



Government of Western Australia

GENERAL CONDITIONS OF CONTRACT

FOR THE ENGAGEMENT OF

CONSULTANTS - MANAGEMENT

NOVEMBER 1996 v2

CONDITIONS OF ENGAGEMENT

Clause 1

The Consultant shall perform and carry out the Services at all times in a conscientious expeditious and workmanlike fashion. Where the Consultant is required to provide or utilise equipment such equipment shall be suitable for the Services and shall be maintained by the Consultant in good and proper working condition.

Clause 2

The Consultant warrants that its employees and agents are competent and have all necessary skill training and qualifications to carry out the Services in accordance with these conditions.

Clause 3

The Consultant shall continue to perform the Services until the date of termination specified in the Letter of Engagement or until otherwise determined by notice as hereinafter provided.

Clause 4

Notwithstanding anything herein contained to the contrary the Principal may determine the engagement of the Consultant at any time and without prior notice should the Consultant its employees or agents be guilty of any dishonesty serious misconduct or serious neglect of duty or be in breach of any of the terms or conditions herein or in the Letter of Engagement contained or refuse to comply with any reasonable instructions or directions given by the Principal.

Clause 5

The Principal may determine the Consultant's engagement hereunder upon the happening of any one or more of the following events, namely:

- (a) If the Consultant enters into a Deed of Arrangement or an order is made for it to be wound up;
- (b) If a Receiver or Receiver/Manager is appointed of the Consultant;
- (c) If the Consultant is placed under Official Management;
- (d) If a judgement is entered against the Consultant for a sum in excess of FIVE THOUSAND DOLLARS (\$5,000) and the same remains unsatisfied or unappealed for a period of twenty one (21) days.

Clause 6

This Agreement is personal and shall not be assigned or dealt with in any way by either party (whether by assignment sub-contract sub-licensing or otherwise) without the consent of the other party.

Clause 7

The Principal shall pay to the Consultant the Consultancy Fee specified in the Letter of Engagement at the time and in the manner set out in the Letter of Engagement.

Clause 8

The Principal shall not be liable to reimburse the Consultant for the amount of any expenses incurred by the Consultant in and about the performance of the Services, including without limitation travel

expenses accommodation and subsistence expenses. All such expenses of the Consultant shall be deemed to be included in the amount of the Consultancy Fee specified in the Letter of Engagement.

Clause 9

The Consultant shall effect and maintain all insurance required to be effected by it by law. Without limiting the generality hereof the Consultant shall arrange all necessary insurance with respect to its employees under the provisions of the Workers' Compensation and Assistance Act 1981 and shall if required by the Principal produce evidence of such insurance at any time and from time to time.

Clause 10

The Consultant shall be responsible for and shall indemnify and keep indemnified the Principal and the Crown in right of the State of Western Australia against liability for all loss, damage or injury to persons or property (including death) caused by the Consultant or its employees or agents and the amount of all claims damages costs and expenses which maybe paid suffered or incurred by the Principal as aforesaid in respect of any loss, damage or injury (including death) shall be made good at the Consultant's expense and may be deducted from any monies due or becoming due to the Consultant.

Clause 11

The Consultant shall at its own expense effect and maintain for the duration of the Consultant's engagement a policy of Professional Indemnity Insurance covering the Consultant's legal liability arising out of any act, neglect, default, error or omission made or done by or on behalf of the Consultant or any of its employees or agents in connection with the Services in the sum of **ONE MILLION DOLLARS (\$1,000,000)** in respect of any one claim.

Clause 12

All works items materials or information whatever nature produced or developed by the Consultant or under the direction of the Consultant pursuant to or in the course of providing the Services shall be and become the sole and complete property of the Crown in right of the State of Western Australia whether such property is tangible or is in the nature of industrial or intellectual property rights (including copyright and rights of confidential information). The Consultant shall not use any such works, items, materials or information otherwise than for the purpose of performing the Services hereunder without the prior written consent of license of the Principal first had and obtained.

Clause 13

If at the written request of the Principal the Consultant performs work additional to the Services, the Principal shall pay the Consultant in respect of such additional work at the rate provided for in the Letter of Engagement or if no such rate is specified then at the rate agreed between the Principal and the Consultant.

Clause 14

For as long as the Consultant shall continue to perform the Services hereunder the Consultant shall at all times at its own cost and expense observe, perform and comply with all Acts of both Federal and State Parliaments and all regulations by-laws ordinances or orders made thereunder and the lawful requirements of any public municipal or other authority so far as the same may affect or apply to the Consultant or the Services and the Consultant shall indemnify and keep indemnified the Principal from and against all actions, suits, costs, charges, claims and demands in respect thereof.

Clause 15

The Principal may at any time by notice in writing to the Consultant require that the Consultant should cease to permit a particular person or persons employed by the Consultant to be engaged in carrying out the Services or any part thereof and the Consultant shall forthwith cease to employ any such

person or persons in or about the performance of the Services and shall replace any such person or persons with such alternative person or persons as shall be suitably qualified and skilled to perform the Services and as shall be acceptable to the Principal.

Clause 16

Nothing herein contained or implied shall constitute the relationship of partnership or employment or agency between the Consultant and the Principal and it is the express intention of the parties hereto that any such relationships are denied.

Clause 17

- (a) No right of the Principal hereunder shall be deemed to be waived except if such waiver is in writing signed by the Principal.
- (b) A waiver by a party hereto will not prejudice the rights of that party in respect of any subsequent breach of these conditions by the other party.
- (c) Any failure by a party to enforce any provision of these conditions 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 these conditions.

Clause 18

These conditions and the Letter of Engagement constitute the entire agreement between the parties for the provisions of the Services by the Consultant. Any prior arrangements, agreements, representations or undertakings are superseded and any modification or alteration of any clause of these conditions will not be valid except if made in writing and signed by the parties hereto.

Clause 19

If any provision of these conditions should be held invalid, unenforceable or illegal for any reason the agreement between the Principal and the Consultant shall remain otherwise in full force apart from such provision which shall be deemed deleted.

Clause 20

These conditions and the agreement between the Principal and the Consultant will be governed by and construed according to the Law for the time being in force in the State of Western Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

Clause 21

Notices under these conditions may be delivered by hand, by registered mail, by telex or by facsimile to the addresses of the parties specified in or notified pursuant to these conditions. Notice will be deemed to be given:-

- (a) in the case of hand delivery or registered mail upon written acknowledgment of receipt by an Officer or other duly authorised employee, agent or representative of the receiving party;
- (b) in the case of telex upon receipt of an answer-back;
- (c) in the case of a facsimile upon proof of completion of transmission.

Clause 22

Any dispute arising in connection with the Letter of Engagement or these conditions which cannot be settled by negotiation between the parties or their representatives shall be submitted to Arbitration in

accordance with the Commercial Arbitration Act 1985. During such Arbitration both parties may be represented by a duly qualified legal practitioner.

Clause 23

- (a) Subject to clause 27 hereof the Consultant shall treat as confidential all information disclosed to the Consultant, made known to the Consultant or developed by the Consultant during the course of or for the purposes of the Services ("the confidential information").
- (b) Without limiting the generality of the preceding sub-clause, the confidential information includes computer programs, client lists, the Principal's methods of operation and details of clientele and potential clientele of the Principal.

Clause 24

- (a) Immediately upon the completion of the Services and the termination of the Consultant's engagement by the Principal, the Consultant shall deliver to the Principal all documents in any way relating to the confidential information which are then in the Consultant's possession.
- (b) The operation of this condition shall survive the termination of the Consultant's engagement with the Principal.

Clause 25

Without limiting the generality of the last preceding clause, the Consultant shall not use or disclose or authorise the use of disclosure of the confidential information to any person or company without the prior consent in writing of the Principal.

Clause 26

If the Consultant is employed or engaged in an industry identical or similar to the industry in which the Principal operates after termination of its engagement with the Principal, the Consultant shall inform all persons who engage or employ the Consultant of the fact and existence of these conditions.

Clause 27

The Consultant shall not be obliged to treat information as confidential in the following circumstances:-

- (a) where such information is generally known within the industry referred to in the last preceding clause;
- (b) where it would be unconscionable to require the Consultant to treat such information confidentially as the term "unconscionable" is defined in the section 52A of the Trade Practices Act 1974 (Commonwealth);
- (c) where it would be an invalid restraint of trade under the law of the State of Western Australia to require the Consultant to treat such information confidentially.

Clause 28

- (a) With respect to all work done in Western Australia under the Contract, the Consultant shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the work to be done under the Contract.

- (b) Failure by the Consultant to comply with sub clause (a) hereof shall entitle the Principal by notice in writing to the Consultant to forthwith terminate the Contract, but without prejudice to any other rights or remedies of the Principal.