



**The Crown in right of the State of New South  
Wales, acting through the Treasury**

(“Principal”)

and

***[Insert name of Consultant]***

(“Consultant”)

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**CONSULTANCY AGREEMENT**  
for professional services as **xxxx** Advisor in  
relation to **[xxxx]**

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## **PART A – PARTIES, RECITALS AND EXECUTION CLAUSES**

### **AGREEMENT BETWEEN**

The Crown in right of the State of New South Wales , acting through the Treasury of 52 Martin Place (127 Phillip Street), Sydney NSW 2000 (the “Principal”),

### **AND**

The party specified as Consultant in Item 1 of Part B: Project Details (the “Consultant”).

### **RECITALS**

- A. The Principal has issued the Request for Proposals for the engagement of a consultant to provide the Services for the Project.
- B. The Consultant submitted the Consultant’s Proposal that was selected by the Principal.
- C. The Consultant has agreed to provide the Services upon the terms and conditions set out in this Agreement.

## **THIS AGREEMENT IS MADE UP OF**

- PART A: Parties, Recitals and Execution Clauses
- Part B: Project Details
- Part C: Agreed Changes to the Operative Provisions
- Part D: Operative Provisions:
  1. Interpretative Provisions
  2. Term
  3. The Consultant's Obligations
  4. The Principal's Obligations
  5. Representatives
  6. Fee
  7. GST
  8. Extension of Time
  9. Variations
  10. Confidentiality
  11. Privacy and Disclosure of Personal Information
  12. Copyright and Intellectual Property
  13. Conflict of Interest
  14. Warranties, Indemnity and Release
  15. Minimum Insurance Requirements
  16. Keeping of Records and Audit
  17. Dispute Resolution
  18. Termination for Convenience
  19. Termination for Cause
  20. Consequence of termination
  21. General
  22. Notices
- ANNEXURES/SCHEDULES:
  - Schedule 1: Request for Proposals
  - Schedule 2: Consultant's Proposal
  - Schedule 3: Fee/Consultant Budget
  - Schedule 4: Statutory Declaration by Sub-Contractor
  - Schedule 5: Insurance Certificates of Currency
  - Schedule 6: Confidentiality and Privacy Deed
  - Schedule 7: Confidentiality and Privacy Deed Poll
  - Schedule 8: Cost Report/Breakdown
  - Schedule 9: Variation Statement of Works Form
  - Schedule 10: Reliance Letter template
  - Schedule 11: Non Reliance Letter template

In the event of any conflict or inconsistency between any parts of this Agreement such as the Schedules, the Request for Proposals, the Consultant's Proposal and any Annexures (or any parts thereof), such conflict or inconsistencies will be determined by the Principal in its absolute discretion or otherwise in the following descending order:

1. Part A: Parties, Recitals and Execution Clauses and Part D: Operative Provisions;
2. Part C: Agreed Changes to the Operative Provisions;
3. Part B: Agreement Details;
4. any Schedule and annexure to this Agreement.

**EXECUTED AS AN AGREEMENT** on the date as specified in Item 2 of Part B: Project Details.

**SIGNED** by [Rob Whitfield, Secretary of the Treasury] [Tim Spencer, Deputy Secretary of the Treasury] [Simone Constant, Deputy Secretary of the Treasury] for and on behalf of the Crown in right of the State of New South Wales but not so as to incur any personal liability in the presence of:

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.....  
Signature of Witness

.....  
Print name of Witness

.....  
Rob Whitfield  
Tim Spencer  
Simone Constant

**SIGNED** for and on behalf of the  
Consultant in the presence of:

- 
- 
- 
- 
- 
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.....  
Signature of Witness

.....  
Print name of Witness

.....  
**Consultant Signature**

| Item | PART B:<br>PROJECT DETAILS         |  |
|------|------------------------------------|--|
| 1    | Consultant                         | Name:<br>Address:<br>ACN:<br>ABN:<br>Tel:<br>Fax:<br>Email:<br>www:  |
| 2    | Execution Date                     | [insert date of execution of this agreement]   |
| 3    | Commencement Date                  | [insert date of when the firm commences]   |
| 4    | 4. Term                            | [insert how long the consultant is contracted for] unless earlier terminated.  |
| 5    | Fee/Consultant Budget (Schedule 3) | [insert fee summary and refer to Schedule 3 for more detailed fee structure (if any)]  |
| 6    | Project                            | [insert name of project]   |
| 7    | Request for Proposals              | [insert T-number + date] annexed as Schedule 1   |
| 8    | Consultant's Proposal              | [name of proposal- name of Advisor] annexed as Schedule 2  |
| 9    | Project Objectives                 | The Government objectives for the Project are to: <ul style="list-style-type: none"> <li>• maximise the financial return for the State</li> <li>• minimise ongoing financial risks and liabilities for the State</li> <li>• treat public sector employees fairly and equitably</li> <li>• complete the Project efficiently and in accordance with appropriate probity and accountability standards.</li> <li>• [INSERT ANY FURTHER OBJECTIVES HERE]</li> </ul> |
| 10   | Third Interested Party/ies         | [insert the relevant parties alluded to or otherwise mentioned in the agreement. These usually refer to the assets that are for sale/lease]  |

|    |  |   |
|----|--|---|
| 11 | Cap on reimbursable Unavoidable Expenses   | \$10,000  |
| 12 | Public Liability Insurance   | \$20 million  |
| 13 | Professional Liability Insurance   | \$50 million  |
| 14 | Consultant's Representative  | Name:<br>Address:<br>Tel:<br>Fax:<br>Email:   |
| 15 | Principal's Representative   | Name: Tim Spencer<br>Address: 52 Martin Place (127 Phillip Street), Sydney 2000<br>Tel: 02 9228 5446<br>Fax: 02 9221 7029<br>Email: Tim.Spencer@treasury.nsw.gov.au   |
| 16 | Notices:<br><br>A notice under this Agreement must be in writing and forwarded to the address and Email of the intended recipient or the address last notified by the intended recipient to the sender | Consultant:   |
|    |  | Name:<br>Address:<br>Tel:<br>Email:   |
|    |  | Principal's Representative:   |
|    |  | Name: Tim Spencer<br>Address: 52 Martin Place 9127 Phillip Street), Sydney 2000<br>Tel: 02 9228 5446<br>Email: Tim.Spencer@treasury.nsw.gov.au  |
| 17 | Invoices   | Attention: XXXXXX<br><br>All invoices need to be accompanied by a detailed breakdown and/or time sheets and, where directed by the Principal, accompanied by a narrative explaining at what stage the project is at. For an example of a cost report – see Schedule 8: Costs Report/Breakdown |
| 18 | Specified Personnel  | Name:<br>Position Category:<br>Telephone:<br>Mobile:<br>Email:<br><br>Name:<br>Position Category:<br>Telephone:<br>Mobile:<br>Email:  |

|    |                      |  |
|----|----------------------|--|
|    |                      | Name:<br>Position Category:<br>Telephone:<br>Mobile:<br>Email: |
| 19 | Specified Timeframes | [INSERT RELEVANT TIMEFRAMES HERE]                              |

**PART C: AGREED CHANGES TO THE OPERATIVE PROVISIONS (Terms and Conditions)**

[If applicable, insert agreed changes to the Operative Provisions here such as:

**14. WARRANTIES, INDEMNITY AND RELEASE**

- Clause XX is hereby deleted and replaced by;
- Clause xx is hereby amended as follows;
- Additional sub clause XX to clause XX

**OTHERWISE INSERT “NOT APPLICABLE”].**

**END OF THE AGREED CHANGES TO THE OPERATIVE PROVISIONS**

## PART D: OPERATIVE PROVISIONS (Terms and Conditions)

### 1. INTERPRETATION PROVISIONS

1.1 In this Agreement including the Recitals, unless the context otherwise require:

“**ACDC**” means the Australian Commercial Disputes Centre;

“**Agreement**” means this Agreement including:

- (a) PART A: Parties, Recitals and Execution Clauses; PART B: Project Details; Part C: Agreed Changes to the Operative Provisions; and Part D: Operative Provisions;
- (b) the Schedules and Annexures;
- (c) the Request for Proposals; and
- (d) the Consultant’s Proposal;

“**Annexure**” means an annexure to this Agreement;

“**Commencement Date**” means the date specified in Item 3 of Part B: Project Details.

“**Confidential Information**” means any information and all other knowledge at any time disclosed (whether in writing or orally) to the Consultant by or on behalf of the Principal, or acquired by the Consultant in performing the Services which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated as confidential;
- (c) the Consultant knows or ought to know is confidential;

and includes but is in no way limited to

- (d) the Contract Material;
- (e) the Principal’s Material;
- (f) any material which relates to the affairs of a third party;

but does not include information which:

- (g) is or becomes public knowledge other than by breach of this Agreement or by reason of a permitted recipient (within the meaning of Clause 10) breaching its obligations referred to in Clause 10.4;
- (h) is in the lawful possession of the Consultant without restriction in relation to disclosure before the date of receipt of the information from the Principal or a third party;
- (i) has been developed or acquired by the Consultant independently of the carrying out of the Services;
- (j) is ascertainable through independent enquiries;
- (k) maybe or is required to be disclosed pursuant to Memorandum No. 2000-11 Disclosure of Information on Government Contracts with the Private Sector dated 27 April 2000, as amended or updated from time to time; or
- (l) is required to be disclosed pursuant to law, regulation, legal process or a regulatory authority;

**“Consultant”** means the party as defined in Item 1 in Part B: Project Details and includes the officers, employees, agents and sub-contractors of the Consultant;

**“Consultant’s Representative”** means the person named in Item 14 of Part B: Project Details or such other person as the Consultant may, from time to time, nominate in writing;

**“Contract Material”** means:

- (a) any Material created, written or otherwise brought into existence by or on behalf of the Consultant in the course of performing this Agreement in which subsists newly created Intellectual Property rights (“New Contract Material”); and
- (b) any Material which exists at the date of this Agreement and which is incorporated with the New Contract Material (“Existing Contract Material”);

**“Existing Contract Material”** has the meaning given to this term in the definition of “Contract Material”;

**“Fee”** means the fee(s) as referred to in Clause 6.1 and Item 5 of Part B: Project Details;

“**GST**” has the meaning given to this term in the GST Law;

“**GST Law**” means *A New Tax System (Goods & Services Tax) Act 1999*, related legislation and any delegated legislation made pursuant to such legislation;

“**Intellectual Property**” includes patent, know-how, copyright, design, semi-conductor or circuit layout rights, trade mark, trade, business or company names or other proprietary rights and any rights to registration of such rights, whether created before or after the Commencement Date in Australia or elsewhere;

“**Material**” includes, but is not limited to, software, documentation, information or data, whether or not in material form;

“**Moral Rights**” means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing at the Commencement Date or which may come into existence on or after the Commencement Date;

“**New Contract Material**” has the meaning given to that term in the definition of “Contract Material”;

“**Party**” means the Principal or the Consultant as the context dictates and “Parties” mean both of them;

“**Payment Schedule**” means the schedule for the payment of the Fee set out as summary in Item 5 of Part B: Project Details and in more detail in Schedule 3 (Fee/Consultant Budget) and subject to the Consultant's continued compliance with this Agreement. The Fee (including disbursements) is payable within 30 business days of receipt of an itemised tax invoice by the Consultant which complies with Clause 6 of this Agreement, to be issued on a monthly basis or as otherwise agreed by the parties;

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

“**Principal's Material**” means any Material supplied by or on behalf of the Principal to the Consultant by whatever means in relation to this Agreement;

“**Principal's Representative**” means the person named in Item 15 of Part B: Project Details or such other person as the Principal may, from time to time, nominate in writing;

**“Project”** means the project defined in Item 6 of Part B: Project Details;

**“Project Objectives”** mean the objectives of the Project set out in Item 9 of Part B: Project Details;

**“Consultant’s Proposal”** means the proposal or tender as specified in Item 8 of Part B: Project Details submitted by the Consultant in answer to the Request for Proposals as specified in Item 7 of Part B: Project Details, a copy of which is annexed to this Agreement and marked Schedule 2;

**“Relevant Party/ies”** means those parties as defined in Item 10 of Part B: Project Details;

**“Request for Proposals”** means the Request for Proposals (RFP) as specified in Item 7 of Part B: Project Details and annexed to this Agreement and marked Schedule 1;

**“Services”** mean:

- (a) the services to be provided by the Consultant described in the Request for Proposals, the Consultant’s Proposal and in this Agreement;
- (b) all reports and other services to be provided by the Consultant to achieve the Project Objectives; and
- (c) any other service relating to the Project required by the Principal from time to time;

**“Schedule”** means a schedule to this Agreement;

**“Specified Personnel”** means the key personnel specified in Item 18 of Part B: Project Details required to undertake the Services or part of the work constituting the Services or such other personnel as the Principal agrees in writing, to perform the Services;

**“Specified Timeframes”** means the timeframe for the performance of the Services specified in Item 19 of Part B: Project Details;

**“Supply”** has the same meaning given to it in the GST Law; and

**“Term”** means the period referred to in Item 4 of Part B: Project Details unless this Agreement is earlier terminated;

**“Third Interested Party/ies”** means those parties as defined in Item 10 of Part B: Project Details.

- 1.2 Except where the context otherwise requires a reference in this Agreement to:
- (a) the singular number includes a reference to a plural number and vice versa;
  - (b) a gender includes a reference to the other genders and each of them;
  - (c) any person or company shall mean and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require;
  - (d) a company includes a corporation and person and vice versa;
  - (e) any organisations, associations, societies, groups or bodies shall, in the event of them ceasing to exist or being reconstituted, renamed or replaced or if the powers or functions of any of them are transferred to any other entity, body or group, refer respectively to any such entity, body or group, established or constituted in lieu thereof or succeeding to similar powers or functions;
  - (f) statutes, regulations, ordinances or by-laws shall be deemed for all purposes to be extended to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time; and
  - (g) a month shall be construed as a reference to a calendar month.
- 1.3 Monetary references are references to Australian currency.
- 1.4 A business day means any day which is not a Saturday, Sunday or public holiday in the State of New South Wales.
- 1.5 Where any time limit pursuant to this Agreement falls on a Saturday, Sunday or public holiday in the State of New South Wales then that time limit shall be deemed to have expired on the next business day.
- 1.6 Where any covenant, condition, agreement, warranty or other provision of this Agreement expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 1.7 Where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or

phrase shall unless the context otherwise requires have a corresponding meaning.

- 1.8 The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- 1.9 No rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Agreement or any part of it.
- 1.10 Where there occurs a reference to the doing of anything by the Principal including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the Principal.
- 1.11 Where the Principal is required to act reasonably in the performance of this Agreement, that shall be read as a requirement to act as would a party in the position of the Principal which is acting reasonably in its own best interests.

## **2. TERM**

- 2.1 This Agreement commences on the Commencement Date and will continue for the Term.
- 2.2 The Principal engages the Consultant during the Term to provide the Services, to achieve the Project Objectives and to carry out other tasks described in the Request for Proposals in accordance with this Agreement.
- 2.3 The Consultant acknowledges and agrees that the Principal may engage other persons to provide the same or similar services to the Services.

## **3. THE CONSULTANT'S OBLIGATIONS**

### **Due Diligence**

- 3.1 The Consultant shall perform the Services diligently, in accordance with the Specified Timeframes and with all necessary skill and care expected in the provision of such Services.

### **Methodology**

- 3.2 In the performance of the Services, the Consultant shall adopt the approach and use the methodology, if any, described in the Request for Proposals and in the Proposal.

### **Knowledge of Principal's Requirements, Co-operation, and Provision of Information and Assistance**

- 3.3 The Consultant must:

- (a) use all reasonable efforts to inform itself of the ongoing requirements of the Principal in performing the Services;
- (b) regularly liaise, consult and/or meet with the Principal or its representatives in order for the Principal to inspect, discuss or assess the provision of the Services;
- (c) consult, co-operate and confer with others as reasonably directed by the Principal; and
- (d) provide all relevant documentation, detailed briefings and other assistance to persons or bodies who may be appointed by the Principal to provide advice in relation to the Project, as directed by the Principal.

### **Specified Personnel**

- 3.4
- (a) The Consultant shall engage the Specified Personnel to carry out the Services.
  - (b) The Consultant will ensure that the Specified Personnel (and any other personnel approved by the Principal and undertaking work in respect of the Services) will not be hindered or prevented in any way in the performance of their duties including but not limited to being removed from the performance of the Services or being requested to perform services which in any way interfere with their due performance of the Services.
  - (c) Where any Specified Personnel or other personnel is unable to undertake work due to illness or other incapacity or resignation from employment with the Consultant, the Consultant will notify the Principal immediately and the Consultant will (at its own cost) provide replacement personnel at the earliest opportunity. All temporary or substitute personnel must be approved in writing by the Principal, which approval may be given or withheld in the Principal's absolute discretion. In giving its approval, the Principal may impose such conditions as it sees fit.
  - (d) Notwithstanding any other provision contained in this Agreement, the Consultant acknowledges and agrees that subclause (a) is a fundamental term of this Agreement and in the event of termination or resignation of a member of the Specified Personnel, the Principal has the right to terminate this Agreement in accordance with Clause 19.1

### **Reports**

- 3.5 The Consultant agrees to provide:

- (a) progress reports of the Project containing such information as may be agreed between the Consultant's Representative and the Principal to each Steering Committee meeting; and
- (b) such other reports, containing the information, in the format and on such dates as reasonably required by the Principal from time to time.

### **Principal's Material**

- 3.6 The Consultant accepts all responsibility for the secure guardianship of the Principal's Material and agrees that it will not, except in the course of or as a necessary or desirable part of the Services, make any (or any substantial) alteration to the Principal's Material without the prior written consent of the Principal.

### **Assignment and Sub-contracting**

- 3.7 (a) Subject to Clause 3.4 the Consultant acknowledges and agrees that it may not assign and/or sub-contract the whole or any part of this Agreement without the prior written approval of the Principal, which approval may be given or withheld in the Principal's absolute discretion. Any approval given by the Principal to sub-contract any part of the Services does not relieve the Consultant from its liabilities or obligations under this Agreement and the Principal may, in giving its approval, impose such conditions as it sees fit.
- (b) Without limiting the generality of subclause (a), notwithstanding any consent given by the Principal, the Consultant will be responsible for ensuring the suitability of any sub-contractor for the work proposed to be carried out and for ensuring that the work proposed to be carried out by the sub-contractor meets the requirements of this Agreement.
- (c) The Consultant agrees and acknowledges that it will be liable to the Principal for any negligent, wilful or reckless acts, defaults or omissions of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the negligent, wilful or reckless acts, defaults or omissions of the Consultant or the employees or agents of the Consultant.
- (d) Prior to any sub-contractor or any employee or agent of the sub-contractor commencing work in respect of the Services, the Consultant will obtain from that person, and provide to the Principal, a written assignment from the person to the Principal of the Intellectual Property created as a result of the person performing that work.

- (e) The Consultant will ensure that a sub-contractor is aware of all the terms and conditions of the Agreement relevant to the sub-contractor's part in the performance of the Agreement. If so requested by the Principal, the Consultant will obtain from the sub-contractor a signed statutory declaration substantially in the form appearing at Schedule 4 (Statutory Declaration by Sub-contractor) prior to the commencement of any work under this Agreement by that sub-contractor and upon request by the Principal, will provide any statutory declaration so obtained to the Principal.

#### **Compliance with Law**

3.8 The Consultant must:

- (a) comply with all applicable standards, laws and regulations including but not limited to complying with its obligations (if any) under or arising pursuant to the *Privacy Act 1988* (Cth), *Privacy and Personal Information Protection Act 1998* (NSW) and other State legislation relating to privacy to the extent that such legislation is relevant to this Agreement and/or the performance of the Services;
- (b) comply with all relevant government policies and guidelines relevant to this Agreement and/or the performance of the Services;
- (c) not do anything that would cause the Principal to breach its obligations under any such legislation, government policies or guidelines.

3.9 The Consultant must hold all necessary approvals, licences and permits required to provide the Services and otherwise fulfil its obligations under this Agreement.

#### **4. PRINCIPAL'S OBLIGATIONS**

4.1 The Principal will as soon as practicable, or as required by this Agreement:

- (a) make or arrange to make available to the Consultant all relevant instructions, information, documentation or data or any other material as is necessary for the performance of the Services; and
- (b) provide assistance to the Consultant, as reasonably required, so that the Consultant may competently perform its duties under this Agreement.

4.2 The Consultant agrees and acknowledges that the Principal's provision of information and assistance in accordance with Clause 4.1 is by way of assistance only and cannot in any way be deemed to give rise to a duty of

care on the part of the Principal. The Consultant must rely on its own professional and personal expertise in providing the Services.

## **5. REPRESENTATIVES**

5.1 The Consultant's Representative is the representative of the Consultant in respect of the provision of the Services and will, except to the extent otherwise provided for in this Agreement, liaise with the Principal in all matters relating to this Agreement. Any substituted representative must be agreed to in writing by the Principal.

5.2 The Principal's Representative will act as the Principal's representative in connection with this Agreement.

## **6. FEE**

6.1 Subject to Clause 6.2, the Principal will, in consideration of the Consultant performing the Services, pay to the Consultant the Fee in accordance with the Payment Schedule.

6.2 Payment of the Fee or any instalment thereof by the Principal is subject to:

- (a) satisfactory progress in the performance of the Services (including, without limitation, the provision of any progress reports) in accordance with the Specified Timeframes or otherwise as agreed between the Consultant's Representative and the Principal's Representative; and
- (b) the provision of an appropriate tax invoice before the due date for the payment of the Fee or the relevant instalment of the Fee.

6.3 The Principal will only reimburse the Consultant any reasonable costs, expenses, fees or charges incurred by the Consultant in connection with this Agreement and not already included in the Fee/Consultant's proposed budget set out in Schedule 3 where the Consultant has obtained the Principal's prior written approval to incur such costs, expenses, fees or charges. The Principal's approval may be given or withheld in the Principal's absolute discretion.

6.4 The Consultant agrees and acknowledges that the Principal may deduct from the amounts otherwise payable to the Consultant any amount due from the Consultant to the Principal in connection with the provision of the Services.

6.5 The parties agree that, in order to maximise value for money for the Principal, they will from time to time renegotiate the fee structure or any portion thereof. The parties agree to negotiate with each other in good faith. The parties may

agree, without limitation, to capped fees for specified project tasks, or discounted fees for resource intensive tasks.

## **7. GST**

7.1 In the event that any of the prices for Supplies made under this Agreement are expressed as being inclusive of GST, Clause 7.2 will not apply in respect of those Supplies.

7.2 If any Party to this Agreement (the "GST Supplier") is or becomes liable to pay GST in connection with any Supplies made under this Agreement:

(a) the GST Supplier may add to the price of all Supplies the amount of GST for which the GST Supplier is or becomes liable in respect of those Supplies, as calculated by the GST Supplier in accordance with the GST Law;

(b) the Party providing consideration for the Supplies (the "Recipient") will pay the amounts or provide any other consideration required to be provided under other provisions of this Agreement for the Supplies ("agreement price") plus the calculated amount in respect of GST;

(c) subject to subclause (d), the additional amounts shall be payable at the same time or times as the agreement price is required to be provided to the GST Supplier under the other provisions of this Agreement;

(d) if the time required by subclause (c) for payment of the additional amounts is at a time prior to the commencement of the tax period in respect of which the GST Supplier will be required to include the GST on that supply in the GST Supplier's GST return, subclause (c) will not apply to that additional amount and instead the additional amount will be payable not less than ten (10) business days prior to the date upon which the GST Supplier is required to lodge its GST return for that tax period.

7.3 The GST Supplier will issue a tax invoice which enables the Recipient, if permitted by the GST Law, to claim a credit or refund of GST on or before the date that the Recipient is required to pay the additional amounts calculated pursuant to Clause 7.2 or the GST component of the price for the Supplies referred to in Clause 7.1.

7.4 If, for any reason, the GST Supplier's GST liability in respect of a particular Supply is varied from the additional amount paid by the Recipient under Clause 7.1 or Clause 7.2 the GST Supplier shall repay to the Recipient the amount of any excess paid by the Recipient above the GST Supplier's GST

liability or the Recipient shall pay the deficiency in the amount previously paid by the Recipient to the GST Supplier for that Supply as appropriate.

- 7.5 Each Party warrants that at the time any taxable Supplies are made under this Agreement, that Party is or will be registered under the GST Law.

## **8. EXTENSION OF TIME**

- 8.1 Where in the Consultant's reasonable opinion there is likely to be a delay in the Consultant discharging an obligation under this Agreement because of a cause beyond the reasonable control of the Consultant (except a cause arising out of any act or omission on the part of the Consultant's employees, agents or sub-contractors or their employees or agents) which the Consultant considers justifies an extension of the time specified in this Agreement, the Consultant will:

- (a) as soon as possible and in any event within 7 days of becoming aware of the possibility of such a delay, notify the Principal, in writing, of the facts and circumstances which the Consultant considers will give rise to such a delay and the extent or likely extent of the delay and develop strategies to manage the consequences of the delay; and
- (b) immediately after the circumstances causing the delay have ceased, notify the Principal, in writing, of the period of delay so caused, give details of the likely effect on this Agreement and request an extension of time which the Consultant considers reasonable in all the circumstances.

- 8.2 Where the Principal:

- (a) agrees that the delay has reasonably arisen from a cause beyond the reasonable control of the Consultant, the Principal will not refuse a request for extension of time without reasonable grounds for doing so; or
- (b) considers that the delay has arisen from a cause within the reasonable control of the Consultant, the Principal may refuse the Consultant's request for extension of time and reserves its rights under Clause 19.1 without prejudice to any accrued rights or remedies of the Principal.

## **9. VARIATIONS**

- 9.1 The Principal may, in writing in the form as outlined in Schedule 9 (Variation Statement of Works Form), request the Consultant to vary the Services. The

Consultant must respond within a reasonable time and subsequently provide a quotation in accordance with Clause 9.2

- 9.2 Before approving a variation requested under Clause 9.1 the Principal must have been provided by the Consultant with a written quotation of the time, cost and programming effects of the proposed variation. On receipt of a quotation, the Principal, if it wishes the variation to proceed, must approve the variation in writing to the Consultant.
- 9.3 Fees for varied Services will be in accordance with the quotation supplied by the Consultant under Clause 9.2 or as otherwise agreed in writing between the Parties.

## **10. CONFIDENTIALITY**

- 10.1 The Consultant:
- (a) must not disclose any Confidential Information to any person without the prior written consent of the Principal; and
  - (b) must take reasonable steps to ensure that the Confidential Information in its possession is kept confidential and protected against unauthorised use and access.
- 10.2 The Consultant agrees to use the Confidential Information solely for the purposes of the Services and for no other purpose.
- 10.3 Notwithstanding Clause 10.1, the Consultant may disclose Confidential Information to its officers, employees and permitted sub-contractors ("permitted recipient") where such disclosure is essential to carrying out their duties or in accordance with this Agreement.
- 10.4 Before disclosing the Confidential Information to a permitted recipient, the Consultant will ensure that the permitted recipient is aware of the confidentiality requirements of this Agreement and is advised that he, she or it is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Agreement. The Principal may, at its sole discretion and at any time, require the Consultant to arrange for a permitted recipient to execute a deed (in the form set out in Schedule 6 (Confidentiality and Privacy Deed), Schedule 7 (Confidentiality and Privacy Deed Poll) or in such form as may be required by the Principal) relating to the non-disclosure and use of the Confidential Information and the Consultant will promptly arrange for such deed to be executed and provided to the Principal.

- 10.5 The Confidential Information must not be copied or reproduced by the Consultant and/or the permitted recipient without the express prior written permission of the Principal, except for such copies as may be reasonably required to accomplish the purpose for which the Confidential Information was provided pursuant to this Agreement.
- 10.6 If any person, being any partner, officer, agent, consultant, sub-contractor or employee of the Consultant, who has had access to the Confidential Information in accordance with this Agreement leaves the service or employ of the Consultant then the Consultant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Consultant, would be a breach of the obligations of the Consultant under this Agreement.
- 10.7 Without limiting this Clause 10 or the definition of Confidential Information, all information at any time disclosed (whether in writing or orally) to the Consultant or acquired by the Consultant in performing the Services with respect to, or in connection with, the affairs of those Third Interested Party/ies, will be Confidential Information. If required by the Principal, the Consultant will execute a deed or deed poll, or arrange for any permitted recipient to execute a deed or deed poll, (in the form set out in Schedule 6 (Confidentiality and Privacy Deed), Schedule 7 (Confidentiality and Privacy Deed Poll) or in such form as may be reasonably required by the Principal) relating to the non-disclosure and use of such Confidential Information and the Consultant will promptly arrange for such deed or deed poll to be executed and provided to the Principal.

## **11. PRIVACY AND DISCLOSURE OF PERSONAL INFORMATION**

- 11.1 Where the Consultant has access to Personal Information in order to fulfil its obligations under this Agreement, it must:
- (a) where the Consultant is responsible for holding the Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
  - (b) not use Personal Information other than for the purposes of the Agreement, unless
    - (i) required or authorised by law; or
    - (ii) authorised in writing by the individual to whom the Personal Information relates but only to the extent authorised;

- (c) not disclose Personal Information without the prior written agreement of the Principal or the prior written agreement of the individual to whom the Personal Information relates, unless required or authorised by law. The Principal may, at its sole discretion and at any time, require the Consultant to arrange for a permitted recipient to execute a deed (in the form set out in Schedule 6 (Confidentiality and Privacy Deed), Schedule 7 (Confidentiality and Privacy Deed Poll) or in such form as may be required by the Principal) relating to the non-disclosure and use of the Personal Information and the Consultant will promptly arrange for such deed to be executed and provided to the Principal;
- (d) ensure that only authorised personnel have access to Personal Information;
- (e) immediately notify the Principal if:
  - (i) the individual to whom the Personal Information relates authorises the Consultant to use his/her Personal Information for other purposes;
  - (ii) the individual to whom the Personal Information relates consents to the Consultant disclosing of his/her Personal Information; and/or
  - (iii) it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law;
- (f) make its employees, agents and sub-contractors aware of the Consultant's obligations under this clause including, when requested by the Principal, requiring those employees, agents and sub-contractors to promptly sign a suitable privacy deed relating to Personal Information in the form of Schedule 6 (Confidentiality and Privacy Deed); and
- (g) comply with such other privacy and security measures as the Principal reasonably advises the Consultant in writing from time to time.

11.2 The Consultant must immediately notify the Principal upon becoming aware of any breach of Clause 11.1

## **12. COPYRIGHT AND INTELLECTUAL PROPERTY**

12.1 The Consultant agrees and acknowledges that ownership of Intellectual Property rights in or in relation to New Contract Material vests upon its creation in the Principal. The Consultant, upon request by the Principal, undertakes and agrees, at its own cost, to do all things necessary and

execute all documents to permit the vesting of ownership and title of Intellectual Property in the Principal including, without limitation, obtaining from any sub-contractor, a written assignment to the Principal of the Intellectual Property rights created as a result of the person performing any part of the Services.

- 12.2 If ownership of or title in Intellectual Property in relation to New Contract Material is not capable of being vested in the Principal under Clause 12.1 because the Consultant itself does not own, and is unable at a reasonable cost to obtain ownership of, that Intellectual Property, the Consultant must at its own cost ensure that the Principal is suitably and irrevocably licensed to use and to sub-license the use of that New Contract Material or that Intellectual Property. In addition, the Consultant must at its own cost ensure that any other persons or bodies appointed by the Principal to provide advice in relation to the Project (defined as "Other Advisors" for the purposes of this Clause 12) are suitably and irrevocably licensed to use and to sub-license the use of that New Contract Material or that Intellectual Property at the direction of the Principal, but only for the purposes of the Project.
- 12.3 This Agreement does not affect the Intellectual Property rights of the Consultant and/or third parties in Existing Contract Material and the Consultant hereby grants, and ensures that relevant third parties grant to the Principal (and to Other Advisors, but only for the purposes of the Project), without additional cost, a non-exclusive, irrevocable, transferable licence to use, reproduce, communicate to the public and adapt for its own purposes (but in the case of Other Advisors, only for the purposes of the Project) all those Intellectual Property rights but only as part of the Contract Material and any development of that material.
- 12.4 The Consultant must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Services.
- 12.5 Unless it has obtained the prior written approval of the Principal to do otherwise, the Consultant must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement. The approval of the Principal may be given or withheld in its absolute discretion and may be subject to such terms and conditions as the Principal considers appropriate.
- 12.6 (a) The Consultant must hold or obtain consents from all authors of Existing Contract Material to its use and adaptation by the Consultant and the

Principal (and Other Advisors, at the direction of the Principal), without restriction and without any requirement to attribute the Existing Contract Material to its authors.

- (b) Where the Consultant is an individual, the Consultant consents to any acts or omissions of the Principal (and those of Other Advisors, at the direction of the Principal) in the exercise of the rights granted under Clauses 12.1 to 12.6 that might otherwise constitute an infringement of the Consultant's Moral Rights.
- (c) Without limiting subclause (b), the Consultant consents, in relation to the New Contract Material not to be named as the author or creator of the works comprised in the New Contract Material or, at the Principal's discretion, to being attributed as author of the works comprised in the New Contract Material in a form and manner acceptable to the Principal.
- (d) Prior to an individual commencing work in respect of the New Contract Material on behalf of the Consultant, the Consultant must obtain from that individual, in writing, and provide to the Principal, upon request all consents, permissions and assignments to enable the Principal (and Other Advisors, at the direction of the Principal) to exercise in full, without cost to the Principal (or other Advisors) and without impediment, the rights granted under this Clause 12.6.

### **13. CONFLICT OF INTEREST**

13.1 The Consultant represents and warrants that at the date of this Agreement, no conflict of interest exists or is likely to arise in the performance of the Services. The Consultant must not, in the course of performing the Services, engage in any activity or obtain any interest likely to give rise to a conflict of interest. The Consultant must notify the Principal, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest.

13.2 On receipt of a notice under Clause 13.1 the Principal may:

- (a) approve the Consultant continuing to perform the Services, which approval may be subject to reasonable conditions to ensure appropriate management of the conflict; or
- (b) where in the Principal's reasonable view the conflict of interest cannot be appropriately managed, exercise its rights of termination under this Agreement.

- 13.3 For the avoidance of doubt and without limiting the types of situations that constitute a conflict of interest, this Clause prevents the Consultant from providing advice (either directly or indirectly) relating to the Project to any potential bidders, purchasers, lessees, financiers and other parties.

#### **14. WARRANTIES, INDEMNITY AND RELEASE**

- 14.1 (a) The Consultant warrants that all personnel engaged in the performance of the Services are appropriately qualified, competent and experienced.
- (b) The Consultant warrants that it will not, in carrying out the Services, infringe or breach or permit or suffer to be infringed or breached any Intellectual Property rights of any third party.
- (c) The Consultant warrants and undertakes that all work done in connection with the Services will comply and conform with all applicable legislation and any regulations, by laws, ordinances, or orders made under such legislation as well as any applicable codes of conduct, policies, guidelines, quality assurance standards and all relevant Australian standards applicable to the Services.
- 14.2 The Consultant must indemnify and keep indemnified the Principal and its officers, employees and agents (“those indemnified”), from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses (including reasonable legal costs and expenses), which may be brought against, made upon, or suffered or incurred by any of those indemnified arising directly or indirectly as a result of or in connection with:
- (a) any infringement or alleged infringement of any Intellectual Property rights (including Moral Rights) by the Consultant or any of its officers, employees, agents and/or sub-contractors in connection with the provision, supply or use of the Services or any Contract Material provided under this Agreement;
- (b) the provision of the Services to the extent that the same is due to a negligent, wilful or reckless act, default or omission of the Consultant or any of its officers, employees, agents and/or sub-contractors; and/or
- (c) any act or omission of the Consultant or any of its officers, employees, agents and/or sub-contractors resulting in personal injury to or the death of any person, or the loss of or damage to property,

and the Consultant hereby agrees to release and discharge the Principal from any actions, proceedings, claims or demands which, but for this provision, might be brought or made against or upon the Principal.

14.3 The Consultant's liability to indemnify those indemnified under this Agreement shall be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.

## **15. MINIMUM INSURANCE REQUIREMENTS**

15.1 Without limiting the Consultant's obligations under this Agreement, the Consultant will, during the continuance of this Agreement and for a period of 3 years after its expiration or termination, take out and maintain with a reputable insurance company the following insurance policies:

- (a) a broad form public liability policy of insurance in the amount of not less than the amount specified in Item 12 of Part B: Project Details in respect of each and every occurrence and unlimited in the aggregate for any one period of cover;
- (b) workers' compensation insurance in accordance with applicable legislation in respect of all employees of the Consultant; and
- (c) a professional liability policy of insurance in the amount of not less than the amount specified in Item 13 of Part B: Project Details in respect of each and every occurrence and unlimited in the aggregate for any one period of cover.

15.2 The Consultant will produce to the Principal satisfactory evidence that the Consultant has effected and renewed the insurance policies required under Clause 15.1 of this Agreement. The initial Certificates of Currency are attached in Schedule 5 (Insurance Certificates of Currency) and Certificates of Currency for renewed insurance policies are to be attached to that Schedule as soon as practical after they have been renewed.

## **16. KEEPING OF RECORDS AND AUDIT**

16.1 The Consultant must:

- (a) keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with the accounting principles generally applied in commercial practice in respect of its time charge billing, its expenditure and fees and amounts payable to others properly engaged pursuant to this Agreement and retain the same for a period of 7 years; and
- (b) keep the operational records and project data relating to the provision of the Services securely and in a form and manner as to facilitate access

and inspection under Clause 16.2 and retain the same for a period of 5 years.

- 16.2 The Consultant must during the Term and for the periods specified in Clause 16.1(a) or 16.1(b) following the expiration or termination of this Agreement in relation to the materials specified in the relevant Clauses:
- (a) make available to or provide the Principal (or its nominee) with access to or copies of any Contract Material, records or other information relating to the Project which may be required by the Principal within a reasonable time of any request; and
  - (b) participate promptly and cooperatively in any external review or audits conducted or instigated by the Principal, a NSW Government department or agency, the NSW Parliament or any other review or audits conducted or instigated by any other government.

## **17. DISPUTE RESOLUTION**

- 17.1 The Parties shall attempt to settle a dispute in relation to this Agreement using the dispute resolution process provided for in this Agreement before resorting to court proceedings, provided however, nothing in this Clause will preclude either Party from seeking urgent interlocutory relief.
- 17.2 If the Principal requests it, the Consultant must continue performing this Agreement while a dispute is being dealt with in accordance with this Clause 17, other than the Services (or part thereof) the subject of the dispute, to the extent practicable to do so.
- 17.3 A Party claiming that a dispute has arisen must give written notice of the dispute to the other Party. The Parties must endeavour in good faith to resolve the dispute within 14 days of receipt of a notice of dispute.
- 17.4 If a dispute is not resolved within the 14 day period or such further period as the Parties agree in writing, the dispute shall be referred to the ACDC for mediation in accordance with the ACDC's 'Mediation Guidelines for Commercial Mediation' which are operating at the time the matter is referred to the ACDC. The ACDC's mediation guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the ACDC's mediation guidelines are hereby deemed incorporated into this Agreement .
- 17.5 The Parties shall do all things reasonably required to refer the dispute to mediation by ACDC.

17.6 In the event that the dispute has not been settled within 28 days (or such other period as agreed to in writing between the Parties) after the appointment of a mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the Parties are free to pursue any other procedures available at law for the resolution of the dispute.

## **18. TERMINATION FOR CONVENIENCE**

18.1 The Principal may, at any time terminate this Agreement for convenience, by giving 7 days' notice in writing to the Consultant, such termination being effective upon expiry of this 7 day period.

18.2 If the Principal terminates this Agreement for convenience:

- (a) the Principal will pay the Consultant any unpaid Fees which relate to Services properly performed up to the date of termination, less any amounts payable by the Consultant to the Principal under Clause 20.1 in relation to pre-paid amounts.
- (b) the Principal will reimburse the Consultant its unavoidable costs and expenses directly incurred as a result of termination provided that any claim by the Consultant:
  - (i) does not exceed an amount of the cap on reimbursable unavoidable costs in the event of termination for convenience, as specified in Item 11 of Part B: Project Details;
  - (ii) is supported by satisfactory written evidence of the costs claimed; and
  - (iii) will be in total satisfaction of the liability of the Principal to the Consultant in respect of this Agreement and its termination.
- (c) the Consultant must do everything reasonably possible to prevent or otherwise mitigate any losses resulting to the Consultant from the termination.

## **19. TERMINATION FOR CAUSE**

19.1 The Principal may, by notice in writing to the Consultant, immediately terminate this Agreement if the Consultant:

- (a) commits a material breach of this Agreement which, in the Principal's opinion, is not capable of being remedied;

- (b) fails to remedy a material breach which, in the Principal's opinion is capable of being remedied, within 7 days of receiving notice from the Principal requiring it to remedy that breach, or such longer period as the Principal may reasonably allow having regard to the nature of the breach and a reasonable time to remedy it;
- (c) is declared bankrupt or bankruptcy proceedings have commenced against the Consultant or it becomes subject to any form of insolvency administration; or
- (d) is the subject of proceedings or investigations commenced or threatened by the Independent Commission Against Corruption, the police service or similar public body; or
- (e) if clause 13.2(b) (Conflict of Interest) applies.

19.2 If the Principal terminates this Agreement for cause the Principal may:

- (a) contract with any other person to complete the provision of Services;
- (b) deduct any loss or damages arising from or in connection with the termination (which may be as ascertained and certified by the Principal) from any money due, or which may become due, to the Consultant (whether under this Agreement or otherwise); and/or
- (c) recover in an appropriate court the balance of any outstanding loss or damage remaining unpaid as a debt due and payable by the Consultant to the Principal.

19.3 For the purposes of the termination provisions in the Agreement, the Consultant acknowledges that a series of minor breaches may constitute a "material breach".

## **20. CONSEQUENCE OF TERMINATION**

20.1 Without limiting the Principal's rights in relation to this Agreement, if the Principal pre-paid any amounts to the Consultant for Services to be performed which at the date of termination have not been performed and this Agreement is terminated for any reason:

- (a) the Consultant must refund to the Principal such prepaid amounts, within 7 days of termination of this Agreement; and

- (b) the Principal may recover in an appropriate court the balance of any prepaid amount not refunded as a debt due and payable by the Consultant to the Principal.
- 20.2 The Consultant must, except to the extent approved by the Principal in writing, deliver to the Principal, within 7 days of termination or expiry of this Agreement all Confidential Information of the Principal, all Personal Information, all the Principal's Material and Contract Material including copies of the same.
- 20.3 The provision dealing with the return of Materials upon termination or expiry of this Agreement does not prevent the Consultant from keeping a bona fide copy of the Contract Material for its records, subject to the confidentiality and privacy requirements contained in this Agreement.
- 20.4 Any termination of this Agreement is without prejudice to any accrued rights or remedies of either Party.
- 20.5 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of this Agreement shall remain in full force and effect following the expiration or termination of this Agreement.

## **21. GENERAL**

- 21.1 The Consultant agrees to provide such assistance as may be reasonably requested by the Principal to publicise and promote the Project.
- 21.2 No failure or delay by the Principal in exercising any right, power or remedy under this Agreement and no course of dealing or grant by the Principal to the Consultant of any time or consideration or other indulgence, will operate as a waiver of the breach or a default by the Consultant. Any waiver by the Principal of a breach of this Agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
- 21.3 If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.
- 21.4 Unless otherwise specifically provided for under this Agreement, any variation to the Agreement, including any variation to the Schedules, must be in writing and signed by both Parties.
- 21.5 The Consultant acknowledges and agrees that neither the Consultant nor any of the Consultant's officers, employees, and/or sub-contractors:

- (a) are or will be officers, employees, and/or partners of the Principal; and
- (b) will represent that they are officers, employees, and/or partners of the Principal.

21.6 The Consultant acknowledges and agrees that neither the Consultant nor any of its officers, employees, or agents are or will be, or will represent that they are, agents of the Principal except as expressly authorised by the Principal.

21.7 Any communication to a Party to this Agreement:

- (a) must be in writing addressed to the intended recipient at the address shown in Item 16 of Part B: Project Details or the address last notified by the intended recipient to the sender; and
- (b) will be deemed to be served:
  - (i) in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery;
  - (ii) in the case of delivery by post, it will be deemed received within 3 business days of posting; or
  - (iii) if a communication is sent by facsimile and the sender's facsimile machine produces a transmission confirmation report indicating that the facsimile was sent to the addressee's facsimile machine, the report will be prima facie evidence that the facsimile was received by the addressee at the time indicated on that report;

provided however, if delivery or receipt of a communication is on a day which is a Saturday, Sunday, bank holiday or public holiday in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next day which is not a Saturday, Sunday, bank holiday or public holiday in that place.

21.8 The Agreement constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded.

21.9 This Agreement will be governed and construed in all respects in accordance with the laws of the State of New South Wales and the Parties hereby submit

to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

**END OF THE OPERATIVE PROVISIONS**

**SCHEDULE 1:  
Request for Proposals**

**SCHEDULE 2:  
Consultant's Proposal**

**SCHEDULE 3:  
Fee/Consultant Budget**



**SCHEDULE 5:**  
**Insurance Certificates of Currency**



Recipient performing certain services for the Principal (whether directly or indirectly) pursuant to the Consultancy Agreement that:

- (a) is by its nature confidential;
- (b) is designated by the Principal as confidential; or
- (c) the Recipient knows or ought to know is confidential;

and includes but is in no way limited to:

- (d) the Contract Material;
- (e) the Principal's Material;
- (f) any material which relates to the affairs of a third party;

but does not include information which:

- (g) is or becomes public knowledge other than by breach of this Deed;
- (h) is in the lawful possession of the Recipient without restriction in relation to disclosure before the date of receipt from the Principal or the Consultant, as the case may be; or
- (i) is required to be disclosed pursuant to law, regulation, legal process or a regulatory authority;

**"Consultancy Agreement"** means the Consultancy Agreement between the Principal and the Consultant dated on or about the date of this Agreement ;

**"Consultant"** means [INSERT HERE THE NAME OF THE CONSULTANT];

**"Express Purpose"** means [DEFINE THIS IN THE SAME TERMS AS IN THE CONSULTANCY AGREEMENT]; and

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

**"The State"** means the Treasurer or The Treasurer's nominee, acting for and on behalf of the Crown in right of the State of New South Wales.

**“Third Interested Party/ies means [SET OUT HERE RELEVANT DETAILS TAKEN FROM Item 10 of Part B: Project Details of the CONSULTANCY AGREEMENT].**

- 1.3 Except where the context otherwise requires:
- (a) a reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
  - (b) no rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Deed or any part of it;
  - (c) the headings and index in this Deed are for convenience only and do not affect the interpretation of this Deed;
  - (d) words importing a gender include any other gender;
  - (e) persons will be taken to include any natural or legal person; and
  - (f) where a word or phrase is given a defined meaning in this Deed, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.

## **2. CONFIDENTIAL INFORMATION**

- 2.1 The Recipient must keep the Confidential Information in confidence and must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- 2.2 The Principal may grant or withhold its consent in its absolute and unfettered discretion and may impose conditions on that consent, as the Principal sees fit. If the Principal grants consent subject to conditions, the Recipient must comply with those conditions.
- 2.3 Without limiting the generality of Clause 2.1, the Principal may require that the Recipient procures the execution of a deed by the person to whom the Recipient proposes to disclose the Confidential Information, on terms substantially similar to the terms of this Deed.
- 2.4 The Recipient:

- (a) may use the Confidential Information for the Express Purpose only and must not use the Confidential Information for any other purpose;
  - (b) must not copy or reproduce the Confidential Information without the prior approval of the Principal;
  - (c) must take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information; and
  - (d) must comply with any direction of the Principal regarding the safekeeping and storage of Confidential Information.
- 2.5
- (a) Immediately upon request, the Recipient must deliver to the Principal all documents and any material in the possession or control of the Recipient containing Confidential Information.
  - (b) If the Principal makes a demand for the return of documents or any material containing Confidential Information, and the Recipient is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Recipient must provide full details of where the documents containing the Confidential Information are, and the identity of the person in whose custody or control they lie.
  - (c) The provisions dealing with the return of materials or documents do not prevent the Recipient from keeping a bona fide copy of the materials or documents for its records, subject to the confidentiality and privacy requirements contained in this Deed.
  - (d) A reference to “documents” or “materials” in this Clause 2.5 includes material in any form of storage of information, whether visible to the eye or not.

### **3. PRIVACY AND DISCLOSURE OF PERSONAL INFORMATION**

- 3.1 Where the Recipient has access to Personal Information in order to perform the services for the Principal referred to in Recital ‘C’, it must:
- (a) where the Recipient is responsible for holding Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;

- (b) not use Personal Information other than for the Express Purpose only unless
  - (i) required or authorised by law; or
  - (ii) authorised in writing by the individual to whom the Personal Information relates but only to the extent authorised;
- (c) not disclose Personal Information without the prior written agreement of the Principal or the prior written agreement of the individual to whom the Personal Information relates, unless required or authorised by law;
- (d) ensure that only authorised personnel have access to Personal Information;
- (e) immediately notify the Principal if:
  - (i) the individual to whom the Personal Information relates authorises the Recipient's to use his/her Personal Information for other purposes;
  - (ii) the individual to whom the Personal Information relates consents to the Recipient's disclosing of his/her Personal Information; and/or
  - (iii) it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law; and
- (f) comply with such other privacy and security measures as the Principal reasonably advises the Recipient in writing from time to time.

3.2 The Recipient must immediately notify the Principal upon becoming aware of any breach of Clause 3.1.

#### **4. CONFLICT OF INTEREST**

- 4.1 The Recipient warrants that before entering into this Deed it has disclosed to the Principal all the past, current and anticipated interests of the Recipient which may conflict with or restrict the Recipient in performing the services for the Principal referred to in Recital 'C' fairly and independently.
- 4.2 The Recipient shall not during the course of performing the services, engage in any activity or obtain any interest likely to conflict with or restrict the Recipient

in providing services to the Principal fairly and independently and shall immediately disclose to the Principal such activity or interest.

## **5. SURVIVAL**

8.1 This Deed will survive termination of the services referred to in Recital 'C' and the expiry or termination of Consultancy Agreement.

## **6. NOTICES**

6.1 A notice under this Deed must be in writing and forwarded to the contact details of the intended recipient in Clause 6.4 below or the address last notified by the intended recipient to the sender.

6.2 A notice under this Deed will be deemed to be served:

- (a) in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery;
- (b) in the case of delivery by post - within three business days of posting;
- (c) in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; and

6.3 Notwithstanding Clause 6.2, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

6.4 The contact details are as follows:

**[SET OUT RELEVANT CONTACT DETAILS HERE]**

## **7. GENERAL**

7.1 This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

7.2 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

- 7.3 No failure or delay by the Principal in exercising any right, power or remedy in relation to this Deed and no course of dealing or grant by the Principal to the Recipient of any time or other consideration, will operate as a waiver of the breach or a default by the Recipient. Any waiver by the Principal of a breach of this Deed will not be construed as a waiver of any further breach of the same or any other provision.
- 7.4 All amendments to this Deed must be in writing, signed by both parties and executed in the form of a deed.
- 7.5 All consents, approvals and waivers given under this Deed must be writing.
- 7.6 This Deed is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.
- 7.7 Each party submits to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom.

**EXECUTED AS A DEED**

**Execution by the Principal:**

**SIGNED, SEALED AND DELIVERED** for and )  
 on behalf of The Crown in right of the State of )  
 New South Wales but not so as to incur any )  
 personal liability in the presence of: )

.....  
 Signature of Witness

.....  
 Print Name of Witness

.....  
**Signature of authorised officer**

**Execution by the Recipient:**

**SIGNED** for and on behalf of the  
Consultant in the presence of:

.....  
Signature of Witness

.....  
**Consultant Signature**

.....  
Print name of Witness

**SCHEDULE 7:  
Confidentiality and Privacy Deed Poll**

**THIS DEED POLL** is made on \_\_\_\_\_ of \_\_\_\_\_ 2012

**BY** **[insert name of Consultant or other person required to sign the Deed Poll]** (the "Recipient")

**IN FAVOUR OF**

**THE PERSON(S) NAMED IN SCHEDULE 1** (each a "**Beneficiary**", collectively the "**Beneficiaries**").

**RECITALS:**

- A. The Recipient has entered into the Consultancy Agreement with the Principal for **[insert Project as described in Item 6 of Part B: Project Details of the Consultancy Agreement]** ("the Project").
- B. In the course of the Recipient performing certain services for the Principal (whether directly or indirectly) pursuant to the Consultancy Agreement, it is intended that the Confidential Information and Personal Information belonging to or in the possession of the Beneficiaries will be disclosed to the Recipient for the Express Purpose.
- C. Improper use or disclosure of the Confidential Information or the Personal Information could damage the businesses of the Beneficiaries and could result in irreparable harm to the Beneficiaries.
- D. The Beneficiaries have agreed to supply the Confidential Information to the Consultant in consideration of and on condition that the Recipient enters into this Deed Poll to protect the secret and confidential nature of that Confidential Information.
- E. The Recipient gives the undertakings contained in this Deed Poll to and for the benefit of the Beneficiaries on the terms and conditions herein contained.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS & INTERPRETATION

1.1 In this Deed including the Recitals, unless the context otherwise requires:

**"Authorised Personnel"** means any employee or officer or legal Advisor of the Recipient or any of its Related Bodies Corporate who:

- (a) have a need to know (and only to the extent that each has a need to know); and
- (b) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Beneficiaries;

**"Confidential Information"** means any information and all other knowledge relating to the specific business of the Beneficiaries at any time disclosed (whether in writing or orally) to the Recipient by or on behalf of the Beneficiaries or by the Principal in the course of the Recipient performing certain services for the Principal (whether directly or indirectly) pursuant to the Consultancy Agreement that:

- (a) is by its nature confidential;
- (b) is designated by the Beneficiaries as confidential; or
- (c) the Recipient knows or ought to know is confidential;

and includes but is in no way limited to:

- (d) the operating and financial information of the businesses of the Beneficiaries;
- (e) any material which relates to the affairs of a third party;
- (f) any documents subject to legal professional privilege or client legal privilege;

but does not include information which:

- (g) is or becomes public knowledge other than by breach of this Deed Poll;
- (h) is in the lawful possession of the Recipient without restriction in relation to disclosure before the date of receipt from or on behalf of a Beneficiary; or

- (i) is required to be disclosed pursuant to law, regulation, legal process or a regulatory authority;

**“Consultancy Agreement”** means the Consultancy Agreement between the Principal and the Consultant dated on or about the date of this Agreement;

**“Consultant”** means **[INSERT HERE THE NAME OF THE CONSULTANT];**

**"Deed Poll"** means this confidentiality deed poll;

**“Express Purpose”** means the purpose of assessing, considering and/or carrying out professional services in respect of the Project (whether alone or with any other person or directly, or indirectly through a Related Body Corporate), including advising the Principal or any other party requested by the Principal, conducting due diligence, preparing, submitting and distributing information memoranda, offer documents (including prospectuses) or other documentation required for the Project, communicating with any Government agency or the Australian Securities Exchange and bona fide doing any other thing reasonably necessary for the purpose of the Project, and, for the avoidance of doubt, includes the use of a Beneficiary's information in connection with a transaction involving another Beneficiary;

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

**"Principal"** means The State of New South Wales;

**"Project"** means the project described in Recital A; and

**"Related Body Corporate"** has the same meaning as in section 50 of the Commonwealth *Corporations Act 2001*.

1.3 Except where the context otherwise requires:

- (a) a reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
- (b) no rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Deed Poll or any part of it;

- (c) the headings and index in this Deed Poll are for convenience only and do not affect the interpretation of this Deed Poll;
- (d) words importing a gender include any other gender;
- (f) persons will be taken to include any natural or legal person; and
- (g) where a word or phrase is given a defined meaning in this Deed Poll, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.

## **2. CONFIDENTIAL INFORMATION**

2.1 In consideration of the Beneficiaries disclosing the Confidential Information to the Recipient, the Recipient agrees:

- (a) to use the Confidential Information solely for the Express Purpose; and
- (b) otherwise to comply with the terms of this Deed Poll.

2.2 The Recipient may disclose the Confidential Information to its Authorised Personnel, provided the Recipient must ensure that its Authorised Personnel comply with the terms of this Deed Poll as if they were parties to this Deed Poll.

2.3 Subject to the terms of this Deed Poll, the Recipient must keep the Confidential Information in confidence and must not disclose the Confidential Information to any person without the prior written consent of the relevant Beneficiary who has provided the Confidential Information.

2.4 A Beneficiary may grant or withhold its consent in its absolute and unfettered discretion and may impose conditions on that consent, as the Beneficiary sees fit. If a Beneficiary grants consent subject to conditions, the Recipient must comply with those conditions.

2.5 Without limiting the generality of Clause 2.4, a Beneficiary may require that the Recipient procures the execution of a deed poll by the person to whom the Recipient proposes to disclose the Confidential Information, on terms substantially similar to the terms of this Deed Poll.

2.6 The Recipient:

- (a) may use the Confidential Information for the Express Purpose only and must not use the Confidential Information for any other purpose;

- (b) must not copy or reproduce the Confidential Information (other than in connection with the Express Purpose) without the prior approval of the relevant Beneficiary which provided the Confidential Information;
  - (c) must take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information; and
  - (d) must comply with any direction of the Principal or Beneficiary regarding the safekeeping and storage of Confidential Information.
- 2.7
- (a) Immediately upon request, the Recipient must deliver to the relevant Beneficiary all documents and any material in the possession or control of the Recipient containing Confidential Information and provided to the Recipient by or on behalf of that Beneficiary.
  - (b) If a Beneficiary makes a demand for the return of documents or any material containing Confidential Information, and the Recipient is aware that documents containing the Confidential Information are beyond its or his or her possession or control, then the Recipient must provide full details of where the documents containing the Confidential Information are, and the identity of the person in whose custody or control they lie.
  - (c) The provisions dealing with the return of materials or documents do not prevent the Recipient from keeping a bona fide copy of the materials or documents for its records, subject to the confidentiality and privacy requirements contained in this Deed Poll.
  - (d) A reference to “documents” or “materials” in this Clause 2.7 includes material in any form of storage of information, whether visible to the eye or not.

### **3. PRIVACY AND DISCLOSURE OF PERSONAL INFORMATION**

- 3.1 Where the Recipient has access to Personal Information in order to perform the services for the Principal pursuant to the Consultancy Agreement, it must:
- (a) where the Recipient is responsible for holding Personal Information, ensure that Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
  - (b) not use Personal Information other than for the Express Purpose only unless
    - (i) required or authorised by law; or

- (ii) authorised in writing by the individual to whom the Personal Information relates but only to the extent authorised;
- (c) not disclose Personal Information without the prior written agreement of the relevant Beneficiary which provided the Personal Information, or the prior written agreement of the individual to whom the Personal Information relates, unless required or authorised by law;
- (d) ensure that only Authorised Personnel have access to Personal Information;
- (e) immediately notify the relevant Beneficiary if:
  - (i) the individual to whom the Personal Information relates authorises the Recipient to use his/her Personal Information for other purposes;
  - (ii) the individual to whom the Personal Information relates consents to the Recipient's disclosing of his/her Personal Information; and/or
  - (iii) it becomes aware that a disclosure of Personal Information is, or may be required or authorised by law; and
- (f) comply with such other privacy and security measures as the Beneficiaries reasonably advise the Recipient in writing from time to time.

3.2 The Recipient must immediately notify the Principal upon becoming aware of any breach of Clause 3.1.

**4. SURVIVAL**

4.1 This Deed Poll will survive the expiry or termination of the Consultancy Agreement.

**5. NOTICES**

5.1 A notice to the Recipient under this Deed Poll must be in writing and forwarded to the address and facsimile number of the Recipient as specified below or the address last notified by the Recipient to the sender:

|                  |  |
|------------------|--|
| <b>Recipient</b> |  |
| Name             |  |
| Address          |  |

|           |  |
|-----------|--|
| Facsimile |  |
| Telephone |  |
| Email     |  |

5.2 A notice to a Beneficiary under this Deed Poll must be in writing and forwarded to the address and facsimile number of the Beneficiary as specified in Schedule 2 or the address last notified by the Beneficiary to the sender.

5.3 A notice under this Deed will be deemed to be served:

- (a) in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery;
- (b) in the case of delivery by post - within three business days of posting;
- (c) in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.

5.3 Notwithstanding Clause 5.2, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

**6. GENERAL**

6.1 This Deed Poll must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

6.2 The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

6.3 No failure or delay by a Beneficiary in exercising any right, power or remedy in relation to this Deed Poll and no course of dealing or grant by a Beneficiary to the Recipient of any time or other consideration, will operate as a waiver of the breach or a default by the Recipient. Any waiver by a Beneficiary of a breach of this Deed Poll will not be construed as a waiver of any further breach of the same or any other provision.

- 6.4 All amendments to this Deed Poll must be in writing, signed by all the Beneficiaries and executed in the form of a deed.
- 6.5 All consents, approvals and waivers given under this Deed Poll must be writing.
- 6.6 This Deed Poll is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.
- 6.7 The Recipient and the Beneficiaries submit to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom.

## **7. BENEFICIARIES**

- 7.1 This Deed Poll may be enforced by any one of the Beneficiaries acting alone and the Recipient has no right or obligation to enquire into the dealings between the Beneficiaries in relation to any matter the subject of this Deed Poll.

**SCHEDULE 1** – [insert name of Beneficiary/ies]

**SCHEDULE 2** – [insert contact details of Beneficiary/ies]

**EXECUTED AS A DEED POLL Execution  
by the Recipient:**

SIGNED for and on behalf of the Consultant  
in the presence of:

.....

Signature of Witness

.....

Recipient Signature

.....

Print name of Witness

**SCHEDULE 8:  
Cost Report/Breakdown**

Each invoice needs to be accompanied by a detailed cost break down and where necessary a narrative to explain variances. An example of such a report could be as follows (soft copy available on request):

| ASSET TRANSCATIONS UNIT COST BREAKDOWN TEMPLATE         |                |              |                       |             |                |  |
|---|----------------|--------------|-----------------------|-------------|----------------|--|
| [insert Project name]                                   |                |              |                       |             |                |  |
| COMPANTY PTY LTD  |                |              |                       |             | DAY/MONTH/YEAR |  |
| Budget Line Item  | Estimated Cost | Cost to Date | Est. Cost to Complete | Final Costs | Over/Under     | Comments on variance                                   |
| Insert Cost Item (e.g. Tax separation)                  |                |              |                       |             |                |  |
| name of team member                                     | 1,000          | 250          | 750                   | 1,000       | -              | on target  |
| name of team member                                     | 1,000          | 250          | 900                   | 1,150       | 150            | more time spent on this item due to XXXX               |
| name of team member                                     | 500            | 250          | 250                   | 500         | -              | on target  |
| name of team member                                     | 500            | 250          | -                     | 250         | - 250          | completed/saving                                       |
| name of team member                                     | 500            | 400          | 250                   | 650         | - 100          | more time spent on this item due to XXXX               |
| name of team member                                     | -              | 250          | 250                   | 500         | -              | extra resource allocation (as approved on 01/01/2013)  |
| Total Project   | 5,000          | 2,550        | 3,050                 | 5,600       | 150            | Overage  |
| Insert Cost Item (e.g. Defined Benefit Scheme analysis) |                |              |                       |             |                |  |
| name of team member                                     | 1,000          | 250          | 750                   | 1,000       | -              | on target  |
| name of team member                                     | 1,000          | 250          | 500                   | 750         | - 250          | saving anticipated                                     |
| Total Project   | 2,000          | 500          | 1,250                 | 1,750       | - 250          | Underage   |
| TOTAL ALL PROJECTS                                      | 7000           | 3050         | 4300                  | 7350        | 350.00         | Overage due to more time/ extra resources needed/ XXXX |

**SCHEDULE 9:  
Variation Statement of Works Form**



## Advisors Statement of Works Form

This Statement of Works (“SOW”) form is to be completed by the Consultant who seeks to undertake additional work on behalf of the Principal. Circumstances in which this form is to be completed are outlined in the Consultancy Agreement, Clause 9(Variations).

Please complete this form and return it to: Martien Coucke

Email: [martien.coucke@treasury.nsw.gov.au](mailto:martien.coucke@treasury.nsw.gov.au)

|  |  |
|--|--|
| <b>Name of Consultant:</b>   | [Company Name]   |
| <b>Name of Lead Partner/Advisor:</b>   | [Advisor Project Lead Name]  |
| <b>Contact Details:</b>  | [Phone: +61]<br>[Email:]   |
| <b>Name of Organisation receiving Services:</b>  | [Insert relevant Name]   |
| <b>Engagement Description and Justification:</b>   | <b>[Title of Service]</b><br><br>1. <b><u>Description of Work</u></b><br><br>2. <b><u>Benefits to the Project</u></b><br><br><i>(if space insufficient, please add additional page(s))</i> |
| <b>Is this Project related Service new scope?</b>  | [Yes/No]   |
| <b>Is this Project related Service part of original scope (please insert Document Name, Version and Reference)</b> | [Yes/No]<br>[Reference to Agreed Scope Document]   |
| <b>Estimated effort (man days):</b>  | [Resources; time; total days]  |
| <b>Estimated Duration (inc.</b>  | [Start date; Finish Date; Duration]  |

|   |   |
|---|---|
| <b>Proposed Start/ Finish date):</b>                          |   |
| <b>Value for Money (Estimated Fee):</b>                       | [Fee structure; costing breakdown; total; impact to overall agreed forecast]            |
| <b>Signed By Consultant's authorised representative:</b>      | <i>(Signature, Name and Position)</i>   |
| <b>Date:</b>  |   |
| <b>Signed By Principal's authorised representative:</b>       | If applicable, approval by other Advisors.<br><br><i>(Signature, Name and Position)</i> |
| <b>Date:</b>  |   |
| <b>Signed By (Lead Partner/Advisor):</b>                      | <i>(Signature, Name and Position)</i>   |
| <b>Date:</b>  |   |
| <b>NSW Treasury Assessment:</b>                               | <b>Approved/ Not Approved</b>   |
| <b>Signed By:</b>   | <i>(Signature, Name and Position)</i>   |
| <b>Date:</b>  |   |
| <b>If Engagement Not Approved, reasons for not approving:</b> |   |

**SCHEDULE 10:**  
**Reliance Letter template**

## **Reliance Letter (Successful Bidder)**

Dear Sir/Madam,

### **Project # - Provision of Final Vendor Technical and Environmental Due Diligence Reports**

I, [insert Consultant name] (the "Consultant") have been directed by the Hon. Gladys Berejiklian, Treasurer, for and on behalf of the Crown in Right of the State of New South Wales (the "**Principal**") to provide [Recipient] with a copy of the confidential Final Vendor Technical Due Diligence Report, expected to be dated [ ] ("**Final Report**") in relation to [ ] (the "**Business**"). (Note: the term "**Final Report**" is to be substituted for the words "**Consultant Report**" in the case of release of same to members of the Due Diligence Committees. Further note that this letter will not be used in the context of an IPO). We agree to provide you with a copy of the Final Report on the basis that you and certain of your financiers and investors may rely on the Final Report subject to the terms set out in this letter.

For the purposes of this Reliance Letter:

"**Project**" means [ ] [Note: definition of specific project to be inserted prior to signing]

### **1. Basis for reliance**

You acknowledge and agree that:-

- (a) You are not either of the Consultant's client and consequently the Consultants have no legal relationship with or obligations to you of a contractual or fiduciary nature and owes you no duty of care.
- (b) The Consultants do not make or give any recommendations or advice to you and has not been given any instructions by you.
- (c) The Consultants have acted solely in accordance with the instructions of the Principal in preparing the Final Report and prepared the Final Report for the benefit of the Principal and has considered only the interests of the Principal in doing so. The matters covered by the Final Report and the emphasis placed on them may not necessarily address all or any of your specific concerns, purposes, requirements or interests or those of your financiers, investors or any other third party.

- (d) The Final Report may not cover all matters that a lessee or a buyer of the Business or its assets or a financier or investor of such lessee or buyer may wish to investigate and there may be matters of interest to you or your investors or financiers which have not been considered to be material for the Final Report or investigated.
- (e) The Final Report is subject to the scope, materiality, guidelines, qualifications, methodology and assumptions which are set out therein and agreed with the Principal.
- (f) You and your technical Advisors will be making an independent assessment of the matters which do not fall within the Scope of the Final Report and that in relation to matters which do fall within the Scope of the Final Report you will determine for yourself whether those matters require further enquiry.
- (g) The Final Report will not be updated for events and transactions occurring after the date of the Final Report or for any other matters which might have a material affect on its contents which may come to light after the date of the Final Report.
- (h) The Consultants will not be obliged to inform you of any matter arising or coming to its notice after the date of the Final Report which may affect or qualify the Final Report.
- (i) The contents of the Final Report are confidential and may not be duplicated or disclosed under any circumstances to any other person without our prior consent except that you may disclose the report to the persons listed below but only to the extent necessary for the purposes of your participation in the Project:-
  1. your professional advisors (including financial, accounting, technical, environmental, survey and legal advisors);
  2. your potential funding sources and their advisors;
  3. each of the persons who are entitled to rely on this report as listed in Section 3 and their professional advisors (including financial, accounting, technical, environment, survey and legal advisors);
  4. provided that:-
    1. you ensure that all persons or entities to whom the Final Report is disclosed maintain the Final Report in strictest confidence and comply and are bound by the terms of this letter on the same basis as you are required to;

2. you provide the persons you disclose the Final Report to with a copy of this letter and obtain an acknowledgement that they shall comply with the terms of this letter;
3. all persons to whom you disclose this Final Report acknowledge that the Final Report is confidential and may not be disclosed to any other party without our prior written consent;
4. all persons to whom you disclose the Final Report acknowledge that they may not rely upon the Final Report and that we accept no liability whatsoever in relation to the provisions of the Final Reports by you to those parties; and
5. a copy of each acknowledgement referred to in this subparagraph is provided to us prior to disclosure of the Final Report to the acknowledging person.

You may disclose the Final Report if required to do so by law regulation, legal or judicial process or the rule of any stock exchange on which your shares are listed or to seek or establish any defence in any legal proceeding or investigation. In those circumstances, so long as it is lawful to do so, you must give such prior notice as is reasonable of the intended disclosure and limit the disclosure of the contents of this Report to the minimum required to meet such compliance.

## **2. Limitation of liability**

### **a) Liability Cap**

Subject to paragraph 2(b), our liability to you is limited to \$[insert] in the aggregate.

### **b) Other Limitations**

If we are held liable to you and also to the Principal or any other person or parties in connection with our Report or in terms of any other liabilities in relation to our services provided to the Principal in relation to the Project, our aggregate liability to you and to the Principal and any other person or parties will not exceed the amount nominated in paragraph 2(a). You shall and hereby do release us, our servants and agents against such liability whatsoever and howsoever and arising in excess of such limited liability.

If you provide, or cause to provide our Report or enable any of our documentation (including the Final Report) to be used or relied upon by any other party other than as permitted herein, you shall and hereby agree to indemnify and hold us harmless in respect of any damages claimed by such party (whether that claim is made against you, the Principal or us.)

You may not bring a claim against us under this letter in relation to any matter of which you or your related bodies corporate, directors, officers, employees, professional

Advisors (including technical, environmental, financial, accounting, industry and legal Advisors) are actually aware.

You may not bring a claim against us under this letter any time after the [insert date] of the date of the Final Report or [insert date], whichever is earlier.

**3. Reliance**

Subject to your agreement under Section 1 of this letter and as qualified in Section 2 of this letter you may rely on the Final Report.

In any event, the use or reliance on the Final Report by you shall constitute the agreement of you to be bound by these terms of reliance set out in this letter and that no right to rely on the Final Report is granted to any other party other than as expressly stated in this section.

The following persons may also rely on the Final Report subject always to the foregoing conditions as set out in this letter:

- (i) your related bodies corporate and affiliates;
- (ii) your directors and officers;
- (iii) any fund of which you or your related bodies corporate or affiliates is the manager, Advisor, trustee, responsible entity or general partner;
- (iv) any joint venture, consortium entity or special purpose vehicle that is formed by or with you for the purpose of participating in the transaction;
- (v) any of your other equity participants, investors or co-investors;
- (vi) the financiers for each of the persons named in (a) - (e) above; and
- (vii) each person who becomes a substitute, transferee or assignee of any of the persons named in (i) – (vi) above within 12 months of the closing of the Project.

**4. Jurisdiction**

This letter is governed by and is construed in accordance with the laws of New South Wales.

\*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*

Yours faithfully

[Consultant]

I have read and understood the terms and conditions of this letter and I agree to accept them and make the relevant acknowledgements for and on behalf of [insert] and I am duly authorised to sign this letter for and on behalf of:

Name

Signature

Name of authorised person

Position of authorised person

Date

.....

**SCHEDULE 11:  
Non- Reliance Letter template**

[To be addressed to each Recipient of the Report]

Dear Sir

**Project (#) – Provision of Interim Vendor Technical and Environmental Due Diligence Report**

I, [Consultant's name] (the "Consultant") have been directed by the Hon. Gladys Berejiklian, Treasurer, for and on behalf of the Crown in Right of the State of New South Wales (the "**Principal**") to provide [Recipient] with a copy of our confidential Interim Vendor Technical Due Diligence Report, expected to be dated [ ] ("**Interim Report**") in relation to [ ] (the "**Business**"). The Final Vendor Technical Due Diligence Report will be provided to the successful bidder in the Project process. The successful bidder will be entitled to rely on the Final Vendor Due Diligence Report on the terms set out in a Reliance Letter in the form of [Schedule].

We agree to provide you with a copy of the Interim Report on the terms set out in this letter on the basis that you may review the Interim Report but that you may not rely on it.

For the purposes of this Non-Reliance Letter:

"**Project**" means [ ] [*Note: definition of specific project to be inserted prior to signing*]

**1. No Reliance**

You acknowledge and agree that:-

- (a) Subject to the provisions of this letter, the Interim Report has been prepared for the Principal and may not be disclosed, used by or relied upon by any other party without our prior written consent.
- (b) The Consultants disclaim all liability in relation to any party that seeks to rely upon the Interim Report or its contents other than as set out in this letter.
- (c) You are not the Consultant's client and consequently the Consultants have no legal relationship with or obligations to you of any nature whatsoever including of a contractual or fiduciary nature and owes you no duty of care.
- (d) The Consultants do not make or give any recommendations or advice to you and has not been given any instructions by you.

- (e) The Consultants have acted solely in accordance with the instructions of the Principal in preparing the Interim Report and prepared the Interim Report for the benefit of the Principal and has considered only the interests of the Principal in doing so. The matters covered by the Interim Report and the emphasis placed on them may not necessarily address all or any of your specific concerns, purposes, requirements or interests or those of your financiers, investors or any other third party.
- (f) The Interim Report may not cover all matters that a lessee or a buyer of the Business or its assets or a financier or investor of such lessee, buyer or financier may wish to investigate and there may be matters of interest to you or your investors or financiers which have not been considered to be material for the Interim Report or investigated.
- (g) The Interim Report is subject to the Scope, materiality, guidelines, qualifications, methodology and assumptions which are set out therein and agreed with the Principal.
- (h) You and your technical Advisors will be making an independent assessment of the matters which do not fall within the Scope of the Interim Report and that in relation to matters which do fall within the Scope of the Interim Report you will determine for yourself whether those matters require further enquiry.
- (i) The successful bidder may rely on the Final Report (which may be supplemented or updated) but only upon the terms of a separate Reliance Letter in the form of [Schedule].
- (j) The Consultants will not be obliged to inform you of any matter arising or coming to its notice after the date of the Interim Report which may affect or qualify the Interim Report.
- (k) The contents of the Interim Report are confidential and may not be duplicated or disclosed under any circumstances to any other person without our prior consent except that you may disclose the report to the persons listed below but only to the extent necessary for the purposes of your participation in # Project:-
  1. your professional advisors (including financial, accounting, technical, environmental, survey and legal advisors);
  2. your potential funding sources and their advisors;
  3. each of the persons who would be entitled to rely on the Final Report (per the terms of a separate Reliance Letter) if you are the successful bidder;
  4. provided that:-
    1. you ensure that all persons or entities to whom the Interim Report is disclosed maintain the Interim Report in strictest confidence and comply with the terms of this letter on the same basis as you are required to;

2. you provide the persons you disclose the Interim Report to with a copy of this letter and obtain an acknowledgement that they shall comply with the terms of this letter;
3. all persons to whom you disclose this Interim Report acknowledge that the Interim Report is confidential and may not be disclosed to any other party without our prior written consent;
4. all persons to whom you disclose the Interim Report acknowledge that they may not rely upon the Interim Report and that we accept no liability whatsoever in relation to the provisions of the Interim Reports by you to those parties; and
5. a copy of each acknowledgement referred to in this sub-paragraph is provided to us prior to disclosure of the Interim Report to the acknowledging person.

You may disclose the Interim Report if required to do so by law regulation, legal or judicial process or the rule of any stock exchange on which your shares are listed or to seek or establish any defence in any legal proceeding or investigation. In those circumstances, so long as it is lawful to do so, you must give such prior notice as is reasonable of the intended disclosure and limit the disclosure of the contents of this Report to the minimum required to meet such compliance.

If you provide, or cause to provide our Report or enable any of our documentation (including the interim Report) to be used or relied upon by any other party other than as permitted herein, you shall and hereby agree to indemnify and hold us harmless in respect of any damages claimed by such party (whether that claim is made against you, the Principal or us.)

## 2. Jurisdiction

This letter is governed by and is construed in accordance with the laws of New South Wales.

\*\*\*      \*\*\*      \*\*\*      \*\*\*      \*\*\*

Yours faithfully

[Consultant name]

I have read and understood the terms and conditions of this letter and I agree to accept them and make the relevant acknowledgements for and on behalf of [insert] and I am duly authorised to sign this letter for and on behalf of:

Name

Signature

Name of authorised person

Position of authorised person

Date

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