



**THE UNIVERSITY OF
WESTERN AUSTRALIA**

**STANDARD TERMS
AND
CONDITIONS OF CONTRACT
FOR THE
ENGAGEMENT OF CONSULTANTS**
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STANDARD TERMS AND CONDITIONS OF CONTRACT FOR ENGAGEMENT OF CONSULTANTS

Table of Contents

5	1. DEFINITION AND INTERPRETATION	1
	1.1. Definitions	1
	1.2. Interpretation	2
	2. ROLE OF THE CONSULTANT	2
10	2.1. Perform Services	2
	2.2. Comply with Instructions	2
	2.3. Professional Standard of Care	2
	2.4. Timely Provision of Services	3
	2.5. Professional Duty of Independent Judgement	3
15	2.6. Knowledge of Client Requirements	3
	2.7. Additional Information Documents and Other Particulars	3
	2.8. Notice of Matters likely to Change Scope or Timing of Services	3
	2.9. Obtain all Necessary Approvals	3
	2.10. Comply with Statutes etc.	3
20	2.11. Supply by Consultant of Labour and Facilities	3
	2.12. Employ Trained Personnel	3
	2.13. Side by Side Work	4
	2.14. Emergency Situations	4
	2.15. Independent Contractor	4
25	2.16. Personnel	4
	2.17. Other Consultants	4
	2.18. Corrections	4
	2.19. Additions and Alterations to Existing Building	4
	2.20. Construction Drawings	4
30	2.21. Document Format	4
	3. ROLE OF THE CLIENT	4
	3.1. Project Scope	4
	3.2. Provide Information, Documents and Other Particulars	4
	3.3. Arrange Access to Perform Services	4
35	3.4. Appointment of representative	4
	3.5. Give Notice of Matters Likely to Change Scope or Timing of Services	5
	3.6. Co-operate with Consultant	5
	3.7. Provisions of Resources	5
	3.8. Provide Additional Professional Services	5
40	4. PAYMENT TO CONSULTANT FOR SERVICES	5
	4.1. Client to Make Payments	5
	4.2. Amount or the Method of Calculation of Fee	5
	4.3. Reimbursable Expenses / Disbursements	5
	4.4. GST	5
45	4.5. Timing of Payments	5
	4.6. Final Payment	5
	4.7. Disputed Claims	5
	4.8. Effect of Termination on Right to Payment	6
	4.9. Changes in Law	6
50	4.10. Records	6
	4.11. Audit	6
	5. TERM	6
	6. INSURANCE AND INDEMNITY	6
	6.1. Insurance provided by the Consultant	6
55	6.2. Sub-consultants' Insurance	7
	6.3. Workers Compensation Insurance	7
	6.4. Provisions of Policies	7
	6.5. Change or Cancellation of insurance Policies	7
	6.6. Certificate of Currency	7
60	6.7. Client May Effect Insurance	7
	6.8. Indemnities	7
	7. RIGHTS TO CONTRACT MATERIAL	8
	7.1. Contract Material	8

	7.2. Delivery of Contract Material	8
	7.3. Use of Contract Material	8
	7.4. Royalty Free Licence	8
	8. RIGHTS TO CLIENT AND CONSULTANT MATERIAL	8
5	8.1. Client Material	8
	8.2. Client Material and Third Parties	8
	8.3. Safekeeping of Client Material	8
	8.4. Consultant Material	8
	8.5. Consultant Material and Third Parties	8
10	8.6. Royalty Payments	8
	8.7. Licence to Consultant Material	8
	9. PUBLICATIONS OF ARTICLES	9
	10. DISPUTE DETERMINATION	9
	10.1. Dispute Resolution	9
15	10.2. Costs of Expert or Arbitrator	9
	11. TERMINATION OF SERVICES	9
	11.1. Termination by Client	9
	11.2. Damages for Breach by Consultant	9
	11.3. Reduction of Services by Client	10
20	11.4. Termination by Consultant	10
	12. UNVOIDABLE DELAY	10
	12.1. Exercise of Rights and Remedies in event of Default	10
	13. TRANSFER AND ASSIGNMENT	10
	13.1. Parties bind their Successors	10
25	13.2. No Assignment	10
	13.3. Employment by Consultant	10
	14. SUB-CONSULTANTS	10
	14.1. Employment of Sub-consultants	10
	14.2. Consultant responsible for payment of Sub-consultants	10
30	14.3. Consultant responsible for Subcontracted Services	10
	14.4. Approval required to Sub-consultant	10
	15. CONFLICT OF INTEREST	10
	16. MONEYS	11
	17. GOVERNING LAW	11
35	18. CONFIDENTIALITY	11
	18.1. Obligation of Confidence	11
	19. CLIENT MAY FINISH UNCOMPLETED SERVICES	11
	20. WAIVER	11
	21. CONSULTANTS TO PAY COSTS	11
40	22. NOTICES	12
	22.1. Address for Notices	12
	22.2. Deemed Service	12
	22.3. Change of Address	12
	23. ENTIRE AGREEMENT AND VARIATION	12
45	23.1. Entire Agreement	12
	23.2. Variation	12
	24. SEVERENCE	12
	25. OCCUPATIONAL HEALTH & SAFETY COMPLIANCE	12
	26. SURVIVAL OF PROVISIONS	12
50	EXECUTED AS AN AGREEMENT	13
	Annexure A Items 1-10	14
	Schedule 1 Disbursements to be reimbursed to the Consultant	16
	Schedule 2 Disbursements that shall not be reimbursed to the Consultant	17

STANDARD TERMS AND CONDITIONS OF CONTRACT FOR ENGAGEMENT OF CONSULTANTS

5 **THIS AGREEMENT** is made on the day of 20

BETWEEN

10 THE UNIVERSITY OF WESTERN AUSTRALIA ABN 37 882 817 280, a body corporate established pursuant to the provisions of The University of Western Australia Act 1911 (WA) of 35 Stirling Highway, Crawley, Western Australia (“**Client**”)

AND

15 (“**Consultant**”)

RECITALS:

20 A. The Client wishes to engage the Consultant to provide Services for the Project.

B. The Consultant accepts the engagement under the terms of this Agreement.

1. DEFINITION AND INTERPRETATION

25 1.1. Definitions

Agreement means this Agreement as constituted by those documents listed in Item 1 together with any amendments or additions to those documents agreed by the parties in writing from time to time.

Brief means the Client’s brief, comprising the documents listed in Item 2.

30 **Client Material** means any material provided by the Client to the Consultant for the purposes of this Agreement including, but not limited to, drawings, designs, models, documents, equipment and other information and data stored by any means.

Confidential Information means information in whatever form that:

- 35 (a) is by its nature confidential;
- (b) is designated by the Client as confidential or provided in circumstances inferring confidentiality; or
- (c) the Consultant knows or ought to know is confidential.

Consultant Material means any pre-existing material provided by the Consultant for the purposes of carrying out this Agreement, including but not limited to drawings, designs, models, documents, equipment and other information and data stored by any means, but excluding Contract Material;.

40 **Consultant’s Proposal** means the Consultant’s offer to the Client to perform the Services as outlined in Item 1.

Contract Material means all material brought or required to be brought into existence by the Consultant as part of, or for the purpose of performing the Services including, but not limited to, reports, notes, specifications, drawings, designs, statistics, models and other information and data stored by any means. Contract Material does not include Client Material or Consultant Material.

45 **FM** means The University of Western Australia, Division of Facilities Management and the **Director of FM** shall mean the person appointed from time to time as the director of FM.

FM Project Leader means the client representative nominated to manage the interface between the Client and the Consultant.

50 **GST or GST Law** means the same as “GST Law” described in A New Tax System (Goods and Services) Tax Act 1999 (Cth).

55 **Intellectual Property** means any copyright, registered or pending patent or patentable invention, registered and unregistered trade mark, confidential information, trade secret, know-how, registered or registrable design, rights in relation to any of the foregoing, rights in relation to any circuit layout and rights in all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

Item means an Item contained in Annexure A.

Project means the defined scope of work being undertaken by or on behalf of the Client in respect of which the Client has engaged the Consultant to provide the Services.

5 **Services** means those professional services described in the Brief, and all professional services reasonably incidental to or arising out of such services.

Taxable Supply has the meaning given to “taxable supply” under GST Law.

Tax Invoice has the meaning given to “tax invoice” under GST Law.

1.2. Interpretation

In this Agreement:

- 10 1.2.1. singular includes the plural and vice versa;
- 1.2.2. a reference to any gender includes every gender;
- 1.2.3. headings and the index are for convenience and shall form no part of the interpretation of this Agreement;
- 15 1.2.4. reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of this Agreement;
- 1.2.5. reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- 1.2.6. reference to any party to this Agreement includes that party’s executors, administrators, substitutes, successors and permitted assigns;
- 20 1.2.7. reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, the Crown, government departments, local authorities, associations and other entities at law;
- 1.2.8. reference to statutes includes all statutes amending, consolidating or replacing the statute referred to and all regulations, rules, Orders in Council, by-laws, and ordinances made under those statutes;
- 25 and
- 1.2.9. time shall be of the essence of this Agreement in all respects.

2. ROLE OF THE CONSULTANT

2.1. Perform Services

30 The Consultant shall duly perform all the Services and discharge all other obligations of the Consultant explicit and implicit in this Agreement. Except where otherwise required by the Client, the Consultant shall perform the Services in the manner proposed in the Consultant’s Proposal and in accordance with the Brief.

2.2. Comply with Instructions

- 35 2.2.1. The Consultant shall comply with all instructions given to the Consultant from time to time by the Client in respect of this Agreement (including instructions which have the effect of modifying or terminating this Agreement). If written confirmation of any instructions is not received by the Consultant within seven (7) days of oral instructions having been given by the Client, the Consultant shall notify the Client in writing accordingly, requesting written confirmation.
- 40 2.2.2. The Client shall not be responsible for the actions of the Consultant which have not been authorised by the Client nor would the Client be responsible for any costs incurred by the Consultant as a result of the Consultant acting without proper authorisation from the Client.
- 2.2.3. No variations to the performance of the Services shall be made until approval is given by the Client or its delegate in writing and such approval is at the sole discretion of the Client.

2.3. Professional Standard of Care

- 45 2.3.1. The Consultant shall have, and shall continue to have, all the requisite expertise, skills, knowledge, experience and safe working practices together with the labour and equipment sufficient to provide the Services to the highest standards currently prevailing in the industry.
- 50 2.3.2. The Consultant must exercise the professional standard of skill, care and diligence in the performance of all Services and other obligations under this Agreement normally exercised by members of the profession performing services of a similar nature, in accordance with the ethics of that profession.

2.4. Timely Provision of Services

2.4.1. The Consultant must, having regard to any delays on the part of the Client's agents, employees or contractors, perform the Services punctually;

2.4.1.1. at the respective times specified or intended in the Brief; or

5 2.4.1.2. if no times are specified or delays occur on the part of the Client's agents, employees or contractors, as soon as practicable, or as otherwise directed by the Client.

2.4.2. The Consultant must keep the Client informed of the progress of Services by the submission of reports to the Client to be provided at intervals and in the format required by the Client.

2.5. Professional Duty of Independent Judgement

10 If the Consultant is required to exercise professional judgment between the Client and a third party with whom the Client has a contract, then the Consultant shall do so independently and impartially and as required by the terms of that contract.

2.6. Knowledge of Client Requirements

15 The Consultant shall use all reasonable efforts to become fully informed of the Client's requirements for the Project. For that purpose the Consultant shall consult the Client before the commencement of and from time to time throughout the performance of the Services.

2.7. Additional Information Documents and Other Particulars

20 If the Consultant considers that any information, documents or other particulars made available to the Consultant by the Client are incorrect in any particulars or are in any respect deficient or unsuitable for the purposes of the Project or not sufficient to enable the Consultant to provide the Services in accordance with this Agreement, the Consultant shall immediately notify the Client to that effect in writing, giving full details of what is incorrect, deficient, unsuitable or insufficient. After any such notification, the Client shall provide such further assistance, information or other particulars including provision of new documents as may be necessary in the circumstances.

2.8. Notice of Matters likely to Change Scope or Timing of Services

25 2.8.1. If the Consultant becomes aware of any matter which will change or which has changed or is likely to change the scope or timing of the Services, the Consultant will promptly give notice in writing to the Client to that effect. Such notice will contain (as far as practicable in the circumstances) full particulars of the change including the costs.

30 2.8.2. The Consultant shall not make any alteration to or omission from any approved design without the prior consent of the Client except as necessitated by emergencies and or unforeseeable circumstances during construction, in which case the Consultant shall notify the Client promptly.

2.8.3. The Consultant shall not initiate or proceed with any stage of the Services as defined in this Agreement without the prior written approval of the Client.

35 2.8.4. The Consultant shall not commence any services for which the Consultant considers an additional fee to be chargeable without first giving notice to the Client and obtaining the Client's approval in writing for such fees.

2.9. Obtain all Necessary Approvals

40 Where specifically stated in the Brief and as otherwise agreed between the parties, the Consultant shall, at the Consultant's expense, obtain all approvals, authorities, licences and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Project.

2.10. Comply with Statutes etc.

45 The Consultant shall duly and punctually comply with all statutes, regulations, rules, orders in council, by-laws, and ordinances relevant to the provision of Services and, at the request of the Client, provide evidence of such compliance.

2.11. Supply by Consultant of Labour and Facilities

50 The Consultant shall, at the Consultant's own cost and expense, supply all labour, expertise, machinery, instruments, tools, equipment, vehicles and other facilities necessary for the provision of the Services, except as may be otherwise detailed in this Agreement.

2.12. Employ Trained Personnel

The Consultant shall, if the Consultant elects to use employees or agents in the provision of the Services, ensure that such employees or agents are appropriately qualified and trained to provide the Services.

2.13. Side by Side Work

The Consultant shall not at any time interrupt, impede or delay in any way the performance of any work by the Client or any other contractor or agent engaged by the Client in respect of the Project, except to the extent that such interference necessarily arises in respect of the administration of a contract as part of the Services under this Agreement.

2.14. Emergency Situations

The Consultant shall have the power to act as the Client's agent in emergency situations where danger to persons or danger to the works appears imminent.

2.15. Independent Contractor

The Consultant is engaged hereunder as an independent contractor and nothing in this Agreement shall be deemed to constitute the Consultant as an agent or employee of the Client and Consultant shall have no authority to incur, and shall not incur any obligation on the part of the Client except with the written approval of the Client.

2.16. Personnel

The Consultant's personnel assigned to the Project are those referred to in Item 3 and such personnel shall remain assigned to the Project, provided that in exceptional circumstances the Consultant may replace any personnel with personnel with equivalent qualifications and experience to those being replaced with the written consent of the Client, which consent will not be unreasonably withheld.

2.17. Other Consultants

The Consultant shall co-ordinate his Services with the other consultants appointed by the Client to provide services relating to different elements of the Project. At no time during the Project will the Client appoint two consultants to perform the same services on the same element of the Project.

2.18. Corrections

The Consultant shall, without any additional fee whether during or subsequent to the term of this Agreement, take whatever action is necessary to correct any errors, omissions and inaccuracies in any drawings, documents or other material submitted to the Client.

2.19. Additions and Alterations to Existing Building

In projects deemed by the Client to be of significance, the Consultant will, if requested by the Client, refer to and or engage the original architect for the building.

2.20. Construction Drawings

Where the Services include administration of a contract to construct works, the Consultant shall prepare and provide plans of the works that accurately depict the size, layout and arrangement of those works as they were required to be built in a format acceptable to the Client (or where such format is not specified, to the standards acceptable to the authority responsible for the works carried out).

2.21. Document Format

The Consultant will provide to the Client all documentation, in electronic format, at the completion of each Project phase or as otherwise nominated in the deliverables of the Brief.

3. ROLE OF THE CLIENT

3.1. Project Scope

The Brief will detail the Services, provide an indication of the scope of the Project and outline the process for the Project development. It will include the nomination of sign-off points required by the Client, prior to the Project proceeding to the next phase.

3.2. Provide Information, Documents and Other Particulars

The Client shall make available to the Consultant information, documents and other particulars relating to the Client's requirements for the Services (to the extent that the same have not already been made available).

3.3. Arrange Access to Perform Services

The Client shall make appropriate arrangements to enable the Consultant to enter such lands and/or buildings as are necessary to enable the Consultant to perform the Services.

3.4. Appointment of representative

The Client will nominate the FM Project Leader to act as the Client's representative and to manage the interface between the Client and the Consultant.

3.5. Give Notice of Matters Likely to Change Scope or Timing of Services

If the Client becomes aware of any matter which may change the scope or timing of the Services of the Project, the Client will give written notice to the Consultant to that effect.

3.6. Co-operate with Consultant

The Client shall endeavour to co-operate with the Consultant, and shall not wilfully interfere with or obstruct the proper performance of the Services.

3.7. Provisions of Resources

The Client will allocate on an agreed basis according to the Project and the Services required, the use of workstations and computers and relevant systems of the Client which will be used as a shared resource by the Consultant's personnel.

3.8. Provide Additional Professional Services

The Client agrees that the Services do not include any services which are properly carried out by other professionals such as legal or accounting unless such as documented in the Brief and if other such professional services are required the Client shall obtain these services at its own cost.

4. PAYMENT TO CONSULTANT FOR SERVICES

4.1. Client to Make Payments

The Client shall pay to the Consultant fees and reimbursable expenses at the times and in the manner set out in Annexure A.

4.2. Amount or the Method of Calculation of Fee

The amount or the method of calculation of the fee for the Services shall be as set out in Item 4.

4.3. Reimbursable Expenses / Disbursements

The Client shall indemnify the Consultant for costs and expenses reasonably incurred by the Consultant in the performance of the Services, as set out in Item 5, but not for costs and expenses of any other kind or in excess of the respective amounts or rates specified in Item 6.

4.4. GST

If the Client receives a Taxable Supply under this Agreement and if the agreed schedule of fees set out in Item 4 does not specify that GST has been included in the agreed payments to the Consultant by the Client for the Taxable Supply, then on presentation of a Tax Invoice by the Consultant to the Client, the Client must pay to the Consultant, in addition to the agreed payments, any GST paid or payable by the Consultant in respect of the Taxable Supply.

4.5. Timing of Payments

The Consultant will give to the Client a Tax Invoice for the Services performed and for reimbursable expenses actually incurred at the times respectively specified in Item 7. Subject to the next clause, the Client shall pay the full amount owing in respect of each Tax Invoice within thirty (30) days of the receipt of the invoice.

4.6. Final Payment

Where stated in Item 8 that the final payment to the Consultant is linked to the delivery of final drawings that accurately describe the building contract works as constructed, final payment will not be made until receipt of these drawings by the Client in an acceptable format as determined by the FM Project Leader.

4.7. Disputed Claims

If the Client disputes the whole or any portion of the amount claimed in an account submitted by the Consultant, the Client shall pay that portion of the amount stated in the account which is not in dispute, and shall notify the Consultant in writing of the reasons for disputing the account. If the parties are unable to reach agreement within fourteen (14) days of the Client's notice, the dispute may be determined at the instigation of either party in accordance with Clause 10 of this Agreement.

4.8. Effect of Termination on Right to Payment

4.8.1. If the engagement of the Consultant is terminated for any reason (other than for breach of this Agreement by the Consultant), or the Services required are reduced, curtailed or discontinued by the Client in accordance with its rights in this Agreement, the Consultant shall be entitled to be paid:

- 4.8.1.1. a pro rata fee, according to the proportion of the Services carried out by the Consultant to the Services for which the Consultant was originally commissioned;
- 4.8.1.2. subject to clause 4.3, all reimbursable expenses incurred to the date of termination; and
- 4.8.1.3. any reasonable consequential costs and expenses (not including loss of anticipated profit) incurred as a result of the termination.

4.8.2. The Consultant shall be entitled upon termination to submit a claim for the aggregate of such amounts less all amounts already claimed pursuant to this Agreement.

4.9. Changes in Law

If after the date of this Agreement there is any change to any statute, by-law, regulation or ordinance of the Commonwealth of Australia or a State or Territory of Australia and that change directly or indirectly increases or decreases the costs or reimbursable expenses incurred by the Consultant in performing the Services, then the fee and/or reimbursable expenses otherwise payable to the Consultant under this Agreement shall be increased or decreased accordingly (but not so as to increase the profit or overhead component of professional fees or other amount representing the difference between direct costs incurred and fees charged).

4.10. Records

The Consultant and his sub-consultants (if any) shall maintain true and correct sets of records in connection with the Services and all transactions related thereto. Such records shall be retained for a period of not less than twenty-four (24) months after the date of the completion of the Services. Copies of all records must be forwarded to the FM Project Leader for filing.

4.11. Audit

The Client may from time to time, and at any time after the date of this Agreement until twenty-four (24) months after the date of completion of the Services, make an audit of all records of the Consultant and his sub-consultant (if any) in connection with all reimbursable expenses under this Agreement. Such audit may also cover the Consultant’s procedures and controls with respect to the costs to be reimbursed. Upon Completion of this audit any amounts by which the total payment by the Client to the Consultant exceeds the amount due to the Consultant as shown by the audit shall be returned to the Client. The Consultant shall do all things necessary to assist the Client in making the audit referred to above.

5. TERM

The Consultant shall commence the Services on the start date specified in Item 9(a) and shall continue until the end date specified in Item 9(b) (if any). The Services may be extended by mutual agreement in writing. If no end date is specified, the Services shall continue until completion of the Project in accordance with this Agreement.

6. INSURANCE AND INDEMNITY

6.1. Insurance provided by the Consultant

The Consultant must, at the Consultant’s own expense, take out and maintain the following insurances for the duration of this Agreement and any extension of it:

- 6.1.1. workers’ compensation, employers liability insurance and any other insurances required to comply with statutory obligations that are applicable to the Consultant’s jurisdiction of residence and any other place where the Services are to be performed;
- 6.1.2. general third party liability insurance covering the Consultant’s own premises, all operations pursuant to this Agreement and contractual liabilities, with a limit of liability of not less than the amount in Item 10(a) for any one occurrence, or such other amount as the Client may agree in writing; and
- 6.1.3. errors and omissions (professional indemnity) insurance covering the Consultant’s and its sub-consultant’s, agent’s, officer’s and employee’s liability arising from any default, act, neglect, error or omission with a limit of liability of not less than the amount in Item 10(b) for any one occurrence and in the aggregate, or such other amount as the Client may agree in writing.

6.2. Sub-consultants' Insurance

The Consultant must ensure that all sub-consultants including employees and agents as referred to in clause 2.12 and 2.16 are protected by similar insurances as referred to in Clause 6.1.

6.3. Workers Compensation Insurance

5 The Consultant must ensure that any workers' compensation insurance to be taken out by the Consultant pursuant to Clauses 6.1 and 6.2 shall be endorsed to indemnify the Client against any liability the Client may have under such laws.

6.4. Provisions of Policies

10 Except for workers' compensation, employer's liability, errors and omissions liability and statutory motor vehicle insurances, the Consultant shall ensure that all insurances to be taken out pursuant to Clauses 6.1 and 6.2 and such other insurances which the Consultant considers necessary shall:

- 6.4.1. include an endorsement to indemnify the Client and its agents, officers and employees; and
- 6.4.2. provide a waiver by insurers and underwriters of all expressed or implied rights of subrogation against the Client and its agents, officers and employees.

6.5. Change or Cancellation of insurance Policies

15 The Consultant shall ensure that all insurances to be taken out pursuant to clause 6.1 and 6.2 shall provide that the insurance cover shall not be materially changed or cancelled without thirty (30) days prior notice in writing to the Consultant of intention to do so. Should any such notice be given the Consultant shall immediately advise the Client before continuing with the performance of the Services.

6.6. Certificate of Currency

20 Before proceeding with the execution of the Services and at such other times as the Client may require, the Consultant shall provide to the Client a certificate of currency evidencing the existence and coverage of insurances required under Clauses 6.1 and 6.2.

6.7. Client May Effect Insurance

25 If the Consultant fails to effect or keep in force or ensure the existence of any of the insurances required by Clauses 6.1 and 6.2 then, without being obligated to do so, the Client may:

- 6.7.1. effect and keep such insurances in force and pay such premiums as may be necessary for that purpose and may recover as a debt due and payable from the Consultant the amount so paid; or
- 6.7.2. refuse payment upon any claim for the fee by the Consultant until the required certificates of currency are provided pursuant to Clause 6.6.

6.8. Indemnities

35 The Consultant shall be solely liable for and shall indemnify and keep indemnified the Client and all agents, officers and employees of the Client from and against all claims, losses, proceedings, demands, actions, damages, costs (including legal costs), charges and expenses whatsoever:

- 6.8.1. in respect of personal injury (including death or disease) to any person, loss of or damage to any property or any economic loss arising out of or in connection with the execution of the Services by the Consultant, any sub-consultant or its or their agents, officers or employees (whether such services are provided in accordance with this Agreement or arising from any direction, authorisation or requirement of the Client or otherwise) or arising from a failure of the Consultant to perform any of its obligations under this Agreement unless and only to the extent that the Consultant proves such injury, loss or damage or economic loss was caused solely by the intentional or negligent act or omission of the Client; and
- 6.8.2. which may be brought by third parties concerning any alleged or proved violation or infringement by the Consultant of any patent rights, registered design, trademark or name, copyright or any other Intellectual Property right of any description in respect of any property or activity directly or indirectly used, owned, operated or undertaken by or on behalf of the Client and arising out of or incidental to the execution of the Services and/or any activity directly or indirectly associated therewith.

50 The Consultant's indemnities provided herein shall not be restricted, limited or waived by any provision of this Agreement with regard to insurance or by any approval of insurance policies.

The Consultant must, as soon as practicable, but not later than twenty-four (24) hours thereafter, give written notice of any incident to its insurance broker and the Client.

7. RIGHTS TO CONTRACT MATERIAL

7.1. Contract Material

Unless otherwise agreed between the parties, the title to and Intellectual Property rights in relation to all Contract Material shall vest upon its creation in the Client and if requested by the Client to do so, the Consultant shall bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or rights in the Client.

7.2. Delivery of Contract Material

On the expiration or earlier termination of this Agreement, the Consultant shall deliver to the FM Project Leader all Contract Material and, if necessary, transfer any Intellectual Property to Client. Where the Contract Material contains data or other information that is stored in or processed by a computer system, a copy of all the data and information from the computer shall be supplied by the Consultant to the Client, in a format suitable for electronic transfer of data to the Client's computer system.

7.3. Use of Contract Material

The Consultant shall ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement.

7.4. Royalty Free Licence

If the Consultant requests use of any Contract Material, and the Client agrees to such request for use, the Client will provide the Consultant a revocable, non-assignable and royalty free licence to use that material.

8. RIGHTS TO CLIENT AND CONSULTANT MATERIAL

8.1. Client Material

Client Material and any Intellectual Property rights in relation to any Client Material shall remain the property of the Client and, on the expiration or earlier termination of this Agreement, the Consultant shall return all Client Material to the Client.

8.2. Client Material and Third Parties

The Client shall inform the Consultant of any Client Material in which third parties own the copyright or other Intellectual Property rights and of any conditions attaching to the use of that material because of such rights. The Consultant shall use that material only in accordance with those conditions.

8.3. Safekeeping of Client Material

The Consultant shall be responsible for the safe keeping and maintenance of Client Material and the protection of any Intellectual Property rights in relation to Client Material in the Consultant's control.

8.4. Consultant Material

Consultant Material and any Intellectual Property rights in relation to Consultant Material shall remain the property of the Consultant and, on the expiration or earlier termination of this Agreement, the Client shall return all Consultant Material to the Consultant other than that which is incorporated into Contract Material or which the Consultant is obliged to provide pursuant to this Agreement.

8.5. Consultant Material and Third Parties

The Consultant shall inform the Client of any Consultant Material in which third parties own the copyright or other Intellectual Property rights and of any conditions attaching to the use of that material because of such rights. The Client shall use that material only in accordance with those conditions.

8.6. Royalty Payments

The Consultant shall pay all royalties and fees on patented articles, processes, and registered designs used in the performance of the Services. The Consultant warrants its sale or use of any goods incorporated in the Services does not and will not infringe any patent, copyright, trademark or trade secret related to such goods, and shall indemnify the Client from all actions, demands, damages or claims arising from or incurred by reason of any breach of warranty by the Client under this clause.

8.7. Licence to Consultant Material

The Consultant grants to the Client an irrevocable royalty free and non-exclusive licence to use the Consultant Material for the purposes for which it is provided.

9. PUBLICATIONS OF ARTICLES

The Consultant shall not without the Client's consent in writing (which may be withheld at the sole discretion of the Client) publish (either alone or in conjunction with others) articles, photographs and other illustrations relating to the Project.

10. DISPUTE DETERMINATION

10.1. Dispute Resolution

The parties agree that should a dispute arise they will proceed in the following manner:

10.1.1. In the first instance, the Client and the Consultant's representative shall attempt to resolve the dispute by negotiation;

10.1.2. If, in the opinion of either party, the offending party has not carried out its obligations to correct the dispute, the offended party shall, by notice in writing to the offending party, provide details of the specific obligations that have not been carried out;

10.1.3. If, after seven (7) days from the date of such notice, the offending party fails to remedy such default the matter shall be referred to the Director of FM and to the Consultant for negotiation and resolution; and

10.1.4. Should there still be no resolution, the matter shall be referred to the WA Chapter of the Institute of Arbitrators & Mediators Australia.

The arbitrator may be a person agreed upon between the Client and the Consultant. If the parties fail to agree on an arbitrator within one (1) month of one party giving the other notice in writing requiring arbitration of a dispute, then either party may request the president for the time being of the WA Chapter of the Institute of Arbitrators & Mediators Australia to appoint an arbitrator for the purposes of this Agreement, and the appointment of such an arbitrator shall bind the parties to this Agreement. In such event, all provisions of the Commercial Arbitration Act 1985 shall apply to such arbitration.

10.2. Costs of Expert or Arbitrator

The costs of arbitration proceedings pursuant to this Agreement shall be borne by the parties as the arbitrator may direct.

11. TERMINATION OF SERVICES

11.1. Termination by Client

Irrespective of any other provision in this Agreement, the Client may terminate this Agreement by notice to the Consultant if:

11.1.1. the Consultant fails to remedy a breach of this Agreement within seven (7) days (or such longer time as the Client may allow) from the receipt of a written notice from the Client specifying the breach and requiring that the same be remedied;

11.1.2. the Consultant shall have committed any act of bankruptcy or an application to wind up the Consultant shall have been presented;

11.1.3. a receiver shall have been appointed in respect of the assets of the Consultant;

11.1.4. the Consultant shall have threatened to cease business or stop payment generally to creditors;

11.1.5. any other event or circumstances shall have occurred which, in the reasonable opinion of the Client, make it unlikely that the Services will be completed by the Consultant in accordance with this Agreement;

11.1.6. a conflict of interest arises which cannot be resolved to the Client's satisfaction in accordance with clause 15;

11.1.7. the Client serves a notice on the Consultant requiring that the Agreement be terminated on a date specified in the notice being not less than thirty (30) days from the date of the notice; or

11.1.8. the Consultant fails or refuses or neglects to comply with any instruction or direction given to it by the Client pursuant to this Agreement.

11.2. Damages for Breach by Consultant

Nothing in the preceding clause shall be taken as in any way restricting any right of the Client to claim and institute proceedings for damages arising out of any breach of this Agreement by the Consultant.

Without limiting the importance of any other provision in this Agreement, the parties agree that the terms of Clauses 2.2, 2.3 and 2.4 are essential terms of this Agreement.

11.3. Reduction of Services by Client

The Client may at any time, by notice in writing to the Consultant, reduce, curtail or discontinue any or all Services specified under this Agreement provided that the Consultant shall be entitled to payment calculated in accordance with Clause 4.8 hereof. Upon such notice being given, the Consultant shall cease or reduce work according to the tenor of the notice and shall immediately do everything possible to mitigate losses as a result of such reduction, curtailment or discontinuance.

11.4. Termination by Consultant

The Consultant may, by notice in writing served on the Client, terminate the Consultant's obligations under this Agreement if the Client breaches any material term of this Agreement and the breach has not been remedied within twenty-eight (28) days (or such longer period as the Consultant may allow) of the service by the Consultant on the Client of a notice requiring the breach to be remedied.

12. UNVOIDABLE DELAY

12.1. Exercise of Rights and Remedies in event of Default

A party to this Agreement shall not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or under clause 11) if that default:

12.1.1. is caused by an act or event that is beyond the reasonable control of that other party;

12.1.2. continues for less than one month; and

12.1.3. was not reasonably foreseeable at the time this Agreement was entered into.

13. TRANSFER AND ASSIGNMENT

13.1. Parties bind their Successors

The Consultant and the Client each bind themselves and their respective partners (in the case of the Consultant), successors, executives, administrators, assigns and legal representatives, under this Agreement.

13.2. No Assignment

The Consultant shall not assign, sublet or transfer any right or obligation under this Agreement without the written consent of the Client which may be withheld at the sole discretion of the Client. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under this Agreement.

13.3. Employment by Consultant

Nothing in this clause shall prevent the Consultant from employing at the Consultant's own expense such persons as are appropriately qualified and as the Consultant may deem necessary for the performance of the Agreement.

14. SUB-CONSULTANTS

14.1. Employment of Sub-consultants

The Consultant shall not without the prior written approval of the Client, subcontract the performance of any part of the Services. In giving written approval, the Client may impose such terms and conditions as it thinks fit.

14.2. Consultant responsible for payment of Sub-consultants

The Consultant shall be responsible for the engagement of and payment for any Services provided by sub-consultants, and shall accept responsibility for those Services.

14.3. Consultant responsible for Subcontracted Services

The Consultant shall be fully responsible for the performance of the Services notwithstanding that the Consultant has subcontracted the performance of any part of the Services.

14.4. Approval required to Sub-consultant

The approval of the FM Project Leader shall be obtained in writing before any sub-consultant is added or deleted from those listed in the Consultant's Proposal.

15. CONFLICT OF INTEREST

The Consultant shall notify the Client immediately of the existence or likelihood of a conflict of interest resulting from any cause whatsoever which would influence the Consultant's work for the Client. The

Consultant shall use its best endeavours (in consultation with the Client) to resolve such conflict of interest. Where in the reasonable opinion of the Client the conflict of interest cannot be resolved to the Client's satisfaction, then the Client shall have the option of terminating the Agreement.

16. MONEYS

5 All reference to moneys in this Agreement shall be deemed to be references to Australian currency, and all moneys to be paid shall be paid to the relevant party in a place in Western Australia which that party may reasonably nominate in writing.

17. GOVERNING LAW

10 This Agreement and all arbitrations arising out of it are governed by the laws in force in the State of Western Australia and the parties submit to the exclusive jurisdiction of courts of that State.

18. CONFIDENTIALITY

18.1. Obligation of Confidence

15 The Consultant shall ensure that neither the Consultant nor any employee, agent or contractor engaged by the Consultant discloses to any person (other than persons required to receive the same as part of the performance of the Services) any Confidential Information, whether it is provided to the Consultant by the Client or any other person or is compiled by the Consultant in connection with this Agreement. The obligations of the Consultant under this clause will not be taken to have been breached where the information referred to:

18.1.1. is or becomes generally available other than by breach of this Agreement;

18.1.2. is legally required to be disclosed; or

18.1.3. is disclosed by the Consultant in the proper performance of this Agreement.

19. CLIENT MAY FINISH UNCOMPLETED SERVICES

25 If the Consultant shall for any reason fail to perform any obligations under this Agreement, the Client may (without prejudice to any right of action or any other rights that the Client may have in respect of such failure) be entitled to have such unperformed works carried out at the expense of the Consultant by any other person.

20. WAIVER

30 All original rights and powers of the Client under this Agreement shall remain in full force irrespective of any neglect, forbearance or delay in their enforcement. The Client shall not be deemed to have waived any of its rights under this Agreement unless such waiver is in writing, and then such waiver shall be effective only in the specific instance and for the purpose for which it is given, and no waiver by the Client of any breach by the Consultant shall be deemed to be a waiver of any continuing or recurring breach.

21. CONSULTANTS TO PAY COSTS

40 The Consultant shall pay its own cost of and incidental to the preparation of this Agreement and all stamp duty payable on this Agreement.

22. NOTICES

22.1. Address for Notices

22.1.1. Any notice, demand, consent, request or other communication to be given or served pursuant to this Agreement shall be in writing and addressed as the case may be, as follows:

5 22.1.2. if given to the Client, addressed and forwarded to the Director of FM at the address of the Client indicated at the commencement of this Agreement or as otherwise notified by the Client; or

22.1.3. if given by the Client, signed by the Director of FM and forwarded to the Consultant at the address indicated at the commencement of this Agreement or as otherwise notified by the Consultant.

10 22.2. Deemed Service

A notice will be deemed to be given:

22.2.1. where delivered by hand, on the day of delivery;

22.2.2. where sent by post, three (3) business days after the day of posting; and

15 22.2.3. where sent by facsimile, on the day of dispatch, provided that a clear transmission report is obtained, unless in any such case it is received on a day which is not a business day, or after 5.00pm on such business day, it will be deemed to have been received on the next such business day.

For the purposes of this clause, "business day" means a day when major banks are open for business in Western Australia

20 22.3. Change of Address

Either party may by notice in writing to the other change the address to which any such notice, demand, consent or other communication is to be served or given as aforesaid.

23. ENTIRE AGREEMENT AND VARIATION

25 23.1. Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Agreement.

23.2. Variation

30 No agreement or understanding varying or extending this Agreement, including in particular the scope of the Services, shall be legally binding upon either party unless in writing and signed by both parties.

24. SEVERENCE

35 If any provision of the Agreement is or becomes void or unenforceable, that part that is not, or does not become, void or unenforceable remains in full force and effect and is unaffected by that severance.

25. OCCUPATIONAL HEALTH & SAFETY COMPLIANCE

40 While performing Services for the Client, the Consultant shall comply with the *Occupational Safety & Health Act 1984* and *Regulations 1996*, the Client's Contractor Safety & Health Policy located at www.safety.uwa.edu.au/policies/contractor (as amended from time to time by the Client), the Client's *Occupational Safety & Health Guidelines* located at <http://www.fm.uwa.edu.au/for/consultants> (as amended from time to time by the Client), Australian Codes of Practice and Australian Standards and all other relevant statutory regulations applicable to the Services and the performance by the Consultant of the Services.

26. SURVIVAL OF PROVISIONS

50 Clauses 4.11, 6, 7, 8, 18 and 19 shall remain in force after the expiry or earlier termination of this Agreement.

EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of **THE UNIVERSITY OF WESTERN AUSTRALIA**

5
by its duly authorised officer

10

in the presence of:

15

Witness

20 Name (printed):

25 **SIGNED** for and on behalf of **Pty Ltd**

by its duly authorised officer

30
.....

Officer Name (printed)

35
In the presence of:

40

Witness

45 Name (printed):

Schedule 1

The disbursements to be reimbursed to the Consultant (Item 5 of Annexure A)

5

Schedule 2

- 5 The disbursements that shall not be reimbursed to the Consultant (Item 6(a) of Annexure A)