Reporting obligations as set out in clause 20.4.

## Revised VIPP Plan

### If at any time a variation to this Agreement is proposed which involves or effects a change in the nature of any Contestable Items, the Consultant must prepare a revised VIPP Plan which must be certified by ICN (**Revised VIPP Plan**).

### When requested by the Principal's Representative, the Consultant must provide the Revised VIPP Plan within the time stated in the Principal's Representative's request.

### The Revised VIPP Plan must be agreed by the parties before any variation to this Agreement can take effect unless the parties agree that a Revised VIPP Plan is unnecessary.

### Once the Revised VIPP Plan is agreed by the parties, the Revised VIPP Plan replaces the VIPP Plan in Attachment 1 of Schedule 7 and forms part of this Agreement.

## Reporting

### The Consultant must prepare and maintain records in the form of the VIPP Monitoring Table demonstrating its compliance with the VIPP Plan.

### The Consultant must report when requested by the Principal demonstrating its progress towards implementing the VIPP Plan. The Consultant may comply with its reporting obligation by submitting a report in the form of the VIPP Monitoring Table.

### Upon completion of the Services, the Consultant must provide to the Principal's Representative:

#### the VIPP Monitoring Table in the form set out in Attachment 2 to Schedule 7 detailing the Consultant 's aggregate compliance with the VIPP Plan. The VIPP Monitoring Table must identify and explain any departures from the VIPP Plan and the aggregated outcomes as reported in the VIPP Monitoring Table; and

#### a Statutory Declaration in the form set out in Attachment 4 to Schedule 7 to confirm that the information contained in the VIPP Monitoring Table is true and accurate. The Statutory Declaration must be made by a director of the Consultant or the Consultant's Chief Executive Officer or Chief Financial Officer.

### At the request of the Principal's Representative, the Consultant must provide further information or explanation of any departures from the VIPP Plan as reported in the VIPP Monitoring Table.

### The reporting obligations are in addition to and do not derogate from any other reporting obligations as set out in the Agreement.

## Verification of Supplier's compliance with VIPP Plan

### The Consultant must:

#### permit the Principal's Representative, the Principal or any other duly authorised representatives of the Principal from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at the Principal's expense of all records maintained by the Consultant for the purposes of this Agreement in connection with the VIPP Plan;

#### permit the Principal's Representative, the Principal or any other duly authorised representatives of the Principal from time to time to undertake a review of the Consultant's performance in accordance with the VIPP Plan; and

#### ensure that its employees, agents and subcontractors give all reasonable assistance to the Principal's Representative, the Principal or any person authorised by the Principal to undertake such audit or inspection.

### The Consultant acknowledges and agrees that the Principal's Representative, Principal, any other duly authorised representative of the Principal and ICN are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Consultant compliance with the VIPP Plan.

### The obligations set out in this clause 20.5 are in addition to and do not derogate from any other obligation under this Agreement.

## Use of VIPP information

1. The Consultant acknowledges and agrees that:

### ICN will assess the Consultant's performance against the VIPP Plan;

### the statistical information contained in the VIPP Plan and the measures of the Consultant's compliance with the VIPP Plan as reported in the VIPP Monitoring Table:

#### will be included in the Principal's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the Principal's compliance with the VIPP in the financial year to which the report of operations relates;

#### will be provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the implementation of the VIPP during that year; and

#### may be disclosed in the circumstances set out in clause 20.6 or as otherwise required by law.

**ALTERNATIVE 2: STRATEGIC PROJECTS**

## Local Industry Development Plan (LIDP)

### The Consultant must, in performing its obligations under this Agreement, comply with the LIDP.

### The Consultant acknowledges and agrees that its obligations as set out in the LIDP apply from the commencement of the Services until the later of completion of the Services and the date upon which the Consultant fulfils all of its Reporting obligations as set out in clause 20.9.

## Revised LIDP

### If at any time a variation to this Agreement is proposed which involves or effects a change in the nature of any Contestable Items, the Consultant must prepare a revised LIDP in collaboration with and certified by ICN (**Revised LIDP**).

### When requested by the Principal's Representative, the Consultant must provide the Revised LIDP to the Principal.

### The Revised LIDP must be agreed by the parties before any variation to the Agreement can take effect unless the parties agree that a Revised LIDP is unnecessary.

### Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP in Attachment 1 of Schedule 7 and forms part of this Agreement.

## Reporting

### The Consultant must prepare and maintain records demonstrating its compliance with the LIDP.

### The Consultant must provide an annual report demonstrating its progress towards implementing the VIPP Commitments. The Consultant may comply with its annual reporting obligation by submitting a report in the form of the LIDP Monitoring Table.

### Upon completion of the Services, the Consultant must provide to the Principal's Representative:

#### the LIDP Monitoring Table in the form set out in Attachment 2 to Schedule 7 detailing the Consultant's aggregate compliance with the LIDP. The LIDP Monitoring Table must identify and explain any departures from the LIDP Commitments and the aggregated outcomes as reported in the LIDP Monitoring Table; and

#### a Statutory Declaration in the form set out in Attachment 4 to Schedule 7 to confirm that the information contained in the LIDP Monitoring Table is true and accurate. The Statutory Declaration must be made by a director of the Supplier or the Supplier's Chief Executive Officer or Chief Financial Officer.

### At the request of the Principal's Representative, the Consultant must provide further information or explanation of any departures from the LIDP as reported in the LIDP Monitoring Table.

### The reporting obligations are in addition to and do not derogate from any other reporting obligations as set out in the Agreement.

## Verification of Consultant's compliance with LIDP Plan

### The Consultant must:

#### permit the Principal's Representative, the Principal or any other duly authorised representatives of the Principal from time to time during ordinary business hours and upon notice, to inspect and verify all records maintained by the Consultant for the purposes of this Agreement in connection with the LIDP;

#### permit the Principal from time to time to undertake a review of the Consultant's performance in accordance with the LIDP; and

#### ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Principal to undertake such audit or inspection.

### The Consultant acknowledges and agrees that the Principal, the Principal's duly authorised representative and ICN are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Consultant's compliance with the LIDP.

### The obligations set out in this clause 20.10 are in addition to and do not derogate from any other obligation under this Agreement.

## Use of VIPP information

1. The Consultant acknowledges and agrees that:

### ICN will assess the Consultant's performance against the LIDP;

### the statistical information contained in the LIDP and the measures of the Consultant's compliance with the LIDP as reported in the LIDP Monitoring Table:

#### will be included in the Principal's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the Principal's compliance with the VIPP in the financial year to which the report of operations relates;

#### will be provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the implementation of the VIPP during that year; and

#### may be disclosed in the circumstances set out in clause 20.11 or as otherwise required by law.

**ALTERNATIVE 3: DESIGN CONTRACTS**

## Interaction Reference Number

### The Consultant must comply with this clause 20.12 as a condition precedent to it becoming entitled to payment of the Funds under the Agreement.

### To maximise opportunities for local business within the Project, within 15 Business Days of the Principal's Representative's request, the Consultant must prepare and submit an IRN Form through the VMC setting out:

#### details of the Project; and

#### the goods and services likely to be required to deliver the Project.

### When contacted by ICN, the Consultant must consult with ICN in respect of opportunities for local businesses to deliver the goods and services required under the Agreement.

### The Consultant acknowledges and agrees that ICN may:

#### review and contribute to planning for the Project; and

#### participate in meetings regarding the Project.

### Within 5 Business Days of receipt from ICN, the Consultant must:

#### provide the IRN to the Principal's Representative; and

#### inform the Principal's Representative of any opportunities for local business agreed with ICN. For this purpose, the Consultant may provide the Principal's Representative with a copy of the Reference Letter.

## Record keeping and monitoring

### The Consultant must prepare and maintain records demonstrating its compliance with any VIPP Commitments.

### The Consultant must monitor its compliance with any VIPP Commitments.

### The Consultant acknowledges and agrees that the Principal or the Department of Economic Development, Jobs, Transport and Resources may consult with ICN in respect of the Consultant's compliance with any VIPP Commitments.

### The obligations set out in this clause 20.13 are in addition to and do not derogate from any obligations as set out in the Agreement.

## Use of VIPP information

1. The Consultant acknowledges and agrees that any information provided to the Principal or the Department of Economic Development, Jobs, Transport and Resources by ICN in accordance with clause 20.14(c) may be:

### included in the Principal's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the Principal's compliance with the VIPP in the financial year to which the report of operations relates;

### provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the implementation of the VIPP during that year; and

### disclosed in the circumstances set out in clause 20.14 or as otherwise required by law.

# General

## Governing law

1. This Agreement is governed by and must be construed according to the laws of Victoria, Australia.

## Jurisdiction

1. Each party irrevocably:

### submits to the non‑exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from the courts of Victoria, with respect to any proceedings which may be brought at any time relating to this Agreement; and

### waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 21.2(a).

## Amendments

1. This Agreement may only be varied by a document signed by or on behalf of each party.

## Waiver

### Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.

### A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.

### No waiver of a breach of a term of this Agreement operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.

## No representation or reliance

### The Consultant acknowledges that neither the Principal (nor any person acting on the Principal's behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.

### The Consultant acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of the Principal, except for representations or inducements expressly set out in this Agreement.

## Indemnities

### Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Consultant, and survives termination, completion or expiration of this Agreement.

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

### The Consultant must pay on demand any amount it must pay under an indemnity in this Agreement.

## Counterparts

### This Agreement may be executed in a number of counterparts and by the parties on separate counterparts.

### Each counterpart constitutes the Agreement of each party who has executed and delivered that counterpart.

## Expense

1. Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

## Severance

1. If at any time a provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

### the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

### the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

## Taxes

1. The Consultant must pay all Taxes which may be payable in respect of the Services.

## No partnership, joint venture or other fiduciary relationship

1. Nothing in this Agreement will be construed or interpreted as constituting the relationship between the Principal on one hand and the Consultant on the other hand as that of partners, joint venturers or any other fiduciary relationship.

## Joint and several liability

1. If the Consultant comprises 2 or more persons (whether a joint venture, consortium, partnership or any other unincorporated grouping of 2 or more persons):

### the obligations and liabilities of the Consultant under this Agreement bind those persons jointly and severally; and

### any payment under the Agreement by the Principal to any one or more persons constituting the Consultant will be deemed to be payment to all persons constituting the Consultant.

## Entire agreement

1. To the extent permitted by law, in relation to its subject matter, this Agreement:

### embodies the entire agreement between, and understanding of, the parties and constitutes the entire terms agreed by the parties; and

### supersedes any prior written or other agreement of the parties.

## Prior work

1. If any work is performed by the Consultant in connection with the Agreement or the Services before the date of execution of this Agreement (**Prior Work**), then:

### the terms of the Agreement apply to the Prior Work; and

### any payment made to the Consultant by the Principal in connection with the Prior Work will be treated as a payment under the Agreement on account of and in partial discharge of the Principal's obligation to pay the Fee.

## Employment Policy

### The Consultant must not engage in any practice that is contrary to any employment or industrial law or any award or other industrial instrument made under or pursuant to laws applicable to the Consultant.

### The Consultant and any person engaged in the provision of the Services must not:

#### engage in unethical work practices; or

#### engage employees or subcontracted workers upon terms and conditions that are not commensurate with industry standards generally applicable in Victoria.

### In addition to any rights the Principal may have under clause 16.2, if the Consultant is in breach of this clause 21.15, the Principal may:

#### direct the Consultant to suspend the Services and the Project; or

#### suspend the operation of this Agreement, or the performance of the Principal's obligations under it,

* 1. immediately by notice to the Consultant for so long as the breach continues.

## Probity Event

### The Consultant must give notice to the Principal immediately upon becoming aware that a Probity Event has occurred or is likely to occur. The notice must, at a minimum, describe the Probity Event, when the Probity Event occurred or is likely to occur and the circumstances giving rise the Probity Event.

### Within 10 Business Days after receipt of a notice under clause 21.16(a) or either party becoming aware of a Probity Event:

#### the Principal and the Consultant must meet and attempt to agree a course of action to cure or address the Probity Event and the timeframe in which that will occur; and

#### subject to clause 21.16(c), the Consultant must comply with any agreement made under clause 21.16(b)(i) (if any) including in accordance with any timeframe agreed.

### If the Principal and the Consultant fail to agree to a course of action under clause 21.16(b)(i), the Consultant must take any action as required by the Principal to cure or address the Probity Event immediately upon being required to do so (including where the Probity Event is in respect of a Consultant's Associate, removing or not engaging that Consultant's Associate in respect of the Services) and in accordance with any timeframe determined by the Principal.

## Auditing

### The Consultant must permit an accountant or auditor on behalf of the Principal from time to time during ordinary business hours and on reasonable notice, to inspect and verify all records maintained by the Consultant for the purposes of this Agreement and the Consultant, its subconsultants, employees and agents must give all reasonable assistance to any person authorised to undertake such audit or inspection.

### Any information provided or to which an accountant or auditor has access under this clause must be treated as confidential information and must not be used other than for the purposes of this Agreement or disclosed other than as required to comply with the written request of the Auditor General for Victoria. These confidentiality obligations of the parties do not extend to:

#### information already in the public domain other than due to a breach of this Agreement; or

#### any disclosure required by law.

### The following provisions apply in relation to Public Audit:

#### The Consultant must, at its cost and without any additional entitlement under this Agreement:

##### permit a Public Audit required by any Public Auditor;

##### procure that the Consultant's subconsultants, employees and agents permit a Public Audit required by any Public Auditor;

##### comply with the requirements or requests of, and cooperate with any Public Auditor during the conduct of a Public Audit;

##### procure that the Consultant's subconsultants, employees and agents comply with the requirements or requests of, and cooperate with any Public Auditor during the conduct of a Public Audit; and

##### provide to the Public Auditor reasonable working accommodation and associated facilities and services required by the Public Auditor for the purposes of undertaking a Public Audit.

#### Any obligations of confidence which one party has to the other under this Agreement or by reason of the entering into of this Agreement or the performance of this Agreement are subject to the obligations, duties, rights and entitlements of the parties in relation to any Public Audit.

**Executed** as a deed.

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed, sealed and delivered** for and on behalf of the [***Insert Principal's name***] by its authorised signatory in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised signatory |
|  |  |  |  |
| Full name of witness |  |  | Full name of authorised signatory |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[insert Consultant's name and ACN]** in accordance with section 127 of the Corporations Act 2001 (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of secretary/director |
| Full name of director | Full name of secretary/director |

1. - Agreement Particulars

| **Item No** | **Clause** | **Details** |
| --- | --- | --- |
|  | Project: (clause 1.1) | [***Insert name of the Project***] |
|  | Brief: (clause 1.1) | 1.  2.  3.  4.  [***Insert description of documents that will form the Brief describing the Services to be provided under the Agreement***] |
|  | Consultant's Representative: (clause 1.1) | [***Insert name***] |
|  | Agreement - other documents forming part of the Agreement: (clause 1.1) | [***Insert (if any)***] |
|  | Site: (clause 1.1) | [***Insert address***] |
|  | Milestones and Milestone Dates: (clause 1.1)  [***Drafting Note: one of the Milestones and the Milestone Dates should be completion and the completion date for the Services.***] | |  |  |  | | --- | --- | --- | |  | **Milestone** | **Milestone Date** | | 1 |  |  | | 2 |  |  | | 3 |  |  | | 4 |  |  | |
|  | Principal's Budget: (clause 1.1) | $…………………for the Works  OR  $…………………for that part of the Works to which the Services relate  [***Insert the value of the Principal's Budget if the Consultant is required to prepare the Deliverables so that the Works may be constructed within the Principal's Budget***] |
|  | Principal's Policies and Procedures  (clause 1.1) |  |
|  | Principal’s Representative: (clause 1.1) | [***Insert name***] |
|  | Project Contracts:  (clause 1.1) | [***Insert the names of the contracts that the consultant will administer or manage on behalf of the Principal***]  *(If nothing is stated, 'Not applicable')* |
|  | Works: (clause 1.1) | [***Insert a description of the Works***] |
|  | Document Management System (clause 1.1) |  |
|  | Parts of the Services approved for subcontracting to the named subconsultants: (clause 2.9(a)) | |  |  | | --- | --- | | **Subcontracted Services** | **Subconsultant** | |  |  | |  |  | |  |  | |
|  | Approvals which the Principal is to obtain: (clause 2.12(b)(i)) | [***List any Approvals that will be obtained by the Principal***] |
|  | Design Obligations: (clause 3.1(a)) | Do the Design Obligations apply?  [***Yes/No***] |
|  | Project Management Obligations: (clause 3.1(b)) | Do the Project Management Obligations apply?  [***Yes/No***] |
|  | Consultant Statement - Does clause 3.4 apply? (clause 3.4) | Yes  No  *(If nothing stated, No)* |
| Intervals during which Consultant Statements must be submitted:  [***Insert period of time, for example, monthly or insert 'not applicable' if the Consultant is not required to conduct inspections.***]  *(If nothing stated, monthly)* |
|  | Co-ordination with other projects/programs: (clause 3.7) | [***Insert description of other projects/programs***]  *(If nothing is stated, 'None specified')* |
|  | Services Not Included: (Clause 3.8) | [***Insert description of Services not included***]  *(If nothing is stated, 'None specified')* |
|  | Site Restrictions: (Clause 3.9) | [***Insert description of Site restrictions***]  *(If nothing is stated, 'None specified')* |
|  | * + 1. Minimum amount of Professional Indemnity Insurance to be effected by the Consultant: (clause 6.1(a)(i)) | $……….per claim  *(If nothing is stated, $10 million)* |
| * + 1. Is Public Liability Insurance required? (clause 6.1(a)(ii) | Yes  No  *(If nothing stated, Yes)* |
| * + 1. Minimum amount of Public Liability Insurance per occurrence: (clause 6.1(a)(ii)) | $……….per occurrence  *(If nothing is stated, $20 million)* |
| * + 1. Minimum amount of Professional Indemnity Insurance to be effected by approved subconsultants: (clause 6.1(b)(i)) | $……….per claim  *(If nothing is stated, $5 million)* |
|  | Period for which the policy of Professional Indemnity Insurance (and policies of professional indemnity insurance effected by subconsultants) is to be maintained:  (clause 6.3(b)) | ..………..years  *(If nothing is stated, 10 years)* |
|  | Additional insured's required to be named on the Public Liability Insurance: (clause 6.5) | [***Insert***] |
|  | Order of precedence: (clause 7.1) | 1. Agreement Particulars  2. Terms and conditions of this Agreement  3. Brief  4. All other Schedules  5. [***Insert***]  [***Note: The default order of precedence should be amended as required. Where technical requirements or different design disciplines are addressed in one or more Agreement Documents, the order of precedence should rank those Agreement Documents, or sections of those Agreement Documents, so as to reflect the order of priority of the technical requirements/disciplines***]] |
|  | Principal's Material to be provided and number of copies of Principal's Material  (clause 7.2(a)) | |  |  | | --- | --- | | **Description of documents** | **Number of copies** | |  |  | |  |  | |  |  | |
|  | Relevant time for Discrepancies (clause 7.5) | **OPTIONAL DRAFTING, choose either:**  Any time  **OR**  Any time (including during the construction of the Works) |
|  | Number of copies of the Deliverables: (clause 7.9) | [***Insert number of copies of the Deliverables to be provided by Consultant in, for example, hard or soft copy***] |
|  | Intellectual Property Rights: (clause 7.1) | Alternative 1: Licence  Alternative 2: Ownership  *Tick the alternative 1 for Licence and 2 for Ownership - If no alternative is ticked the alternative is ‘2’.* |
|  | Quality assurance system: (clause 10.1(a)) | ..……………………………...  (If nothing stated, ISO 9001) |
|  | Program requirements applicable - Does clause 11.2 apply? (clause 11.2) | Yes  No  *(If nothing stated, No)* |
|  | Maximum intervals between program updates by Consultant: (clause 11.2) | ..……………………………...  *(If nothing stated, monthly)* |
|  | Hourly or other rates and prices for pricing Variations: (clause 12.3(b)) | [***Insert any rates or prices for pricing Variations or refer to the Fee Schedule if necessary***] |
|  | Time for Payment Claims: (clause 13.2(a)) | [***Insert time for Consultant's payment claims, for example "25th day of every month"***] |
|  | Time after receipt of a Payment Claim for payment of Payment Statements: (clause 13.6) | …………….………… Business Days  *(If nothing is stated, 44 days)* |
|  | Interest rate: (clause 13.9) | …………….………………………………..  *(If nothing stated, the 90 day bank bill rate)* |
|  | Authorised nominating authority: (clause 13.12(b)) | …………….………………………………..  *(If nothing stated, the Resolution Institute)* |
|  | Address for the giving or serving of notices, upon: (clause 15.1(b)) | **Principal** Attention: Address:  **Principal's Representative** Attention: Address:  **Consultant** Attention: Address:  **Consultants Representative** Attention: Address: |
|  | Can notices be sent electronically? | Yes  No  (*if nothing stated, notices may not be sent electronically*)  If notices can be sent electronically, means of sending:  Email  Electronic management system  The relevant email addresses are:  **Principal**  Email:[***Insert (as applicable)***]  **Principal's Representative**  Email: [***Insert (as applicable)***]  **Consultant**  Email: [***Insert (as applicable)***]  **Consultants Representative**  Email: [***Insert (as applicable)***]  The relevant electronic contract management system is:  [***Insert (as applicable)***] |
|  | Application of Document Management System (clause 15.4) | Applicable / Not applicable  *(delete the inapplicable, if nothing selected, not applicable applies)* |
|  | Maximum amount payable on termination for convenience of the Principal: (clause 16.9(a)(iii)) | [***Insert***]  *(If nothing stated, the Fee $10)* |
|  | Mediation - Does clause 17.4 apply? (clause 17.4) | Yes  No  (*if nothing stated, Yes*) |
|  | Person responsible for nominating mediator: (clause 17.4(c)(ii)) | *(If nothing stated, by the Resolution Institute)* |
|  | Rules for mediation: (clause 17.4(e)) | (*If nothing stated, the Resolution Institute Mediation Rules*) |
|  | Expert Determination - Does clause 17.5 apply? | Yes  No  (*if nothing stated, Yes*) |
|  | Person to nominate independent industry expert: (clause 17.5(c)(ii)) | [***Insert***]  *(If nothing stated the current Chairman of the Resolution Institute, Victorian Chapter or the Chairman’s nominee)* |
|  | Rules for expert determination: (clause 17.5(d)) | [***Insert***]  *(If nothing stated the ADC Guidelines for Expert Determination of the Australian Disputes Centre)* |
|  | Rules for arbitration: (clause 17.6) | [***Insert***]  *(If nothing stated:*  *The ACICA Arbitration Rules 2016 except in lieu of Article 11.2 of the ACICA Arbitration Rules 2016, the sole arbitrator will be appointed by ACICA if the parties:*  *(a) have not agreed on the choice of sole arbitrator; and*  *(b) have not provided written evidence of their agreement to ACICA within 14 days of the referral of the Dispute to arbitration or an extended period that the parties may agree upon.)* |
|  | Arbitration final and binding: (clauses 17.6(e) and 17.6(f)) | Alternative 1: Final and Binding  *(Clause 17.6(e) applies)*  Alternative 2: Appeal from Arbitration  *(Clause 17.6(f) applies)*  *Tick the Alternative 1 for Final and Binding and 2 for Appeal from Arbitration - If no alternative is ticked the alternative is ‘Alternative 1’.* |
|  | Not used | Not used |
|  | Not used | Not used |
|  | Additional information to be included in Regular Performance Reports: (clause 19.2(b)) |  |
|  | Threshold for Shared Performance Reporting: (clause 19.3(a)) | $200,000 |
|  | Does VIPP apply to this Agreement? (clause 20.1) | Yes  No  *(If nothing stated, No)* |
|  | VIPP requirements:  (clause 20.1) | Alternative 1: Standard Projects  *(Clauses 20.2 to 20.6 apply)*  Alternative 2: Strategic Projects  *(Clauses 20.7 to 20.11 apply)*  Alternative 3: Design Contracts  *(Clauses 20.12 to 20.14 apply)*  *Tick the Alternative 1 for Standard Projects, 2 for Strategic Projects and 3 for Design Contracts. If no alternative is ticked the alternative is ‘Alternative 1’.* |

1. - Fees and Expenses

(Clause 1.1)

* 1. Fee

[***Drafting Note: different payment options to be confirmed by DTF. The following are provided by way of example.***]

**Option 1: Lump sum fee**

|  |  |  |
| --- | --- | --- |
| The Fee is the fixed lump sum amount of: | $ | (GST exclusive) |

**Option 2: Percentage based Fee**

|  |  |  |  |
| --- | --- | --- | --- |
| The Fee is | % of |  | (GST exclusive) |

**OR**

|  |  |  |
| --- | --- | --- |
| The Fee is | % | of the final contract sum (GST exclusive) payable for the Works (disregarding Claims other than Variations, damages and provisional sum adjustments) |

**Option 3: Schedule of rates**

The total amount of the Fee calculated using the schedule of rates below [**shall / shall not**] be subject to a cap.

If the Fee is subject to a cap, it shall not exceed the value of the cap, being $[***insert***] (GST exclusive).

The Fee is calculated on a time charge basis according to the following rates:

[***Drafting Note: DTF to consider capped Schedule of Rates.***]

|  |  |  |
| --- | --- | --- |
| **Role / Task** | **Rate $ / Hour** | **Rate $ / Day** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

* 1. Expenses

| **Expense Type** | **Description of Expense** | **Maximum per item** |
| --- | --- | --- |
| Travel |  | $ |
| [***Insert description of other***] |  | $ |

* 1. Provisional Sums

|  |  |
| --- | --- |
| **Provisional Sum Item** | **Provisional Sum** |
| **e.g. Land Surveying, Geo Tech, Fire risk assessment, Independent Structural Certification (example)** |  |

1. - Key People

|  |  |  |
| --- | --- | --- |
| **Key Person** | **Role** | **Responsibilities** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

1. - Deed of Novation

Deed of Novation

**[*Insert name of Principal*]**

**Principal**

**[*Insert name of Consultant*]**

**Consultant**

**[*Insert name of Incoming Party*]**

**Incoming Party**

Contents

[1. Definitions and interpretation 77](#_Toc515941058)

[1.1 Definitions 77](#_Toc515941059)

[1.2 Interpretation 77](#_Toc515941060)

[2. Novation 78](#_Toc515941061)

[2.1 Novation 78](#_Toc515941062)

[2.2 Assumptions of rights and obligations 78](#_Toc515941063)

[2.3 Release by Consultant 79](#_Toc515941064)

[2.4 Release by Principal 79](#_Toc515941065)

[3. Consultant Statement and pre-existing Claims 79](#_Toc515941066)

[4. Right to Enquire 79](#_Toc515941067)

[4.1 Direct Enquiries 79](#_Toc515941068)

[4.2 Report by Consultant 79](#_Toc515941069)

[5. Overriding effect 80](#_Toc515941070)

[6. Representations and warranties 80](#_Toc515941071)

[6.1 Authority 80](#_Toc515941072)

[6.2 Authorisations 80](#_Toc515941073)

[6.3 Binding obligations 80](#_Toc515941074)

[7. Duties, Costs and Expenses 80](#_Toc515941075)

[7.1 Stamp Duty 80](#_Toc515941076)

[7.2 Costs 80](#_Toc515941077)

[7.3 GST 80](#_Toc515941078)

[8. General 81](#_Toc515941079)

[8.1 Governing Law 81](#_Toc515941080)

[8.2 Jurisdiction 81](#_Toc515941081)

[8.3 Amendments 81](#_Toc515941082)

[8.4 Waiver 81](#_Toc515941083)

[8.5 Counterparts 81](#_Toc515941084)

[8.6 Severance 81](#_Toc515941085)

[8.7 Further acts and documents 82](#_Toc515941086)

[8.8 Assignment 82](#_Toc515941087)

Deed of novation dated

**Parties [*Principal name*] *[ABN]*** of **[*address*]** (**Principal**)

**[*Consultant name*] *[ABN]*** of **[*address*]** (**Consultant**)

**[*Incoming Party name*] *[ABN]*** of **[*address*]** (**Incoming Party**)

Recitals

1. The Principal and the Consultant are parties to the Agreement.
2. The Principal and the Incoming Party have asked the Consultant to agree to the novation of the Agreement on the terms and conditions of this deed.
3. The Consultant has agreed to the novation of the Agreement on the terms and conditions of this deed.

Operative provisions

* 1. Definitions and interpretation
     1. Definitions
        1. Defined terms in the Agreement have the same meanings in this deed, unless otherwise defined in clause 1.1(b) .
        2. In this deed:

1. **Agreement** means the agreement between the Principal and the Consultant [*described in the Schedule**or insert description here*].
2. **Claim** includes any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract or in equity, including in tort, by statute or otherwise.
3. **Effective Date** means [*insert date or**as described in the Schedule*].
4. **GST** means the Goods and Services Tax as defined in the *A New Tax System (Goods and Services) Act 1999* (Cth).
5. **Liability** means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.
6. **Related Entity** has the meaning ascribed to that term in s 9 of the *Corporations Act 2001* (Cth).
   * 1. Interpretation
7. In this deed:
   * + 1. headings are for convenience only and do not affect interpretation;
8. and unless the context indicates a contrary intention:
   * + 1. an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
       2. **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
       3. a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
       4. a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
       5. a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re‑enactments and replacements;
       6. a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
       7. a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
       8. if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
       9. **includes** in any form is not a word of limitation; and
       10. a reference to "**$**" or "**dollar**" is to Australian currency.
   1. Novation
      1. Novation
9. From the Effective Date:
   * + 1. the parties novate the Agreement so that the Incoming Party and the Consultant are parties to a new agreement on the same terms as the Agreement; and
       2. any reference in the Agreement to the Principal is to be read as a reference to the Incoming Party.
     1. Assumptions of rights and obligations
10. From the Effective Date:
    * + 1. the Incoming Party:

#### will be bound by and must comply with the terms of the Agreement as amended by this deed, and will enjoy the rights and benefits conferred on the Principal under the terms of the Agreement; and

#### will assume the obligations and Liability of the Principal under the terms of the Agreement,

* 1. in all respects as if the Incoming Party had originally been named in the Agreement as a party instead of the Principal.
     + 1. the Consultant will comply with the terms of the Agreement on the basis that the Incoming Party has replaced the Principal under the Agreement in accordance with this deed.
     1. Release by Consultant

1. From the Effective Date:
   * + 1. the Consultant releases the Principal from:
          1. any obligation or Liability; and
          2. any Claim it has or may have against the Principal,

under or arising in relation to or connection with the Agreement; and

* + - 1. this release does not affect any rights the Consultant may have against the Incoming Party as a result of the assumption by the Incoming Party under the terms of this deed of the obligations and Liability of the Principal under the terms of the Agreement.
    1. Release by Principal

1. From the Effective Date the Principal releases the Consultant from further performance of the Agreement, except:
   * + 1. where clause 3 provides otherwise; and
       2. that nothing in this clause affects the obligations of the Consultant to the Incoming Party under the Agreement.
   1. Consultant Statement and pre-existing Claims
2. ]
   * + 1. Notwithstanding clause 2.3, the Consultant must continue to provide the Consultant Statements to the Principal in accordance with clause [2.17] of the Agreement.
       2. Nothing in deed affects any obligation, Liability or Claim that the Principal may have against the Consultant under or in respect of the Agreement before the Effective Date.
   1. Right to Enquire
      1. Direct Enquiries
3. In addition to any other rights which the Principal may have, the Consultant and the Incoming Party each agree that the Principal may make enquiries directly of the Consultant for the purpose of establishing whether the Consultant is complying with its obligations under the Agreement.
   * 1. Report by Consultant
4. The Consultant must immediately report, to both the Incoming Party and the Principal:
   * + 1. any instruction or direction which it receives, or any work or services it becomes aware of, which in the reasonable opinion of the Consultant, is not in accordance with any provision of the Agreement; and
       2. any non-conformity of any documentation produced pursuant to the Agreement, or to the documentation in existence at the date of this deed, upon becoming aware of the non-conformity.
   1. Overriding effect
5. The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Agreement relating to any requirement for consent to assignment of the Agreement so far as any such provisions would apply with respect to the novation of the Agreement to the Incoming Party.
   1. Representations and warranties
      1. Authority
6. Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.
   * 1. Authorisations
7. Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.
   * 1. Binding obligations
8. Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.
   1. Duties, Costs and Expenses
      1. Stamp Duty
9. The Incoming Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Agreement provide otherwise).
   * 1. Costs
10. Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.
    * 1. GST
         1. Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
         2. If GST is payable on a supply made under this deed by an entity (**Supplier**), the party providing the consideration for that supply must, in addition to any other amounts payable under any provision of this deed, pay an additional amount equal to the GST payable by the Supplier on that supply. The additional amount must be paid, and the Supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause 7.3 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999.
    1. General
       1. Governing Law
11. This deed is governed by and must be construed according to the laws of Victoria, Australia.
    * 1. Jurisdiction
12. Each party irrevocably:
    * + 1. submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from the courts of Victoria, with respect to any proceedings which may be brought at any time relating to this deed; and
        2. waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a).
      1. Amendments
13. This deed may only be varied by a document signed by or on behalf of each party.
    * 1. Waiver
         1. Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
         2. A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
         3. No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.
      2. Counterparts
14. This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.
    * 1. Severance
15. If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:
    * + 1. the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
        2. the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.
      1. Further acts and documents
16. Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.
    * 1. Assignment
17. A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

Schedule

|  |  |
| --- | --- |
| **Effective Date** (clause 1.1) | ………………………………………………………………….. |
| **Agreement** (clause 1.1) | .............................................................................................  ............................................................................................. |

**Executed** as a deed.

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed, sealed and delivered** for and on behalf of the [***Insert Principal's name***] by its authorised signatory in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of authorised signatory |
|  |  |  |  |
| Full name of witness |  |  | Full name of authorised signatory |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[*Consultant and ABN*]** in accordance with s 127 of the *Corporations Act 2001* (Cth): |  |  |  |
|  |
|  |  |  |  |
| Signature of Director |  |  | Signature of Secretary/other Director |
| Name of Director in full | Name of Secretary/other Director in full |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[*Incoming Party and ABN*]** in accordance with s 127 of the *Corporations Act 2001* (Cth): |  |  |  |
|  |
|  |  |  |  |
| Signature of Director |  |  | Signature of Secretary/other Director |
| Name of Director in full | Name of Secretary/other Director in full |

1. - Confidentiality Undertaking

Confidentiality Undertaking

**Person's name and address:**

**Confidentiality Deed Poll** in favour of (**Principal**)

I **[*Insert name and address*]** acknowledge that:

1. I have been engaged or requested by the Consultant to perform services (**Services**) in relation to the Project defined in the agreement between the Principal and the Consultant dated: [***insert***] (**Agreement**) and agree:
   * 1. that the Confidential Information made available to me is confidential to the Principal;
     2. to keep the Confidential Information confidential; and
     3. not to disclose any of the Confidential Information to any person other than to those who have signed an undertaking in this form unless I have the prior written consent of the Principal;
2. damages are not a sufficient remedy for the Principal for any breach of this Undertaking and the Principal is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or possible breach by me of this Undertaking, in addition to any other remedies available to the Principal at law or in equity;
3. capitalised terms used in this deed poll that are not otherwise defined have the meaning given in the Agreement; and
4. the laws of the State of Victoria govern this deed poll. I submit to the non-exclusive jurisdiction of the courts of the State of Victoria and the courts of appeal from those courts.

**Executed** as a deed poll

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed, sealed and delivered** by **[*Insert Individual's name*]** in the presence of: |  |  |  |
| Signature |
|  |  |  |  |
| Signature of Witness |  |  |  |
| Name of Witness in full |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[*Insert Company name and ACN/ARBN/ABN*]** in accordance with section 127 of the *Corporations Act* by or in the presence of: |  |  |  |
|  |  |  |  |
| Signature of Secretary/other Director |  |  | Signature of Director or Sole Director and Secretary |
| Name of Secretary/other Director in full |  |  | Name of Director or Sole Director and Secretary in full |

1. - Statutory Declaration

(clause 13.11)

I, [***insert full name***] of [***insert address***]in [***insert State or Territory***], [***insert occupation***] do solemnly and sincerely declare that, for the purposes of clause [***insert***] of the agreement between [***insert***] (**Principal**) and [***insert***] (**Consultant**) dated [***insert date***] (**Agreement**)-

1. I hold the position of [***title***] and am duly authorised by the Consultant to make this declaration on its behalf.

2. To the best of my knowledge all workers and subconsultants who have at any time been engaged by the Consultant in connection with the Services under the Agreement have as at the date of this declaration been paid all moneys due and payable to them in respect of their engagement for work under the Agreement.

3. As at the date of this statutory declaration the Consultant is not in breach of any obligation or any agreement in the Agreement.

I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

|  |  |  |  |
| --- | --- | --- | --- |
| Declared at  this day of 20 | )  ) |  | …………………………………………………….. |
|  |  |  | Signature of person making this declaration  [to be signed in front of an authorised witness] |
| Before me:  ……………………………………………………... |  |  |  |
| Signature of Authorised Witness |  |
| The authorised witness must print or stamp his or her name, address and title under section 107A of the *Evidence (Miscellaneous Provisions) Act 1958* (as of 1 January 2010), (previously *Evidence Act 1958*), (eg. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist) | | | |

1. - VIPP Schedules

1. The VIPP Plan/LIDP is at Attachment 1 to this Schedule.

2. The Consultant must complete the VIPP Monitoring Table/LIDP Monitoring Table at Attachment 2 to this Schedule for the purposes of its VIPP Compliance Reporting obligations as set out in clause 20. The Consultant must provide the VIPP Monitoring Table/LIDP Monitoring Table to the Principal's Representative upon completion of the Services.

3. The Contestable Items are set out in Attachment 3 to this Schedule.

4. The form of Statutory Declaration is set out in Attachment 4 to this Schedule.

1. - VIPP Plan/LIDP Plan

[***Note: VIPP Plan/LIDP to be inserted as Attachment 1.***]

1. - VIPP Monitoring Table/LIDP Monitoring Table

ANZ value-added activity

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  | VIPP Commitments | | Progress | Secured VIPP Outcomes | | |  |  |
| Item Description | Brand /manufacturer | Supplier | % of Local Content | % of Total Local Content | % of Local Content | % of Local Content (A) | % of Contact Content (B) | % of Total Local Content (C) = (A x B) | ICN Assistance (Y/N) | Comments |
| E.g. Item 1 |  |  |  |  |  |  |  |  |  |  |
| TOTAL ANZ value-added activity | | | Total Committed: |  |  | Total Secured: | 100 % |  |  |  |

Employment

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| New Jobs | | Existing Jobs | | Total Jobs Committed | Total Jobs Secured | Difference / Comments |
| Committed | Secured | Committed | Secured |
|  |  |  |  |  |  |  |

Apprentices/ trainees

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| New Apprentices/ trainees | | Existing Apprentices/ trainees | | Total Apprentices/ trainees Committed | Total Apprentices/ trainees Secured | Difference |
| Committed | Secured | Committed | Secured |
|  |  |  |  |  |  |  |

1. - Contestable Items

[***As set out in Attachment 1 (or as otherwise approved by ICN).***]

1. - Statutory Declaration

State of Victoria

**Statutory Declaration**

|  |  |  |
| --- | --- | --- |
| I: [full name] |  | |
| of: [address] |  | |
| Occupation: |  | |
| do solemnly and sincerely declare that: | | |
| Contracted company: |  | |
| achieved the Victorian Industry Participation Policy objectives and outcomes relating to local content; employment; skills and technology transfer; and apprentices/ trainees reflected in the [VIPP Monitoring Table][LIDP Monitoring Table] for: [name and tender number of procurement activity] | |  |
| as submitted to: [agency] |  | |
| on: [date] |  | |

**'**

**I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Declared at: |  | | | |
| this: |  | day of: |  | 20 |
|  |  |  |  |  |
| Signature of person making this declaration: [to be signed in front of an authorised witness] | |  | | |
| Before me:  [Signature of Authorised Witness] | |  | | |

The authorised witness must print or stamp his or her name, address and title under section 107A of the Evidence (Miscellaneous Provisions) Act 1958 (e.g. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist)

1. - Consultant Statement

Dated: [***Insert***]

BY: [***Insert the legal name and ACN of the Consultant***]

of: [***Insert address***]

(**Consultant**)

**IN FAVOUR OF:** **[*insert name of Principal and ACN / ABN*]** of [**insert address**] (**Principal**)

This consultant statement (**Statement**) is given by the Consultant in respect of: [***Insert project name***] project (**Project**).

Expressions in this Statement have the same meaning as under the consultancy agreement for the Project entered into between the Consultant and the Principal dated: **[*insert***] (**Consultancy Agreement**)

I, the undersigned, state that:

1. I am a director or authorised officer of the Consultant and am authorised by the Consultant to make this Statement on its behalf.

2. The design documents prepared by the Consultant as at and up to the date of this Statement are suitable, appropriate, adequate and otherwise fit for their purpose as stated in or reasonably to be inferred from the Consultancy Agreement and comply with the requirements of the Consultancy Agreement and all applicable Laws.

3. The Consultant confirms in its professional opinion as a design consultant, based on the inspections of the Works periodically undertaken by it, that the Works have been completed in accordance with the design documents prepared by the Consultant:

* + - 1. subject to any variations or other changes authorized or directed by the Principal pursuant to the construction contract between the Principal and any building contractor engaged by it to construct the Works; and
      2. save for the following areas of non-conformity (if any):

|  |
| --- |
| [***Insert***] |

|  |  |
| --- | --- |
| Print name: |  |
| Signature: |  |
| Dated: |  |