

THIS CONSULTANCY AGREEMENT is made on the date referred to in Item 1 of the Schedule.

Who are the parties to this Agreement?

The parties are:

- (1) the Principal;
 - (2) the Consultant; and
 - (3) the Guarantor, if any
- referred to in Items 2, 3 and 4 of the Schedule.

What is the purpose of this Agreement?

The Principal wishes to engage the Consultant to carry out the Work described in the Schedule and this Agreement sets out the terms on which the Principal agrees to engage the Consultant and on which the Consultant has agreed to work for the Principal.

THE PRINCIPAL AND THE CONSULTANT AGREE AS FOLLOWS:

1. What do certain words mean in this Agreement?

In this Agreement, unless a contrary intention appears:

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

“**Agreed New Specifications**” means New Specifications provided by the Principal to the Consultant and not objected to by the Consultant or modified New Specifications the modified form of which has been agreed to by the Principal and Consultant.

“**Agreement**” means this Agreement and includes the Schedule and any Specifications annexed and any Agreed New Specifications which shall be deemed annexed to this Agreement.

“**Business Day**” means a day on which the Commonwealth Bank of Australia is open for business in the Place referred to in the Schedule.

“**Business Hours**” means from 9.00 am to 5.00 pm on a Business Day.

“**Confidential Information**” means:

- (a) all trade secrets, ideas, know-how, concepts, intellectual property rights, affairs, businesses, sales, marketing or promotional information, and information (written or oral) relating in any way to
 - (i) a Party, its Directors, sub-licensees, agents, employees or end users; or
 - (ii) the Work or any Work Product; and
- (b) without limiting the above, any information or knowledge which is by its nature confidential or is designated marked or stipulated as confidential or a party knows or ought to know is confidential and includes but is not limited to
 - (i) the terms of this Agreement including the fees payable under it,
 - (ii) any information knowledge or material relating to the Work or any Work Product;

- (iii) any information, knowledge or material which relates to the affairs of a third party which are disclosed to the Consultant or come to the Consultant's attention relating to or during the Work

but does not include information which:

- (c) is or becomes public knowledge other than by breach of this Agreement;
- (d) was in a party's possession lawfully without restriction in relation to disclosure before the date of receipt of the information from the other party or a third party; or
- (e) must be disclosed to perform the Work.

"Consultant Proprietary Rights" means Intellectual Property Rights that were created, developed or acquired by the Consultant except for Intellectual Property Rights that were or are created for the purpose of or relating to the provision or doing of the Work under this Agreement or any other agreement in respect of which the Principal and the Consultant are parties.

"Consultant's Employees" means employees or agents of the Consultant other than Specified Personnel appointed to perform the Work or part of it pursuant to Clause 4.

"Copyright" means any copyright under the Copyright Act 1968 (Commonwealth), any copyright under the law of a country other than Australia and rights in the nature of or analogous to those rights (including future copyright and rights in the nature of or analogous to copyright).

"End User" means any third party who uses any product arising from the Work.

"Force Majeure Event" means an act of God; an outbreak or escalation of hostilities affecting the Place or the Principal or the Consultant; or any other unlawful act against public order or authority, any industrial dispute, any governmental restraint or like event which is not within the reasonable control of the parties.

"GST" means any goods and services tax under the GST Act or a tax of a like or analogous nature that is imposed, assessed or levied in relation to any supply made of goods, services or any other thing under this Agreement, including the production investment or gross proceeds due for payment.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) and any associated legislation and regulations.

"GST Invoice" means a valid GST tax invoice in a form that complies with the requirements of the GST Act, for each taxable supply under this Agreement.

"Guarantor/s" means the person/s referred to in Item 4 of the Schedule.

"Insolvency Event" means, in relation to a party:

- (a) a receiver, receiver and manager, trustee, administrator, or other controller (as defined in the Corporations Act) or similar official is appointed over any of the assets or undertaking of that party;

- (b) the party is unable to pay its debts when they are due or is presumed to be insolvent within the meaning of the Corporations Act;
- (c) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (d) the party ceases to carry on business or threatens to cease to carry on business;
- (e) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
- (f) an application or order is made for the bankruptcy or winding up or dissolution of the party, or a resolution is passed or any steps are taken to pass a resolution for the bankruptcy or winding up or dissolution of the party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the other parties to this Agreement.

“Intellectual Property Rights” means any and all intellectual and industrial protection rights throughout the world including rights in respect of or in connection with patents, inventions, know-how, copyright, designs, trade marks, service marks, any Confidential Information, semi-conductor or circuit layout rights, trade, business or Principal names or other proprietary rights and any rights to registration of such rights whether created before the date of this Agreement in Australia or elsewhere.

“Moral Rights” means rights of integrity of authorship, rights of attribution of authorship and the right not to have authorship falsely attributed, and rights of an analogous nature as may be conferred by the Copyright Act 1968 (Commonwealth) and rights of a similar kind anywhere in the world whether existing at the date of this Agreement or which may come into existence after the date of this Agreement.

“New Specifications” means new amended or supplementary specifications provided by the Principal to the Consultant after the date of this Agreement.

“Place” has the meaning referred to in Item 11 of the Schedule.

“Specifications” means the specifications annexed to this Agreement if any. “New Specifications” means new, amended or supplementary specifications provided by the Principal to the Consultant after the date of this Agreement. “Agreed New Specifications” means New Specifications provided by the Principal to the Consultant and not objected to by the Consultant or modified New Specifications the form of which has been agreed to by the Principal and Consultant.

“Specified Personnel” means where the Consultant is a Company, the people referred to in Item 3(e) of the Schedule.

“Third Party Rights” means Intellectual Property Rights owned by or licensed to third parties.

“Work” is the Work described in Item 5 of the Schedule and includes all work carried out by the Consultant pursuant to this Agreement for the Principal and where the context permits “Work” includes part of the Work and Work product.

“Work Product” includes all material, knowledge and information provided to the Consultant to carry out the Work and all products including each and every draft or trial of any product in each and every stage, and ideas, concepts, parts, products, material knowledge and information produced by the Consultant during the course of carrying out the Work.

2. How should this Agreement be interpreted?

2.1 In this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) any explanatory notes or comments do not form part of this Agreement and are not legally binding;
- (c) a word or expression in the singular includes the plural, and the other way around;
- (d) words importing a gender include any gender;
- (e) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (f) a reference to a statute includes an amendment or re-enactment of that statute and any subordinate legislation in force under it;
- (g) a reference to a party to this or any other agreement includes that party’s successor and permitted assign;
- (h) a reference to a person or words denoting a person includes a Principal, statutory corporation, partnership, joint venture, association, board, government or semi-government agency or authority and that person’s successors and legal personal
- (i) if any provision or part of a provision of this Agreement is held invalid, unenforceable or illegal, this Agreement shall remain in force except for such provision or part of a provision (as the case may be) which shall be deemed deleted.

2.2 This Agreement constitutes the entire Agreement between the parties. It supersedes any prior arrangements or agreements and this Agreement may only be modified if it is done so in writing and signed by the parties.

2.3 Despite Clause 2.2 any variation of this Agreement shall be binding on the parties if it is signed by the Principal and the Consultant and not the Guarantor and the Guarantor expressly acknowledges and agrees that the Consultant and Principal may vary this Agreement without reference to the Guarantor and without affecting the validity of the guarantee provided by the Guarantor in Clause 23.

2.4 This Agreement may be executed in any number of counterparts.

3. What Work is to be performed by the Consultant?

- 3.1 The Consultant shall carry out the Work in a conscientious and proper manner and in accordance with any Specifications annexed to this Agreement (or Agreed New Specifications as the case may be).
- 3.2 The Consultant shall complete the Work or stages of the Work within the Specified Time Frames referred to in Item 5(b) of the Schedule.
- 3.3 The Principal may from time to time by notice in writing provide to the Consultant New Specifications. These New Specifications shall become the Agreed New Specifications unless the Consultant serves a notice on the Principal in accordance with Clause 3.4.
- 3.4 If the Consultant does not have the knowledge or resources to perform the Work referred to in the New Specifications then the Consultant shall, within 3 Business Days of receiving the New Specifications, notify the Principal of those parts of the Specifications with which it cannot comply and the reasons for its inability to comply.
- 3.5 If the Principal receives a notice pursuant to Clause 3.4 then the Principal shall as soon as practicable (and in any event within 5 Business days from receipt of the Consultant's notice pursuant to Clause 3.4) confer with the Consultant to ascertain whether a modified form of specifications with which the Consultant can comply and which is acceptable to the Principal is able to be negotiated and if a modified form of specifications is agreed between the parties then these shall as soon as practicable (and in any event within 5 Business Days) be signed by the Principal and Consultant and after signing the modified specifications shall become the Agreed New Specifications. The Principal in its absolute discretion may refuse any modification sought by the Consultant.
- 3.6 If the Principal and Consultant cannot reach agreement pursuant to Clause 3.5 the Principal or Consultant may terminate the Agreement pursuant to Clause 10.
- 3.7 The Principal makes no warranty relating to the amount of Work which will be required to be carried out by the Consultant.

4. Who will perform the Work if the Consultant is a Company?

- 4.1 If the Consultant is a Company the Consultant shall engage the Specified Personnel referred to in Item 3(e) of the Schedule to carry out the Work. Only Specified Personnel may carry out the Work on behalf of the Consultant unless separate written authority is first obtained by the Consultant from the Principal authorising other specified employees or agents of the Consultant to perform specific part/s of the Work.

5. When is the Consultant to provide progress reports?

- 5.1 The Consultant agrees to provide to the Principal progress reports in respect of the Work containing such information as may be agreed between the Principal and Consultant.
- 5.2 The progress reports referred to in Clause 5.1 shall be provided by the Consultant to the Principal on the dates or at the intervals or at the stages referred to in Item 6 of the Schedule.

6. Consultant to insure any equipment and/or technology and maintain it in good working condition

- 6.1 If the Consultant is required to provide or use equipment and/or technology, such equipment and/or technology shall be suitable for the Work and shall be insured at the Consultant's cost and maintained by the Consultant in good working condition.

7. What Warranties does the Consultant make?

The Consultant warrants that:

- 7.1 the Consultant and its Specified Personnel and the Consultant's Employees, if any, are competent and have the necessary skills to carry out the Work; and
- 7.2 neither the Consultant nor its Specified Personnel nor the Consultant's Employees, if any, will be in breach of any obligation to any third party in carrying out the Work or the terms of this Agreement and without limiting the foregoing, the product of the Work will not infringe any Intellectual Property Rights or constitute a breach of any agreement with any other person;
- 7.3 at the date of this Agreement, no conflict of interest exists or is likely to arise relating to the performance of the Work;
- 7.4 all representations made and information provided to the Principal (which in any way relate to the subject matter of this Agreement or the selection by the Principal of the Consultant to carry out the Work) were true and correct at the time the representations were made/information was provided and the representations and information remain at the date of this Agreement true and correct;
- 7.5 the product of the Work will perform in accordance with the Specifications (if any) or Agreed New Specifications (if any) as the case may be; and
- 7.6 the product of the Work will be fit for the purpose identified by the Principal.

8. If the Principal is a Company, who is its representative?

- 8.1 If the Principal is a Company, the Principal's Representative referred to in Item 2(e) of the Schedule will act as the Principal's representative in connection with this Agreement.

9. How long is this Agreement for?

9.1 This Agreement commences on the date of this Agreement and shall continue in force until determined by notice given in accordance with Item 7 of the Schedule by:

9.1.1 the Principal to the Consultant; or

9.1.2 the Consultant to the Principal.

9.2 All provisions of this Agreement that are intended expressly or by implication to apply after termination continue to apply after termination of the Agreement.

10. How else can this Agreement be terminated?

10.1 Despite anything else in this Agreement, the Principal may without prior notice terminate this Agreement if:

- (a) an Insolvency Event occurs in respect of any party to the Agreement;
- (b) a Force Majeure Event occurs that in the Principal's opinion affects the ability of the Principal to provide the Work or the ability of the Consultant to perform the Work;
- (c) a warranty made by the Consultant in this Agreement is at any time proven to have been false, incorrect or misleading;
- (d) at any time the Consultant or its Specified Personnel or the Consultant's Employees are guilty of any dishonesty, serious misconduct or serious neglect of duty;
- (e) the Consultant or its Specified Personnel or Consultant's Employees refuse to comply with any reasonable instructions or directions given by the Principal;
- (f) the Consultant fails to complete the Work or a stage of the Work within the Specified Time Frame referred to in Item 5(b) of the Schedule;
- (g) the Principal and Consultant cannot agree on a modified form of New Specifications in accordance with Clause 3.6;
- (h) the Principal receives a conflict of interest notice pursuant to Clause 25.1 and in the Principal's view the conflict cannot be appropriately managed; or
- (i) the Consultant or its Specified Personnel or the Consultant's Employees are in breach of this Agreement.

10.2 Despite Clause 9, the Consultant may without prior notice terminate this Agreement if:

- (a) an Insolvency Event occurs in respect of the Principal; or
- (b) a Force Majeure Event occurs that affects the ability of the Consultant to perform the Work; or
- (c) the Principal and Consultant cannot agree on a modified form of New Specifications in accordance with Clause 3.6.

10.3 Upon termination of this Agreement the Consultant will return to the Principal all documentation and any other materials relating to or used or referred to or produced during the carrying out of the Work.

11. This Agreement cannot be assigned without consent

This Agreement is personal and:

11.1 the Principal shall not assign its rights and obligations under it without the consent of the Consultant which shall not unreasonably be withheld;

11.2 the Consultant shall not assign its rights and obligations under it without the consent of the Principal;

11.3 the Guarantor cannot assign its rights and obligations under it without the consent of the Principal which may be withheld by the Principal in its absolute discretion.

12. How and when are Consultancy Fees to be paid?

12.1 Subject to Clause 12.2, in consideration of the Consultant performing the Work, the Principal will pay to the Consultant consultancy fees in accordance with Item 8 of the Schedule.

12.2 Payment of the consultancy fees referred to in the Item 8 of the Schedule are subject to:

(a) of the Work in accordance with the Specified Time Frames referred to in the Schedule; and

(b) satisfactory progress in the performance the provision of a GST Invoice before the due date for the payment of the consultancy fees or the relevant instalment of the fee.

13. Who pays for expenses?

13.1 Subject to Clause 13.2 the Consultant will perform the Work at its own cost, and will not be entitled to be reimbursed for any out of pocket expenses incurred by the Consultant or Specified Personnel or Consultant's Employees in connection with the performance of the Work and will be solely responsible for and solely bear payment to the Specified Personnel and Consultant's Employees of remuneration and benefits including salaries, wages, superannuation, sick leave, annual leave and any other benefits to which they may be entitled together with payment of all taxes and duties in respect of the aforesaid remuneration and benefits and compliance with, and the cost of compliance, of any applicable statutory award or other legal or contractual requirements.

13.2 Despite Clause 13.1 the Principal hereby agrees to reimburse the Consultant within one month of receipt by the Principal of evidence sufficient to satisfy tax requirements that the expense has been incurred of:

(a) the Pre-Approved expenses, if any referred to in the Schedule; and/or

(b) where the Consultant has obtained the Principal's prior written approval to incur specified expenses, those specified expenses.

14. What insurances must the Consultant take out?

- 14.1 Before performing the Work, the Consultant shall at its cost take out all insurance required to be effected by it by law and by this Agreement.
- 14.2 The insurances effected pursuant to this Clause 14 shall be maintained during the term of this Agreement. If so requested by the Principal the Consultant shall provide certificates of currency and copies of policies to the Principal in respect of insurances.
- 14.3 Without limiting the generality of Clause 14.1, the Consultant shall take out:
- (a) public liability insurance for an amount not less than that specified in Item 10 of the Schedule to cover liability to third parties for loss or damage to property and death or injury to any person; and
 - (b) workers' compensation insurance in respect of the Specified Personnel and the Consultant's Employees (if any); and
 - (c) professional indemnity insurance.

15. Consultant to indemnify Principal against liability for loss, damage, injury, death

- 15.1 The Consultant shall be responsible for and shall indemnify the Principal and its officers, employees and agents (in this Clause 15.1 called "those indemnified") from and against any loss or liability including consequential loss and including reasonable legal costs and expenses incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability was caused or contributed to by the Consultant or the Specified Personnel or the Consultant's Employees or arose out of, in connection with, or in respect of:
- (a) any breach of this Agreement;
 - (b) without limiting Clause 15.1(a) any breach of the warranties made by the Consultant;
 - (c) without limiting Clause 15.1(a) any disclosure of confidential information by the Consultant or its Specified Personnel or the Consultant's Employees;
 - (d) without limiting Clause 15.1(a) any infringement or alleged infringement of the rights, including the Intellectual Property Rights, of any person occurring by the development, manufacture, promotion or sale or use of any product, the development, manufacture, promotion, sale or use of which relied on or incorporated the Work performed by the Consultant.
- 15.2 The Consultant shall pay to the Principal all sums required to be paid under the indemnity provided under clause 15.1 within 5 Business Days of receipt by the Consultant of written demand from the Principal requiring payment of those sums.

16. Principal under no liability to Consultant in respect of loss or damage claimed by End User etc.

- 16.1 The Consultant acknowledges and accepts that, to the extent permitted by law, the Principal will be under no liability to the Consultant whatsoever, whether in contract or tort (including, without limitation, negligence); breach of statute; or any other legal or equitable obligation in respect of any loss or damage referred to in Clause 16.2

16.2 The loss or damage referred to in Clause 16.1 is loss or damage (including loss of profit or savings), howsoever caused, which may be:

- (a) suffered or incurred or which may arise directly or indirectly in respect of any infringement by any End User or other person, of the Intellectual Property Rights of the Consultant or any other right of the Consultant in or in relation to the Work; or
- (b) which may be caused directly or indirectly by any act or omission of any End User or any other person who may access the Work and whether or not the Principal has knowledge or notice of, authorised or otherwise permitted such infringement or other act or omission.

17. Consultant must comply with law

17 During this Agreement the Consultant shall at its own cost ensure that the Consultant (and where applicable its Specified Personnel and the Consultant's Employees) comply with all legislation (both Commonwealth and State) and all Regulations, By-laws, Ordinances or Orders made thereunder and the lawful requirements of any Public, Municipal or other authority or licensing or regulating body so far as the same are required by law to be complied with by the Consultant.

18. Principal may require Consultant to cease using a particular person to do the Work

18.1 At any time the Principal may by notice in writing require the Consultant to cease to permit one or more of the Specified Personnel and/or Consultant's Employees to be engaged in carrying out the Work which the Consultant is performing for the Principal pursuant to this Agreement.

18.2 If a notice is given to the Consultant pursuant to Clause 18.1, the Consultant shall as soon as possible and in any event within 5 Business Days of receipt of the notice, cease to provide the services of such person in respect of the Work and shall provide within 5 Business days of receipt of the notice or such other period as the Principal may agree, the services of an alternative person acceptable to the Principal.

19. Nothing in this Agreement creates the relationship of partnership or employer and employee

Nothing in this Agreement constitutes the relationship of partnership or employer and employee between the Consultant and the Principal and it is the express intention of the parties that any such relationships are denied.

20. Confidentiality

20.1 The Consultant and the Principal each acknowledge that they and their employees or agents (including Specified Personnel and the Consultant's Employees and the Guarantor if applicable) may be given access to Confidential Information in the course of negotiating or performing this Agreement.

20.2 Each party and its employees and agents (including Specified Personnel, the Consultant's Employees and the Guarantor if any) will keep Confidential Information confidential and will not disclose it to any third party or use it or duplicate or sell it.

20.3 If required by the Principal, the Consultant shall procure execution by its Specified Personnel, the Consultant's Employees and the Guarantor, if any, of such confidentiality agreement as may be required by the Principal.

20.4 Despite anything else in this Agreement, the parties agree that disclosure of Confidential Information:

- (a) for the purposes of this Agreement;
- (b) as authorised in writing by the other party;
- (c) as required by any law, judicial body or governmental agency; or
- (d) by way of disclosure to a party's professional advisors who have agreed to keep the Confidential Information confidential; or
- (e) for the purposes of dispute resolution or litigation or enforcing rights under this Agreement shall be permitted and shall not be a breach of Clause 20.2

20.5 If the Work being carried out by the Consultant is the creation or improvement of software or anything related to it, subject to the law, the Consultant agrees that it will not and that it will procure that its Specified Personnel and the Consultant's Employees and the Guarantor, if any, will not use Confidential Information for creating or aiding the creation of competitive software nor will it disclose the same to anyone for the purpose of aiding in the design or creation of competitive software.

20.6 The Consultant agrees that for a period of 6 months from the termination of this Agreement, neither the Consultant nor its Specified Personnel or the Consultant's Employees or the Guarantor, if any, shall directly or indirectly contact the Principal's clients or clients of companies associated with the Principal.

20.7 On determination or termination of this Agreement, each party will return to each other party all documents or copies containing information which at the date of determination or termination is the Confidential Information of that party.

20.8 If this Agreement is determined or terminated for any reason then the provisions of this Clause 20 continue to apply despite the determination or termination of the Agreement.

21. Who owns intellectual property?

The Consultant hereby:

- (a) assigns all existing and future Intellectual Property Rights in the Work other than Third Party Rights and Consultant Proprietary Rights to the Principal;
- (b) grants to the Principal a perpetual non-exclusive royalty free licence of Consultant Proprietary Rights and Third Party Rights,
- (c) acknowledges that by virtue of this Clause 21 ownership of all Intellectual Proprietary Rights, other than Third Party Rights and Consultant Proprietary Rights, vest in the Principal and, on their creation, all such future rights will vest in the Principal; and

- (d) will do all things lawfully requested by the Principal to enable the Principal to assure further the Intellectual Property Rights, assigned under this Clause and without limiting the aforesaid the Consultant will if requested by the Principal procure the execution of any form of assignment or acknowledgment from Specified Personnel or the Consultant's Employees.

22. **Third Party Rights**

The Consultant will use its best endeavours to procure an assignment to the Principal of all Third Party Rights embodied in the Work and will notify the Principal if any such assignment cannot be obtained. In relation to any Third Party Rights that are not assigned to the Principal, the Consultant will ensure that the use, reproduction and commercial exploitation of the Work will not infringe any such rights and that no fees, royalties or other payments are payable in respect of such Third Party Rights as a result of any such use, reproduction and commercial exploitation unless agreed by the parties in writing to the contrary.

23. **Guarantee if Consultant a Company**

- 23.1 This Clause 23 shall apply if the Consultant is a company.
- 23.2 In consideration of the promises made by the parties under this Agreement, the Guarantor named in Item 4 of the Schedule (and if more than one the Guarantors jointly and severally) unconditionally and irrevocably guarantee the Consultant's performance of its obligations under this Agreement and indemnify the Principal against all loss, liability and expense which the Principal may suffer or incur in consequence of any breach or default by the Consultant of this Agreement or in performance of any of the Consultant's obligations under this Agreement. The Guarantor declares that the Principal is entitled to enforce its rights against the Guarantor immediately on any breach or default by the Consultant. The Principal will not be required to enforce or exhaust all or any of its rights against the Consultant before enforcing any of its rights against the Guarantor.
- 23.3 The Guarantor agrees that the guarantee referred to in this Clause 23 shall remain of full force and effect regardless of any variations and regardless of whether or not the Guarantor has been informed of such variations and without limiting the foregoing, despite Clause 2.2, the Guarantor agrees to be bound by any Agreed New Specifications and/or any variation of this Agreement signed by the Consultant and the Principal whether or not the Guarantor has been informed of or signs Agreed New Specifications or variation of Agreement.
- 23.4 (a) The Guarantor shall be the person who has signed this Agreement on behalf of or as an officer of the Consultant and the signing of this Agreement by the aforesaid person on behalf of or as an officer of the Consultant shall be deemed in addition to be the signing by the said person in his or her personal capacity as Guarantor;
- (b) For clarity, the parties agree that even if the said person has signed this Agreement only once (on behalf of or as an officer of the Consultant) that person will be deemed to have signed the Agreement once on behalf of or as an officer of the Consultant and secondly as having signed in his or her personal capacity as Guarantor.

24. When is a right under this Agreement waived?

- 24 (a) No right under this Agreement shall be deemed to be waived by a party except if such waiver is in writing signed by the party alleged to have waived the right.
- (b) A waiver by a party pursuant to sub-clause (a) will not prejudice its rights in respect of any subsequent breach of this Agreement by the other party.
- (c) Subject to sub-clause (b) any failure by a party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by a party to the other shall not be construed as a waiver of the first-mentioned party's rights under this Agreement.

25. What happens if a conflict of interest arises during the course of the Agreement?

- 25.1 If the Consultant becomes aware of the existence or possibility of a conflict of interest the Consultant shall immediately notify the Principal in writing of the conflict or potential conflict.
- 25.2 On receipt of a notice under Clause 25.1 the Principal may:
- (a) approve the Consultant continuing to perform the Work, which approval may be subject to reasonable conditions to ensure appropriate management of the conflict; or
 - (b) where in the Principal's view the conflict of interest cannot be appropriately managed, the Principal may terminate this Agreement pursuant to Clause 10.1(h)

26. Goods and services tax

- 26.1 Unless stated otherwise and subject to this clause, any amount required to be paid or consideration required to be provided under any other provision of this Agreement, is calculated to be exclusive of GST.
- 26.2 If GST is payable in relation to a supply made by the Consultant to the Principal under this Agreement then, subject to Clause 26.1, the Principal will pay to the Consultant an additional amount equal to the GST payable on that supply.
- 26.3 The Consultant may not recover the additional amount under Clause 26.2 unless and until a GST Invoice for the supply to which that additional amount relates is issued and delivered to the Principal.
- 26.4 If any amount to be paid by the Principal to the Consultant is calculated by reference to an amount, cost or expense incurred by the Consultant, the amount which the Principal is required to pay the Consultant will be reduced by the amount of any input tax credit to which the Consultant is entitled in respect of that amount, cost or expense.
- 26.5 The Consultant indemnifies the Principal in respect of any tax deductions or liability that the Australian Commissioner of Taxation may seek to recover from the Principal in respect of all and any Consultancy Fees which the Principal pays to the Consultant under this Agreement.

27. Dispute Resolution

- 27.1 The parties shall attempt to settle a dispute in relation to this Agreement using the dispute resolution process provided for in this Agreement before resorting to court proceedings, provided however, nothing in this Clause 27 will preclude a party from seeking urgent interlocutory relief.
- 27.2 The Consultant agrees to continue performing the Work during the dispute resolution process.
- 27.3 On receipt of a notice of dispute, the parties must endeavour in good faith to resolve the dispute expeditiously using the informal dispute resolution process provided for in this Agreement.
- 27.4 If a dispute is not settled by negotiation between the parties within fourteen (14) days of one party first sending to the other party/ies written notice that they are in dispute, the dispute shall be referred to mediation conducted by ACDC in accordance with the mediation guidelines administered by ACDC from time to time.
- 27.5 The parties shall do all things reasonably required to refer the dispute to mediation by ACDC.
- 27.6 If the dispute has not been settled within twenty eight (28) days (or such other period as agreed to in writing between the parties) after the appointment of a mediator, or if no mediator is appointed within twenty eight (28) days of the referral of the dispute to mediation, the parties are free to pursue any other procedures available at law for the resolution of the dispute.

28. What law governs this Agreement?

- 28 This Agreement will be governed by and construed according to the law of the Place referred to in Item 11 of the Schedule and the parties agree to submit to the jurisdiction of the courts and tribunals of that Place.

29. How are Notices to be given?

- 29.1 Notices under this Agreement may be:
- (a) delivered by hand to the address of the party referred to in the Schedule in which case it is deemed received by the receiving party on the date of delivery; or
 - (b) posted by registered mail to the address of the party referred to in the Schedule in which case it is deemed to be received by the receiving party two Business Days after posting; or
 - (c) faxed to the facsimile number referred to in the Schedule in which case it is deemed to be received when the completed transmission report is received, unless:
 - (i) the sending party's machine indicates a malfunction in transmission or, the receiving party within a reasonable time (and in any event no later than one Business Day), informs the sending party of an incomplete transmission; or
 - (ii) the transmission is completed outside business hours at the receiver's address in which case the notice is regarded as received at the commencement of business on the following Business Day.

EXECUTED as an Agreement by the parties

Signed for and on behalf of the Principal

By Hansel Construction Pty Ltd, ACN 550 223 455 (name)
..... (signature)
.....

who warrants by his or her signing that he or she has authority to sign this Agreement in the presence of:

..... (signature of witness)

..... print name of witness

Signed for and on behalf of the Consultant

By Browning, Alan Joseph (name)
..... (signature)
.....

who warrants by his or her signing that he or she has authority to sign this Agreement in the presence of:

..... (signature of witness)

..... print name of witness

Signed by the Guarantor/s

..... (name)
..... (signature)
..... (name)
..... (signature)

in the presence of:

..... (signature of witness)

..... print name of witness

Sample Only
Subject to Copyright

SCHEDULE

Item no.

- 1 **The date of this Agreement:** 1/04/2006
- 2(a) **The Principal:** Hansel Construction Pty Ltd, ACN 550 223 455
- 2(b) **The Principal's address:** Unit 7A
86-88 Jackson Street
Goulburn, NSW, 2580
AUSTRALIA
- 2(c) **The Principal's fax no.:** 02 5567 2111
- 2(d) **The Principal's email address:** info@hanselconstruction.com.au
- 2(e) **The Principal's Representative:**
(Applicable if the Principal is a Company. This should be the person who is authorised to instruct the Consultant with respect to the Work)
Hansel, Gregory Keith
- 3(a) **The Consultant:** Browning, Alan Joseph
- 3(b) **The Consultant's address:** 4 Carrington Parade
Bowral, NSW, 2576
AUSTRALIA
- 3(c) **The Consultant's fax no.:** 02 5521 4444
- 3(d) **The Consultant's email address:** abrowning@interque.com.au
- 3(e) **The Specified Personnel:** (Applicable if the Consultant is a Company):

If the Consultant is a company, the Specified Personnel shall be those persons performing the Work or any part of the Work on behalf of the Consultant from time to time and the Consultant shall supply the names and addresses of those Specified Personnel to the Principal.

- 4 **The Guarantor/s:** (Clauses 1 and 23) (Applicable if the Consultant is a Company):

If the Consultant is a company then the Guarantor/s shall be the person/s who have signed this Agreement on behalf of or as an officer of the Consultant and the signing of the Agreement by them on behalf of or as an officer of the Consultant shall be deemed in addition to be the signing by them in their personal capacity as Guarantor/s.

- 5 **The Work:** (Clauses 1 and 3)

(a) (i)

(Describe the Work and/or annex Specifications detailing the Work)

(ii) If (i) above has been left blank, the Work is all work carried out from time to time by the Consultant for the Principal at the Principal's request.

(iii) If there are any Specifications annexed to this Agreement or if after the date of this Agreement there are any Agreed New Specifications then the Work shall be carried out in accordance with those Specifications or Agreed New Specifications as the case may be.

5(b) Specified Time Frames: (Clause 3.2)

(i)

(Insert specified time frames or completion dates for particular stages of Work OR if time frames are contained in Specifications insert "see Specifications").

(ii) If (i) is left blank, the Work or stages of it shall be completed within such time frames as the Principal may request from time to time or if no such time frame is requested then within a reasonable time.

6 Progress reports: (Clause 5)

(i) The first Progress Report shall be provided by ----- (Insert date)
and thereafter Progress Reports shall be provided

(Insert eg. monthly; quarterly OR nominate specific stages of the Work at which progress reports are required;)

(ii) If (i) is left blank, the Consultant shall provide Progress Reports to the Principal as and when reasonably requested by the Principal.

7 How long is this Agreement for? Notice to be given pursuant to Clause 9:

This Agreement may be terminated by the Consultant or Principal giving to the other party not less than

- (i) ----- months notice in writing; or
(ii) if (i) is left blank, One (1) month's notice in writing.

8. Consultancy fees payable pursuant to Clause 12:

(i) -----
(Specify either a fixed fee or how fees are to be calculated and when fees are to be payable or insert a payment schedule. Note whether or not amounts are inclusive or exclusive of GST).

(ii) If (i) has been left blank, the Consultant's remuneration shall be such amount as agreed by the parties from time to time which shall be invoiced by the Consultant to the Principal on a monthly basis and supported by details of times and work carried out.

(iii) If fees are not specified as inclusive or exclusive of GST, any amount referred to shall be deemed exclusive of any GST.

9. Reimbursement of expenses: (Clause 13)

Pre-approved expenses to be reimbursed in accordance with Clause 13.2:

(i) -----
(If expenses are to be paid insert the nature and amount of any pre-approved expenses and include limits).

(ii) If (i) above has been left blank, there are NIL pre-approved expenses.

10. Minimum public liability cover: (Clause 14.3(a))

(i) ----- (insert minimum amount)

(ii) If (i) is left blank \$20,000,000.

11. The Place: (Clause 28)

The Place is the State in which the Principal's address referred to in this Schedule is located.

Sample Only. Subject to Copyright