

## Northparkes Mines General Conditions for Consultancy Services (AU)

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## 1. Definitions and interpretation

### 1.1 Definitions

In these General Conditions and the Contract the following terms have the meanings set out below:

**Alternative Consultancy Services** is defined in Clause 15.1.

**Business Day** means a day on which banks are open for business in the place in respect of which an obligation is to be performed or, in respect of Clause 36, the place to which a Notice is sent.

**Cancellation Date** is defined in Clause 29.2(b)(iii).

**Claim** means any action, suit, proceeding or demand of any kind (including by or against any or all of the Company, or its Personnel by Personnel of the Consultant or any third party).

**Commencement Date** is defined in the Key Terms.

**Company** is defined in the Key Terms.

**Company Competencies** is defined in Clause 21.5(b).

**Company Default** is defined in Clause 30.1.

**Company Default Notice** is defined in Clause 30.2.

**Company Induction Courses** is defined in Clause 21.5(a).

**Company Representative** is, initially, as defined in the Key Terms, and includes:

- (a) such other person as the Company may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

**Company's Personal Data** means the Personal Data that the Company transfers to the Consultant from time to time in connection with the Contract.

**Confidential Information** means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the Consultant or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Company, (including in relation to the Consultancy Services) and which:

- (a) is disclosed to the Consultant or its Personnel by or on behalf of the Company;
- (b) is generated by the Consultant or its Personnel in performing the Consultancy Services; or
- (c) otherwise comes to the knowledge of the Consultant or its Personnel.

**Consultancy Fee** is defined in Clause 10.1.

**Consultancy Services** means the provision of the Consultant's knowledge, skills, experience, deductive and intuitive intellectual capabilities, inventiveness, physical work and any other services identified in Schedule A (Scope of Consultancy Services) and Schedule D (Reports and Deliverables).

**Consultant** is defined in the Key Terms.

**Consultant Default Notice** is defined in Clause 29.1.

**Consultant Insurances** is defined in Clause 26.1.

**Consultant IP** means the Consultant's Intellectual Property Rights which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

**Consultant Representative** is defined in the Key Terms.

**Contract** is defined in Clause 2.1.

**Contract IP** means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the provision of the Consultancy Services or the Contract (including all Intellectual Property Rights in anything developed by the Consultant in providing the Consultancy Services and any Intellectual Property Rights in the Documentation provided by the Company to the Consultant).

**Corporations Act** means the Corporations Act 2001 (Cth).

**Customs Duties** mean a government tax on imports or exports of Consultancy Services and include any applicable customs, import / export duties, fees, tariffs or similar analogous taxes.

**Deducted Amount** is defined in Clause 14.2(a).

**Deliverables** means those deliverables (if any), other than Reports, specified in Schedule D (Reports and Deliverables).

**Dispute** is defined in Clause 31.1.

**Dispute Notice** is defined in Clause 31.1.

**Dispute Representative** is defined in Clause 31.2(a).

**Documentation** includes plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training manuals and any other material specified in the Contract (and whether embodied in tangible or electronic form).

**Excise Duties** means any tax imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the production or manufacture of Goods.

**Facilities** means any accommodation, sustenance, transportation, medical or toilet facilities.

**Government Agency** means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**HSE Policies and Standards** is defined in Clause 21.3(a).

**HSE Management Plan(s)** is defined in Clause 21.4(a).

**Illegal Information Brokering** means the practice by which certain parties approach contractors, sub-contractors, vendors and other suppliers, and offer confidential information or illicit influence in order to obtain business through corruption of competitive bidding processes.

**Indemnified Parties** is defined in Clause 27.2(a).

**Indirect Transaction Taxes** mean any relevant value added tax (VAT), goods and services tax (GST), sales, use or consumption or similar tax or impost imposed, levied or assessed by any Government Agency or otherwise payable, but does not include any related penalty, fine or interest thereon.

**Indirect Transaction Taxes Invoice or Invoice** means an invoice in a form acceptable by applicable laws in the jurisdiction where the supply of the Consultancy Services take place which clearly identifies the amount of Indirect Transaction Taxes payable and any applicable registration or collector numbers of the Consultant for purposes of Indirect Transaction Taxes, and which would enable the Company to claim a credit or reimbursement for Indirect Transaction Taxes payable under the invoice under any applicable laws.

**Input Tax Credit** means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

**Intellectual Property Rights** means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

**Joint Venture** means an unincorporated joint venture, if any, on behalf of which the Company is a Party to the Contract as agent.

**Joint Venturers** means, in respect of a Joint Venture, the participants in that Joint Venture.

**Key Terms** means the document named "Key Terms" forming part of the Contract, but not including the Schedules to that document.

**Liabilities** means damages, Claims, losses, liabilities, costs and expenses of any kind.

**Materials** is defined in Clause 35.5(a)(i).

**Northparkes IP** means the Intellectual Property Rights of the Company which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

**Notice** is defined in Clause 36.1.

**Official** includes:

- (a) any officer or employee of any Government Agency, or any person acting in an official capacity on behalf of any such Government Agency;
- (b) any officer, employee or official of a political party;
- (c) any candidate for political office; or
- (d) any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).

**Party** means a party to the Contract.

**Personal Data** means information relating to identifiable individuals and includes (but is not limited to all information relating to individuals that is protected by privacy laws or data protection laws in the country where:

- (a) the individuals are located; or
- (b) the data relating to those individuals is processed.

**Personnel** means:

- (a) in relation to the Consultant, each of the Consultant's personnel named in Schedule B (Personnel) and any additional personnel involved directly or indirectly in the performance of the Consultancy Services; and
- (b) in relation to the Company, any of its past or present officers, employees, agents (including, for the purposes of Clause 27, the entity entering into the Contract for and on behalf of Joint Venturers (if applicable) and that entity's past or present officers, employees, agents or representatives) or representatives.

**Purchase Order** means an individual purchase order or service order as may be issued by the Company to the Consultant in respect of the performance of Consultancy

Services which shall be subject to the terms of the Contract.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Reports** means the reports to be provided by the Consultant pursuant to Clause 5 and Schedule D (Reports and Deliverables).

**Site** means the Company's premises identified in the Key Terms.

**Taxes** mean any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever (other than taxes on the Company's net income), together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable, on or in respect of the supply of the Consultancy Services hereunder.

**Tax Invoice** means an invoice or other document, including without limit a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

**Tender** means the Consultant's offer or counter-offer in writing to perform the Consultancy Services whether described as a "tender" or "proposal" or otherwise.

**Term** is defined in the Key Terms.

**Termination Notice** is defined in Clause 28.1.

**Variation** is defined in Clause 6.1(a).

**Variation Date** is defined in Clause 6.1(a).

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by **including** or **for example**.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to a Clause or Appendix is a reference to a clause of, or appendix to, these General Conditions.
- (h) A reference to a Schedule is a reference to a schedule to the Contract.
- (i) A reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification or re-enactment of it, a legislative

provision substituted for it and a regulation or statutory instrument issued under it.

- (j) A reference to use in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communications.
- (k) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (l) Where it is provided that the Consultant will perform any act or provide any thing at its cost, this means the Consultant will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Consultancy Fee.

### 1.3 Joint Venture

If the Contract specifies that the Company enters into, and is a party to, the Contract for and on behalf of Joint Venturers under a Joint Venture, then the following paragraphs apply:

- (a) The Company is a party to the Contract as agent severally for each of the Joint Venturers in their respective percentage interests in the Joint Venture.
- (b) The Parties acknowledge and agree that:
  - (i) the obligations and liabilities of the Joint Venturers to the Consultant are several only (and will not be, nor be construed to be, either joint or joint and several), in accordance with the Joint Venturer's respective percentage interest from time to time in the Joint Venture;
  - (ii) the percentage interests of the Joint Venturers, and the identity and number of Joint Venturers, may change from time to time and the Company may at any time without the consent of the Consultant assign its rights and obligations under the Contract to an incoming agent or manager on behalf of the Joint Venturers;
  - (iii) the rights and remedies in and under the Contract may be exercised by the Company for and on behalf of the Joint Venturers;
  - (iv) the benefit of the respective duties and obligations of the Consultant under the Contract are deemed to enure to each of the Joint Venturers, and the Company is severally authorised to enforce those duties and obligations on the Joint Venturers' behalf;
  - (v) all Notices to be given or made pursuant to the Contract relating to the Joint Venture may be given or made (as the case requires) by the Company on behalf of the Joint Venturers or any one or more of them;
  - (vi) in dealing with the Joint Venturers, for all purposes under or in connection with the Contract (including, for the avoidance of doubt, any Purchase Order), the Consultant must deal only with the Company; and
  - (vii) the Company will not be liable for the failure of the Joint Venturers (or any one or more of them) to perform its or their obligations under the Contract.

## 2. Evidence of Contract and precedence of documents

### 2.1 Contract

The **Contract** consists of the following documents:

- (a) Key Terms;
- (b) Schedule F (Special Conditions) (if any);
- (c) Schedule E (Site Specific Terms) (if any);
- (d) these General Conditions;
- (e) Schedule A (Scope of Consultancy Services)
- (f) Schedule B (Personnel);
- (g) Schedule C (Fees and Rates);
- (h) Schedule D (Reports and Deliverables); and
- (i) any other Schedules,

but the Tender (if any) does not, except to the extent that it, or any part of it, is reproduced in the Contract itself, form part of the Contract unless the Company expressly so agrees in writing.

### 2.2 Precedence of Contract documents

- (a) If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 2.1.
- (b) If there is any conflict or inconsistency between a Purchase Order and the Contract, the Contract will prevail to the extent of that conflict or inconsistency.

### 2.3 Entire agreement

- (a) The Contract contains the entire agreement between the Company and the Consultant with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Consultant in this regard, unless those communications expressly form part of the Contract.
- (b) If at any time in relation to the Consultancy Services, the Consultant provides, refers to, submits or otherwise uses terms and conditions other than those included in the Contract (including as part of the submission of an Invoice) such terms and conditions will not form part of, or be incorporated into, the Contract.
- (c) If during the Term the Company issues a Purchase Order which attaches a separate set of terms and conditions other than those incorporated in the Contract, those terms and conditions will not form part of, or be incorporated into, that Purchase Order or the Contract.

### 2.4 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Consultant and the Company.

## 3. Consultant's representations

The Consultant represents to the Company that, as at the date of the Contract:

- (a) it has the corporate power to enter into, and to perform all of its obligations under, the Contract;
- (b) it is qualified and has the necessary experience, skill and resources to perform the Consultancy Services;
- (c) it is properly licensed, equipped, organised and financed to perform all its obligations under the

Contract and that there are no contracts in existence that would affect the Consultant's ability to perform its obligations under the Contract in a timely and satisfactory manner;

- (d) the Contract has been validly executed by the Consultant and constitutes valid and binding obligations of the Consultant enforceable according to its terms; and
- (e) the execution of the Contract and the performance of the Consultancy Services do not and will not result in the breach of:
  - (i) the terms of, or constitute a default under, any agreement or undertaking (whether verbal or written) or any instrument to which the Consultant may be affected or bound; or
  - (ii) any order, writ, rule, regulation, injunction or decree of any court or Government Agency or any legislation applicable to the Consultant by which the Consultant may be bound.

#### **4. Consultant's investigations**

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##### **4.1 Investigations regarding Contract**

The Consultant acknowledges that, prior to the submission of its Tender or, where no Tender is submitted, prior to accepting the Company's offer in relation to the provision of the Consultancy Services:

- (a) the Company provided it with every opportunity for inspecting and testing the Site and gave it every assistance in relation to the investigation of all local and other conditions affecting the performance of the Contract, and the provision of the Consultancy Services, including in relation to meteorological, geological, labour, accommodation, fuel, power, water, telecommunications and transport conditions; and
- (b) that it is deemed to have:
  - (i) inspected and tested the Site;
  - (ii) (without limiting Clause 4.2) carefully and fully examined all documents which have been provided by the Company as part of any tender process; and
  - (iii) to have fully informed itself in relation to each of the matters referred to in this Clause 4.1.

##### **4.2 No representation by Company**

The Company has endeavoured and will continue to endeavour (without being obliged to do so) to ensure the accuracy of any information provided to, or obtained by, the Consultant or its Personnel through a conducted Site visit, a pre-bid conference or otherwise obtained by the Consultant or its Personnel from the Company. However, the Company does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it. The Parties acknowledge that any information so provided is for the convenience of the Consultant only and does not form part of the Contract unless otherwise expressly agreed by the Parties in writing, and that any Tender submitted by the Consultant and its subsequent execution and performance of the Contract is deemed to have been based on the Consultant's own investigations and determinations.

##### **4.3 Consultant satisfied with accuracy**

The Consultant agrees that it has satisfied itself as to the accuracy of any information given to it at any time prior to the execution of the Contract and accepts full

responsibility for any use by it of such information including, without limitation, responsibility for any conclusions drawn by it from such information.

##### **4.4 No relief**

Failure by the Consultant to do all or any of the things it is deemed to have done under this Clause 4 will not relieve the Consultant from any of its obligations under the Contract.

##### **4.5 Company not liable**

The Company is not liable for any Liabilities incurred or suffered by the Consultant as a result of its reliance in any way upon any information given to it by the Company.

#### **5. Performance by Consultant**

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##### **5.1 Appointment of Consultant**

The Company appoints the Consultant as a consultant to provide the Consultancy Services to the Company for the Term in accordance with the terms and conditions of the Contract.

##### **5.2 Performance by Consultant**

- (a) The Consultant must perform the Consultancy Services in accordance with the terms of the Contract and in consideration of the payment of the Consultancy Fee by the Company.
- (b) Without limiting Clause 5.3, the Company may complete and forward a Purchase Order to the Consultant in respect of all or any part of the Consultancy Services.

##### **5.3 Reports and Deliverables**

The Consultant must deliver to the Company each of the Reports and Deliverables set out in Schedule D (Reports and Deliverables), by the deadline specified in that Schedule.

##### **5.4 Additional comments or advice**

Subsequent to the delivery of a Report or Deliverable, the Company may request that the Consultant provide reasonable explanatory comments or advice (whether verbally or in writing) relating to the Reports and Deliverables provided by the Consultant in accordance with Clause 5.1, and the Consultant must provide such comments or advice.

#### **6. Variations**

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##### **6.1 Variations**

- (a) During the Term, the Company Representative may by Notice direct the Consultant to vary any aspect of the Consultancy Services (**Variation**) on and from the date specified in the Notice (**Variation Date**).
- (b) To the extent that the Variation is reasonable, the Consultant must comply with the Notice and any Variation will be binding on the Parties as if it was included in the Contract.

##### **6.2 Cost of Variations**

- (a) The difference in the cost (excluding Indirect Transaction Taxes), if any, including a reasonable allowance in respect of Consultancy Services already performed but not required, caused by Variations directed by the Company Representative will be added to or deducted from the Consultancy Fee as applicable.

- (b) To the extent that the rates for Variations are specified in a Schedule, they may be used by the Consultant to calculate the cost of a Variation, but otherwise the cost of a Variation will be estimated by the Consultant at the lowest reasonable cost consistent with sound industry practices.

### 6.3 Variation procedure

- (a) Within 10 days after a Variation Date, the Consultant must submit to the Company Representative a statement advising whether, in its opinion, a difference in the Consultancy Fee will arise as a result of the Variation and, if so, the approximate value of the cost difference.
- (b) Within 30 days of a Variation Date, the Consultant must provide a detailed statement to the Company Representative of either the cost of the Variation or a detailed statement as to why the Consultant has been unable to state the cost of the Variation within the 30 day period. In the latter case, the Consultant must, without prejudice to the rights and remedies of the Company in those circumstances, provide the detailed statement of cost as soon as possible.
- (c) If either of the statements referred to in Clauses 6.3(a) or (b) are submitted later than the relevant time limits specified in those Clauses the claims contained in those statements may, at the sole discretion of the Company Representative, be time barred.
- (d) The Company Representative must use all reasonable endeavours to make a decision in relation to Variation claims as soon as is practicable after the claim is made.
- (e) As soon as practicable after the Company Representative makes a decision in regard to the Consultant's claim, the Company Representative must prepare a document to be signed by the Company Representative and the Consultant Representative setting out the details of the Variation to the Consultancy Services directed by the Company Representative and any consequent Variation in the Consultancy Fee.
- (f) If the Company Representative does not approve the claim and the Consultant and the Company Representative are unable to agree upon the amount of the difference in cost then the Dispute must be resolved in accordance with Clause 31.

### 7. Consultant's warranties

In addition to the warranties contained in Clauses 34.5, 35.1 and 37.1, the Consultant warrants that:

- (a) all of the Consultancy Services will be of the highest standard and will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (b) the Consultant and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
- (c) any equipment used on-Site by the Consultant will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company.
- (d) all information and materials forming part of the Tender (if any) are true and correct in every respect and are not misleading or deceptive and the Consultant has not withheld from the Company any information concerning the

Consultant, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to engage the Consultant to provide the Consultancy Services or the price at which or the terms on which the Company would be prepared to engage the Consultant to provide the Consultancy Services.

### 8. Term

The Contract will commence on the Commencement Date and will remain in force, unless terminated earlier in accordance with the Contract, for the Term.

### 9. Representatives

#### 9.1 Performance

The Consultancy Services must be performed by the Consultant in accordance with the Contract and in accordance with any directions of the Company Representative pursuant to the provisions of the Contract.

#### 9.2 Company Representative

- (a) The Company Representative is responsible for giving directions for and on behalf of the Company as provided in the Contract.
- (b) Directions given to the Consultant by any person other than the Company Representative will not bind the Company unless ratified by the Company Representative.

#### 9.3 Consultant Representative

- (a) The Consultant Representative is responsible for liaising with the Company Representative in relation to any of the matters referred to in Clause 9.2, and the Consultant Representative will have full power to legally bind the Consultant in respect of all matters arising out of the Contract.
- (b) Any direction which the Company Representative gives to a Consultant Representative is deemed to have been given to the Consultant for and on behalf of the Company and the Consultant must comply with that direction accordingly. Any communication given, or document signed, by a Consultant Representative is deemed to have been given or signed by the Consultant and will bind the Consultant. Matters within the knowledge of a Consultant Representative are deemed to be within the knowledge of the Consultant.
- (c) Either Party may from time to time revoke the appointment of its representative and appoint another person as its representative and that Party must give Notice of such revocation and appointment to the other Party.

### 10. Consultancy Fee

#### 10.1 Consultancy Fee

The **Consultancy Fee** is the aggregate amount payable (excluding Indirect Transaction Taxes payable in accordance with Clause 11) by the Company to the Consultant in relation to the Consultancy Services.

#### 10.2 Consultancy Fee to be inclusive

All expenses incurred by the Consultant in relation to the provision of the Consultancy Services, including, without limitation, travel expenses and subsistence expenses,

will be deemed to be included in the Consultancy Fee and the Consultancy Fee includes any applicable Taxes.

## 11. Taxes

### 11.1 Taxes (including Indirect Transaction Taxes)

- (a) All amounts payable under or in connection with this Contract, (including any amount by way of reimbursement, indemnity, damages or otherwise) are:
  - (i) inclusive of Taxes; and
  - (ii) exclusive of Indirect Transaction Taxes, unless expressed otherwise.
- (b) If Indirect Transaction Taxes are payable on a supply, transfer or sale (**supply**) made under or in connection with this Contract, and if the party making that supply (**supplier**) is liable, under the applicable law, to pay, or collect and remit, the Indirect Transaction Taxes to the appropriate Government Agency, the party receiving that supply (**recipient**) shall pay to the supplier an additional amount equal to the Indirect Transaction Taxes payable by the supplier in respect of the supply. The recipient must pay the additional amount to the supplier on the date when the Consultancy Fee (or part thereof) is provided to the supplier (subject to a Tax Invoice being received prior to payment date). This sub-Clause does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.
- (c) The supplier shall ensure that each invoice it presents to the recipient in respect of any Indirect Transaction Taxes is a Tax Invoice. If the supplier fails to provide the recipient with a Tax Invoice within the time period required by applicable law of that jurisdiction, the recipient may withhold payment of the amount payable on account of Indirect Transaction Taxes, either pursuant to sub-Clause (b) or as part of the consideration where that consideration is expressed to be inclusive of Indirect Transaction Taxes, until such time as a Tax Invoice is received.
- (d) Any reference in:
  - (i) this Contract to a cost, expense or other liability (**Cost**) incurred by a party; or
  - (ii) the calculation of consideration or of any indemnity, reimbursement or similar amount to a Cost,
- (e) must exclude the amount of any Input Tax Credit entitlement of that party in relation to that Cost.
- (f) Each Party will take all reasonable steps to cooperate with and provide all necessary assistance to the other Party to ensure so far as possible that the Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

### 11.2 Withholding Taxes

- (a) If a party (**payer**) is required by any applicable law to make a deduction or withholding from a payment to the other party (**payee**) for or on account of any Taxes, the payer is entitled to make that deduction or withholding unless the payee provides the payer with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the payer that an exemption applies. If the payer is required by law to deduct

or withhold, then the payer shall use its best endeavours to furnish the payee with all receipts, proof of payment and other relevant documentation for all deductions and withholding Taxes so paid to the relevant Government Agency. For the avoidance of doubt, the payer will not be liable to pay any amount to the payee on account of an amount deducted or withheld in accordance with this Clause.

- (b) Where a payment is made without a deduction or withholding for or on account of Taxes and such a deduction or withholding was required by any applicable law, the payee shall reimburse the payer for, or otherwise pay to the payer, the amount that should have been withheld or deducted within 14 days of receiving an official receipt (or certified copy) or other documentation evidencing the amount that was required to have been withheld or deducted.

### 11.3 Customs Duties and Excise Duties

- (a) Where the recipient elects to acquire goods and the supplier is the importer of record, the supplier will:
  - (i) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and
  - (ii) use its best endeavours to ensure that any goods are imported free of Customs Duties including, without limit, through the use of applicable bilateral free trade agreements (or the equivalent).
- (b) The supplier will, at the recipient's request, provide the recipient with all information and documentation necessary for the recipient to make or assess the supplier's entitlement to make, in accordance with any applicable laws, applications or certifications for:
  - (i) a drawback, refund, rebate, remission or other reduction of Customs Duties or Excise Duties; and
  - (ii) Customs Duties or Excise Duties concessions, including, without limit, exemptions, reductions, duty-free access and preferential rates of duty available under bilateral free trade agreements (or the equivalent).
- (c) The supplier must make any application or certification requested by the recipient in a form that is satisfactory to the recipient. Where any such application or certification is successful, the supplier will pass on to the recipient the full economic benefit of the exemption, reduction, concession, drawback, refund, rebate or remission of Customs Duty or Excise Duty, as appropriate, by way of a reduction in the Consultancy Fees. This Clause applies regardless of the shipping, insurance or freight terms used.

### 11.4 Survival of Clause

- (a) This Clause will continue to apply after expiration or termination of this Contract.

### 11.5 US or Global contracts only

- (a) If, in respect of a Tax audit or a levied Tax assessment, the appropriate Government Agency seeks payment of Indirect Transaction Taxes from the supplier for which the supplier seeks reimbursement from the recipient, then, unless the supplier notifies the recipient in writing of the Indirect Transaction Taxes payable at least 30 days prior to the expiration date of the right to



appeal the imposition thereof, any reimbursement by the recipient will be at its sole discretion.

- (b) If the recipient deems that any Indirect Transaction Taxes paid to the supplier under Clause 11.1(b) have been inappropriately levied or that an exemption applies, the recipient may, by written Notice to the supplier, require the supplier to contest such Indirect Transaction Taxes at the recipient's sole expense and subject to its direction and control.
- (c) The supplier shall do all things reasonably necessary to ensure that the recipient remains eligible for any exemption, credit, set-off, deduction or similar amount to which the recipient is entitled as a purchaser or recipient of any supply under any applicable laws, whether the Indirect Transaction Taxes are paid by the supplier or directly by the recipient. If an exemption to payment of Indirect Transaction Taxes applies, the recipient shall provide the supplier with a valid tax exemption certificate or equivalent documentation required by any applicable laws in the jurisdiction where the supply takes place.

## **12. Payments to Consultant**

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### **12.1 Method of payment**

- (a) Unless otherwise provided in the Contract, all payments required to be made to the Consultant by the Company pursuant to the Contract in relation to the performance of the Consultancy Services must be made in the currency specified in Schedule C (Fees and Rates) by electronic funds transfer into the Consultant's nominated bank account.
- (b) If the Contract provides that any of the amounts referred to in Clause 12.1(a) are to be paid to the Consultant:
  - (i) outside Australia;
  - (ii) other than in Australian currency; or
  - (iii) in a manner subject to control by any Government Agency,

payment is conditional upon the Company obtaining the necessary authorities and consents to the making of that payment.

### **12.2 Tax Invoices**

- (a) The Consultant must, unless otherwise agreed with the Company, render a Tax Invoice to the Company in relation to the provision of the Consultancy Services at the end of each month during the period in which the Consultancy Services are provided and calculated by reference to the prices, fees or other amounts specified in Schedule C (Fees and Rates).
- (b) Tax Invoices must be in a form acceptable to the Company and must contain the following information:
  - (i) the number of the Purchase Order to which the Invoice relates;
  - (ii) a brief description of the Consultancy Services provided in the period covered by the Tax Invoice; and
  - (iii) any further verification or documentation in relation to the Tax Invoice as is reasonably required by the Company, including:
    - (A) timesheets indicating hours expended in the performance of the Consultancy Services; and

- (B) evidence of reimbursable costs claimed.

### **12.3 Payment of Tax Invoices**

Subject to Clauses 12.4, 14, 26.10(e) and 29.2(b), the Company must pay to the Consultant the amount shown on the Tax Invoice within 45 days following the end of the month in which the Tax Invoice is received by the Company.

### **12.4 Disputed Tax Invoices**

If the Company disputes any amount shown on a Tax Invoice, it must notify the Consultant within 21 days of receipt of the Tax Invoice and must pay any amounts not in dispute in accordance with Clause 12.3, provided that the payment by the Company of any amount the subject of a disputed Tax Invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

### **12.5 Errors or exceptions in invoicing**

Without limiting Clause 12.3, if the Consultant discovers or is advised of any errors or exceptions relating to its invoicing for the Consultancy Services, the Consultant and the Company will jointly review the nature of the errors or exceptions, and the Consultant must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund overpayments.

## **13. E-Commerce**

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### **13.1 Consultant's e-commerce obligations**

The Consultant undertakes to continually monitor and review its business processes in order to identify e-commerce opportunities and must use its best endeavours to develop and use such opportunities in its dealings with the Company.

## **14. Deduction from payments**

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### **14.1 Deductions**

The Company may:

- (a) deduct from any moneys due or becoming due to the Consultant pursuant to Clause 12.3 the following amounts (plus any Indirect Transaction Taxes in respect of such deductions payable in accordance with Clause 11):
  - (i) all debts and moneys due from the Consultant or its Personnel to the Company; and
  - (ii) all Liabilities which the Company may have paid, suffered or incurred and which or for which the Consultant or its Personnel is or are liable to bear, pay or reimburse to the Company (including pursuant to any indemnity contained in the Contract); or
- (b) without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Consultant fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Consultant under the Contract, until the matter has been remedied.

### **14.2 Deductions and withholdings required by law**

- (a) If the Company is required by law to withhold or deduct any amount (**Deducted Amount**) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Consultant when it is withheld or deducted and the Company will not be liable to pay any amount

on account of the Deducted Amount to the Consultant.

- (b) If the Company fails to withhold or deduct a Deducted Amount, the Company may:
- (i) give Notice to the Consultant demanding payment of an amount equal to the Deducted Amount and the Consultant will pay that amount to the Company within 30 days of receiving the Notice;
  - (ii) deduct an amount equal to the Deducted Amount from any amounts payable by the Company to the Consultant and the amount so deducted will be treated as having been paid to the Consultant when it is deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Consultant; or
  - (iii) recover an amount equal to the Deducted Amount by a combination of a demand under Clause 14.2(b)(i) and deducting an amount under Clause 14.2(b)(ii),

and in each case where the failure to withhold or deduct the Deducted Amount arises as a result of any act, omission or oversight of the Consultant, the Deducted Amount will include any fines, penalties or interest payable by the Company in respect of the Deducted Amount.

#### **14.3 Notification of withholding or deductions**

The Company must notify the Consultant of the details of any amounts withheld or deducted pursuant to Clauses 14.1 or 14.2.

#### **14.4 Clause to survive termination**

This Clause 14 will survive the termination or expiry of the Contract.

### **15. Alternative Consultancy Services**

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#### **15.1 Alternative Consultancy Services**

To the extent that the Consultant is unable to perform all or any part of the Consultancy Services in accordance with the Contract for any reason, the Company may, in its sole discretion, source such part of the Consultancy Services from any third party (**Alternative Consultancy Services**).

#### **15.2 Consultant responsible for incremental costs**

- (a) If the Company exercises its rights under Clause 15.1 to source an Alternative Consultancy Services, the Consultant is responsible for all incremental costs to the Company associated with sourcing the Alternative Consultancy Services, except where the reason for the inability to perform all or part of the Consultancy Services was as a direct result of an act or omission of the Company.
- (b) The Company must use reasonable endeavours in exercising its rights under Clause 15.1 to source the Alternative Consultancy Services at the minimum cost reasonably available.

### **16. Consultant's information, accounts and records**

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#### **16.1 Provision of information**

The Consultant must provide the Company with any information requested by the Company in relation to the provision of the Consultancy Services.

#### **16.2 Consultant to maintain accounts and records**

The Consultant must:

- (a) maintain a complete set of accounts and records in accordance with prudent and accepted accounting principles; and
- (b) retain, and ensure that all of its Personnel retain, any of the items referred to in Clause 16.2(a) for a minimum period of 2 years after the expiry of the Term or earlier termination of the Contract.

#### **16.3 Consultant to provide access**

- (a) In addition to the rights set out in Clause 16.1, the Consultant and its Personnel must permit the Company to have access to any of their accounts, books, records, correspondence, receipts, vouchers and other relevant documents (including documents stored in electronic form) for the purposes of substantiating:
  - (i) the Consultancy Fee, including any amendment to the Consultancy Fee;
  - (ii) the existence (or otherwise) of any Indirect Transaction Taxes; or
  - (iii) any other amount payable to, or claimed by, the Consultant pursuant to the Contract.
- (b) The Company may make and retain copies of any of the items referred to in Clause 16.3(a).

### **17. Right to audit by Company**

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#### **17.1 Right of audit of Consultant performance**

In addition to the rights set out in Clause 16, the Consultant and its Personnel must permit the Company to have access to any of their documentation and data (including documents stored in electronic form) and to interview the Consultant's Personnel in connection with the Consultancy Services, as necessary for Company Personnel to verify, monitor and audit the Consultant's compliance with:

- (a) the HSE Management Plan(s) and the health, safety and environmental conditions set out in Clause 21; and
- (b) the Company policies identified in Clause 23.

#### **17.2 Action by Consultant**

Without limiting any other rights or remedies available to the Company as a result of the Consultant's non-compliance with any of the conditions, policies and standards referred to in Clause 17.1, if deficiencies are identified by an audit undertaken under Clause 17.1, the Consultant must take prompt corrective action and notify the Company of such action.

### **18. Preservation of existing third party consulting arrangements**

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The Consultant acknowledges that:

- (a) consulting arrangements exist between the Company and third party consultants as at the Commencement Date; and
- (b) the Company has no obligation to the Consultant to seek to alter, modify or terminate any of the consulting arrangements referred to in Clause 18(a).

## **19. No minimum purchase or exclusivity**

### **19.1 No minimum purchase**

Nothing in the Contract obliges the Company to request or acquire any minimum level of Consultancy Services from the Consultant.

### **19.2 No exclusivity**

The Contract is not evidence of, nor does it create, an exclusive relationship between the Company and the Consultant in respect of the Consultancy Services (or any aspect of it).

## **20. Personnel, Facilities and equipment**

### **20.1 Personnel**

The Consultant is required to supply all Personnel necessary for the proper performance of the Consultancy Services. Such Personnel must be appropriately qualified, competent and skilled to perform the relevant part of the Consultancy Services in respect of which they are engaged.

### **20.2 Engagement of Personnel**

The Consultant must ensure that all Personnel of the Consultant engaged to provide any part of the Consultancy Services comply with Clauses 32, 33, 34, 35, 38 and 39 with respect to Intellectual Property Rights, Documentation, Confidential Information and business standards.

### **20.3 Company may object to Personnel**

The Company Representative may object to any of the Consultant's Personnel who, in the opinion of the Company Representative, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Consultant must remove such Personnel upon receipt from the Company Representative of Notice requiring it to do so and must not re-employ that person in connection with the Consultancy Services without the prior written consent of the Company Representative. In addition, the Consultant must at its cost replace such removed Personnel with suitably qualified, competent, skilled and approved Personnel.

### **20.4 Consultant responsibilities**

The Consultant is responsible for:

- (a) the transportation of its Personnel to and from the Site and will provide for the movement of its Personnel on the Site at all times and all vehicles and drivers used for this purpose must be properly licensed and all vehicles must comply with the requirements of any applicable road safety and traffic laws, legislation and regulations;
- (b) the supply of all labour, supervision, tools, equipment, materials, power, water, safety equipment and other requirements necessary for the Consultant to provide the Consultancy Services in accordance with the Contract; and
- (c) the health and safety of its Personnel.

### **20.5 Company Facilities**

- (a) Subject to Clauses 20.4 and Clause 20.5(b), to the extent that the Company has relevant Facilities in place which are available, those Facilities will be available for use by the Consultant or any of its Personnel in relation to the provision of the Consultancy Services. The Consultant is responsible for the provision of any Facilities which are required for the provision of the Consultancy Services to the extent that they

are not already in existence and available (as determined by the Company).

- (b) The Consultant is required to inform the Company Representative at least 7 days in advance of its requirements in relation to the use of the Company's Facilities. The terms of use of any of the Company's Facilities will be at the Company's discretion.
- (c) The Consultant must ensure that at all times the Site and any Facilities used are left in a clean, orderly and safe condition and fit for immediate use.

## **21. Health, safety and environment**

### **21.1 Application of Clause**

This Clause 21 applies to the extent the Consultant or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Consultancy Services.

### **21.2 Consultant acknowledgement**

The Consultant acknowledges that there is a direct relationship between the Consultant's health, safety and environmental performance and the success of the Company's business.

### **21.3 Compliance with health, safety and environmental laws, policies and standards**

The Consultant agrees to comply, and to ensure that its Personnel comply, with:

- (a) without limiting Clause 23, the Company's health, safety and environmental policies and associated standards applicable from time to time (a copy of which has been provided to the Consultant) (**HSE Policies and Standards**);
- (b) without limiting Clause 24, all relevant health, safety and environmental legislation and laws in force from time to time; and
- (c) the health, safety and environmental conditions contained in this Clause 21.

### **21.4 Health, Safety and Environmental Management Plan**

- (a) If it has not already been finalised as part of the submission of the Consultant's Tender (if any), the Consultant must, within 30 days after the date of the Contract, submit proposed health, safety and environmental management plan(s) (**HSE Management Plan(s)**) in accordance with the HSE Policies and Standards, for review by the Company Representative.
- (b) The Company Representative will review the proposed HSE Management Plan(s) and provide the Consultant with any request for amendments.
- (c) The Consultant and its Personnel may not commence work on-Site unless and until the HSE Management Plan(s) and any requested amendments to it have been approved by the Company Representative.
- (d) The Company Representative may at any time direct the Consultant to amend the approved HSE Management Plan(s) to adequately reflect any amendments to the HSE Policies and Standards.
- (e) The Consultant must keep a copy of the approved HSE Management Plan(s) at its on-Site office or work area at all times during the Term.

### **21.5 Induction Courses**

- (a) Each of the Consultant's Personnel must attend all appropriate and relevant induction courses

required by the Company (**Company Induction Courses**).

- (b) Where, pursuant to the operating rules for specific areas of the Company, any of the Consultant's Personnel are required to have specific skills for the performance of the Consultancy Services (**Company Competencies**), the induction and training requirements in relation to those Company Competencies must:
  - (i) be included in the HSE Management Plan(s);
  - (ii) to the extent they are not set out in the Specifications, be confirmed with the Company Representative; and
  - (iii) be undertaken by the relevant Personnel prior to the commencement of any work on, or near the vicinity of, the Site.
- (c) Unless otherwise agreed:
  - (i) the Company will arrange and pay for the Company Induction Courses and will be responsible for the costs of Consultant Personnel attending the Company Induction Courses; and
  - (ii) the Consultant will arrange and pay for all training courses in respect of Company Competencies and will be responsible for the costs of Consultant Personnel attending such training courses.
- (d) Any person visiting the Consultant on Site to meet Personnel working on the Site, and who is not performing any type of manual work, will also be required to attend the relevant Company Induction Courses. However, this requirement will not apply if the visitor is accompanied at all times whilst on Site by a person who has attended all relevant Company Induction Courses, and has Company Competencies in relation to access to the Site.

#### 21.6 Consultant to remain liable

Nothing in this Clause 21 (including the approval of the HSE Management Plan(s)) limits or removes any obligation or duty imposed on the Consultant or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.

#### 21.7 Removal from Site

Notwithstanding any other term of the Contract, in the event of any breach of this Clause 21, the Company may:

- (a) require the Consultant, the Consultant's Personnel and/or any other person to leave the Site immediately; and
- (b) require the Consultant and/or any of its Personnel to remove any material or substance from the Site at the Consultant's cost,

and the Consultant must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

### 22. Access to Site

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#### 22.1 Access

Without limiting Clause 26.10(e) or this Clause 22, the Company will grant to the Consultant access to the Site on and from the date of the Contract and the Consultant must give the Company Representative at least 7 days' Notice before commencing the Consultancy Services on the Site.

### 22.2 Consultant obligations

- (a) Prior to commencement of the Consultancy Services on the Site, the Consultant must notify the Company Representative of its normal times and periods of work and must give the Company Representative at least 24 hours' Notice of any alteration in its working hours or periods of work.
- (b) The Consultant must at all times consult with the Company Representative and obtain 14 days' prior written approval for any action likely to interfere with the Company's operations. The Company Representative must reply to any such request within 7 days of receipt of such request.

### 22.3 Delayed or suspended access

- (a) If there is any delay in giving the Consultant access to the Site, or if access is suspended or inadequate, the Consultant may apply for an amendment to the deadline for the delivery of one or all of the Reports and Deliverables set out in Schedule D (Reports and Deliverables).
- (b) The Company must, if it considers an application made in accordance with Clause 22.3(a) to be reasonable, by Notice amend the deadline for the delivery of one or all of the Reports or Deliverables set out in Schedule D (Reports and Deliverables) in such manner as it considers appropriate and such amendment will be the Consultant's sole remedy for any delay and the Consultant will not be entitled to any increase in the Consultancy Fee or any damages, costs or expenses in connection with such amendment provided that the Company may (in its discretion) reimburse the Consultant for additional costs if it considers that such reimbursement would be fair and equitable in the circumstances.

### 22.4 Right to deny access

If the Consultant or its Personnel fail to comply with any of the requirements of Clause 21 or this Clause 22, then the Company Representative may in its discretion deny that person or those persons access to the Site or permit such access subject to terms and conditions the Company Representative thinks appropriate.

### 22.5 No exclusive possession

The Consultant acknowledges that nothing in the Contract confers on it exclusive possession of the Site and that it will only be granted access to the Site to the extent deemed necessary by the Company Representative for the performance of the Consultancy Services.

### 23. Compliance with Company policies

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During the Term, the Consultant must, and must ensure that its Personnel, comply with each of the rules and policies of the Company, as notified by the Company to the Consultant from time to time in writing.

### 24. Laws

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#### 24.1 Compliance with laws

During the Term, the Consultant must:

- (a) comply with all applicable legislation, laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- (b) in relation to the provision of the Consultancy Services, at its cost:
  - (i) obtain all necessary notices;

- (ii) give all necessary notices;
- (iii) pay all necessary fees, deposits and Taxes,

and, if requested by the Company, must provide evidence of the matters referred to in this Clause 24.1(b).

#### **24.2 Consequences of breach**

Notwithstanding any other Clause of these General Conditions or term of the Contract, in the event of any breach of Clause 23 or this Clause 24, the Company may:

- (a) require the Consultant, the Consultant's Personnel, and/or any other person to leave the Site immediately; and
- (b) require the Consultant and/or any of its Personnel to remove any material or substance from the Site at the Consultant's cost,

and the Consultant must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

### **25. Co-operation with third parties**

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#### **25.1 No interference**

The Consultant must not impede or interfere with the work of any other consultants or suppliers or their personnel (whether employed or engaged by the Company or not) on-Site during the Term.

#### **25.2 No compensation**

The Consultant is not entitled to any increase in the Consultancy Fee, damages, costs or any other financial or other compensation as a result of any interference on-Site from other consultants, suppliers, contractors or personnel.

#### **25.3 Amendment to timing of Reports and Deliverables**

- (a) If, through no fault of its own, the Consultant suffers delay through interference by other consultants, suppliers, contractors or their personnel on the Site, the Consultant may apply for an amendment to the deadline for the delivery of one or all of the Reports and Deliverables set out in Schedule D (Reports and Deliverables).
- (b) The Company must, if it considers an application made in accordance with Clause 25.3(a) to be reasonable, by Notice amend the deadline for the delivery of one or all of the Reports or Deliverables set out in Schedule D (Reports and Deliverables) in such manner as it considers appropriate and such amendment will be the Consultant's sole remedy for any delay and the Consultant will not be entitled to any increase in the Consultancy Fee or any damages, costs or expenses in connection with such amendment provided that the Company may (in its discretion) reimburse the Consultant for additional costs if it considers that such reimbursement would be fair and equitable in the circumstances.

### **26. Insurances**

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#### **26.1 Consultant Insurances**

The Consultant is required, at its cost, to effect and maintain throughout the Term and any additional period specified in the Contract, each of the insurances described in Clauses 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, 26.8 and 26.9 (**Consultant Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

#### **26.2 General and Product Liability Insurance**

- (a) Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured, however caused. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 26.2(a) must, unless prohibited by law, be endorsed to:
  - (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
  - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
  - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract;
  - (iv) cover "goods in the physical and legal control of the Consultant" for an amount not less than the value of the "goods" held off the Site; and
  - (v) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

#### **26.3 Workers' Compensation and Employer's Liability Insurances**

- (a) Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to any employee of the Consultant or any person deemed to be an employee of the Consultant.
- (b) The insurance outlined in Clause 26.3(a) must, unless prohibited by law, be endorsed to:
  - (i) indemnify the Company against any liability which it may incur to the Consultant's employees, arising by virtue of the applicable workers' compensation statute or regulations or at common law;
  - (ii) extend to include employees underground if any of the work under the Contract is to be performed underground; and
  - (iii) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.
- (c) The insurance outlined in Clause 26.3(a) must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel.

#### **26.4 Consultant's Plant and Equipment**

If the performance of the Contract requires the Consultant to use or provide for use plant and equipment that will be used at the Site in connection with the Contract, the Consultant must maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is the Company) to maintain insurance covering all loss and damage to that plant and equipment, for its replacement value. The insurance must, unless prohibited by law,

waive all express or implied rights of subrogation against the Company and its directors, officers and employees.

than A\$10,000,000 for each and every claim.

## 26.5 Goods in transit

If the performance of the Contract requires the Consultant to transport goods, materials, supplies, equipment or other items to or from the Site, unless otherwise advised by the Company in writing, the Consultant will maintain insurance covering loss of or damage to the goods, materials, supplies, equipment or other items during transit, regardless of whether the Company has paid for those goods, materials, supplies, equipment or other items. Such insurance must note the company as a party insured under the policy.

## 26.6 Motor Vehicle/Automobile Third Party Liability Insurance

(a) If the performance of the Contract requires the Consultant or its Personnel to use or provide for use motor vehicles, the Consultant must maintain or require the owners of such motor vehicles to maintain third party liability insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles.

(b) The insurance outlined in Clause 26.6(a) must, unless prohibited by law, be endorsed to:

- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
- (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
- (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
- (iv) include a clause that provides a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

## 26.7 Professional Indemnity Insurance

If the performance of the Contract includes or is related to the provision of professional advice or services, the Consultant must effect and maintain throughout the Term and for a period of not less than 3 years after termination of the Contract or completion of the Consultant's obligations under the Contract, professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or services provided by the Consultant under the Contract. Such insurance must provide cover to an amount of not less than A\$5,000,000 for each and every claim.

## 26.8 Marine Insurance

(a) If the performance of the Contract requires or involves the use of watercraft, the Consultant must maintain or require the owners of such watercraft to maintain:

- (i) marine hull and machinery insurance, including collision liability, on all watercraft so used, with a limit of cover not less than the market value of the watercraft; and
- (ii) protection and indemnity insurance including coverage for injuries or death of masters, mates and crews. Such insurance must provide cover to an amount of not less

(b) The insurance outlined in Clause 26.8(a) must, unless prohibited by law, be endorsed to:

- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
- (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
- (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
- (iv) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

## 26.9 Aviation Insurance

(a) If the performance of the Contract requires or involves the use of aircraft (including helicopters), the Consultant must maintain or require owners of such aircraft to maintain:

- (i) aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and
- (ii) liability insurance including coverage for injuries or death of crew, passengers and any other person, and in respect of loss of or damage to cargo. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.

(b) The insurance outlined in Clause 26.9(a) must, unless prohibited by law, be endorsed to:

- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
- (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
- (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
- (iv) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

## 26.10 Insurance terms

(a) If the Consultant Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the self-insured retention, excess or deductible must be declared to the Company. The Company reserves the right to require the Consultant to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Company as being unreasonable in the circumstances of the Contract.

(b) The Consultant Insurances must be underwritten by a reputable insurer with a security rating from A.M. Best of not less than "A" and on terms and

conditions consistent with prudent risk management practice.

- (c) No provision contained in this Clause 26 will limit the Consultant's liability in relation to the indemnities in the Contract.
- (d) Before performing any of the Consultancy Services, and each time the policies are renewed or varied, the Consultant must provide the Company with an insurance certificate of currency or such other evidence as the Company may reasonably require that the Consultant is insured in accordance with the Contract.
- (e) In the event that the Consultant fails to effect or keep in force any of the insurances required pursuant to the Contract, the Company may do one or more of the following:
  - (i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Consultant;
  - (ii) refuse the Consultant and its Personnel access to all or any part of the Site; and/or
  - (iii) treat the failure to insure as a default under the Contract.
- (f) All Consultant Insurances must not be varied to the detriment of the Company or its Personnel, cancelled or allowed to lapse unless the Consultant has received a written consent from the Company.

#### 26.11 Notification under Consultant's policy

If the Consultant becomes aware of an event which may give rise to a claim involving the Company under any policy of insurance effected by the Consultant as required by this Clause 26, the Consultant must notify the Company and must ensure that the Company is kept fully informed of subsequent action or developments concerning the claim.

#### 26.12 Insurance claims and payment of insurance excess

- (a) The Consultant will be responsible for the payment of any excess or deductible relating to the insurances effected by the Consultant and the Consultant will not be entitled to recover from the Company any excess or deductible so paid by the Consultant.
- (b) The Consultant will be responsible for the payment of any excess or deductible relating to the insurances effected by the Consultant where the Company makes a claim under such policy, to the extent that the Company determines that the Consultant or any of its Personnel were responsible for the loss or damage.

#### 26.13 Survival of Clause

This Clause 26 will survive the expiry or earlier termination of the Contract.

### 27. Indemnities

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#### 27.1 Acknowledgement

The Consultant acknowledges that if it enters on to the Site, it does so at the Consultant's own risk. The Consultant must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

#### 27.2 Indemnity

- (a) Subject to Clause 27.3, the Consultant will indemnify (and will keep indemnified) the Company and its Personnel (**Indemnified Parties**) from and against all Liabilities that any

Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:

- (i) the breach by the Consultant or its Personnel of any of the Consultant's obligations (including any warranty) under the Contract and/or any Purchase Order;
  - (ii) any negligent act or omission or wilful misconduct by the Consultant or its Personnel arising out of the performance of the Contract and/or any Purchase Order; or
  - (iii) any claim made against the Company by any of the Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.
- (b) The Company is entitled to recover from the Consultant an amount due to its Personnel under the indemnity in Clause 27.2(a) on behalf of its Personnel and will hold any amount recovered, and the benefit of the indemnity in Clause 27.2(a) to which its Personnel is entitled, as trustee for and on behalf of its Personnel.

#### 27.3 Exclusions

The Consultant will not be liable under Clause 27.2 to the extent that the Liability was caused, or contributed to, by (as the case requires) the Company's negligent acts or omissions or wilful misconduct.

#### 27.4 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Consultant's other obligations and survives termination or expiry of the Contract.

#### 27.5 No requirement for expense before enforcing indemnity right

It is not necessary for the Company or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

### 28. No fault termination

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#### 28.1 Termination Notice

The Company may terminate the Contract or any part of it by giving the Consultant not less than 30 days' Notice of its intention to do so (**Termination Notice**).

#### 28.2 Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice, the Consultant must:

- (a) immediately take all possible action at its cost to ensure the safety of all Personnel;
- (b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (c) take any other action reasonably required by the Company in relation to the termination.

#### 28.3 Obligations upon termination

On the date of termination specified in the Termination Notice, the Consultant must:

- (a) immediately cease performance of the Consultancy Services in accordance with, but only to the extent specified in, the Termination Notice;
- (b) provide the Company with a detailed report in such form as the Company may require in relation

to the Consultancy Services performed up to and including the date of receipt of the Termination Notice;

- (c) return to the Company any items issued to the Consultant by the Company during the Term; and
- (d) take any other action relating to the termination of the Contract as the Company may reasonably require.

#### 28.4 Consultant compensation

- (a) Following termination of the Contract by the Company pursuant to this Clause 28, the Consultant is entitled to recover from the Company out-of-pocket expenses which it has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
  - (i) removing the Consultant's plant and equipment from the Site; and
  - (ii) transporting Personnel back to their place of engagement.
- (b) The amounts outlined in Clause 28.4(a) represent the only amounts or Liabilities recoverable from the Company by the Consultant following a termination of the Contract by the Company in accordance with this Clause 28.

### 29. Consultant Default and insolvency

#### 29.1 Consultant Default Notice

If the Consultant breaches any term of the Contract, the Company may serve a Notice of default (**Consultant Default Notice**) on the Consultant containing the information specified in Clause 29.2.

#### 29.2 Consultant Default Notice requirements

A Consultant Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Consultant Default Notice on the Consultant or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Consultant Default Notice or is incapable of remedy, then the Company may by further Notice to the Consultant do one or more of the following:
  - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Consultant;
  - (ii) take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Consultant as a debt due to the Company by the Consultant); or
  - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

#### 29.3 Obligations upon termination

If the Company gives Notice pursuant to Clause 29.2(b)(iii), the Contract is terminated from the Cancellation Date and the Consultant must:

- (a) cease performance of the Consultancy Services in accordance with, but only to the extent specified in, the Consultant Default Notice;

- (b) immediately take all possible action at its cost to ensure the safety of all Personnel;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (d) take any other action reasonably required by the Company in relation to the termination.

#### 29.4 No prejudice

Notwithstanding the terms of any Consultant Default Notice, no action taken by the Company under this Clause 29 will prejudice the existence of any of its rights and remedies under the Contract which the Company may have as a result of the relevant breach.

#### 29.5 Consultant insolvency or bankruptcy

If the Consultant:

- (a) being a company:
  - (i) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
  - (ii) is insolvent within the meaning of section 95A of the Corporations Act;
  - (iii) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
  - (iv) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
  - (v) has an administrator appointed over all or any of its assets or undertaking, or any step preliminary to the appointment of an administrator is taken;
  - (vi) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking; or
  - (vii) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, or class of them or any of them; or
- (b) being an individual, commits an act of bankruptcy or makes a compromise or composition with or assignment of his property in favour of creditors,

the Company may either:

- (i) terminate the Contract by Notice to the Consultant or any other person in whom the Contract has been vested; or
- (ii) give the person in whom the Contract has been vested, the option to perform the Consultancy Services in accordance with the Contract, subject to that person providing a guarantee satisfactory to the Company up to the value (as certified by the Company Representative) of the Consultancy Services remaining to be performed pursuant to the Contract.



### 30. Default by Company

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#### 30.1 Company Default

If the Company fails to make a payment of any amount due to the Consultant under the Contract in accordance with Clause 12 where the Company is not entitled to exercise any of its rights under Clauses 12.4, 14, 26.10(e) or 29.2(b) (**Company Default**), then this Clause 30 will apply.

#### 30.2 Company Default Notice

If a Company Default is not remedied within 30 days of the Company Default arising, the Consultant may serve a Notice of default (**Company Default Notice**) on the Company.

#### 30.3 Company Default Notice requirements

A Company Default Notice must:

- (a) require the Company to pay to the Consultant the amount owing the subject of the Company Default within a specified period of not less than 30 days' after service of the Company Default Notice on the Company; and
- (b) state that if the Company Default is not remedied within the period specified in the Company Default Notice, then the Consultant may either:
  - (i) cease performance of all or any part of the Consultancy Services until such time as the Company Default is remedied; or
  - (ii) terminate the Contract by Notice to the Company.

#### 30.4 Costs recoverable by Consultant

- (a) Following termination of the Contract by the Consultant pursuant to Clause 30.3(b)(ii), the Consultant is entitled to recover from the Company:
  - (i) the amount owing the subject of the Company Default;
  - (ii) out-of-pocket expenses which the Consultant has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
    - (A) removing the Consultant's plant and equipment from the Site; and
    - (B) transporting Personnel back to their place of engagement.
- (b) The amounts outlined in Clause 30.4(a) represent the only amounts or Liabilities recoverable from the Company by the Consultant following a termination of the Contract by the Consultant in accordance with Clause 30.3(b)(ii).

#### 30.5 Company access to Consultant records

For the purposes of Clause 30.4(a), the Consultant must provide the Company with such access to its records, books and (subject to confidentiality restrictions) contracts as the Company may require in order to verify the amounts claimed by the Consultant.

### 31. Dispute Resolution

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#### 31.1 Dispute

In the event of any dispute, question or difference of opinion between the Company and the Consultant arising out of or under the Contract (**Dispute**), a Party may give to the other Party a Notice (**Dispute Notice**)

specifying the Dispute and requiring its resolution under this Clause 31.

#### 31.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.

#### 31.3 Performance of obligations during Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

#### 31.4 Urgent interlocutory relief

Nothing in this Clause 31 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

### 32. Confidentiality

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#### 32.1 Obligation of confidentiality

The Consultant undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Consultancy Services; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Consultancy Services,

unless the Consultant has obtained the prior written consent of the Company to do so (which consent may be withheld by the Company in its discretion or given on such terms as it sees fit).

#### 32.2 Exceptions

Clause 32.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this Clause 32 or any other obligations of confidence imposed on the Consultant; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Consultant gives Notice to the Company with full particulars of the proposed disclosure.

#### 32.3 Breach of consent

The breach of any of the conditions contained in a consent granted pursuant to Clause 32.1 will be deemed to be a breach of the Contract.

#### 32.4 Indemnity

- (a) Without limiting Clause 27, the Consultant indemnifies the Company and its Personnel, and

must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this Clause 32 by the Consultant or its Personnel.

- (b) The Company is entitled to recover from the Consultant an amount due to its Personnel under the indemnity in Clause 32.4(a) on behalf of that entity and will hold any amount recovered, and the benefit of the indemnity in Clause 32.4(a) to which that entity is entitled, as trustee for and on behalf of that entity.

### **32.5 Additional obligations**

The obligations in this Clause 32 are in addition to and do not diminish the obligations of the Consultant in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

### **32.6 Return of Confidential Information**

If requested by the Company, whether prior to or after the expiry or earlier termination of the Contract, the Consultant must promptly deliver to the Company all Confidential Information in the custody, possession or control of the Consultant or any of its Personnel.

### **32.7 Survival of Clause**

This Clause 32 will survive the termination or expiry of the Contract.

### **33. Public announcements**

Except as required by any applicable law or regulatory requirement or as otherwise permitted by the Contract, the Consultant may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written consent of the Company. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without the Company's written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by the Company.

### **34. Intellectual Property Rights in Consultancy Services**

#### **34.1 Consultant IP**

- (a) The Company acknowledges that the Consultant remains the owner of all Consultant IP and that nothing in the Contract prevents, limits or restricts the Consultant's subsequent use or exploitation of Consultant IP.
- (b) The Consultant grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use all Consultant IP for the purposes of or in connection with the business of the Company to the extent such use is necessary to use and enjoy the Consultancy Services.

#### **34.2 Contract IP**

- (a) The Consultant agrees that all Contract IP will be vested in the Company and will be the Company's property as and when created and the Consultant assigns and must ensure that all of its Personnel assign all of their respective right, title and interest in and to the Contract IP (whether created before, on or after the Commencement Date) to the Company.

- (b) On the Company's request, the Consultant must execute any formal assignment or other document required to give effect to this Clause 34.2.

#### **34.3 Sub-licence of Consultant IP**

The Company may sub-licence the Company's rights to use the Consultant IP under Clause 34.1(b) to any person provided such use is in connection with the business of the Company.

#### **34.4 Northparkes IP**

- (a) The Consultant acknowledges and agrees that the Company remains the owner of all Northparkes IP and that nothing in the Contract prevents, limits or restricts their subsequent use or exploitation of Northparkes IP.
- (b) The Company grants to the Consultant a non-exclusive, non-transferable, revocable licence to use the Northparkes IP and the Contract IP for the sole purpose of providing the Consultancy Services.
- (c) The Consultant must not use, register or attempt to register any interest in or otherwise deal with the Northparkes IP and the Contract IP, or allow any other person to do the same, for any purpose other than to provide the Consultancy Services.

#### **34.5 Consultant warranty**

The Consultant warrants that:

- (a) the Consultant has the right to grant to the Company the licence under Clause 34.1(b); and
- (b) the Consultant has the right to assign all Contract IP to the Company in accordance with Clause 34.2.

#### **34.6 General Consultant obligations**

The Consultant agrees to:

- (a) disclose to the Company all Contract IP as and when it is created;
- (b) notify the Company as soon as the Consultant becomes aware of any suspected, threatened or actual infringement or unauthorised use of any Intellectual Property Rights in the Contract IP and to provide all reasonable assistance in relation to that infringement; and
- (c) provide all reasonable assistance the Company may request to protect, perfect, enforce, defend or assert its interests in and right to use and exploit the Contract IP (including assisting the Company to take action against persons infringing the Contract IP). The Consultant must also ensure that its Personnel provide all reasonable assistance to the Company as set out in Clause 34.2.

#### **34.7 Survival of Clause**

This Clause 34 will survive the termination or expiry of the Contract.

### **35. Third party Intellectual Property Rights**

#### **35.1 Third party Intellectual Property Rights**

The Consultant warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Consultancy Services, or to the extent the Company will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Consultancy Services:

- (a) it has obtained, or will obtain at no further cost to the Company, from the relevant third party all

necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and

- (b) that it will not breach any of the licences or assignments referred to in Clause 35.1(a).

### 35.2 Consultant Indemnity

- (a) Without limiting Clause 27, the Consultant indemnifies the Company and its Personnel and must keep the Company and its Personnel indemnified in respect of any Liabilities incurred or sustained by the Company or its Personnel resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
  - (i) the performance of the Consultancy Services by the Consultant;
  - (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Consultant; or
  - (iii) the use and enjoyment of the Consultancy Services by the Company.
- (b) The Consultant must notify the Company immediately the Consultant becomes aware of a Claim being threatened or made against the Company or its Personnel in relation to any of the matters covered by the indemnity in Clause 35.2(a).
- (c) The Company may require the Consultant to conduct any litigation that may arise from a Claim referred to in Clause 35.2(b) and all negotiations for settlement of that Claim. However, the Consultant must not make any settlement or consent to any judgment, order or verdict against the Company or its Personnel without the Company's prior written consent.

### 35.3 Procurement of Intellectual Property Rights

If the Company or its Personnel are prevented from utilising the Consultancy Services or any part of the Consultancy Services as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Consultant must (at its cost) take all reasonable steps to procure for the Company and its Personnel the right to use the Consultancy Services or the relevant part of the Consultancy Services for the purpose for which it was intended.

### 35.4 Procedure where Intellectual Property Rights cannot be procured

If the Consultant cannot procure the rights referred to in Clause 35.3 within a reasonable time (but not exceeding 60 days unless the Company Representative otherwise agrees), it must notify the Company Representative accordingly and the Company Representative may direct the Consultant to immediately (at the Consultant's cost):

- (a) alter the Consultancy Services or the relevant part of the Consultancy Services to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) amend the Consultancy Services affected or the relevant part of the Consultancy Services with work or other services which do not infringe or violate the Intellectual Property Rights; or
- (c) reimburse the Company any compensation and other moneys already paid to the Consultant and pay to the Company any costs or other expenses that may have been paid or incurred by the Company in connection with the removed Consultancy Services.

### 35.5 Moral rights

- (a) The Consultant must (at its cost) procure from each of the Consultant's Personnel and any third parties engaged in the provision of the Consultancy Services an irrevocable and unconditional consent, in favour of the Consultant (for the benefit of the Consultant and its customers, including the Company), which is legally enforceable by the Company, for the Company to:
  - (i) reproduce, transmit, communicate, adapt or publish any materials in relation to the Consultancy Services to the Company (together the **Materials**) or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world, in whatever form the Company thinks fit (including the making of any distortions, additions or alterations to the Materials or any adaptation thereof or any part of the Materials or any such adaptation) as so reproduced, transmitted, communicated, adapted or published;
  - (ii) reproduce, transmit, communicate, adapt or publish the Materials or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world without making any identification of the employee/contractor/third party in relation to such reproduction, transmission, communication, adaptation or publication; and
  - (iii) do anything in relation to the Materials that (but for these consents) would otherwise infringe any moral rights or similar rights of the employee/contractor/third party anywhere in the world.
- (b) Where the Company reasonably believes that the Consultant has not complied with its obligations set out in this Clause 35.5, the Consultant must procure that each of the Personnel of the Consultant or any third parties engaged in the provision of the Consultancy Services do all such other things and execute all such documents as reasonably requested by the Company in order to confirm or give effect to any of the matters stated in this Clause 35.5.

## 36. Notices

### 36.1 Form of Notices

Unless otherwise specified in the Contract, any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- (a) be in writing;
- (b) be marked to the attention of "the Company Secretary" for the Party to whom the Notice is addressed;
- (c) where given by the Company, be signed or authorised by either the Company Representative, a director or company secretary of the Company, or a duly authorised representative of the Company;
- (d) where given by the Consultant, be signed or authorised by either the Consultant Representative, a director or company secretary of the Consultant, or a duly authorised representative of the Consultant; and
- (e) be delivered by prepaid post, by hand or by facsimile to the Party to whom the Notice is addressed at its address shown in the Contract or

such other address as that Party may have notified to the other Party.

### **36.2 Notices deemed given**

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
- (c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

## **37. Conflict of interest**

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### **37.1 Warranty**

The Consultant warrants that as at the date of the Contract it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of the Consultancy Services by the Consultant and its Personnel under the Contract.

### **37.2 Conflicts of interest**

The Consultant must ensure that neither it nor any of its Personnel carry on business, enter into any financial arrangements or undertake any obligation which would in any way interfere or conflict with the performance of the Consultancy Services by the Consultant and its Personnel under the Contract, without the prior written consent of the Company.

### **37.3 Indemnity**

Without limiting Clause 27, the Consultant indemnifies the Company and its Personnel, and must keep the Company and its Personnel indemnified in respect of any Liabilities incurred or sustained by the Company or its Personnel as a result of any breach by the Consultant of the warranties contained in Clause 37.1 or the undertakings contained in Clause 37.2.

## **38. Business Standards**

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### **38.1 Establishment of procedures**

The Consultant must establish and maintain procedures, policies and precautions to prevent its Personnel from making, receiving, providing or offering substantial gifts, entertainment, payments, loans or other consideration to Personnel of the Company for the purpose of influencing such Personnel to act contrary to the best interests of the Company. This obligation will apply to the activities of Personnel in their relations with Company Personnel arising from the Contract.

### **38.2 Improper advantage or benefit to Official**

- (a) The Consultant represents and warrants that it has not offered, paid, promised to pay, authorised the payment of or transferred money or anything of value to an Official to secure any improper advantage or benefit in relation to the matters

contemplated by the Contract, either directly or indirectly through a third party.

- (b) The Consultant must not, directly or indirectly, in connection with the Contract, offer, pay promise to pay or authorise the giving of money or anything of value to an Official, or to any other person, while knowing or being aware of a high probability that all or a portion of such money or thing of value may be offered, given or promised, directly or indirectly to an Official, for the purpose of influencing the act, decision or omission of such Official to obtain or retain business related to the Contract, to direct business related to the Contract to any person, or to obtain any improper advantage or benefit.
- (c) The Consultant represents that no Official or close relative of an Official has any direct or indirect ownership or other legal or beneficial interest in it or any of its Related Bodies Corporate, or in the contractual relationship established by the Contract, and that no such Official serves as an officer, director, employee, or agent of the Consultant.
- (d) The representations and obligations under this Clause 38.2 will continue throughout the Term.

## **38.3 Notification regarding change of interests**

The Consultant agrees to promptly notify the Company in writing of any changes in the direct or indirect ownership in the Consultant or its Related Bodies Corporate that would make it or them an Official. The Consultant covenants that should the Company notify it of any concerns that there has been a breach of the provisions of Clauses 38.2 or this Clause 38.3, it must cooperate in good faith with the Company in determining whether such a breach has occurred. If the Company determines in its sole discretion that there has been such a breach or that the Consultant has taken any action that would create a material risk of liability for the Company under any applicable law, it may treat the breach as an event of default and to exercise any rights it may have under the Contract upon the occurrence of an event of default, but without regard to any waiting periods or cure periods specified in the Contract.

## **38.4 Notification of failure to comply with Clause**

The Consultant agrees to notify the Company promptly upon discovery of any instance where the Consultant or any of its Personnel fail to comply with this Clause 38.

## **39. Illegal Information Brokering**

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### **39.1 Prohibition**

The Consultant recognises that the practice of Illegal Information Brokering or any other corruption of the Contract award process is not permitted by the Company and the Consultant represents and warrants that it has not and will not utilise Illegal Information Brokering in connection with the Contract.

### **39.2 Notification**

- (a) The Consultant must immediately notify the Company Representative if any person approaches the Consultant for the purpose of Illegal Information Brokering concerning the Contract or any other related business interest of the Company.
- (b) After receiving a Notice under Clause 39.2(a):
  - (i) such Notice and any related information provided by the Consultant will be treated by the Company with the utmost discretion; and

- (ii) the Company will handle the Contract with extra security measures, as appropriate, in order to prevent any contractor, sub-contractor or other supplier from gaining any unfair advantage subsequent to such Notice.

#### **40. Compliance with Code of Conduct Policy and Core Contractor compliance training**

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##### **40.1 Northparkes Code of Conduct Policy**

In performing the Consultancy Services, the Consultant must, and must ensure that its Personnel:

- (a) comply or otherwise act in a manner consistent with the Company's code of business conduct policy (**Code of Conduct Policy**);
- (b) report all actual, alleged or suspected non-compliance with the Code of Conduct Policy to the Company or through the Company's reporting system; and
- (c) cooperate promptly and fully with the Company in any investigation of an alleged or suspected breach of Code of Conduct Policy.

##### **40.2 Core Contractor compliance training**

The Company may identify the Consultant and/or certain of its Personnel as "Core Contractors". The Consultant must ensure that any such Core Contractors undertake the mandatory compliance risk reduction training modules identified by the Company from time to time within the timeframe specified. Such training modules can be accessed through the Company's business system and delivered as computer based training, or with the approval of the Company's relevant authorised Personnel, classroom based training.

#### **41. Indigenous/Community relations**

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The Consultant recognises that the Company has a foundation for indigenous people and in the performance of the Contract, the Consultant undertakes to endeavour to identify and encourage opportunities which benefit indigenous people and local communities wherever possible.

#### **42. Costs**

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##### **42.1 Each Party to bear its own costs**

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

##### **42.2 Stamp duty**

All stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract or other document related to the Contract will be borne by the Consultant.

#### **43. Status of Consultant**

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##### **43.1 Independent contractor**

At all times during the Term, and in the provision of the Consultancy Services, the Consultant is an independent contractor and will not act as, or be or be regarded as, an agent or employee of the Company, and the

Consultant and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Company by virtue of their status as an employee.

##### **43.2 Partnership and joint venture Consultants**

Where the Consultant comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to the Company under the Contract.

#### **44. Assignment**

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##### **44.1 Consent required**

The Consultant is not permitted to assign all or any part of the Contract without the prior written consent of the Company, such permission being at the Company's discretion and on whatever terms and conditions the Company may think appropriate, including requiring the proposed assignee to be bound by any or all of the provisions of the Contract.

##### **44.2 Obligations survive assignment**

The Consultant acknowledges that no permitted assignment in any way relieves the Consultant from the performance of any of its obligations under the Contract.

#### **45. Personal Data Protection**

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##### **45.1 Personal Data**

Each Party agrees to comply with its obligations under all applicable laws relating to privacy and protection of Personal Data in respect of Personal Data obtained by or disclosed to them pursuant to this Contract.

##### **45.2 Warranty**

Each Party warrants to the other Party that it has complied with, and will continue to comply with, all applicable laws in its processing of Personal Data (including its collection, use, disclosure, storage and handling) pursuant to this Contract.

##### **45.3 Data protection**

In addition to its obligations under Clauses 45.1 and 45.2, Consultant agrees to:

- (a) only collect, use, disclose or process Company's Personal Data for the performance of its obligations under the Contract, and as directed by the Company;
- (b) not disclose Company's Personal Data to any other person (including the data subject) without the Company's prior written request or consent, unless the disclosure is required by applicable laws;
- (c) immediately notify the Company that the disclosure of Company's Personal Data is or may be required by applicable laws;
- (d) put into place and maintain appropriate technical, physical and organisational measures to protect against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to Company's Personal Data;
- (e) take all necessary steps to ensure that its collection, use, disclosure and handling of Company's Personal Data will be fair and lawful and, for this purpose, the Consultant may reasonably enquire of the Company as to the manner in which the Company collected Company's Personal Data; and

- (f) if requested by the Company to do so, execute EU model contracts for the transfer of Personal Data:
- (i) with the Company; or
  - (ii) with any or all of the Consultant's related companies or subcontractors.

For clarification, such a request may be made if the Company considers it necessary or appropriate for the purposes of the Company's compliance with its global data privacy obligations. This Clause operates in addition to Clause 45.2.

#### **45.4 Individual complaints**

- (a) If an individual complains to the Company that the Consultant (or any of its Personnel) has, in the performance of the Contract, handled his or her Company's Personal Data inappropriately, the Company must promptly give the Consultant sufficient details about the complaint to enable the Consultant to take steps to address the subject of the complaint promptly. The Consultant must provide a written response to the Company about how it has addressed the complaint as soon as possible, and in any event, no later than seven (7) days after the complaint is notified to the Consultant. The response must identify the steps that the Consultant has taken to address the complaint and if relevant, to minimise any further misuse.
- (b) If an individual complains to the Consultant that the Consultant (or any of its Personnel) has, in the performance of the Contract, handled his or her Company's Personal Data inappropriately, the Consultant must:
  - (i) promptly inform the Company of the complaint;
  - (ii) provide the Company with the Company's Personal Data that is the subject of the complaint; and
  - (iii) provide a Notice to the Company about how the Consultant has addressed the complaint, and what steps the Consultant has taken to minimise further complaints.

#### **45.5 Consultant indemnity**

Without limiting Clause 27 the Consultant must indemnify the Company and its Personnel from and against any and all Liabilities arising from the Consultant's actual or alleged breach of this Clause 45.

#### **45.6 Survival of Clause**

- (a) The Consultant must, on termination of this Contract, return, destroy, store or dispose of the Company's Personal Data as directed by the Company.

- (b) This Clause will survive the termination or expiry of this Contract.

#### **46. Waiver**

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A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

#### **47. Further assurances**

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Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

#### **48. Severability**

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##### **48.1 Severability**

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

##### **48.2 Negotiation in good faith**

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

#### **49. Governing law**

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The Contract is governed by the laws of New South Wales. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction there in connection with matters concerning the Contract.

#### **50. Counterparts**

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This Contract may consist of a number of copies, each signed by one or more of the Parties. If so, the signed copies are to be treated as making up the one document, and the date on which the last counterpart is executed will be the date of this Contract.