

General Consultancy Contract for Utilities Management

The Council of the City of Sydney
ABN 22 636 550 790

Energetics Pty Ltd
ABN 67 001 204 039

CoSVer1/18

KEY DETAILS

1 Date 27th June 2019

18/06/2019 

2 Parties

Principal
Name

The Council of the City of Sydney
ABN 22 636 550 790

Consultant
Name

Energetics Pty Ltd
ABN 67 001 204 039

BACKGROUND

- A The Principal wishes to engage the Consultant, and the Consultant has agreed to perform the Services, on the terms set out in this Contract.

TERMS

1. In this Formal Instrument of Agreement terms which are defined in the General Conditions of Contract have the same meanings when used in this Formal Instrument of Agreement.
2. The parties agree that this Contract comprises the following documents:
 - (a) this Formal Instrument of Agreement;
 - (b) the General Conditions of Contract; and
 - (c) all schedules to the General Conditions of Contract.
3. The parties agree that they must perform their respective obligations under this Contract.
4. The parties acknowledge and agree that:
 - (a) this Contract applies to all Services, whether they are performed before, on or after the Date of the Contract; and
 - (b) if any payments have been made to the Consultant by the Principal prior to the Date of the Contract with respect to any Services, those payments are deemed to have been made pursuant to this Contract.
5. Each party confirms to the other party that:
 - (a) it has full power to enter into and to comply with its obligations under this Contract;
 - (b) it has taken all necessary action to authorise its entry into and to comply with its obligations under this Contract;
 - (c) it has in full force and effect the authorisations necessary to enter into this Contract and to comply with its obligations under it and to allow it to be enforced; and
 - (d) its obligations under this Contract constitute its binding obligations and are completely and lawfully enforceable against it in accordance with their terms subject to laws generally affecting creditors' rights and to principles of equity.
6. If this Contract is signed in counterparts, then each counterpart is deemed an original and together they constitute one document.

EXECUTION

Executed as a deed

Signed for and on behalf of the **Council of the City of Sydney** ABN 22 636 550 790 by its duly authorised officer in the presence of:

J. V. L-Vn

Signature of witness

AMY VICTORIA LEPKE-VOJE

Print name

Amit Chanan

Signature of authorised officer

AMIT CHANAN

Print name

Mary Stewart

Signed by Energetics Pty Ltd ABN 67 001 204 794 in accordance with section 127(1) of the Corporations Act 2001 (Cth):

MARY STEWART

Signature of director/company secretary

Mary Stewart

Print name

Anthony Cooper

Signature of director

ANTHONY COOPER

Print name

OR

Signed for Energetics Pty Ltd ABN 67 001 204 794 under power of attorney in the presence of:

Signature of witness

Print name

Signature of attorney

Print name

Date of power of attorney

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GENERAL CONDITIONS OF CONTRACT

1 Definitions and interpretation

1.1 Definitions

In this Contract, except where the context otherwise requires:

Account Level means the supply of Utilities at a Supply Point Level of a given Location.

Background Intellectual Property Rights means Intellectual Property Rights in documents or materials (including the Deliverables) provided by a party in connection with this Contract or the Services that is in existence prior to the Date of the Contract or developed or conceived by a party independently of this Contract.

Better Building Partnerships (BBP) means a directed leadership panel that provides green leadership and sustainable innovations for commercial and public buildings

Business Day means a day other than:

- (a) a Saturday, Sunday or a public holiday in New South Wales; or
- (b) 27, 28, 29, 30 or 31 December.

Commodity Charges means the price of electricity/natural gas based on traded value on the commodity exchange or spot market (Australian Securities Exchange).

Consultancy Services means those services set out in Schedule 3 Section 2.

Contract means the agreement between the Principal and the Consultant comprising the documents identified in clause 2 of the Formal Instrument of Agreement.

Contract 776 means the contract for Retail Supply of Electricity and GreenPower to NSW Government and Eligible Buyers (Small Sites).

Contract 778 means the contract for Retail Supply of Electricity Metering and Metering Data Agency Services for NSW Government.

Contract 4000 means the contract for Retail Supply of natural gas to NSW Government and eligible buyers.

Contract Rate means the negotiated Retail Rate from the Retailer.

Date for Completion means the date set out in Item 5(c) or any notice specifying part of the Services to be completed by a specific date.

Date of the Contract means the date referred to in the Formal Instrument of Agreement or, if undated, the date on which the Principal executes this Contract.

Deliverables means any documents, materials or information (including notes, drawings, specifications, tools, methodologies, processes, sketches, templates, tables, reports and software programs) in any format, electronic or otherwise which the Consultant is required to provide to the Principal under this Contract or otherwise produces in connection with this Contract.

Environmental Charges means the costs associated with the state and federal government green schemes.

Envizi means the Principal's primary data and analytics software for Utilities and environmental management.

Expiry Date means the date in Schedule 1.

Facilities Management Service Provider means the service provider engaged by the Principal to undertake facilities management services, which include maintenance activities for assets within the Principal's portfolio.

Fee means the fee set out in Schedule 2 Section Schedule 11, as may be adjusted in accordance with this Contract.

Formal Instrument of Agreement means the "Formal Instrument of Agreement" to which the General Conditions of Contract are attached.

Further Term means an extension of the Term under clause 3.2.

General Conditions of Contract means the part of this Contract headed "General Conditions of Contract".

GST means the same as in the GST Law.

GST Law means the same as "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information Documents means:

- (a) the documents and other information described in Item 1; and
- (b) any other information identified by the Principal, whether before, on or after the Date of the Contract, as being for information only.

Insolvency Event means, in relation to the Consultant, where:

- (a) it informs the Principal in writing or its creditors that it is insolvent or is financially unable to proceed with this Contract;
- (b) it is unable to pay its debts as and when they fall due;
- (c) notice is given of a meeting of its creditors with a view to the corporation entering a deed of company arrangement;
- (d) it enters into a deed of company arrangement with its creditors;
- (e) a controller or administrator is appointed to it;
- (f) a winding-up order is made against it;
- (g) it resolves by special resolution that it should be wound up voluntarily; or
- (h) it suffers an event or circumstance analogous to an event or circumstance set out in paragraphs (a) to (g) above.

Intellectual Property Right means all present and future rights conferred in law in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and information which is confidential for the purposes of clause 12.1, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, throughout the world, whether or not registrable, registered or patentable that exist or that may come to exist anywhere in the world, but excluding any Moral Rights.

Item means an Item in Schedule 1.

Key Personnel means the persons nominated in Item 2, as may be varied in accordance with clause 4.2(c).

Large Site means:

- (a) (electricity) an electricity account that consumes over 100,000 kWh per annum or has been placed on the Principal's large site electricity contract.
- (b) (natural gas) a natural gas account that consumes over 1,000 GJ per annum or has been placed on the Principal's large site natural gas contract.

Location means a particular place or site as identified in Envizi.

Meter means either a Revenue-Meter or a Non-revenue Meter.

Monthly Service Delivery and Performance Report means the report required to be developed by the Consultant in accordance with Schedule 4.

Moral Rights means rights of integrity of authorship or performership, rights of attribution of authorship or performership, rights not to have authorship or performership falsely attributed, and rights of a similar nature conferred by statute anywhere in the world that may now exist or that may come to exist in relation to a work.

National Carbon Offset Standard (NCOS) means a voluntary standard created by the Department of the Environment and Energy to manage greenhouse gas emissions and to achieve carbon neutrality. It provides best-practice guidance on how to measure, reduce, offset, report and audit emissions for organisations, products & services, events, precincts and buildings.

National Greenhouse and Energy Reporting (NGER) means a single national (Australian) framework for reporting and disseminating company information about greenhouse gas emissions, energy production, energy consumption and other information specified under *National Greenhouse and Energy Reporting Act 2007* (NGER) legislation.

National Meter Identifier is a unique 10 or 11 digit number used to identify every electricity network connection point in Australia.

Network Rates means the cost of transporting electricity/natural gas via transmission and distribution network, and as approved and published by the Australian Energy Retailer (AER) for the respective network.

Non-revenue Meter means a utility meter used for measuring and reporting of the utility data.

Personal Information means all personal information as defined under section 6 of the *Privacy Act 1988* (Cth) and section 4 of the *Privacy and Personal Information Protection Act 1998* (NSW) that is provided or obtained by the Consultant or its Personnel in connection with the performance of its obligations under this Contract.

Personnel means a party's officers, employees, agents or contractors, and in relation to the Consultant, includes its Key Personnel and Subcontractors.

Principal's Representative means:

- (a) the person named in Item 3; or
- (b) such other person as the Principal may notify the Consultant from time to time to be the "Principal's Representative" for the purposes of this Contract,
- (c) and includes any delegate appointed under clause 4.1.

Power Purchasing Agreement PPA means an agreement between an independent power generator (or vendor) and a purchaser (often called the 'off-taker') for the sale and supply of energy. They can be used for the supply of any type of energy, but in more recent times have often been used for the supply of renewable energy such as through solar panels or wind generators.

Property Management Service Provider means the service provider engaged by the Principal to undertake property management services.

Retailer means a licensed utility provider which on-sells electricity, natural gas and water to the customer.

Retail Rates means the cost of the Utilities set by the Retailer.

Revenue Meter means a meter installed by the Retailer for invoicing purposes which measures the consumption of the utility in the respective unit of measurement.

Schedule of Services means Schedule 3.

Service Plan means the plan required to be developed by the Consultant as outlined in Schedule 4.

SOPA means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Services means the services described in the Schedule of Services, as may be varied in accordance with clause 7.1.

Service Delivery Plan means the Plan required to be developed by the Consultant in accordance with Schedule 4.

Site means the sites identified by their corresponding Asset ID and address identified in Tririga and can either be:

- (a) land;
- (b) a building;
- (c) a structure; or

- (d) a Location as identified in Envizi.

Small Site means:

- (a) an account that consumes less 100,000 kWh electricity per annum or has been placed on the Principal's small site electricity contract.; or
- (b) an account that consumes less 1000 GJ natural gas per annum or has been placed on the Principal's small site gas contract.

Subcontractor means a person engaged by the Consultant in accordance with clause 4.3 to assist in the provision of the Services.

Supply Point Level means the point at which Utilities are provided and can be identified with help of a unique meter identifier such as:

- (a) national meter identifier (NMI) in instance of electricity;
- (b) delivery point identifier (DPI) / meter installation registration number (MIRN) for a natural gas meter; and,
- (c) water meter/account number in instance of water.

There may be multiple Supply Point Levels that relate to an Account Level.

Systems means Envizi, Tririga and Technology One.

Total Utilities Cost means the sum of the Retail Rate or Contract Rate and the Network Rate and any other charges including environmental and metering charges as indicated on a tax invoice by the relevant Retailer.

Technology One means the Principal's primary financial management information system which aids in purchasing, performance planning, budgeting and forecasting, and, financials.

Term has the meaning given to that term in clause 3.1.

Tririga means the Principal's primary management information system used for the delivery of all property and facilities related services and is the source of truth for all master data.

Utilities means electricity, gas and water services.

Utilities Consultancy Services means the services outlined in Schedule 4, sections 2.1 to 2.4.

Utilities Management means the services outlined in Schedule 3, sections 1.1 to 1.8.

Waste Data means information regarding waste streams required to be processed as a result of the Principal's operations such as co-mingled, paper and cardboard, general waste, construction and demolition waste, and food organics

WHS Law means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).

1.2 Interpretation

In this Contract, except where the context otherwise requires:

- (a) clause and subclause headings shall not be used in the interpretation of this Contract;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (c) words importing a gender include every gender;
- (d) a reference to \$ or dollars is to Australian dollars;
- (e) the words "including", "include" and "included" are deemed to be followed by the words "without limitation";
- (f) a reference to legislation or a provision of legislation is to that provision or legislation as amended, re-enacted or replaced from time to time;
- (g) a reference to a body which ceases to exist is a reference to a body that the parties agree to substitute for the named body or, failing agreement, to a body having substantially the same objects as the named body; and
- (h) where the Consultant comprises of more than one person, each of the persons comprising the Consultant will be jointly and severally liable under this Contract.

1.3 Contra proferentem

This Contract is not to be interpreted against the interests of a party merely because that party proposed this Contract or some provision in it.

1.4 Ambiguity or discrepancy

- (a) If the Consultant becomes aware of any ambiguity or discrepancy in any document forming, or a provision of, this Contract, the Consultant must, within 10 Business Days of becoming aware, give written notice to the Principal's Representative detailing the ambiguity or discrepancy.
- (b) The Principal's Representative must direct the Consultant as to the interpretation to be followed as soon as reasonably practicable after receipt of a notice under clause 1.4(a).

2 Engagement of the Consultant

2.1 Key obligations

- (a) The Consultant must perform its obligations under this Contract, including the Services, in accordance with the terms of this Contract.
- (b) The Principal must pay the Consultant the Fee in accordance with this Contract.
- (c) The Consultant's entitlement to payment under this Contract in respect of the performance of the Services is strictly limited to:
 - (i) the Fee; and
 - (ii) any other payment to be made under an express provision of this Contract,and no other circumstances.
- (d) Without limiting clause 2.1(c), the Consultant acknowledges and agrees that there may be periods of inactivity on the part of the Consultant between stages of the Services as set out in the Schedule of Services or as directed by the

Superintendent's Representative (acting reasonably) from time to time and the Consultant agrees to not make any claim against the Principal as a result of or in connection with any such inactivity.

- (e) Except where the Consultant is entitled to payment in accordance with an express provision of this Contract, the Consultant must bear all costs and expenses (including travel, accommodation and other disbursements) in relation to the performance or non-performance of the Services and its other obligations under this Contract.

2.2 Independent contractor

- (a) The Consultant is engaged as an independent contractor.
- (b) Nothing in this Contract makes the Consultant an employee, agent, partner or joint venturer of the Principal.

2.3 No authority

Except with the prior written consent of the Principal, the Consultant acknowledges and agrees that it has no authority to, and must not:

- (a) act on behalf of the Principal;
- (b) incur any obligation on behalf of the Principal; or
- (c) enter into any verbal or written agreement on behalf of the Principal.

2.4 Conflict of interest

- (a) As at the Date of the Contract, the Consultant is not aware of any matter which may give rise to an actual or perceived conflict of interest relating to the performance of the Services by the Consultant.
- (b) If, at any time prior to the expiry or earlier termination of this Contract, the Consultant becomes aware of any matter which may give rise to an actual or perceived conflict of interest relating to the performance of the Services by the Consultant, the Consultant must:
 - (i) immediately notify the Principal of such matters, including making full disclosure of all relevant information relating to the conflict; and
 - (ii) take such steps to resolve or manage such conflict as required by the Principal's Representative.

3 Provision of the Services

3.1 Term

This document commences on the Start Date and, unless otherwise extended under clause 3.2 or terminated on its terms, expires on the Expiry Date (**Term**).

3.2 Further Terms

The City may extend this document for the Further Term (if any) specified in **Error! Reference source not found.**, commencing on the Expiry Date or the expiry of a previous Further Term (as applicable), by giving written notice to the Consultant no later than 2 months prior to the Expiry Date or the expiry of a previous Further Term (as applicable). The maximum number of Further Terms is specified in **Error! Reference source not found.**

3.3 General

The Consultant must:

- (a) perform the Services (including providing the Deliverables) in accordance with the terms of this Contract; and
- (b) ensure that all Services and Deliverables comply with all applicable laws, including environmental and work health and safety laws (including the WHS Law), and applicable Australian Standards.

3.4 Acknowledgements by Consultant

- (a) The Consultant confirms that it has the requisite technology, Personnel, resources and ability to enable it to perform the Services and all of its other obligations under this Contract.
- (b) The Consultant acknowledges and agrees that the Principal has entered into this Contract relying on the confirmations set out in clause 3.4(a).

3.5 Standard of Services

The Consultant must:

- (a) at all times be suitably qualified and experienced for the performance of the Services;
- (b) perform the Services competently and professionally and with the due skill, care and diligence reasonably expected of a professional, qualified and competent consultant experienced in providing services of a similar size, scope and complexity to the Services;
- (c) ensure that the Deliverables are fit for the purposes expressly stated in the Schedule of Services;
- (d) measure the performance of the Services in accordance with Schedule 5; and
- (e) maintain a quality assurance system in accordance with any standard referred to in Item 4, including subjecting all Deliverables to appropriate levels of internal checking and approval before issuing the Deliverables to the Principal.

3.6 Timely provision of the Services

The Consultant must:

- (a) commence, progress and provide the Services expeditiously, without delay and in accordance with any directions of the Principal's Representative.

3.7 if a Date for Completion is included in Item 5(c), complete any part of the Services by the Date for Completion. Delay and Extension of Time

- (a) The Consultant must, no later than 5 Business Days from the time the Consultant becomes aware or ought reasonably to have become aware of any fact, matter or circumstances which is likely to prevent the Consultant from completing any part of the Services by the Date for Completion, give written notice to the Principal's Representative detailing the circumstances and estimated period of delay.
- (b) Subject to the Consultant's compliance with clause 3.7(a), the Consultant will be entitled to an extension of time to the Date for Completion for any of the causes listed in Item 6 that have delayed the Consultant in achieving the Date for Completion.

- (c) Following receipt of a claim in accordance with clause 3.7(a), the Principal's Representative (acting reasonably) will determine an extension to the Date for Completion and notify the Consultant accordingly.
- (d) The Principal's Representative may, at any time and from time to time, direct an extension of time to the Date for Completion for any reason in the Principal's Representative's absolute discretion and without being under an obligation to do so.

3.8 Safety and the environment

Without limiting its other obligations under this Contract or otherwise at law, when carrying out the Services, the Consultant must:

- (a) if it becomes aware of the existence or possibility of any work health, safety and environmental issues (including any potential breach of any work health and safety laws) in connection with the Services, inform the Principal's Representative within 5 Business Days of the Consultant becoming so aware;
- (b) have a work health and safety management system in place and apply that system at all times whilst carrying out the Services;
- (c) if applicable, prior to commencing any Services on the Site, ensure that all Personnel have undertaken any required induction; and
- (d) as necessary, consult, cooperate and coordinate activities with the Principal and any other persons who have a common duty under the WHS Law.

3.9 Review of Deliverables

- (a) The Principal's Representative may:
 - (i) review any Deliverable, or any resubmitted Deliverable, prepared and submitted by the Consultant; and
 - (ii) reject the Deliverable if the Principal's Representative, acting reasonably, does not believe that the Deliverable complies with the requirements of this Contract.
- (b) If any Deliverable is rejected, the Consultant must promptly (and in any event within the period specified by the Principal's Representative acting reasonably) resubmit the amended Deliverable to the Principal's Representative in which case clause 3.9(a) will reapply.
- (c) The Consultant acknowledges and agrees that:
 - (i) the Principal and the Principal's Representative do not assume or owe any duty of care or other responsibility to the Consultant, and shall not be required to check any Deliverable for errors, omissions or compliance with this Contract; and
 - (ii) any review of, or comment by, the Principal or the Principal's Representative in relation to a Deliverable provided by the Consultant under this Contract, shall not relieve the Consultant from its liabilities and responsibilities under this Contract or otherwise at law.

3.10 Risk of loss of documents

- (a) The Consultant is responsible for the preservation from loss or damage of all documents (including documents stored electronically) created by or provided to the Consultant in connection with the Services, including the Deliverables.

4 Principal's Representative and Consultant's Personnel

4.1 Principal's Representative

- (a) The Principal's Representative has authority to act on behalf of the Principal as its agent and for all purposes in connection with this Contract, except as notified to the Consultant by the Principal.
- (b) The Principal's Representative may, from time to time, appoint individuals to exercise delegated functions of the Principal's Representative, provided that:
 - (i) no aspect of any function shall at any one time be the subject of delegation to more than one person; and
 - (ii) the Principal's Representative gives the Consultant written notice of respectively:
 - (A) the appointment, including the name and delegated functions of the appointed person; and
 - (B) the termination of each appointment.
- (c) The Consultant must comply with the directions of the Principal's Representative. Except with the Contract provides otherwise, a direction may be given orally.
- (d) If the Consultant in writing requests the Principal's Representative to confirm an oral direction the Principal's Representative must as soon as practicable confirm the oral direction in writing.

4.2 Consultant's Personnel

- (a) The Consultant must only engage Personnel in the performance of the Services who:
 - (i) are appropriately qualified, competent and experienced in the provision of the type of services required under this Contract; and
 - (ii) hold and maintain all necessary professional, technical, trade or other licences, authorisations and registrations relevant to the Services and this Contract.
- (b) The Consultant must replace any Personnel involved in the performance of the Services who, in the reasonable opinion of the Principal's Representative, do not fulfil any of the criteria set out in clause 4.2(a).
- (c) The Consultant must:
 - (i) ensure that each of the Key Personnel undertakes the role specified in Item 2, and must not replace any Key Personnel without the prior written approval of the Principal's Representative (acting reasonably); and
 - (ii) not permit any Key Personnel to undertake any other role or assignment which would conflict with the Consultant's obligations under this Contract.
- (d) The Consultant is responsible for acts and omissions of its Personnel as if they were acts and omissions of the Consultant.
- (e) The Consultant's responsibility for the performance of the Services and for the work and performance of its Personnel is not lessened or otherwise affected in any way by this clause 4.2 or by anything done in accordance with this clause 4.2.

4.3 Subcontracting and assignment

- (a) Without limiting clause 4.2, the Consultant may only engage Subcontractors in connection with the provision of the Services if, before the engagement of any proposed Subcontractor, the Principal's Representative has approved in writing the engagement of that Subcontractor for the relevant part of the Services.
- (b) The obligations of the Consultant under this Contract are not lessened or otherwise affected by any subcontracting.
- (c) The Consultant must not assign, transfer or otherwise create an interest in any or all of its rights or benefits under this Contract without obtaining the prior written consent of the Principal.

5 Non-complying Services

5.1 Direction by Principal's Representative

- (a) If the Principal's Representative discovers or reasonably believes that any of the Services have not been performed in accordance with this Contract, and without limiting the Principal's rights elsewhere under this Contract or otherwise at law, the Principal's Representative may at any time give the Consultant a direction specifying the non-complying Services and may do one or more of the following:
 - (i) require the Consultant to:
 - (A) re-perform the Services which are non-complying (in which case the Principal's Representative will specify the time within which this must occur); and
 - (B) take all such steps as are reasonably necessary to:
 - i. mitigate the effect on the Principal of the failure to carry out the Services in accordance with this Contract; and
 - ii. put the Principal as closely as possible in the position in which it would have been if the Consultant had carried out the Services in accordance with this Contract; or
 - (b) advise the Consultant that the Principal will accept the non-complying Services and make an appropriate adjustment to the Fee to take account of such non-compliance as reasonably determined by the Principal's Representative.

5.2 Consultant to re-perform

If a direction is given under clause 5.1(a)(i), the Consultant must re-perform the non-complying Services within the time specified in the Principal's Representative's direction.

6 Reports, meetings and audits

6.1 Reports

The Consultant must provide to the Principal:

- (a) all reports as set out in Schedule 3 and Schedule 4;
- (b) such other reports in relation to this Contract or the Services as may be reasonably requested by the Principal's Representative from time to time; and

- (c) without limiting the foregoing, if requested by the Principal's Representative, a schedule demonstrating the Consultant's resources available to meet the requirements of this Contract.

6.2 Meetings

The Consultant must:

- (a) attend all meetings set out in the Schedule 4;
- (b) attend such other meetings in relation to the Services as may be reasonably requested by the Principal's Representative from time to time; and
- (c) if requested by the Principal's Representative, ensure that any relevant Subcontractors attend the meetings contemplated in this clause 6.2.

6.3 Availability, audit and access

- (a) Without limiting any of its other obligations under this Contract, the Consultant must:
 - (i) keep complete, accurate and up to date records, including books of account, labour time sheets, final accounts and any other documents or papers which:
 - (A) show all details in relation to the Services (including evidence of compliance with clause 3.5(e) and matters relating to work health and safety such as any applicable safe work method statements); and
 - (B) are maintained in a form and manner that facilitates access and inspection under this clause 6;
 - (ii) without limiting clause 12.1, at the request of the Principal's Representative at any time during the performance of the Services, and the additional period of time (if any) stated in Item 7 following the completion of the Services or the earlier termination of this Contract, make available within 5 Business Days of such request, one complete set of the records referred to in clause 6.3(a)(i) for inspection and copying by:
 - (A) the Principal or the Principal's Representative; or
 - (B) any other person nominated by the Principal's Representative provided that, where such records are confidential, that person is under an obligation to the Principal to keep the records confidential;
 - (iii) provide the Principal's Representative with copies of documents affecting the Services as may be required by the Principal's Representative;
 - (iv) participate in audits under this Contract at the frequency and in relation to the matters specified by the Principal (including on an ad hoc basis if requested by the Principal), for the purpose of ensuring that this Contract is being properly performed and administered. The Principal may, but is not obliged to, appoint an independent person to assist in the audits. Audits may consider all aspects of the Consultant's performance; and
 - (v) participate promptly and cooperatively in any audits conducted by the Principal or its nominee.

- (b) The Consultant must promptly take corrective action to rectify any error, non-compliance or inaccuracy identified during an audit in relation to the discharge of its obligations under this Contract.

7 Variation or suspension of Services

7.1 Directions to vary

- (a) The Principal's Representative may, by a written document titled "Variation Order", direct the Consultant to vary the Services (including by way of increase, decrease, omission or change), if the variation is within the general scope of this Contract. The Consultant must comply with any direction issued pursuant to this clause 7.1(a).
- (b) The Principal's Representative must not direct a variation after the Expiry Date.
- (c) If the Consultant receives a direction from the Principal's Representative which, although not stated to be a "Variation Order", the Consultant considers to be a direction to carry out a variation to the Services, the Consultant must:
 - (i) within 5 Business Days of receipt of such direction, advise the Principal's Representative that it considers the direction to be a variation direction; and
 - (ii) not commence the services the subject of the direction until the Principal's Representative advises that:
 - (A) it considers the direction to be a variation; or
 - (B) the Consultant should commence the relevant service immediately whether or not the Principal's Representative considers the direction to be a variation.
- (d) If the Principal's Representative directs a variation which omits any part of the Services, the Principal may thereafter carry out this omitted service either itself or by engaging another consultant.
- (e) Any variation to the Services must be performed in accordance with and subject to the terms and conditions of this Contract and is deemed to be incorporated into this Contract.

7.2 Consequences of variation or proposed variation

- (a) Before directing a variation, the Principal's Representative may request the Consultant to provide a written estimate of the time, cost and programming effects of the proposed variation.
- (b) If the Principal's Representative requests the Consultant to provide an estimate under clause 7.2(a), the Consultant must provide the written estimate within the time nominated by the Principal's Representative.

7.3 Valuation of variations

- (a) Unless otherwise agreed in writing between the Principal's Representative and the Consultant, the value of a variation must be determined using the rates set out in Part B of Schedule 2.
- (b) If Part B of Schedule 2 does not include rates relevant to the variation, rates and prices that in the opinion of the Principal's Representative are reasonable will apply, having regard to the market for services similar to the Services.
- (c) Following valuation of a variation in accordance with this clause 7.3, the Principal's Representative will adjust the Fee accordingly.

7.4 Change in law

- (a) If a new law or a change in a law after the Date of the Contract:
 - (b) necessitates a change to the Services;
 - (c) has effect after the Date of the Contract; and
 - (d) could not reasonably have been anticipated at the Date of the Contract,
- then, the extent the Services cost more for the Consultant to perform due to the new or changed law, any such additional cost shall be valued pursuant to clause 7.3.

7.5 Suspension of Services

- (a) Except as permitted by law or directed by the Principal's Representative, the Consultant must not suspend the performance of any or all of the Services.
- (b) The Principal's Representative may immediately suspend the performance of any or all of the Services at any time and for any reason by giving a direction to that effect to the Consultant.
- (c) Except to the extent permitted by law, the Consultant must resume the performance of the suspended Services as soon as practicable after being directed by the Principal's Representative and, in any event, not later than 5 Business Days after receiving a written direction to do so from the Principal's Representative.

8 Payment

8.1 Payment claims and invoices

The Consultant may only serve an invoice on the Principal for the performance of Services in accordance with this Contract for amounts then payable:

- (a) on the date, or completion of the applicable event, stated in Item 8, provided however that not more than one invoice may be served on the Principal in any month; and
- (b) in the form, and containing all details, set out below:
 - (i) the total amount claimed (including the amount of any applicable GST);
 - (ii) an itemised breakdown of how the payment claim is calculated;
 - (iii) documentary evidence supporting the Consultant's claim for the Services performed during the relevant period, including the statutory declaration and statements in the form and on the terms set out in Schedule 6 (or such other form and terms as may be required by the Principal's Representative) signed by the Consultant; and
 - (iv) any other details reasonably required by the Principal.

8.2 Payment

- (a) The Principal will pay correctly rendered invoices, less any amount due from the Consultant to the Principal as a result of clause 8.3 or otherwise, within 30 days of the date the Principal receives an invoice.
- (b) Unless otherwise agreed by the Principal, payment to the Consultant will be made by electronic funds transfer to the Consultant's nominated bank account as notified in writing to the Principal from time to time.
- (c) Payment of the Fee:

- (i) is on account only; and
- (ii) does not constitute any admission that performance by the Consultant is in any respect in accordance with this Contract.

8.3 Set off

The Principal may set off or deduct at any time from any money payable to the Consultant under this Contract:

- (a) any debt or other moneys due from the Consultant to the Principal under this Contract; or
- (b) any other money where the Principal has a bona-fide Claim against the Consultant under the Contract provided that the Principal has given the Consultant prior written notice of such Claim.

8.4 GST

- (a) Terms used in this clause 8.4 which are not defined in this Contract, but which are defined in the GST Law, have the meanings given to them in the GST Law.
- (b) Amounts payable, and consideration to be provided, under any other provision of this Contract exclude GST unless otherwise stated in the Contract.
- (c) If GST is payable on a supply made under or in connection with this Contract (not being a supply the consideration for which is specifically described in the Contract as being inclusive of GST), the recipient of the supply ('**recipient**') must pay to the party making the supply ('**supplier**') an amount equal to the GST payable on that supply at the time the recipient pays or provides any part of the consideration for the supply.
- (d) The supplier must give a tax invoice to the recipient before the time when the recipient is required to pay or provide any part of the consideration for the supply. Without limiting the foregoing, where the supplier is the Service Provider, the Service Provider must, as soon as possible and in any event within 5 Business Days of the date stated in Item 8, provide the Principal with a tax invoice.
- (e) If an adjustment event arises in connection with a supply made under or in connection with this Contract, the supplier must recalculate the GST payable to reflect the adjustment event and give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event. The adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient, as the case requires.
- (f) If any part of a supply is treated as a separate supply for the purposes of the GST Law (including attributing GST payable to tax periods), that part of the supply will be treated as a separate supply for the purposes of this clause 8.4.
- (g) Where a party ('**payer**') must pay to another party ('**payee**') an amount in respect of a cost, expense or loss ('**outgoing**') of the payee, the amount payable is the sum of:
 - (i) the amount of the outgoing less any input tax credit in respect of it to which the payee, or its GST group representative member, is entitled; and
 - (ii) if the amount payable is subject to GST, an amount equal to that GST.

9 Intellectual Property, Principal's materials and Information Documents

9.1 Background Intellectual Property Rights

- (a) Each party will retain all of its Background Intellectual Property Rights.
- (b) The Principal grants the Consultant a non-exclusive, royalty-free and non-transferable licence for the term of this Contract, to use the Principal's Background Intellectual Property Rights for the sole purpose of enabling the Consultant to perform its obligations under this Contract.
- (c) The Consultant grants the Principal an irrevocable, perpetual, royalty-free, non-exclusive licence (with the right to sub-licence) to use, copy, modify, and (subject to clause 12.1(a)(ii)) publish, the Consultant's Background Intellectual Property Rights for any purpose in relation to the Services, or to the extent required to use the Deliverables as contemplated by this Contract.

9.2 Intellectual Property Rights in the Deliverables

- (a) The Consultant assigns to the Principal, all Intellectual Property Rights in the Deliverables (including all draft and interim versions):
 - (i) in existence at the Date of the Contract, with effect on and from the Date of the Contract; and
 - (ii) created after the Date of the Contract, with effect on and from the date of creation of such Deliverables.
- (b) The Consultant undertakes to do all acts and execute all documents necessary or desirable for perfecting the Principal's title to the Deliverables.
- (c) The Consultant acknowledges that its only rights in respect of the Deliverables are those rights of use pursuant to this Contract and the Consultant does not have any right, title or interest to the Deliverables or any goodwill in any Deliverables.
- (d) The Principal grants to the Consultant a non-exclusive, royalty-free and non-transferable licence for the term of this Contract, to use the Deliverables for the sole purpose of the Consultant performing its obligations under this Contract.
- (e) The Consultant must not sublicense the licence granted to it under clauses 9.1(b) and 9.2(d) to any person without the prior written consent of the Principal.
- (f) Notwithstanding any other provision to the contrary and while in no way limiting the Principal's rights under clause 9.2(a), the Principal:
 - (i) acknowledges and agrees to make reasonable endeavours to consult with the Consultant before making any substantial alterations to the Deliverables; and
 - (ii) after taking the steps set out in clause 9.2(f)(i), may exercise its rights under clause 9.2(a) in any manner it sees fit, regardless of the outcome of the consultation under clause 9.2(f)(i).

9.3 Moral Rights

- (a) The Consultant must ensure that it does not, and its Subcontractors do not, infringe any Moral Rights in carrying out the Services.
- (b) The Consultant agrees, and must procure that it obtains all necessary consents (on terms acceptable to the Principal) from the Consultant's Personnel, to any act or omission that might otherwise infringe an author's Moral Rights in relation to any works in connection with the Services, including acts or omissions that occurred before, on or after the Date of the Contract.

- (c) Where requested by the Principal, the Consultant must promptly and, in any event within 10 Business Days of such request, provide the Principal with evidence of the written consents required to be obtained under clause 9.3(a).

9.4 Use of intellectual property

The Consultant must ensure that in providing the Services:

- (a) it owns or is licenced to use all Intellectual Property Rights (including Background Intellectual Property Rights) provided under or in connection with this Contract; and
- (b) the use of the Deliverables as permitted or contemplated under this Contract will not cause the Principal to incur any liability for infringement of any Intellectual Property Rights or Moral Rights.

9.5 Principal's materials

- (a) All materials and information made available by the Principal to the Consultant or its Personnel remain the property of the Principal.

9.6 Information Documents

- (a) Information Documents are provided to the Consultant for information only and the Consultant acknowledges that it has:
 - (i) not relied on the contents of any Information Documents; and
 - (ii) made its own enquiries and formed its own view on the issues covered in the Information Documents.
- (b) Neither the Principal nor the Principal's Representative is responsible for the accuracy or the contents of, or makes any representation or assumes any duty of care in respect of, the Information Documents.

10 Indemnity and Consultant's limitation of liability

10.1 Indemnity

- (a) Without limiting the Principal's other rights under this Contract or otherwise at law, the Consultant must indemnify the Principal on demand against any claim, damage, expense, loss, cost (including reasonable legal costs) or liability (including liabilities of the Principal to third parties) arising out of or in connection with:
 - (i) loss of, loss of use of, destruction or damage to real or personal property of the Principal or any third party, including existing property;
 - (ii) breach of confidentiality or privacy;
 - (iii) infringement of Intellectual Property Rights or Moral Rights; or
 - (iv) injury to, or disease or illness (including mental illness) or death of, persons,

to the extent that, and in proportion to which, such claim, damage, expense, loss, cost or liability arises from:

- (v) a breach by the Consultant of this Contract; or
- (vi) any negligent act or omission of the Consultant or its Personnel in the performance of the Services or otherwise in relation to this Contract.

10.2 Consultant's limitation of liability

- (a) Subject to clauses 10.2(b), the Consultant's aggregate liability to the Principal, whether in contract, tort (including negligence or under any warranty or indemnity) or otherwise at law, arising out of or in connection with this Contract or the performance or non-performance of the Services, is limited to the amount of \$5 million.
- (b) The limitation of liability in clause 10.2(a) will not apply to limit the Consultant's liability to the Principal in relation to:
 - (i) fraudulent or criminal conduct by the Consultant or its Personnel;
 - (ii) a deliberate or intentional breach of this Contract by the Consultant;
 - (iii) injury to, or disease or illness (including mental illness) or death of, persons, or damage to property of third parties;
 - (iv) breach of confidentiality or privacy by the Consultant or its Personnel;
 - (v) infringement by the Consultant or its Personnel of Intellectual Property Rights or Moral Rights; or
 - (vi) conduct by the Consultant or its Personnel in reckless disregard of, or in wanton indifference to, the consequences, excluding any innocent act or omission.

11 Insurance

11.1 Consultant's insurances

The Consultant must:

- (a) from the date the Consultant commences the Services, hold and maintain the following insurances:
 - (i) public liability insurance that:
 - (A) is for the amount referred to in Item 10;
 - (B) is written on an occurrence basis covering the liability of the Consultant and its Personnel to third parties (including each other) for property loss or damage or loss of use (including to property of the Principal in the care, custody or control of the Consultant) and injury to, disease or illness (including mental illness) of or death of persons arising out of, or in connection with, the performance of the Services; and
 - (C) covers the Principal for its vicarious liability for the acts and omissions of the Consultant and its Personnel;
 - (ii) workers compensation insurance as required by law;
 - (iii) professional indemnity insurance that:
 - (A) is for the amounts referred to in Item 11;
 - (B) covers the Consultant for civil liability arising from breach of its professional duty in performing the Services as a result of an act or omission of the Consultant and including cover for breaches of any consumer protection legislation and unintentional breaches of Intellectual Property Rights;
 - (C) has a retroactive date of no later than the date on which the Consultant commences the Services or any earlier preparatory work; and

- (D) includes a definition of professional business which is broad enough to cover all professional activities and services to be provided by the Consultant under this Contract;
- (b) effect the insurances set out in clause 11.1(a) with an insurer licensed by the Australian Prudential Regulatory Authority in Australia or with an investment grade rating from an industry recognised rating agency such as Moodys, Standard & Poors or A M Best;
- (c) ensure that its Subcontractors maintain the insurances stated in Item 12;
- (d) on request, provide the Principal with a certificate of currency for each policy of insurance that the Consultant is required to hold and maintain under this Contract;
- (e) ensure that:
 - (i) if the insurer gives the Consultant notice of cancellation of, rescission of or intention not to renew any required insurance policy, the Consultant as soon as possible informs the Principal in writing that the notice has been given and effects the appropriate replacement insurance in accordance with the requirements of this clause 11;
 - (ii) the Consultant does not cancel, rescind or fail to renew any required insurance policy without effecting replacement insurance as required by this Contract so as to ensure no gap in cover and inform the Principal in writing as soon as possible of the identity of the replacement insurer and the terms of that insurance, and providing such evidence as the Principal reasonably requires that the replacement insurance complies in all relevant respects with the requirements of this Contract; and
 - (iii) if the available limit under its professional indemnity insurance is materially depleted by claims unrelated to this Contract, it informs the Principal as soon as possible and reinstates or replaces the available limit unless the Principal has otherwise agreed in writing; and
- (f) ensure that it:
 - (i) does not do or omit to do anything whereby any insurance may be prejudiced;
 - (ii) if necessary, takes all reasonable steps to rectify any situation which might prejudice any insurance;
 - (iii) renews or replaces any required insurance policy if it expires during the relevant period;
 - (iv) does not cancel or allow an insurance policy to lapse during the period for which it is required by this Contract without giving prior written notice to the Principal;
 - (v) immediately notifies the Principal in writing of any event which may result in a required insurance policy lapsing, being cancelled or rescinded; and
 - (vi) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies.

The obtaining of insurance as required under this clause 11.1 will not in any way limit, reduce or otherwise affect or be affected by any of the obligations, responsibilities and liabilities of the Consultant under any other provision of this Contract or otherwise at law or in equity.

11.2 Period of insurance

The insurance which the Consultant is required to obtain under clause 11.1 must be maintained:

- (a) in the case of public liability insurance, workers compensation insurance, and compulsory third party motor vehicle insurance, until the completion of the Services or the earlier termination of this Contract; and
- (b) in the case of professional indemnity insurance, until the expiration of the period specified in Item 13.

12 Confidentiality, privacy and related matters

12.1 Confidential information

- (a) Subject to clause 12.1(b):
 - (i) the Consultant must:
 - (A) keep confidential the terms of this Contract, any documents produced under this Contract and any information leading to the creation of this Contract; and
 - (B) ensure that each of its Personnel comply with the terms of clause 12.1(a)(i)(A); and
 - (ii) each party must keep confidential all information of the other that is by its nature confidential.
- (b) Neither party is obliged to keep confidential any information disclosed to it by or on behalf of the other party:
 - (i) which is otherwise in the public domain other than by a breach of this Contract by the receiving party;
 - (ii) the disclosure of which is:
 - (A) required by law;
 - (B) made with the prior written consent of the disclosing party;
 - (C) made to a court in the course of proceedings to which the disclosing party is a party; or
 - (D) required by the listing rules of a recognised stock exchange; or
 - (iii) which is disclosed by the receiving party to its legal or other advisers, or to its Personnel in order to comply with its obligations or to exercise its rights under or in connection with this Contract provided that such persons are under an obligation to keep the information confidential.

12.2 Privacy

Without limiting its obligations at law with respect to privacy and the protection of Personal Information, the Consultant must (and must procure that its Personnel):

- (a) comply with the *Privacy Act 1988* (Cth), *Privacy and Personal Information Protection Act 1998* (NSW) and any other privacy guidelines and requirements that the Principal notifies the Consultant that it must comply with;
- (b) only use Personal Information for the sole purpose of fulfilling its obligations under this Contract;

- (c) protect all Personal Information from unauthorised access, modification, disclosure or use; and
- (d) immediately notify the Principal on becoming aware of any unauthorised access, modification, disclosure or use of Personal Information or privacy breach in relation to any Personal Information.

12.3 No publicity

- (a) The Consultant must not use the Principal's name, trade mark or logo in any advertisement, media release, public statement, promotional materials or announcement relating to this Contract or the Services without the Principal's prior written approval.
- (b) If the Consultant receives any enquires from the media in relation to this Contract or the Services, the Consultant must promptly refer such enquires to the Principal.

12.4 Public Access to Government Information

- (a) The Consultant acknowledges and agrees that the Principal is subject to the *Government Information (Public Access) Act 2009 (NSW) (GIPA Act)*. To the extent the GIPA Act applies, the Principal may disclose information in this Contract (including the entire Contract) on its nominated website established for GIPA Act disclosures. The Consultant irrevocably consents to the Principal acting in accordance with this clause.
- (b) To the extent that section 121 of the GIPA Act applies, the Consultant must, upon receipt of a written request by the Principal, provide the Principal with immediate access to the following information contained in records held by the Consultant:
 - (i) information that relates directly to the performance of the Services; and
 - (ii) information received by the Consultant from the Principal to enable it to provide the Services.
- (c) For the purposes of clause 12.4(b), information does not include:
 - (i) information that discloses or would tend to disclose the Consultant's financing arrangements, financial modelling, cost structure or profit margin;
 - (ii) information that the Consultant is prohibited from disclosing to the Principal by provision made by or under any law; or
 - (iii) information that, if disclosed to the Principal, could reasonably be expected to place the Consultant at a substantial commercial disadvantage in relation to the Principal, whether at present or in the future.
- (d) The Consultant must provide copies of any of the information in clause 12.4(b), as requested by the Principal, at the Consultant's own expense.

13 Termination

13.1 Principal may terminate for convenience

- (a) The Principal may terminate this Contract at any time and for any reason, and in its sole discretion, by giving to the Consultant not less than the period of prior written notice specified in Item 14.

- (b) If this Contract is terminated pursuant to this clause 13.1, the Principal must pay the Consultant:
 - (i) any accrued portion of the Fee for Services carried out up to and including the date of termination; and
 - (ii) the Consultant's direct costs and expenses (excluding profit) reasonably and necessarily incurred by reason of the termination except to the extent that such costs and expenses are already payable pursuant to clause 13.1(b)(i)
- (c) Except as set out in clause 13.1(b), the Consultant is not entitled to any other payment in connection with the termination of this Contract under this clause 13.1, including for any costs, losses (including loss of profit) or damage.

13.2 Termination for cause

- (a) In addition to any other rights that it has under this Contract or at law, the Principal may terminate this Contract by giving notice in writing to the Consultant if:
 - (i) the Consultant breaches any provision of this Contract and that failure or breach:
 - (A) is incapable of remedy; or
 - (B) if it is capable of remedy, continues for 10 Business Days after the date the Principal gives the Consultant a notice requiring the breach to be remedied;
 - (ii) the Consultant notifies the Principal of an actual or perceived conflict of interest under clause 2.4 that is unable to be rectified or managed by the Consultant to the reasonable satisfaction of the Principal;
 - (iii) an Insolvency Event occurs; or
 - (iv) the Consultant breaches clause 6.3.
- (b) In addition to any other rights that it has under this Contract or at law, the Consultant may terminate this Contract by giving notice in writing to the Principal if the Principal breaches any provision of this Contract and that failure or breach continues for 10 Business Days after the date the Consultant gives the Principal a notice requiring the breach to be remedied.
- (c) The parties agree that any termination in accordance with clause 13.2(a) or clause 13.2(b) will be treated as if it were termination for repudiation of this Contract by the Consultant or the Principal (as the case may be).

13.3 Consultant's obligations on termination or completion of the Services

Without limiting the Consultant's obligations elsewhere in this Contract, within 5 Business Days of the completion of the Services or earlier termination of this Contract, the Consultant must:

- (a) deliver to the Principal, or if directed by the Principal's Representative destroy, all material and information made available by the Principal to the Consultant; and
- (b) deliver to the Principal copies of all documents produced by the Consultant in relation to the Services,
- (c) including all confidential information and Information Documents, except that the Consultant is entitled to retain a copy of such materials, information and

documents to the extent that it is required to do so by law or for a legitimate quality assurance purpose.

14 Dispute resolution

14.1 Notice of dispute

- (a) If a dispute between the parties arises out of, or in any way in connection with, the subject matter of this Contract, then either party may, by hand or by registered post, give the other and the Principal's Representative a written notice of dispute adequately identifying and providing details of the dispute.
- (b) Notwithstanding the existence of a dispute, the parties must, subject to clause 13 and clause 14.13, continue to perform the Contract.

14.2 Negotiation

Within 10 Business Days after receiving a notice of dispute, representatives from the senior management of the parties set out in Item 15 must undertake genuine negotiations with a view to resolving the dispute.

14.3 Expert determination

- (a) If the dispute has not been resolved within 20 Business Days of service of the notice of dispute, either party may refer the dispute to expert determination in accordance with clauses 14.4 to 14.11.
- (b) Clauses 14.3(a) and 14.4 to 14.11 will only apply if both parties agree in writing, within 20 Business Days of service of the notice of dispute, to have the matter resolved by way of expert determination.

14.4 The expert

The expert determination is to be conducted by an independent industry expert:

- (a) agreed by the parties; or
- (b) failing agreement within 10 Business Days of the referral, as nominated by the Principal (acting reasonably, which expert must be suitably qualified and experienced in light of the nature of the dispute in question).

14.5 Not arbitration

An expert determination conducted under this clause 14 is not arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

14.6 Procedure for determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit but must observe the rules of natural justice;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute;
- (d) examine such documents, and interview such persons, as he or she may require; and

- (e) make such directions for the conduct of the expert determination as he or she considers necessary.

14.7 Disclosure of interest

The expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the expert determination; and
- (b) not communicate with one party to the expert determination without the knowledge of the other.

14.8 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) unless determined otherwise by the expert, pay one-half of the expert's costs.

14.9 Conclusion of expert determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 14 within 20 Business Days from the acceptance by the expert of his or her appointment.

14.10 Liability of expert

The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud. The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 7 or such other terms as the parties and the expert may agree.

14.11 Determination of expert

The determination of the expert:

- (a) must be in writing;
 - (b) will be:
 - (i) substituted for the relevant direction of the Principal's Representative (where applicable); and
 - (ii) final and binding,
- unless:
- (iii) the amount determined by the expert exceeds the amount in Item 16; and
 - (iv) a party gives notice of appeal to the other party within 15 Business Days of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following subclauses.

14.12 Litigation

If a notice of appeal is given under clause 14.11(b)(iv), or if the parties are unable to resolve the dispute within the timeframe set out in clause 14.3(a), then either party may commence proceedings in relation to the dispute.

14.13 Summary relief

Nothing herein will prejudice the right of a party to institute proceedings to seek injunctive or urgent declaratory relief.

15 General

15.1 Governing law

- (a) This Contract is governed by the law in force in New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts in New South Wales, and any court that may hear appeals from those courts, for any proceedings in connection with this Contract.

15.2 Entire agreement

This Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or promise relating to that subject matter is replaced by this Contract and has no further effect.

15.3 Council acting as an Authority

- (a) Nothing in this Contract will fetter, limit or restrict in any way the discharge by the Principal of its obligations or rights under any legislative requirements or as an authority.
- (b) The Consultant will deal with the Principal as it would with any other authority with respect to obtaining any permits, approvals or licences.

15.4 Exclusion of Part 4 of the Civil Liability Act 2002 (NSW)

In determining the rights, obligations and liabilities of the parties in any claim arising in relation to this Contract the operation of Part 4 of the Civil Liability Act 2002 (NSW) which would otherwise be applicable is expressly excluded to the maximum extent permitted by law.

15.5 Notices

- (a) A notice, consent or other communication under this Contract is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
 - (i) if it is delivered, when it has been received by a representative of the addressee at the addressee's address;
 - (ii) if it is sent by mail, 5 Business Days after it is posted; or
 - (iii) if it is sent by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.
- (c) For the purpose of this clause 15.5, the address and email address of the Principal and the address and email address of the Consultant are as set out at Item 17 and Item 18 respectively, or, in either case, another address or email address of which that party has given notice to the other party as its address or email address for notices.
- (d) Notices referred to in this Contract must be given within the time provided for in this Contract. If the Consultant fails to give a notice in that time, then:
 - (i) the Principal will not be liable upon any claim by the Consultant; and

- (ii) the Consultant will be absolutely barred from making any claim against the Principal,
- (iii) arising out of, or in any way in connection with, the relevant act, default, omission, direction, fact, matter or thing (as the case may be) in respect of that claim or dispute.

15.6 Liability for expenses

Each party must pay its own expenses incurred in negotiating and executing this Contract.

15.7 Survival

Clauses 6.3, 8, 10, 11 (to the extent it relates to professional indemnity insurance), 12, 13.3, 14 and this clause 15.7 survive the expiry or earlier termination of this Contract, together with any other term which by its nature is intended to do so.

15.8 Counterparts

This Contract may be executed in counterparts and together they constitute one document.

15.9 Attorneys

Each person who executes this Contract on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

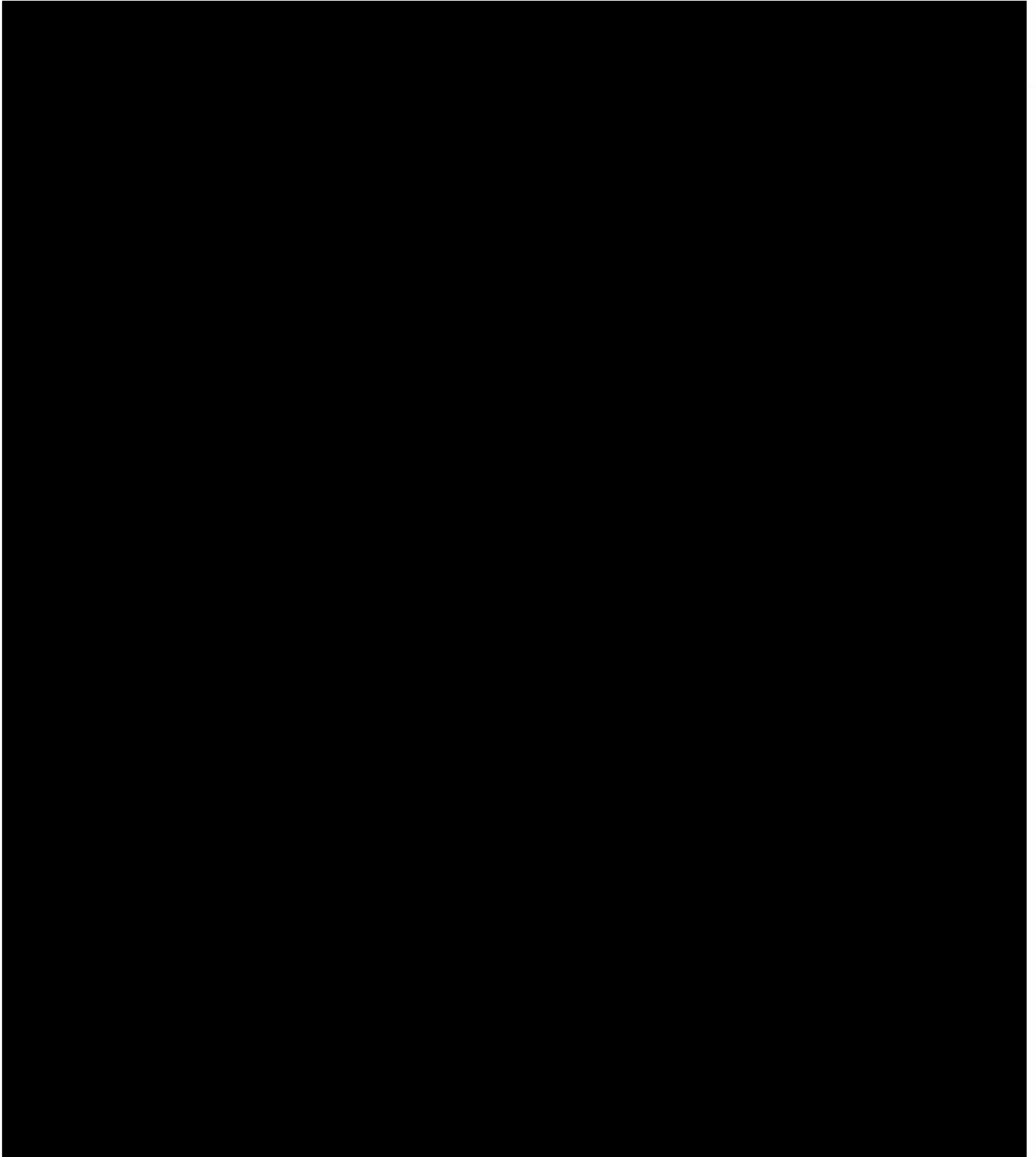
Schedule 1 - Contract information

Item	Description	Contract reference	Details	
1.	Information Documents	Clause 1.1	Definitions and interpretation	
2.	Key Personnel	Clause 1.1	<div>Role</div> <div>General Manager</div> <div>Principal Consultant</div>	<div>Name</div> <div>Michael Bosnich</div> <div>Trang Kim</div>
3.	Principal's Representative	Clause 1.1	<div>Title: Utilities Manager</div> <div>Name: Kunal Johri</div> <div>Address: Town Hall House, 456 Kent Street, SYDNEY NSW 2000</div>	
4.	Quality assurance system	Clause 3.5(e)	<div>Documented Quality Assurance System Required</div> <div>Yes <input checked="" type="checkbox"/> <i>K.J.</i> No <input type="checkbox"/> (mark box as appropriate)</div>	
5.	a Expiry Date		4 years from the Date of the Contract	
	b Further Terms		<div>Length of Further Terms (if applicable): 2 years</div> <div>Maximum number of Further Terms (if any): 3</div>	
	c Date for Completion		Not used	
6.	Causes entitling the Consultant to claim an extension of time	Clause 3.7(a)	<div>1. An act or omission of the Principal or any of its Personnel (excluding the Consultant and its Personnel) not permitted by this Contract.</div> <div>2. A variation, other than a variation directed by the Principal for the benefit of the Consultant.</div> <div>3. A suspension of the Services by the Principal, other than in direct response to an act or omission of the Consultant or any of its Personnel not permitted by this Contract.</div> <div>4. A change in law to the extent contemplated by clause 7.4.</div>	

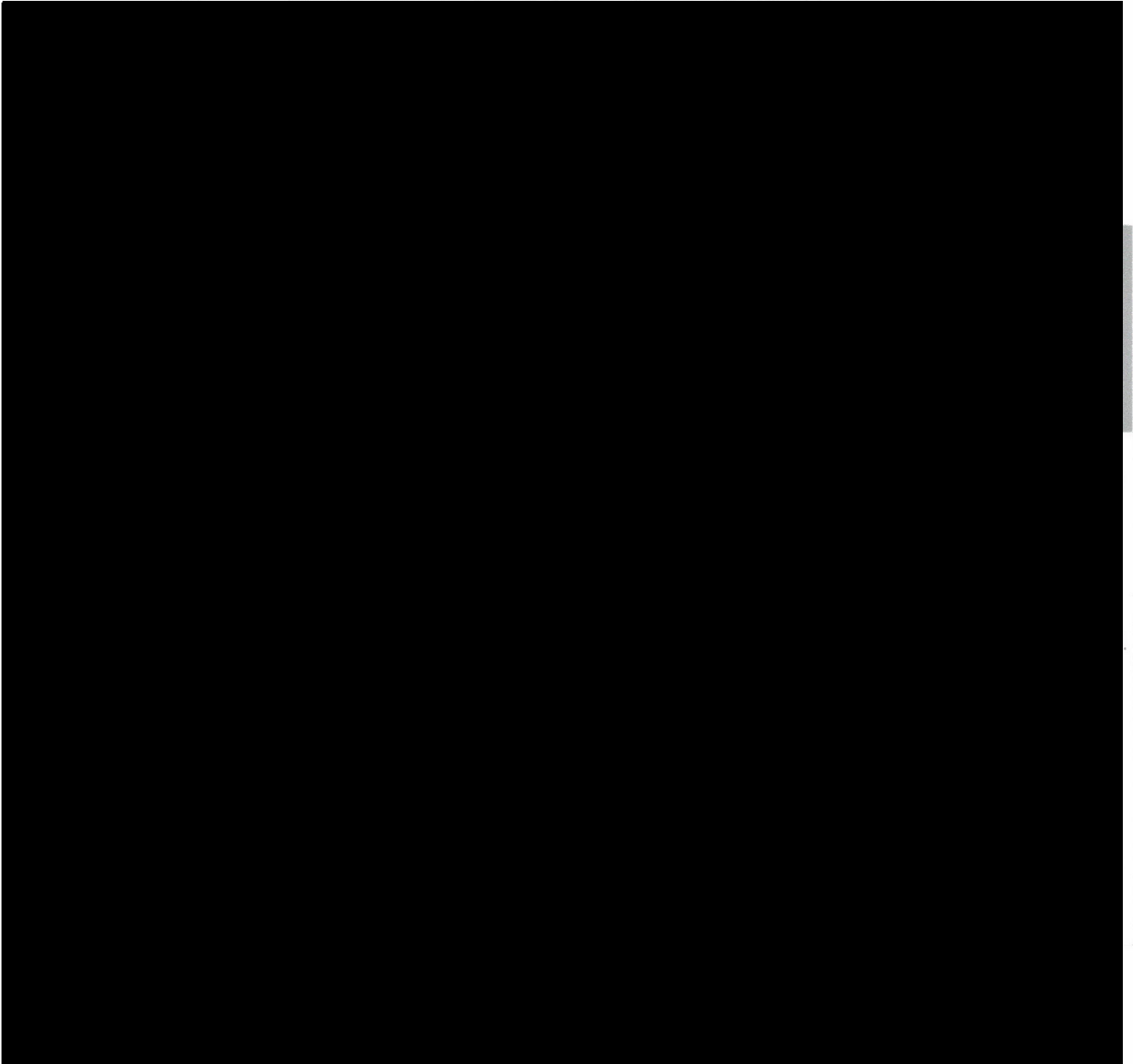
Item	Description	Contract reference	Details
7.	Additional period of time the Principal is permitted to access records and documents	Clause 6.3(a)(ii)	5 Business Days of such request
8.	Frequency of payment claims	Clause Error! Reference source not found. and Clause 8.1(a)	Consultant may only serve an invoice on the date, or completion of the applicable event, as stated in Item 8.
9.	Rate of interest on overdue payments	Not used	Not used
10.	Public liability Insurance	Clause 11.1(a)(i)(A)	\$20 million per occurrence.
11.	Level of professional indemnity insurance	Clause 11.1(a)(iii)(A)	\$10 million per claim and \$20 million in the aggregate.
12.	Insurance requirements for Subcontractors	Clause 11.1(c)	The insurances set out in clause 11.1(a) as relevant to that part of the Services undertaken by the relevant Subcontractor.
13.	Period for professional indemnity insurance	Clause 11.2(b)	7 years after the completion of the Services or the earlier termination of this Contract.
14.	Period of notice for termination for convenience	Clause 13.1(a)	5 Business Days
15.	Representative for senior negotiations	Clause 14.2	Principal: The Council of the City of Sydney Consultant: Energetics Pty Ltd
16.	Threshold value for whether an expert's determination is final and binding		
17.	Address of the Principal (including the Principal's Representative) for service of notices	Clause 15.5(c)	Attention: Kunal Johri Address: Lvl 22 456 Kent St, Sydney 2000 Email: kjohri@cityofsydney.nsw.gov.au
18.	Address of the Consultant for service of notices	Clause 15.5(c)	Attention: Michael Bosnich Address: Level 7 / 132 Arthur Street North Sydney NSW 2060 Email: michael.bosnich@energetics.com.au

Schedule 2 - Fee and schedule of rates for variations

1. Part A – Utilities Management



2. Part B - Utilities Consultancy Services



Schedule 3 – Schedule of Services and Standards

1.1 Utilities Financial Management Services

- (a) The provision of Utilities Financial Management Services by the Consultant includes but is not limited to the following Services:
 - (i) Issue of a monthly payment file in the agreed format;
 - (ii) integrate with the Systems;
 - (iii) develop and document a monthly process for assessing, analysing, verifying and recommending accounts for payment within three months of the Date of the Contract;
 - (iv) provide monthly requisition and accrual journals for Utility accounts;
 - (v) provide the City written confirmation of the Utility payment due date and the amount payable;
 - (vi) provide a remittance advice to the Retailer within 10 days of making the Utility payment;
 - (vii) liaise with Retailers as required in relation to invoice payment issues and balances;
 - (viii) work in conjunction with the Principal's accounts payable when billing or payment issues arise;
 - (ix) provide monthly account reconciliation;
 - (x) consolidate supplier accounts and mis-allocated payments monthly;
 - (xi) provide monthly reconciliation of the Principal's payment file; and
 - (xii) process special notices and action as required. Where the notices cannot be actioned by the Consultant these should be passed back to the Principal for appropriate action.
- (b) The Consultant is required to:
 - (i) use Envizi to update data in Tririga and Technology One; and
 - (ii) ensure that data is replicated in Tririga and Technology One;
- (c) The Consultant must provide updates for Technology One using the Envizi. The Principal will be responsible for providing the master data to the Consultant at the Date of the Contract and where changes to the master data occurs.

1.2 Utility Budgeting

- (a) The Consultant must :
 - (i) develop and submit annually a budgeting model for all Utilities in a format agreed by the Principal;

- (ii) track monthly actual spend against the budget on Account Level unless advised by the Principal to undertake at a Supply Point Level, which breakdown the major Utility components including but not limited to:
 - A. Network Rates;
 - B. Retail Rates;
 - C. Contract Rates (inclusive of Contracts 776, 778, 4000, and any other relevant contract rates);
 - D. Commodity charges; and
 - E. Environmental charges
- (iii) update the forecast model to reflect changes in the above rates as required;
- (iv) provide a narrative to support the budget;
- (v) update monthly known changes to the usage or cost profile at an Account Level where an overspend or underspend has been identified;
- (vi) provide a monthly reconciliation in an agreed format of the actual spend against the budget at an Account Level which needs to include but not limited to following fields:
 - A. current dollar budget;
 - B. forecasted dollar spend;
 - C. current usage;
 - D. historical usage;
 - E. feedback on +/-10% cost variance;
 - F. feedback on +/- \$10,000 cost variance; and
 - G. revised end of year forecast.
- (vii) document and obtain approval from the City all of the processes carried out to deliver on the above within agreed timeframes.

1.3 Data Administration

- (a) The Consultant must undertake data administration for the following:
 - (i) all of the Principal's accounts for Utilities;
 - (ii) multiple Waste Data streams by Site including but not limited to:
 - A. co-mingled;

- B. paper and cardboard;
 - C. general waste;
 - D. construction and demolition Waste Data (multiple streams); and
 - E. food organics
- (iii) as defined by NCOS including but not limited to the following:
 - A. flights;
 - B. fleet;
 - C. refrigerants;
 - D. hotel stays; and
 - E. events;
- (b) As part of data administration the Consultant is required to ensure that active Sites and accounts are reflected correctly in the Systems. This includes:
 - (i) identifying and reporting monthly on new and closed Sites and accounts in conjunction with the Principal and the Facilities Management Service Provider;
 - (ii) document and implement a roll-in and roll-out procedure that links accounts for Utilities, Waste Data and other data to relevant metrics of the Principal including but not limited to:
 - A. leasing ID's;
 - B. TPK codes;
 - C. business units; and
 - D. Accounting codes
 - (iii) liaising with Retailers to open or close accounts each month;
 - (iv) check closed accounts to ensure that ongoing payment is terminated;
 - (v) monitor new accounts to ensure that invoicing occurs and that the correct tariff and Contract Rate has been applied

1.4 Data Capture

- (a) The Consultant must capture the following in the Systems :
 - (i) all accounts including new accounts and their associated data related to:
 - A. Utilities; and
 - B. NCOS reporting; and

- (ii) all meters including Revenue-Meters and Non-revenue Meters and their associated data related to Utilities.
- (b) For all Sites and accounts the Consultant must:
 - (i) manage electricity, gas and water accounts including receiving invoices, undertake account setup, invoice processing, budgeting and forecasting for:
 - A. Large Sites;
 - B. Small Sites; and
 - C. Water
 - (ii) manage Waste Data and NCOS reporting by providing usage variation analysis per Location. The analysis is required to be provided monthly and rolled up on an annual basis.
- (c) The Consultant must undertake data capture in accordance with the following standards and ensure:
 - (i) a site schedule is managed through Envizi and Tririga and Technology One and mapped to agreed metrics;
 - (ii) all paper invoices in the Envizi and Tririga are uploaded and date stamped for electronic storage as per agreed process by the Principal;
 - (iii) Retailers are followed up when invoices are not received within the expected timeframes;
 - (iv) all cost and usage data is uploaded as agreed by the Principal to the Systems;
 - (v) connector files for:
 - A. interval data are uploaded daily, maintained and allocated to correct accounts in Envizi; and
 - B. utility and Waste Data are uploaded regularly, maintained and allocated to correct accounts in Envizi;
 - (vi) site area (m2) data is updated in the Envizi when required; and
 - (vii) relevant Utility contract information is maintained as supplied by the Principal

1.5 Data Validation

- (a) The Consultant is required to undertake the following data validation using Envizi:
 - (i) prepare a data integrity report as a one-off exercise that highlights any major discrepancy and ensures the correct allocations have been applied for usage and cost at an Account Level;

- (ii) Provide monthly cost and consumption validation checks on all bills based on agreed metrics including but not limited to:
 - A. unit cost;
 - B. intensity;
 - C. total quantity used (kWh, MJ, kL);
 - D. invoice # days;
 - E. gap / overlap from previous invoice;
 - F. total invoice network Rate (\$ / MWh);
 - G. change in rate from previous invoice;
 - H. average daily cost (\$ / day);
 - I. change in average daily cost from previous invoice;
 - J. average daily usage (Units / Day);
 - K. change in average daily usage from previous invoice; and
 - L. GST % of ex-GST cost.
- (iii) The agreed metrics listed above will be finalised with the Principal one month after the Date of the Contract;
- (iv) Ensure data-integrity of non-revenue meters in Envizi by undertaking monthly validation checks;
- (v) perform bill validation using:
 - A. reconciliation of meter data for those accounts where interval meter data is available with invoiced data; and
 - B. account data for those accounts where interval meter data is not available.

(b) The Consultant is required to:

- (i) develop and maintain a register for failed bill validations so these can be tracked and resolved;
- (ii) liaise with Retailers to manage recovery of funds where errors have occurred; and
- (iii) escalate issues monthly to the Principal in the agreed format as contained in the Consultants Service Delivery Plan.

1.6 Data Reporting

- (a) The Consultant is required to utilise Envizi and Tririga in order to:
 - (i) produce reports at utility Account level as per the designated hierarchy;

- (ii) produce accurate dashboards and reports that support the Principal's financial and Utilities reporting;
- (iii) upload the Total Cost per Site in Tririga in order to support financial reporting;
- (iv) create business intelligence dashboards that enables detailed analysis and data interpretation as required by the Principal. In addition to Envizi and Tririga, third-party software services such as Microsoft Power BI or Tableau might be utilised for BI dashboards;
- (v) provide quarterly comparison reports on metering data vs revenue data, where interval data is captured;
- (vi) provide reporting against target costs for Utilities where these have been set by the Principal; and
- (vii) monitor Utilities consumption and report monthly to the Principal where variances in consumption or cost have been found such as:
 - A. above +/-10%; and
 - B. costs greater than +/- \$1,000
- (viii) the above parameters may change at the request of the Principal.
- (b) The Consultant is required to push reports to the various personnel nominated by the Principal at the required frequency.
- (c) The Consultant is required to provide a report on any impacts to the delivery of the Services based on updates made to the Systems.

1.7 Envizi Integration

- (a) To ensure consistent financial and environmental reports, the Consultant must ensure that Envizi includes but is not limited to the following information:
 - (i) Retail and Network Rates:
 - A. create and maintain Retail Rates and Network Rates in the tariff library based on Contract Rates
 - (ii) Sites and accounts:
 - A. maintain an accurate and up to date list of sites and accounts that are under contract and require bill validation
 - (iii) generate a bill payment file from Envizi itemising the bills and amounts that are to be paid;
 - (iv) tag bills that have been paid via bill payment file; and
 - (v) give access to a helpdesk issue centre to log, track, resolve and assign a cost related to billing issues.

- (b) All information must be current and where updates are required to and from other systems this must be made in real time or near real time.

1.8 Tenant Invoicing

- (a) For tenant invoicing the Consultant is required to, whilst utilising the principles of NGERs guidelines for defining operational control:
 - (i) prepare tenant invoicing every month using Envizi;
 - (ii) document and implement the process for identifying opportunities for tenancy on-charging or resolving tenancy utility account changes;
 - (iii) assist the Principal in all occupant/tenant charges and changes according to the Policy position that all tenant usage should be measured; and
 - (i) provide advice to the Principal where changes to legislation affect the on selling of energy and water to its tenants including calculation of the applicable rate chargeable to each tenant.

2.1 Overview of Utilities Consultancy Services

- (a) The Principal requires the Consultant to provide expertise in the areas listed in clauses 2.2 to 2.4 below in order to support the Principal's facilities and property management functions both operationally and strategically.
- (b) The expected annual expenditure of Utilities Consultancy Services is at the sole discretion of the Principal but shall not exceed \$200,000 per annum.

2.2 Utilities Consultancy Services

- (a) The Consultant must provide Utilities Consultancy Services at the request of the Principal which includes but is not limited to:
 - (i) energy tariff network optimisation;
 - (ii) assistance in sub-metering requirements;
 - (iii) utility procurement;
 - (iv) providing advice on embedded network management;
 - (v) solar renewable energy generation management;
 - (vi) assistance in:
 - A. retrieving tenant data for BBP purposes; and
 - B. setting up and managing tenant data for BBP purposes;
 - (vii) future management of recycled water usage,; and
 - (viii) any ongoing PPA management requirements

2.3 Provision of Utilities Consultancy Services

- (a) The Consultant must provide a list of relevant employees and subcontractors to be used to provide Utilities Consultancy Services and include as part of their Service Delivery Plan.
- (b) The Principal will provide the Consultant a written notice including the proposed terms requesting Utilities Consultancy Services.
- (c) The Consultant must provide:
 - A. a quotation including estimated cost for the provision of the Services based on the hourly rates included in Schedule 2 Section 2 and a detailed scope of works for approval by the Principal;
 - B. a proposed approach, methodology and program if requested by the Principal;

- C. the proposed resources including the use of any subcontractors; and
 - D. detail of any proposed testing, monitoring and verification if required.
- (i) Following the receipt of the above the Principal may at its sole discretion:
 - A. accept the quotation, in which case the parties will sign and date that quotation and the Consultant must complete the Services in accordance with the quotation and this Agreement; or
 - B. reject the quotation and / or request changes to the scope of works;
- (ii) The Consultant must manage all project progress payments to ensure that payments are made in a timely fashion and to ensure that only valid project payments are made. All payments need to be recorded in the correct work in progress account with appropriate treatment and recovery of any GST paid.

2.4 Scope of Utilities Consultancy Services

- (a) For energy tariff network optimisation the Consultant is required to identify potential tariff savings for electricity accounts that can be achieved in the following areas:
 - (i) network tariff changes for Large Sites;
 - (ii) demand resets for Large Sites;
 - (iii) moving a Site onto contract (franchise supplies);
 - (iv) franchise tariff changes (franchise supplies); and
 - (v) developing commercial arrangements with distributors
- (b) For sub-metering requirements, the Consultant is required to ensure:
 - (i) data flow maintenance from the sub-meters;
 - (ii) data accuracy and verification;
 - (iii) reconciliation of sub-metering data with invoiced data; and
 - (iv) efficiency project support
- (c) for Utilities procurement the Consultant is required to:
 - (i) conduct tender processes for supply of electricity and natural gas to the Principal's Sites;
 - (ii) undertake pricing negotiations with Retailers in the energy market;

- (iii) undertake reviews of contract obligations and commercial terms with Retailers;
 - (iv) provide benchmarking of energy market pricing;
 - (v) advise on future energy market trends;
 - (vi) establish and review policies and strategies regarding procurement;
 - (vii) advise on cost implications related to upcoming regulator or legislative changes in the Utilities market.
- (d) for general advice and other Utilities Consultancy Services the Consultant is required to:
- (i) investigate Utility cost and usage deviations and liaise with the Principal in relation to possible explanations;
 - (ii) train the Principal's staff on how to use Envizi;
 - (iii) undertake stakeholder engagement with the Principal's representatives in order to configure the Systems to provide various functions and reporting outputs;
 - (iv) develop or review utility efficiency procedures and initiatives as requested;
 - (v) provide analytical support for utility related matters;
 - (vi) provide advice on state and federal funding for Utility initiatives that are relevant to the Principal.

Schedule 4 Service Plan

1. Service Plan Requirements

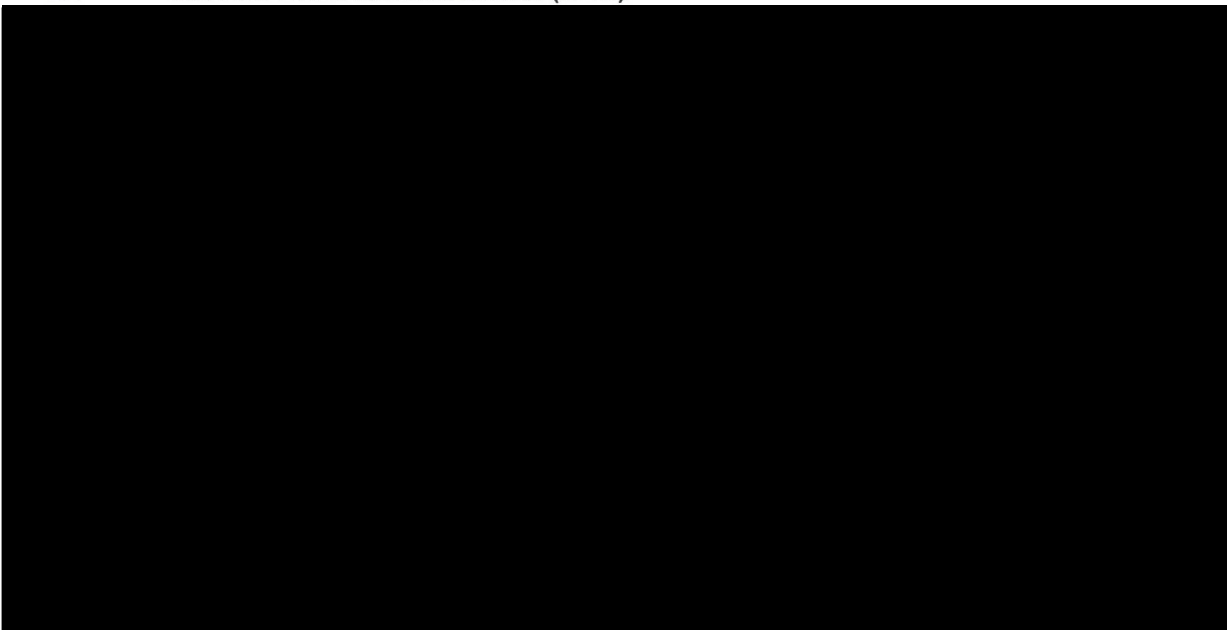
- (a) The Consultant is required to develop a Service Plan that will be used by the Consultant in the delivery of the Services. The Principal will monitor delivery of the Services against this Service Plan.
- (b) The Service Plan is to include but not be limited to the following information:
 - (i) a list of personnel, their role and responsibilities in the provision of the Services including Utilities Consultancy Services;
 - (ii) an escalation protocol and associated documents that aligns with the Principal the Principal will provide relevant information to the Consultant for completion;
 - (iii) a methodology of how the Consultant will undertake data validation using Envizi;
 - (iv) a methodology of how the Consultant will undertake the utilities financial management using Envizi;
 - (v) a methodology of how the Consultant will undertake utility budgeting;
 - (vi) a data management guideline that details how:
 - A. integrity of the data in the Systems will be maintained;
 - B. the information that will be included in the Systems; and
 - C. the data will be utilised for accurate reporting and analysis;
 - (vii) a draft outline of the Monthly Service Delivery and Performance Report required as part of, Schedule 5 Performance Management. The monthly report must contain as a minimum the following information:
 - A. performance against the service level measurements included in Schedule 5, performance Management;
 - B. reporting requirements included as part of Schedule 3 Schedule of Services and Standards;
 - (viii) a Register for failed bills and associated action log and processes to bring noted issues to resolution;
 - (ix) developing a strategy and associated communication protocol that assists the Principal in stakeholder engagement of relevant issues.

Schedule 5 – Performance Management

1.1 Meeting and Reporting

- (a) The Consultant is required to:
 - (i) monitor and report on performance of the Services. The key purpose is to enable the performance of the Consultant to be evaluated by the City; and
 - (ii) attend meetings and provide Monthly Service Delivery and Performance Reports to the City for review. The Consultant is required to propose timing and format of monthly reports as part of their Service Delivery Plan. The City will respond within 5 Business Days with any requests for changes to the supplied templates.
- (b) The Consultant is required to attend Monthly meetings with the Principal to discuss:
 - (i) any refinements to existing processes or new processes required in the Consultants Service Delivery Plan
 - (ii) issues on the failed bill register;
 - (iii) performance against the measures listed in clause 1.2 of this Schedule 5.
- (c) The Consultant is required to attend an Annual meeting with the Principal to discuss:
 - (i) annual performance against the measures listed in clause 1.2 of this Schedule 5;
 - (ii) functional changes required to Envizi and Tririga;
 - (iii) updates required to the Consultants Service Delivery Plan

1.2 Service Level Measurements (SLM)



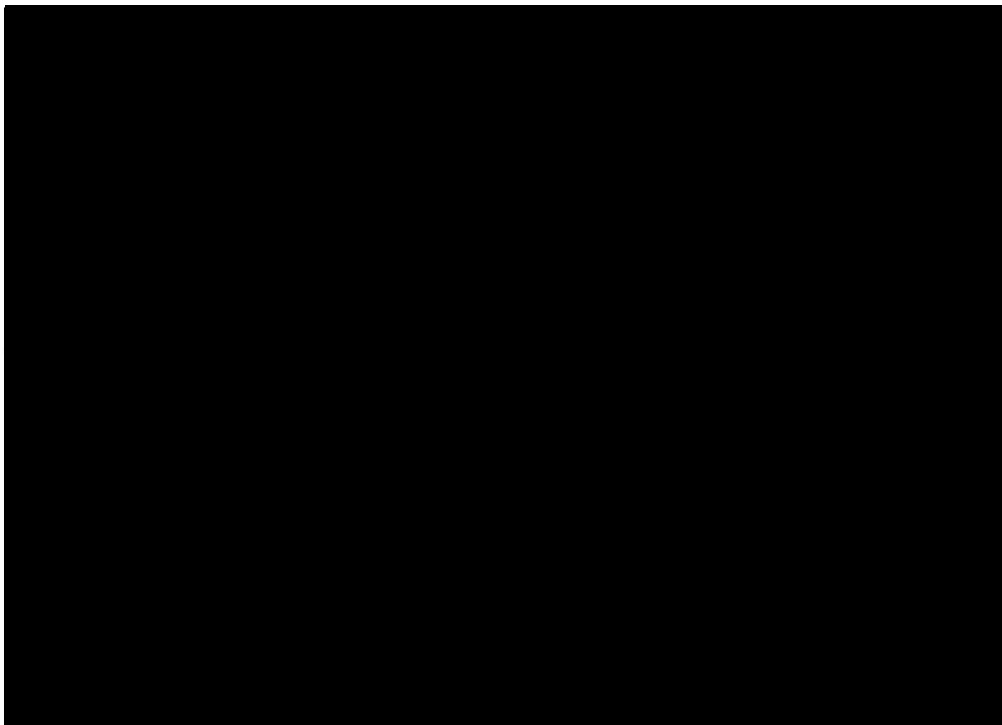


Table 1 Service Level Measurements

1. *Journal of the American Medical Association*, 2000; 283: 2689-2695.



Schedule 6- Statutory declaration

_____ of _____, do solemnly and sincerely declare as follows:

1. I am General Manager (NSW) of Energetics Pty Ltd (ABN 67 001 204 794) ("Consultant").
2. The Consultant has a contract with the Council of the City of Sydney (ABN 22 636 550 790) to **Contract for Utilities Management Services** dated **18/06/2019** ("**Contract**").
3. All subcontractors and suppliers engaged by the Consultant with respect to services under the Contract have been paid all moneys due and payable to them in respect of services carried out for or materials supplied to the Consultant.
4. Attached to and forming part of this declaration is a subcontractor's statement given by the Consultant in its capacity as 'subcontractor' (as that term is defined in the *Workers Compensation Act 1987* (NSW), *Payroll Tax Act 2007* (NSW) and *Industrial Relations Act 1996* (NSW) ("**Acts**") which is a written statement:
 - (a) under section 175B of the *Workers Compensation Act 1987* (NSW), in the form and providing the detail required by that legislation;
 - (b) under Schedule 2 section 18 of the *Payroll Tax Act 2007* (NSW), in the form and providing the detail required by that legislation; and
 - (c) under section 127 of the *Industrial Relations Act 1996* (NSW), in the form and providing the detail required by that legislation.
5. The matters which are contained in this declaration and the attached subcontractor's statement are true.
6. If the Consultant has subcontractors, the Consultant has received from each of those subcontractors a statutory declaration and subcontractor's statement in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).
7. All statutory declarations and subcontractor's statements received by the Consultant from subcontractors referred to in clause 6 were:
 - (a) given to the Consultant in its capacity as 'principal contractor' as defined in the Acts; and
 - (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.
8. The period of the Contract covered by this declaration and the attached subcontractor's statement is from **1/07/2019** to **30/06/2023**.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the *Oaths Act 1900* (NSW).

Declared at _____ on _____
(place where declaration made) (date of declaration)
by _____

Signature of person making the declaration

Name of person making the declaration in the presence of an authorised witness, who states:

I, **[name of authorised witness]**, a **[qualification to be authorised witness]**, certify the following matters concerning the making of this statutory declaration by the person who made it:

- (a) **Alt**[I saw the face of the person. / I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering].
- (b) **Alt**[I have known the person for at least 12 months. / I have confirmed the person's identity using an identification document and the document I relied on was [describe identification document relied on]].

Signature of authorised witness

Date:

SUBCONTRACTOR'S STATEMENT
REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note 1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s).

The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN: _____
(Business name)

of _____
(Address of Subcontractor)

has entered into a contract with _____ ABN: _____
(Business name of principal contractor)
(Note 2)

Contract number/identifier _____

(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive,

(Note 4)

subject of the payment claim dated:/...../.....

(Note 5)

I, _____ a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick ☐ if true and comply with **(b)** to **(g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick ☐ and only complete **(f)** and **(g)** below. You must tick one box.

(Note 6)

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../.....

(Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.

(Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement.

(Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.

(Note 10)

(f) Signature _____ Full name _____

(g) Position/Title ___ Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s 127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s 127 of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or

(c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s 175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkerCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Schedule 7 - Expert determination agreement

(Clause 14.10)

THIS AGREEMENT is made on 20.....

BETWEEN Council of the City of Sydney (ABN 22 636 550 790) ("**Principal**")

AND ("**Consultant**")

AND ("**Expert**")

BACKGROUND

- A. The Principal and the Consultant have entered into the Contract.
- B. The Principal and the Consultant have agreed to refer the Dispute for determination by the Expert acting as an expert and not as an arbitrator.

TERMS

1. DEFINITIONS

In this Agreement:

"**Contract**" means the contract entered into between the Principal and the Consultant described in Item 1 of Annexure 1.

"**Dispute**" means the dispute or difference described in Item 2 of Annexure 1.

2. DECIDE ON DISPUTES

The Expert must:

- (a) determine the Dispute and not any other matter; and
- (b) in discharging his or her obligations under this agreement, abide and be bound by the provisions of the Contract.

3. PROCEDURES

Subject to clause 4, the Expert must determine the Dispute in accordance with the procedures set out in Item 3 of Annexure 1 unless varied, amended or otherwise changed by agreement between the Principal, Consultant and Expert.

4. EXPERT'S POWERS

The Expert must in discharging his or her obligations under this agreement:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the Expert thinks fit without being bound to observe the rules of evidence but must observe the rules of natural justice;
- (c) conduct any investigation which the Expert considers necessary to resolve the Dispute;
- (d) examine such documents, and interview such persons, as the Expert may require;
- (e) make such directions for the conduct of the determination as the Expert considers necessary;

- (f) giving reasons, make a decision in writing stating the determination of the Dispute; and
- (g) act with expedition and, unless otherwise agreed between the parties, make a decision within the period contemplated in clause 16.9 of the general conditions to the Contract.

5. MEET WITH PARTIES

If as part of the procedures under clause 3, the Expert meets with the Principal and Consultant, the Principal and Consultant agree to be bound by such procedural directions as may be given by the Expert both in preparation for, and during the course of, the meeting.

The parties agree that any such meeting or meetings are not in any way to be regarded as a formal hearing.

6. REMUNERATION

In consideration of the Expert performing his obligations under this agreement the Principal and the Consultant shall pay to the Expert (in equal shares unless determined otherwise by the Expert) the amount of set out in Item 4 of Annexure 1 or such other amount as is agreed between the Principal, Consultant and Expert.

7. CONFIDENTIALITY

The Expert must not at any time, without the consent of both the Principal and Consultant, disclose or suffer or permit his or her employees, consultants or agents to disclose to any person:

- (a) any details concerning the subject matter of the Dispute;
- (b) any of the contents of the Contract, this agreement or any other collateral or supplemental agreements or any of the commercial bases or any information relating to the negotiations concerning the same; or
- (c) any other information which may have come to the Expert's knowledge in the course of this agreement including information concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Principal or Consultant.

8. NATURE OF EXPERT'S ROLE

The Expert:

- (a) is to be independent from the Principal and Consultant; and
- (b) without limitation, warrants that he or she has no conflict of interest in acting under this agreement.

9. TERMINATION

This agreement may be terminated by either the Principal or the Consultant in any of the following events:

- (a) the Expert being declared of unsound mind or mentally ill;
- (b) the Expert being declared bankrupt;
- (c) the Expert committing any proven act of dishonesty or, by wilful act or omission or by gross neglect, behaving in a fashion clearly prejudicial to the interests of the Principal or the Consultant;
- (d) the Expert failing to observe and fulfil any of the substantive terms of this agreement; or
- (e) the Expert being prevented by illness or incapacity from performing his or her obligations under this agreement.

10. NOTICES

All notices to be given to the Expert under this agreement will be deemed to be properly given if:

- (a) hand delivered to the Expert;
- (b) sent by certified or registered mail to the Expert's address set out in Item 5 of Annexure 1 or to such other address as the Expert may from time to time advise by notice in writing; or
- (c) forwarded by facsimile transmission to the Expert's facsimile number as set out in Item 6 of Annexure 1 or to such other facsimile number as the Expert may from time to time advise by notice in writing.

11. GOVERNING LAW

Unless specified otherwise in Item 7 of Annexure 1, this agreement is to be construed for all purposes in accordance with the laws applying to the Contract.

12. INCONSISTENCY BETWEEN AGREEMENT AND CONTRACT

If there is any inconsistency between the terms of this agreement and the Contract, then unless otherwise specified in Item 8 of Annexure 1 the terms of the Contract will prevail.

SIGNED by the PRINCIPAL)
in the presence of:)

(Signature of Witness)

(Name Of Witness in Full)

SIGNED by the CONSULTANT)
in the presence of:)

(Signature of Witness)

(Name Of Witness in Full)

SIGNED by the EXPERT)
in the presence of:)

(Signature of Witness)

(Name Of Witness in Full)

ANNEXURE 1

Item 1: (Contract):

Item 2: (Dispute):

Item 3: (Procedures):

Item 4: (Expert's Hourly Remuneration):

Item 5: (Expert's Address):

Item 6: (Expert's Facsimile):

Item 7: (Governing law):

Item 8: (Inconsistency):