

Consultancy Agreement

AGREED TERMS

1 DEFINED TERMS & INTERPRETATION

1.1 Defined terms

In this Agreement:

Act of Bankruptcy means any of the events described in section 40 of the *Bankruptcy Act 1966* (Cth).

Agreement means this document including all schedules as amended by the parties in writing from time to time.

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

Claim includes any claim, action, judgment, arbitration, adjudication, determination, proceeding, suit, cause of action, defence, set-off or demand, (including for time, cost, moneys, damages, loss or expenses, at law, under contract for tort, misrepresentation, restitution, unjust enrichment and/or quantum merit.

Confidential Information means:

- a) the following information, regardless of its form and whether the Consultant becomes aware of it before or after the date of this Agreement:
 - i. all information and know-how relating to the Project or Head Contract; and
 - ii. all information and materials disclosed or provided by the Principal, Owner or Head Contractor, or for or on behalf of the Principal or Owner or Head Contractor, to the Consultant in connection with this Agreement or the performance of the Services, whether before or after the date of this Agreement;
- b) all notes and other records prepared by the Consultant based on or incorporating information referred to in paragraph (a);
- c) all notes, documents, Designs, Design Documents, plans, know-how and intellectual; property created by the Consultant pursuant to this Agreement or in respect of the Services; and
- d) all copies of the information, notes and other records referred to in paragraphs (a), (b) or (c),

except information:

- a) the Consultant creates (whether alone or jointly with any third person) independently of the Principal which is not related in any way to this Project; or
- b) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Consultant or any of its permitted disclosees).

Consultant's Representative means the person named in the Details as the Consultant's Representative or any replacement Consultant's Representative from time to time as agreed in advance with Principal.

Contractor means any contractor engaged by the Principal in respect of the Project and includes a consultant.

Design includes design, system, method, technique, opinions, recommendations, advice, workshops and plans evidenced by the Design Documents or otherwise and includes any materials and methods of using, fixing or working required or contemplated by the Design Documents.

Design Documents includes reports, written opinions/recommendations, plans, drawings, specifications, calculations and other documents required for the proper performance of the Services.

Fee means the amount set out in the Details or the amount calculated by application of the rates set out in Schedule 2 excluding GST.

Head Contract means any contract or contracts between the Principal and another party or parties for the performance of work and/or services performed in whole or in part by the Consultant for and on behalf of the Principal.

Head Contractor means an entity with whom the Principal has contracted with pursuant to the Head Contract and any one to whom the Principal has obligations, including warranties and indemnities, pursuant to the Head Contract.

Insolvent has the meaning given to that term in section 95A (2) of the *Corporations Act 2001* (Cth).

Intellectual Property Rights means any and all intellectual property rights, existing worldwide and the subject matter of such rights, including the following:

- a) patents, copyright, rights in circuit layouts (or similar rights), registered designs, registered and unregistered trademarks, and any right to have confidential information kept confidential.; and
- b) any application or right to apply for registration of any of the rights referred to in paragraph (a),

whether or not such rights are registered or capable of being registered and whether existing under a Legislative Requirement, at common law or in equity.

Key Personnel means the key personnel listed in the Information table or any replacement of the key personnel from time to time as agreed in advance with the Principal.

Legislative Requirements includes:

- a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Services;
- b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction applicable to the Services;
- c) Australian Standards and the Building Code of Australia and any other relevant standards;
- d) the Codes of Practice of the Commonwealth, State or Territory applicable to the Services and other appropriate codes for the construction industry; and
- e) fees and charges payable in connection with the foregoing.

Owner means the owners, occupiers and/or operators of the site to which the Head Contract relates and their agents, the entity with whom the Principal has contracted with pursuant to the Head Contract and any one to whom the Principal has obligations, including warranties and indemnities, pursuant to the Head Contract.

Personnel means:

- a) employees, agents or sub consultants of the Consultant; and
- b) employees or agents of those sub consultants,

engaged to perform any part of the Services in accordance with this Agreement.

Principal Contractor means any Contractor nominated as Principal Contractor, within the meaning of the *Work Health and Safety Act 2011*.

Principal's Project Requirements means the requirements for that part of any Project constituting the Services as identified in any Head Contract and/or this Agreement or any instructions, documents, Design, Design Documents or Design Intent reasonably indicating the Principal's requirements for any part of the Services.

Principal's Representative means the person named in the Details as the Principal's Representative.

Project means any project in relation to which the Principal is contracted to provide works or services or any Head Contract to which the Service relate.

Services means all of the services and/or works described in Schedule 1, all the services and/or works performed by the Consultant for or on behalf of the Principal and the associated obligations established by this Agreement.

Site means the location of any Project.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- a) headings are inserted for convenience and do not affect the interpretation of this Agreement;
- b) the singular includes the plural and vice versa, and a gender includes other genders;
- c) another grammatical form of a defined word or expression has a corresponding meaning;
- d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- f) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- g) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and

2 ENGAGEMENT

2.1 Fundamental obligations

- a) The Consultant must provide the Services to the Principal on the terms set out in this Agreement.
- b) The Principal must pay for the Services in accordance with this Agreement.

2.2 Independent contractor

The Consultant is engaged as an independent contractor. Nothing in this Agreement constitutes the Consultant as an employee, agent, partner or joint venturer of the Principal.

2.3 No authority

Subject to the provisions of this Agreement, the Consultant acknowledges and agrees that it:

- a) has no authority to enter into any agreement on behalf of the Principal, or otherwise incur any obligation, liability, cost, loss or expense on behalf of the Principal except with the express written instruction of the Principal; and
- b) must not engage in any negotiations or discussions with any statutory authority on behalf of the Principal except as authorised in writing by the Principal.

2.4 Consultant's responsibility

No review or comment by the Principal or by the Principal's Representative to the Consultant will:

- a) relieve the Consultant of any responsibility;
- b) impose any responsibility on the Principal; or
- c) evidence the due performance of the Services.

3 CONSULTANTS OBLIGATIONS

3.1 General warranty

- a) The Consultant represents, warrants and undertakes to the Principal that:
 - i. it has and will appropriately apply the requisite on-site and off-site resources required to perform the Services and other obligations in accordance with this Agreement;
 - ii. the Services are performed, and all materials and data (including Design, Design Documents) required or requested by the Principal pursuant to this Agreement are prepared, diligently, competently and professionally, with the diligence, care and skill expected of a competent, skilled and appropriately qualified consultant experienced in providing services similar to the Services for projects of similar complexity to any Project to which the Services relate or any other services required by this Agreement;
 - iii. the Services are performed, and all materials and data (including Design & Design Documents) required or requested by the Principal pursuant to this Agreement or

required for the performance of the Services will comply with the requirements of this Agreement, the Principal's Project Requirements, the Head Contract and be fit for purpose for any intended or reasonably inferred use.

- iv. the Fee allows for all costs and expenses incurred by the Consultant in fulfilling and complying with all the terms, conditions and obligations set out in this Agreement and in performing the Services;
 - v. the scope of the Services includes all ancillary and related work or services which the Consultant should reasonably have anticipated might be appropriate to ensure that the Services effectively meet the requirements of the Principal and the Head Contract, even if not specifically described;
 - vi. all Designs, Design Documents, reports and other work produced as part of the Services and other obligations will comply with all Legislative Requirements and will in each case be suitable, fit and appropriate for their respective functions and purposes;
 - vii. it has carefully conferred with the Principal to ensure that it has ascertained and fully understands the Principal's requirements and objectives and the requirements of the Head Contract; and
 - viii. it will not cause the Principal to be in breach of any Head Contract, any contract relating to a Project or obligation to an Owner or Head Contractor.
- b) The Contractor acknowledges and agrees that the Principal has entered into this Agreement with the Consultant fully relying upon the warranties given by the Consultant in this Agreement.
 - c) The warranties in clause 3.1 remain unaffected notwithstanding:
 - i. that design work (including the preliminary design) has been carried out by or on behalf of the Principal and included in the Principal's project requirements;
 - ii. any receipt or review of, or comment or direction on, the design documents by the Principal's Representative;
 - iii. any variation; or
 - iv. that the Contractor engages any Subcontractor in connection with any of the Work under the Contract.

3.2 Performance

Without limiting the generality of clause 3.1 a), in performing the Services, the Consultant must:

- a) proceed with the Services with all due expedition, without delay and, if applicable, in accordance with the Consultant's Program;
 - b) complete the Services when and as required by the Principal;
 - c) do all things reasonably necessary and incidental for the proper performance of the Consultant's obligations under this Agreement;
 - d) do all things reasonably necessary and incidental for, and not do anything to adversely effect, the proper performance of the Principal's obligations under any Head Contract, nor cause the Principal to be in breach of any obligations pursuant to any head Contract relating to the Services;
 - e) provide, and ensure the Personnel provide, the Services in compliance with all Legislative Requirements;
 - f) remain fully responsible for all Services provided by the Consultant irrespective of any review or acceptance of those Services by the Principal or the Principal's Representative and any Owner and/or any Head Contractor;
 - g) The consultant or related entity shall not canvas or solicit employment of personnel employed by Ecosure during the execution of this agreement and for a duration of 18 months after completion of the specified works in this agreement, **except as otherwise provided by law.**
- and
- h) comply with all the reasonable industrial, safety and security requirements of:
 - i. the Principal;

- ii. any Owner and/or Head Contractor;
- iii. any Contractor in possession of the site; and
- iv. the person conducting a business or undertaking (PCBU) within the meaning of the *Work Health and Safety Act 2011*.

3.3 Defects or omissions in the Services

- a) The Consultant must promptly notify the Principal of any error or omissions in the Services.
- b) If the Principal considers (as a result of notification by the Consultant or at its own volition) that there are any defects or omissions in the whole or any part of the Services or that the Services are unsatisfactory or do not comply with the requirements of this Agreement, the Principal may, at its absolute discretion:
 - i. assess the reduction in value of the Services as performed and deduct that amount from the Fee;
 - ii. require the Consultant to rectify the Services not performed in accordance with this Agreement at the Consultant's cost and within any time that may be specified by the Principal; or
 - iii. rectify or engage another party to rectify the Services not performed in accordance with this Agreement and recover the cost to the Principal as a debt due from the Consultant.

4 OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY

4.1 Principal's Materials

- a) All materials, documents and information made available by the Principal to the Consultant remain the property of the Principal.
- b) The Consultant must not use the Principal's trademarks or other identifications without the Principal's prior written consent.
- c) The Consultant must keep safe and secure all materials and documentation provided by the Principal to the Consultant.
- d) Upon request by the Principal from time to time or on the earlier of:
 - i. the completion of the Services;
 - ii. termination of this Agreement under clause 10;
 - iii. deliver to the Principal without delay all material (including electronic data) in the Consultant's possession or control relating to the Services or the Project.

4.2 Intellectual Property rights

The Consultant:

- a) assigns to the Principal all existing and future Intellectual Property Rights in the Design, Design Documents and other products of the Services;
- b) agrees and represents to the Principal that the Design, Design Documents and other products of the Services, and their use, do not infringe and will not infringe the Intellectual Property Rights of any person; and
- c) indemnifies the Principal, its officers, agents, employees, contractors and consultants against all liability, cost, loss, damage or expense (including legal cost on a solicitor and own Principal basis and whether incurred by or awarded against the principal) suffered or incurred that arises out of a breach of clause 5.

5 PRINCIPAL'S OBLIGATIONS

5.1 Performance

In contracting with the Consultant, the Principal agrees to communicate with the Consultant by and through the Principal's Representative.

6 TERM AND TIME

6.1 Delay

- a) The Consultant shall proceed with the Services with due expedition and without delay.

- b) If the Consultant becomes aware of anything which is likely to cause, or has caused, delay to the Consultant in providing the Services or which may affect any agreed time for performance of the Services then the Consultant must promptly give written notice to the Principal. The notice must contain all the relevant details of the matters causing the delay, the anticipated duration of the delay and the Consultant's recommendation as to how to minimise its impact.
- c) The Principal may direct the Consultant in what order and at what time the Services shall be performed. If the Consultant can reasonably comply with the direction, the Consultant shall do so. If the Consultant cannot reasonably comply with the direction the Consultant shall so notify the Principal in writing, giving reasons.

7 INDEMNITY AND INSURANCE

7.1 Limitation of Principal's Liability

The Principal will not be liable to pay the Consultant for:

- a) any variations to the Services made by the Consultant without the prior written approval of the Principal;
- b) Services not performed in accordance with this Agreement;
- c) the accuracy of information or documents provided to, or for the use of, the Consultant (except to the extent expressly otherwise agreed by the Principal in this Agreement or in a later written instruction); and
- d) any delay costs or loss of interest, earnings, profit or opportunity, or any other special, indirect or consequential damages.

7.2 Consultant's liability

- a) To the extent allowable by law, the Consultant must indemnify and hold harmless the Principal, its officers, agents, contractors and employees against all liabilities, fines, penalties, losses, costs, expenses, damage, Claims and damages (including legal cost on a solicitor client basis) suffered or incurred as a result of:
 - i. Breach of this Agreement by the Consultant;
 - ii. Any negligence, breach of duty, wrongful act or omission by the Consultant or the Consultant's Personnel.
- b) The Consultant's liability to indemnify under clause a), shall be reduced proportionately to the extent that any liability, fine, penalty, loss, cost, expense, damage, Claims or damages was suffered or incurred as a result of any breach of this Agreement, negligence wrongful act or omission by the Principal's Personnel.

7.3 Professional indemnity insurance

To the extent that professional indemnity insurance is available to Other Consultants providing services of a similar nature in same industry as the Consultant:

- a) The Consultant must obtain and maintain a policy or policies of professional indemnity insurance in respect of such services as required to be performed pursuant to this Agreement, with an insurer approved by the Principal (such approval not to be unreasonably withheld) for the period from the commencement of the provision of the Services until 7 years after the completion of the Services.
- b) The policy must contain the following provisions:
 - i. a minimum indemnity limit set out in the Information table in the aggregate for the Services;
 - ii. one automatic reinstatement provision; and
 - iii. a description of the risk covered by the policy.

7.4 Workers' compensation

The Consultant must obtain prior to commencing performance of the Services and maintain for the duration of this Agreement, workers' compensation insurance in accordance with the requirements of the law.

7.5 Public liability

- a) The Consultant must obtain a policy of public liability insurance with an insurer approved by the Principal (such

approval not to be unreasonably withheld) prior to commencing the performance of the Services and must maintain that policy for the duration of this Agreement.

- b) The policy must:
- i. be in the joint names of the Principal and the Consultant (and if required by the Head Contract, to be in the name of the Owner and/or Head Contractor);
 - ii. insure the Principal, the Consultant and all sub consultants/subcontractors employed in relation to the Services for their respective rights, interests and liabilities;
 - iii. insure the parties' respective liability to each other and to third parties for loss of or damage to property and for the death or injury (other than liability which the law requires to be covered under a workers' compensation policy) due to or arising out of the performance of the Services by the Consultant and the Consultant's Personnel; and
 - iv. be for an amount not less than that stated in the Information table in respect of any single occurrence and in the annual aggregate.

7.6 Proof of insurance and notification

- a) Before commencing the Services, before each payment claim which immediately follows any renewal of a policy and whenever requested in writing by the Principal or the Principal's Representative the Consultant must provide the Principal with:
- i. a copy of the insurance policies referred to in this clause 7 including, if requested, all policy schedules, certificates, endorsements and insurance proposals; and
 - ii. a certificate of currency for those policies.
- b) The Consultant must notify the Principal in writing of any claim against the insurances effected by the Consultant under this Agreement immediately upon becoming aware of such claims and provide such further information as the Principal requires.

7.7 Joint insurance policies

Any insurance required by this Agreement to be obtained by the Consultant in joint names shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased thereby).

8 DIRECTIONS AND VARIATIONS

8.1 Directions by the Principal

The Principal may give any direction to the Consultant in writing or orally unless otherwise specified under this Agreement.

9 PAYMENT

9.1 Principal must pay Consultant

In consideration of the provision of the Services, the Principal must pay to the Consultant the Fee in accordance with this clause 9.

9.2 Payment claims

The Consultant must, as a condition precedent to payment, issue payment claims to the Principal's Representative for the Services at the time specified in the Information table for the Services performed during the preceding period specified in the information table.

9.3 Payment

- a) The Principal's Representative must within 10 Business Days of receipt of the payment claim:
- i. determine the amount payable to the Consultant in respect of the payment claim; and
 - A. indicates the amount of the payment to be made by the Principal proposes;
 - B. if the amount to be paid by the Principal is less than the claimed amount, indicates why the amount

proposed to be paid is less and (if it is less because the Principal is withholding payment for any reason), the Principal's reasons for withholding payment; and

- C. if the payment claim is a payment claim pursuant to the Building and Construction Industry Payments Act 2004 (Qld), constitutes a payment schedule as that term is defined in the *Building and Construction Industry Payments Act 2004* (Qld).
- b) If the Principal's Representative determines that any part of the payment claim is not properly due and payable, the Principal is under no obligation to pay that amount so determined as not due and payable. The Principal may, however, pay that amount as determined as not due and payable and such payment will not constitute a waiver of the Principal's right of action in relation to that amount.
- c) Subject to clause 9.4, the Principal must pay the Consultant the amount determined as payable by the Principal's Representative under subparagraph (a) (i) at the time for payment specified in the Information table.
- d) The Principal's Representative will determine the amount of the payment claim that is payable as follows:
- i. the Principal's Representative will determine the contract value of the Services remaining to be performed at the time of the payment claim;
 - ii. the Consultant will be entitled to be paid an amount equivalent to the Fee, less:
 - A. the amount determined under subparagraph(i); and
 - B. the sum of all previous payments made to the Consultant; and
 - C. amounts the Principal is entitled to set off or withhold.

9.4 Conditions precedent to payment

The amount determined as payable by the Principal's Representative under clause 9.3 is not due and payable until the Consultant has submitted a tax invoice:

9.5 Final payment

The final payment claim shall include all amounts owing to the Consultant for all services performed and/or required by this Agreement and the Principal shall not be liable for any further payment under the Agreement or at law, in respect of or arising out of the services required and/or performed pursuant to or incidental to this Agreement.

9.6 Set off

Without prejudice to the Principal's other right or remedies, the Principal or the Principal's representative may certify as a deduction from moneys otherwise due to the Consultant by the Principal:

- a) any debt or other moneys due from the Consultant to the Principal;
- b) any claim to money which the Principal has or may have against the Consultant whether for liquidated or unliquidated damages, debt, restitution, contribution or otherwise, whether under this Agreement or otherwise at law;
- c) any amount reasonably estimated by the Principal or the Principal's Representative as:
 - i. The increased cost (over the relevant portion of the fee) to the Principal of rectifying and/or completing any Services not made good or not completed by the Consultant; and/or
 - ii. The sum required to rectify any damage to property caused by any act, error or omission of the Consultant and/the Consultant's Personnel; and/or
 - iii. Liability, loss, damage, injury, expense, costs, consequential loss (including loss of profits and other economic loss) to the Principal or any third party occasioned by a breach of this Agreement by the Consultant and/or negligence of the Consultant and/or the Consultant's Personnel.

9.7 Payment on account only

Payment will be on account only and will not be evidence of the

value of the work completed nor an admission on the part of the Principal that the performance by the Consultant of the Services is, in any respect, in accordance with this Agreement.

9.8 GST

- a) Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- b) Any consideration to be paid or provided to the Consultant for a supply made by the Consultant under or in connection with this Agreement unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

9.9 Other taxes

The Consultant must pay all other taxes including sales tax, payroll tax, levies, duties and assessments due in connection with the Services.

10 DEFAULT AND TERMINATION

10.1 Principal's remedy notice

- a) If the Principal considers that the Consultant is in breach of this Agreement, the Principal may give the Consultant a written notice specifying:
 - i. the breach of the Agreement which has occurred;
 - ii. the date by which the Consultant must rectify the breach, to the extent that the breach is capable of rectification; or
 - iii. the Principal's requirements for mitigating the effects of the breach, to the extent that the breach is incapable of rectification.
- b) If the Principal gives the Consultant a notice under clause 10.1(a), the Consultant must:
 - i. comply with the notice; and
 - ii. give the Principal's Representative a program for doing the things necessary to comply with the notice.
- c) If the Consultant fails to comply with a notice under clause 10.1(a) the Principal may:
 - i. take any action it considers appropriate to;
 - ii. rectify that breach; or
 - iii. mitigate the effects of the breach including appointing other Consultants to undertake the Services or any part of the Services; or
 - iv. terminate this Agreement, with immediate effect, by written notice.
- d) The Consultant indemnifies the Principal against any loss, expense or damage of any nature, including financial loss and legal costs and any expenses on an indemnity basis, suffered or incurred by the Principal in respect of the action that the Principal has taken under clause 10 (c) i, except to the extent that the loss, expense or damage arises from the negligence or wilful default of the Principal.

10.2 Termination for insolvency

Either party may terminate this Agreement, with immediate effect, by written notice to the other party if an Insolvency Event occurs with respect to that other party.

10.3 Termination for convenience

- a) Notwithstanding any other provision of this Agreement:
 - i. the Principal may at its sole discretion, and without giving any reason, terminate this Agreement by giving 5 Business Days' written notice to the Consultant; and
 - ii. the Consultant must:
 - A. stop performing the Services within the time specified in the notice; and
 - B. hand over all Design Documents to the Principal.
- b) If for any reason a purported termination under clauses 10.1 or 10.2 or at general law by the Principal is held to be ineffective, the purported termination is not a breach or repudiation of this Agreement and must be treated to have been effected under clause 10.3 (a) i.

10.4 Consultant's obligations on expiry or termination

On the expiry or earlier termination of this Agreement, the Consultant must immediately deliver to the Principal, at no cost to the Principal:

- a) all material and information made available by the Principal to the Consultant; and
- b) copies of all documents and drawings produced by the Consultant in relation to the Project.

10.5 Principal's obligations on termination

On termination of this Agreement pursuant to clause 10.3:

- a) the Principal must, within 20 Business Days of the date of the notice of termination, pay the Consultant the amount due to the Consultant for the Services performed in the relevant period up to the date of termination; and
- b) the Consultant is not entitled to any other payment, including for any loss of profit or other consequential costs, losses or damage.

10.6 Survival of provisions

The rights and obligations contained in clauses 3.1 (warranty), 4 (Ownership of materials and Intellectual Property), 9.6 (Set off), 7 (Indemnity and insurance), 9.8 (GST), 10.4 (Consultant's obligations on expiry or termination) and 10.5 (Principal's obligations on termination) bind the parties notwithstanding the expiry or earlier termination of this Agreement.

10.7 Effect of termination

The parties' rights under this clause 10 are without prejudice to any right of action or remedy which has accrued or may accrue in favour of each party.

11 GENERAL

11.1 Assignment

The Principal may at any time transfer or assign any or all of its rights, obligations, benefit or interest under the Agreement including the benefit of the Consultant's warranties and indemnities and the copyright licence given in this Agreement.

11.2 Notices and other communications

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

- a) in writing, in English and signed by a person duly authorised by the sender; and
- b) delivered by hand, by certified mail or by e-mail, addressed to the other party at the postal address or email address described in the Information Table.

11.3 Governing law

This Agreement is governed by the law applicable in State of Queensland.

Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of Queensland.

11.4 Entire Agreement

This Agreement:

- a) constitutes the entire agreement between the parties as to its subject matter; and
- b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

11.5 Severability

Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

11.6 Costs of Agreement

Each party must bear its own costs of and incidental to the preparation and execution of this Agreement. The Consultant must pay all stamp duties or other taxes of a similar nature on this Agreement.

11.7 Changes to this Agreement

Modifications and amendments to this Agreement must be in writing signed by each of the parties.

11.8 Waiver

Waiver of any provision of or right under this Agreement:

- a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- b) is effective only to the extent set out in any written waiver.

SCHEDULE 1 - Services

(To be added)

SCHEDULE 2 - Fee

(To be added)

SCHEDULE 3 - Insurance

(To be added)

SCHEDULE 4 - Head Contract

(To be added)