MRA Agreement for Engagement of a Consultant/Contractor

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Act means a statute (State or Federal) including amendments and re-enactments and any by-laws or regulations made pursuant to it;

Agreement means the Letter, the terms and conditions contained in this Agreement for Engagement of Consultant/Contractor and where applicable, the Consultant/Contractor’s Proposal;

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

Commencement Date means the commencement date specified in the Letter or the date specified in the Form;

Confidential Information means information in respect of this Agreement that is by its nature confidential or is specified by the Principal to be confidential including any information specified to be confidential in the Form or Letter or the Consultant/Contractor knows or ought to know is confidential;

Consultant/Contractor means the party on the front page of the Form under the heading ‘To be completed by Consultant/Contractor’;

Consultant/Contractor’s Records means records and information of any kind, including originals and duplicate copies of all accounts, financial statements, books, files reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the supply of the Services, whether or not it contains Confidential Information, and however such records and information are kept, held, stored or recorded;

Consultant/Contractor’s Covenants means the terms covenants and conditions expressed or implied in this Agreement and on the part of the Consultant/Contractor to be observed and performed;

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

(a) the Consultant/Contractor breaches or fails to observe or perform any other of the Consultant/Contractor’s Covenants and that breach or failure continues after the expiration of 14 days (or any further time as the Principal may specify) of notice to the Consultant/Contractor to remedy it;

(b) the Consultant/Contractor breaches an obligation under this Agreement that cannot be remedied;

(c) the Consultant/Contractor goes into liquidation or becomes bankrupt or enters into any composition arrangement with or assignment for the benefit of the Consultant/Contractor’s creditors;

(d) a manager, an administrator, a trustee, a receiver, a receiver and manager or liquidator is appointed under any Act or instrument or by order of any court in relation to any part of the Consultant/Contractor’s undertakings assets or property;

(e) the Consultant/Contractor made a false representation or breaches a warranty under this Agreement;

(f) the Consultant/Contractor ceases, or threatens to cease to carry on the Services;

(g) the Consultant/Contractor or its employees or sub-Consultant/Contractors is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, $10,000;
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(h) the Consultant/Contractor defaults under this Agreement over any 12 month period notwithstanding that the Principal has not provided a notice to the Consultant/Contractor of such defaults and the Consultant/Contractor has remedied such defaults; or

(i) if in the reasonable opinion of the Principal, the reputation of the Principal is likely to be damaged by any act or omission of the Consultant/Contractor;

Expiration Date means the expiration date specified in the Letter or the date specified in the Form;

Form means the request form issued by the Principal for the supply of Services;

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

Letter means the letter from the Principal to the Consultant/Contractor accepting the Consultant/Contractor’s Proposal;

Principal means Metropolitan Redevelopment Authority;

Proposal means the offer submitted by the Consultant/Contractor in response to the request contained in the Form;

Relevant Authorities means any body or corporation or any municipal, government, statutory or non-statutory authority or body in the State of Western Australia;

Services means the services described in the Letter;

Specification means the specification of the Services specified or referred to in the Letter or in the Form; and

Term means the initial term of this Agreement and, when the context so requires, includes any renewal or extension of that term.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

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

(b) another grammatical form of a defined word or expression has a corresponding meaning;

(c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph in, or a schedule or an annexure to, this Agreement and a reference to this Agreement includes any schedule or annexure;

(d) a reference to dollar or $ is to Australian currency;

(e) a reference to time is to Perth, Australia time;

(f) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party’s executors, administrators, successors and permitted assigns and substitutes;

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

(h) a reference to a statute, ordinance, code or other law includes regulations and other law under it and consolidations, amendments, re-enactments or replacements of any of them;

(i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
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(j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

(k) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

(l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;

(m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and

(n) headings are for ease of reference only and do not affect interpretation.

2. FORMATION OF AGREEMENT

This Agreement between the Principal and the Consultant/Contractor comes into existence when the Principal provides the Letter to the Consultant/Contractor/Contractor.

3. TERM

3.1 Term of Agreement

The Principal engages the Consultant/Contractor to provide the Services for the Project named in the Letter pursuant to the terms and conditions contained in this Agreement for the Term commencing on the Commencement Date and expiring on the Expiration Date.

3.2 Extension of Agreement

If the Principal desires to renew the Term and gives to the Consultant/Contractor notice in writing at any time prior to the expiration of the Term and the Consultant/Contractor must grant to the Principal a renewal of the Term for a further period specified in the Form and otherwise on the same terms and conditions contained in this Agreement (other than this right of renewal).

4. SCOPE OF WORK

4.1 Services

(a) The Consultant/Contractor shall perform the Services described in the Letter and comply with all instructions given by the Principal in respect of this Agreement, and the Principal is not responsible for any costs resulting from any unauthorised act of the Consultant/Contractor.

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

4.2 Additional Works
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(a) If the Principal requests in writing that the Consultant/Contractor performs work in addition to the Services, then the Principal shall pay the Consultant/Contractor for the additional works at the rate specified in the Form or the Proposal or if no rate is specified in the Form or the Proposal, then at the rate agreed between the Principal and the Consultant/Contractor.

(b) If the parties are unable to agree to a rate within 14 days from the date of the Principal's request, then the rate shall be a reasonable rate determined by the Principal.

4.3 Standard of Services

(a) The Consultant/Contractor must supply the Services in accordance with the Specification and if no standards for the Services are specified in the Specification, then the Consultant/Contractor must supply the Services in accordance with the highest standards that usually apply to the supply of the Services and with proper skill, care and diligence.

(b) If the Principal is not satisfied with the Services, then, without limiting any other remedy available to the Principal, the Principal may by notice to the Consultant/Contractor require the Consultant/Contractor to re-supply the Services at no cost to the Principal.

(c) If the Consultant/Contractor fails to provide the Services in clause 4.3(b), then the Principal may engage another Consultant/Contractor to provide the Services and the Consultant/Contractor must reimburse the Principal for any amount by which the cost of engaging another Consultant/Contractor to provide the Services exceeds the fee payable to the Consultant/Contractor and any additional costs and expenses incurred by the Principal as a result of engaging another Consultant/Contractor.

4.4 Consultant/Contractor's employees or sub-Consultant/Contractors

(a) The Consultant/Contractor must ensure that its employees or sub-Consultant/Contractors are competent and able to carry out the Services.

(b) The Consultant/Contractor must remove any of its employees or sub-Consultant/Contractors from providing the Services if the Principal provides a written notice to the Consultant/Contractor requiring that person be removed. The Principal must provide a reason for the removal of the person in the notice.

5. ACCESS

(a) The Consultant/Contractor must, to the extent necessary, comply with the Principal's record keeping plan if the Consultant/Contractor has custody or control of State records in the supply of the Services in accordance with the State Records Act 2000 (WA).

(b) Subject to the Principal providing reasonable prior notice to the Consultant/Contractor, the Consultant/Contractor must provide access to the Principal to inspect, audit, examine, copy and use all or any Consultant/Contractor's Records in its possession and control at its premises or if requested by the Principal deliver the Consultant/Contractor's Records to the Principal.

6. WARRANTIES AND UNDERTAKINGS

6.1 Warranties
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The Consultant/Contractor warrants that:

(a) it has no conflict of interest arising out of this Agreement;

(b) it is authorised and has the power to enter into this Agreement and perform the Services under this Agreement;

(c) the Consultant/Contractor’s obligations under this Agreement are valid and binding and are enforceable against the Consultant/Contractor;

(d) all information provided by the Consultant/Contractor to the Principal is true and correct;

(e) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatening against the Consultant/Contractor which could have a materially adverse effect on the Consultant/Contractor’s ability to provide the Services in accordance with this Agreement;

(f) it or any of its employees have not been convicted of a criminal offence that is punishable by imprisonment or detention; and

(g) there is nothing that prevents the Consultant/Contractor from complying with the Consultant/Contractor’s obligations under this Agreement.

6.2 Undertakings

The Consultant/Contractor must:

(a) take proper care and safe custody of all the Consultant/Contractor’s Records that are in the possession or control of the Consultant/Contractor;

(b) promptly notify the Principal if there is any breach of the warranties in clause 6.1;

(c) act ethically and in accordance with good corporate governance practices in connection with this Agreement at all times;

(d) comply with all State and Commonwealth laws relevant to the provision of the Services and this Agreement;

(e) cooperate with the Principal in respect of the administration of this Agreement; and

(f) use its best endeavours to ensure that the Consultant/Contractor’s employees or sub-Consultant/Contractors do not breach this Agreement.

7. PAYMENT AND INVOICING

(a) The Principal shall pay to the Consultant/Contractor fees and reimbursable expenses at the times and in the manner set out in the Letter.

(b) The Consultant/Contractor shall give to the Principal an account for the Services performed and for reimbursable expenses actually incurred at the times respectively specified in the Letter. The account given by the Consultant/Contractor to the Principal must be set out in a manner that clearly identifies the Services the invoice covers and the amount of fees and reimbursable expenses payable for those Services.
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(c) Subject to clauses 7(d) and (e), the Principal shall pay the full amount owing in respect of each account within 30 days of the receipt of the account if the amount in the account is correctly calculated in accordance with this Agreement and properly payable by the Principal.

(d) If the Principal disputes the amount claimed in an account submitted by the Consultant/Contractor, the Principal shall notify the Consultant/Contractor in writing within 14 days. If the parties are unable to reach agreement within 14 days of the Principal’s notice, the dispute may be determined at the instigation of either party in accordance with the provisions of this Agreement relating to disputes.

(e) The Principal has no obligation to make any payment to the Consultant/Contractor unless and until the Services have been supplied to the Principal pursuant to this Agreement or a default under this Agreement has been remedied.

(f) Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided by clause 7(g).

(g) Upon the issue of the Consultant/Contractor’s last account for the Services, the Principal shall issue a payment certificate stating the amount of the payment which, in the opinion of the Principal, is to be made by the Principal to the Consultant/Contractor or by the Consultant/Contractor to the Principal (Final Payment Certificate). The Principal shall set out in the Final Payment Certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Consultant/Contractor, the reasons for the difference.

The Final Payment Certificate shall be evidence in any proceedings of whatsoever nature and whether under the Agreement or otherwise between the parties arising out of the Agreement, that the Services have been completed in accordance with the terms of the Agreement and that any necessary effect has been given to all the terms of the Agreement which require additions or deductions to be made to sums paid for the Services, except in the case of—

(i) fraud, dishonesty or fraudulent concealment relating to the Services or any part thereof or to any matter dealt with in the Final Payment Certificate;
(ii) any defect (including omission) in the Services or any part thereof which was not apparent at the issues of the Final Payment Certificate, or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Payment Certificate; or
(iii) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation.

8. GST

(a) In this clause 8, reference to the words ‘GST’, ‘consideration’, ‘supplier’, ‘recipient’, ‘supply’, ‘tax invoice’ and ‘taxable supply’ have the same meaning as in the GST Act.

(b) Unless otherwise specified in the Form, all sums payable or considerations under this Agreement are inclusive of GST.

(c) If GST is imposed on any supply made under this Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply at the same time to which the amount of GST relates.

(d) If a GST inclusive amount is charged or varied under this Agreement, the supplier must provide to the recipient a valid tax invoice on or before the time of payment or variation.

(e) If the amount of GST paid or payable by the supplier on any supply made under this Agreement differs from the amount of GST paid by the recipient as a result of the adjustments
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made by the Commissioner of Taxation, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as applicable.

(f) The Consultant/Contractor shall pay to the Principal all duties, taxes and charges other than GST imposed or levied in Australia or overseas in connection with the supply of the Services.

9. INTELLECTUAL PROPERTY RIGHTS

(a) All trademarks, copyrights, patents, photographs, reports, notes, specifications, drawings, designs, statistics, models and other information or data compiled or prepared in connection with this Agreement (Intellectual Property) shall be the Principal’s property.

(b) For the purposes of section 35 of the Copyright Act 1968 (Cth), the parties agree that any copyright created by the Consultant/Contractor, its officers or employees under this Agreement will be the Principal’s property. The Principal’s copyright in a photograph continues to subsist until the expiration of 50 years after the expiration of the calendar year in which it was taken.

(c) Upon the Principal’s request, the Consultant/Contractor agrees to immediately execute, or take all necessary steps to ensure execution by any third party to this Agreement, any document necessary to assign the Intellectual Property to the Principal, whether created or prepared by the Consultant/Contractor or any third party to this Agreement. In the event that ownership of any Intellectual Property is deemed not to have passed until the execution of any necessary documents, the Consultant/Contractor hereby grants an irrevocable, royalty free licence to the Principal to use the Intellectual Property for any purpose.

(d) This clause does not affect the intellectual property rights the Consultant/Contractor had in existence prior to the date of engagement of the Consultant/Contractor.

(e) The Consultant/Contractor indemnifies and will keep indemnified the Principal including its officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from the Consultant/Contractor’s failure to comply with this clause 9 or otherwise resulting from the actual or alleged infringement of the Intellectual Property rights of any third party by the Consultant/Contractor.

(f) The Consultant/Contractor's obligations under this clause 9 are a continuing obligation and shall survive the expiration or earlier determination of this Agreement.

10. CONFIDENTIALITY

(a) The Principal shall make available to the Consultant/Contractor all information reasonably necessary (Information) to fulfil the Principal's requirements for the Services.

(b) The Consultant/Contractor acknowledges:

(i) the Information, and other information relevant to any of the Principal's activities that the Consultant/Contractor becomes aware of by virtue of its engagement by the Principal, is confidential (Confidential Information) and must remain confidential, regardless of whether the Confidential Information has been or will be released into the public domain; and
(ii) the duty to maintain the Confidential Information in confidence shall continue after the services have been provided or the Agreement is terminated.

(c) The Consultant/Contractor may only use the Confidential Information for the purposes of this Agreement and may not disclose it to any person, other than the Consultant/Contractor's officers and employees without the Principal's prior written consent to each disclosure. The Consultant/Contractor shall not, make use of any Confidential Information to gain an advantage for himself or herself or someone else or to cause detriment to the Principal.

(d) Subject to clause 10(e), in the event that the Confidential Information will or has been released into the public domain, the Consultant/Contractor will, at the Principal's expense, assist the Principal in any action or conduct necessary to prevent dissemination or further dissemination of the Confidential information. If the release or pending release of the Confidential Information into the public domain is a consequence of the Consultant/Contractor's act or omission or that of each or any of its employees, agents, or sub-Consultant/Contractors, then the Consultant/Contractor shall do all things considered by the Principal to be necessary, at the Consultant/Contractor's expense, to prevent dissemination or further dissemination of the Confidential Information.

(e) The Consultant/Contractor may disclose Confidential Information to persons who have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know) and have agreed in writing with the Consultant/Contractor to comply with substantially the same obligations in respect of Confidential Information as those imposed on the Consultant/Contractor under this Agreement (Direction). The Consultant/Contractor must ensure that each person to whom it discloses Confidential Information under this clause complies with its Direction and notify the Principal of, and take all steps to prevent or stop, any suspected or actual breach of a Direction. If the Consultant/Contractor is required by law to disclose any Confidential Information to a third person (including, but not limited to, government) the Consultant/Contractor must, before doing so, notify the Principal and give the Principal a reasonable opportunity to take any steps that the Principal considers necessary to protect the confidentiality of that Information and notify the third person that the Confidential Information is confidential information of the Principal.

11. PRIVACY

The Consultant/Contractor agrees to comply with its obligations (if any) pursuant to the Privacy Act 1988 (Cth) or the National Privacy Principles set out in the Privacy Act 1988 (Cth) or any other Act, regulations or directions from any Relevant Authorities to the extent that it is relevant to this Agreement.

12. INSURANCE

(a) The Consultant/Contractor shall, at the Consultant/Contractor's own expense, effect and maintain throughout the term of this Agreement Worker's Compensation Insurance, Public Liability Insurance and Professional Indemnity Insurance in the name of the Consultant/Contractor with insurers approved by the Principal and on terms and conditions approved by the Principal.

(b) The Consultant/Contractor must:

(i) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clause 12(a);
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(ii) not vary or cancel any insurance required under clause 12(a) or allow it to lapse during the Term; and

(iii) not do or allow to be done anything which may void or render void the insurance or entitle the insurer to refuse a claim.

(c) The Consultant/Contractor must give to the Principal a copy of the insurance policy specified in clause 12(a) or a certificate of currency if requested by the Principal at any time.

(d) If the Consultant/Contractor fails to provide a copy of the insurance policy or a certificate of currency under clause 12(c), the Principal may withhold payment of any money due under this Agreement to the Consultant/Contractor until the Consultant/Contractor has complied with clause 12(c).

13. INDEMNITY

The Consultant/Contractor indemnifies the Principal including its officers, employees and agents against all loss or damage arising out of the provision of their Services.

14. CONFLICT OF INTEREST

(a) During the term of this Agreement, the Consultant/Contractor will not provide services to any party (other than the Principal), which, in the Principal’s opinion, presents a conflict of interest, without the Principal’s written consent.

(b) If a conflict of interest arises in respect of the Consultant/Contractor, the Consultant/Contractor must:

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

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

15. DEFAULT

If the Consultant/Contractor shall for any reason fail to perform any obligations under this Agreement, the Principal may (without prejudice to any right of action or any other rights that the Principal may have in respect of such failure) be entitled to have such unperformed works carried out at the expense of the Consultant/Contractor by any other person.

16. TERMINATION

16.1 Right to Terminate

Irrespective of any other provision in this Agreement, the Principal may terminate this Agreement by notice to the Consultant/Contractor if:

(a) an Event of Default occurs;
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(b) the Consultant/Contractor shall have failed to remedy a breach of this Agreement within 7 days from the receipt of a written notice from the Principal specifying the breach and requiring that the same be remedied;

(c) in the reasonable opinion of the Principal that the Services will not be completed by the Consultant/Contractor in accordance with this Agreement arising from any event or circumstances;

(d) the Principal serves a notice on the Consultant/Contractor requiring that the Agreement be terminated on a date specified in the notice being not less than 30 days from the date of the notice; or

(e) the Consultant/Contractor fails or refuses or neglects to comply with any instruction or direction given to it by the Principal pursuant to this Agreement.

16.2 Yield up

On the expiry or earlier determination of this Agreement, the Consultant/Contractor must:

(a) deliver to the Principal all the Consultant/Contractor’s Records as required by the Principal;

(b) not represent that the Consultant/Contractor is any way connected to the Principal;

(c) return all of the Principal’s Confidential information to the Principal;

(d) in every other respect co-operate with the Principal as reasonably required by the Principal in order to minimise any loss, damage or inconvenience to the Principal and Consultant/Contractor resulting from the expiration or termination of this Agreement.

16.3 Principal’s Further Right on Termination

Nothing in clause 16 shall be taken as in any way restricting any right of the Principal to claim and institute proceedings for damages arising out of any breach of this Agreement by the Consultant/Contractor.

16.4 Limited Liability

Except where the Principal has repudiated this Agreement or damages are not an appropriate remedy, if the Principal breaches this Agreement, then the remedies of the Consultant/Contractor are limited to damages.

17. SUSPENSION

(a) The Principal may at any time, by notice in writing to the Consultant/Contractor, reduce, curtail or discontinue any or all Services described in the Letter. Upon such notice being given, the Consultant/Contractor shall cease or reduce work according to the tenor of the notice and shall immediately do everything possible to mitigate losses as a result of such reduction, curtailment or discontinuance.

(b) The Principal is not obliged to give a reason to the Consultant/Contractor for reducing, curtailing or discontinuing any or all Services.

(c) If the Principal becomes aware that a subconsultant/subcontractor has suspended, or will become entitled to suspend, its works under a subcontract for non-payment by the Consultant/Contractor (whether under the Construction Contracts Act 2004 or otherwise),
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the Principal may elect to make payment to the subconsultant/subcontractor itself and any amount paid by the Principal shall be a debt due from the Consultant/Contractor to the Principal and payable on demand.

18. DISPUTE RESOLUTION

(a) The parties agree to use reasonable commercial efforts to resolve by negotiation any dispute that arises between them under this Agreement. Neither party shall resort to legal proceedings or terminate this Agreement until the following process has been exhausted, except it is necessary to seek an urgent interim determination.

(b) If a dispute arises (including a breach or an alleged breach) under this Agreement which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, either party shall escalate the dispute to the management level. The managers of each of the parties will endeavour in good faith to agree upon a resolution.

(c) If the parties do not agree to a resolution within 7 days from the date of the managers meeting or within 30 days of the dispute arising then the dispute may be referred to arbitration. The arbitrator shall be a person appointed by the President for the time being of the Institute of Arbitrators Australia. The provisions of the Commercial Arbitration Act 1985 shall apply to such arbitration.

(d) The costs of any expert arbitration proceedings pursuant to this Agreement shall be borne by the parties as the arbitrator may direct.

19. NO ASSIGNMENT

(a) The Consultant/Contractor must not sell, assign, novate, transfer, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under this Agreement without the written consent of the Principal.

(b) An assignment of this Agreement requiring the consent of the Principal in the terms of subclause (a) shall be deemed to occur when:

(i) any change in the principal shareholders of any corporate Consultant/Contractor (which is not a public listed company) occurs which has the effect of altering the effective control of the Consultant/Contractor; or

(ii) the Consultant/Contractor has executed this Agreement as the trustee of a trust and any change in the persons beneficially entitled (or who may become beneficially entitled) to the trust assets occurs or in the case of a unit trust any units are transferred or any units (in addition to those issued at the Commencement date) are issued.

(c) The covenants and agreements on the part of any assignee expressed or implied in any deed of assignment and in favour of the Principal are supplementary to those contained in this Agreement and do not in any way relieve the Consultant/Contractor from the Consultant/Contractor’s Covenants. Despite any assignment by the Consultant/Contractor of the benefit of this Agreement the Consultant/Contractor shall remain liable to observe and perform all the Consultant/Contractor’s Covenants throughout the balance of the Term current at the date of assignment.
20. SUB-CONSULTANT/CONTRACTOR

(a) If circumstances arise which require expertise outside the field of practice of the Consultant/Contractor, the Consultant/Contractor may, with the prior written approval of the Principal, engage an appropriate sub-Consultant/Contractor to perform relevant Services under this Agreement. The Consultant/Contractor shall be responsible for the engagement of and payment for any Services provided by sub-Consultant/Contractors, and shall accept responsibility for those Services.

(b) The Consultant/Contractor must ensure that it is a term of any agreement to subcontract that the remuneration and terms of employment of any employee employed by a sub-Consultant/Contractor for the performance of the agreement to subcontract will, for the duration of the agreement to subcontract, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

(c) The Consultant/Contractor must, if requested by the Principal, supply to the Principal a copy of any subcontract, which copy may exclude commercially sensitive information but must indicate that the Consultant/Contractor has complied with this clause 20.

(d) The engagement by the Consultant/Contractor of a sub-Consultant/Contractor does not relieve the Consultant/Contractor from its obligation to perform the Consultant/Contractor’s obligations under this Agreement.

21. RELATIONSHIP

(a) Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency, partnership or joint venture between the parties.

(b) The Consultant/Contractor must not represent that the Consultant/Contractor is the employee, agent, partner or joint venture partner of the Principal.

22. NOTICES AND OTHER COMMUNICATIONS

22.1 Service of Notices

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

(a) in writing, in English and signed by a person duly authorised by the sender; and
(b) hand delivered or sent by prepaid post or facsimile to the recipient’s address for Notices specified in the Form, as varied by any Notice given by the recipient to the sender.

22.2 Effective on Receipt

A Notice given in accordance with clause 22.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

(a) if hand delivered, on delivery;
(b) if sent by prepaid post, on the third Business Day after the date of posting (or on the seventh Business Day) after the date of posting if posted to or from a place outside Australia);
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(c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

23. GENERAL PROVISIONS

23.1 Waiver

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

23.2 Entire Agreement

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

(b) If there is any inconsistency between the provisions contained in the Form, Proposal, Letter and the terms and conditions in this Agreement, then this Agreement shall be read in the following order of precedence:
   (i) the Letter;
   (ii) the Form;
   (iii) the terms and conditions in this Agreement; and
   (iv) the Proposal.

23.3 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

23.4 Amendments

This Agreement may not be amended unless agreed in writing by both parties.

23.5 No Merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

23.6 Severability

(a) The parties agree that a construction of this Agreement results in all provisions being enforceable is to be preferred to a construction that does not so result.

(b) If, despite the application of subclause (a), a provision of this Agreement is illegal or unenforceable:
   (i) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
   (ii) in any other case, the whole provision is severed, and the remainder of this Agreement continues in force.

23.7 Applicable Law
MRA Agreement for Engagement of a Consultant/Contractor

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

23.8 Cumulative Rights

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

23.9 Auditor General

(a) The powers and duties of the Auditor General are not limited or otherwise affected by the terms and conditions of this Agreement.

(b) The Consultant/Contractor must allow the Auditor General or an authorised representative of the Auditor General to have access to and examine the Consultant/Contractor’s Records concerning this Agreement.

23.10 Consent

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

23.11 Further Assurance

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

23.12 Right of Set Off

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

24. COSTS

(a) Each party must pay its own costs of negotiating, preparing and executing this Agreement.
(b) The Consultant/Contractor must pay all stamp duty on this Agreement.
(c) Except otherwise stated in this Agreement, the Consultant/Contractor must comply with its obligations under this Agreement at the Consultant/Contractor’s cost.