

Consultancy Agreement

This Consultancy Agreement is made on: 05 / 02 / 2024

Parties

1. **Greenwich Road Pty Limited** (ACN 636 032 258), **Anglo Road Pty Limited** (ACN 636 032 187), **Dee Why 3 Pty Limited** (ACN 634 195 350), **Dee Why 4 Pty Limited** (ACN 639 570 568), of Level 40, 2 Chifley Square Sydney NSW 2000 (**Principal**).
2. **Premium Consulting Engineers** (ABN: 36 627 724 029) Suite 802, 299 Sussex Street Sydney 2000 (**Consultant**)

Recitals

- A. The Principal wishes to engage the Consultant to perform the Services for the Project.
- B. The Consultant has agreed to accept the engagement and perform the Services on the terms set out in this Contract.
- C. The Consultant wishes to accept its appointment in accordance with this Contract.

The parties agree

1. The documents listed below together form this Contract, and in the case of inconsistency or ambiguity between them the following decreasing order of priority will apply:
 - (a) the Particulars;
 - (b) the Conditions;
 - (c) Attachment 1 – Services;
 - (d) Attachment 2 – Fees;
 - (e) Attachment 3 – Services Program; and
 - (f) Attachment 4 – Design and Building Practitioners Requirements.
2. The Consultant must provide the Services in accordance with this Contract.
3. The Principal must pay the Consultant the Fees in accordance with this Contract.
4. Each party warrants:
 - (a) it has the power to execute this Contract and all necessary corporate and other action has been taken to authorise that execution; and
 - (b) if this Contract is signed on behalf of a party, the signatory is authorised to do so.
5. This Contract may be executed in any number of counterparts.

Execution

Executed as an Agreement

6. **Greenwich Road Pty Limited** (ACN 636 032 258), **Anglo Road Pty Limited** (ACN 636 032 187), **Dee Why 3 Pty Limited** (ACN 634 195 350), **Dee Why 4 Pty Limited** (ACN 639 570 568), of Level 40, 2 Chifley Square Sydney NSW 2000 (**Principal**), by its authorised officer:

Signature of Authorised Officer

Signature of Witness

Print name

Print name

Executed by Premium Consulting Engineers (ABN: 36 627 724 029) Suite 802, 299 Sussex Street Sydney 2000 in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth):



Signature of Company Secretary/Director

Qing Ye (Felix)

Print name



Signature of Director

Qing Ye (Felix)

Print name

Particulars

Item 1 (clause 2.2(a))	Date of commencement of Services	05/02/2024	
Item 2 (clause 2.3(a))	Date for conclusion of Services	Refer to the Services Program at Attachment 3	
Item 3 (clause 11.2(a))	Date for submission of payment claims	25th calendar day of each month or the first Business Day thereafter until completion of the Services or termination of this Contract (whichever is earlier)	
Item 4 (clause 19)	Principal's address for notices	Level 29/2 Chifley Square, Sydney NSW 2000 Attention: Joseph Scuderi Phone: (02) 9231 8679 Email: joseph@landmarkgr.com	
	Consultant's address for notices	Suite 802, 299 Sussex Street Sydney 2000 Attention: Felix Ye Phone: 0426 076 689 Email: Felix YE <felixyeqing@gmail.com>	
Item 5 (clause 5)	Principal's Agent	Landmark Group Australia Pty Ltd ACN 144 079 792 Level 29/2 Chifley Square, Sydney, NSW 2000 Attention: Robert Kokanovic Phone: (02) 9231 8679 Email: robert@landmarkgr.com	
Item 6 (clause 6.3)	Key Personnel	Name Felix Ye	Role Director/Mechanical Engineer
Item 7 (clause 13.1)	Public Liability Insurance	Not less than \$20 million dollars (AUD) in any one claim and \$20 million dollars (AUD) in the aggregate	
Item 8 (clause 13.3)	Professional Indemnity Insurance	(a) Not less than \$10 million dollars (AUD) in any one claim and \$20 million dollars (AUD) in the aggregate. (b) A period of not less than 6 years post completion of this Contract.	

Item 9 (Attachment 4)	Design and Building Practitioners Requirements Is the <i>Design and Building Practitioners Act 2020</i> (NSW) applicable?	Yes
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Conditions

1 Definitions, interpretation and agreement components

1.1 Definitions

The meanings of the terms used in this document are set out below:

Agent means the person or party named in Item 5 of the Particulars.

Business Day means any day other than:

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

Company Insolvency means a company which:

- (a) takes or has instituted against it an action or proceedings whether voluntary or compulsory which has the object of or which may result in the winding up of the Consultant;
- (b) has a winding up order made against it or passes a resolution for winding up; or
- (c) is a party to the appointment of or has an administrator, receiver, provisional liquidator or liquidator appointed to the whole or any part of its property or undertaking.

Deliverables means the outcomes, products, designs, drawings, specifications, models, reports, documents and other things (including drafts and partially completed documents) required under this Contract to be produced or provided by the Consultant to the Principal.

Design and Building Practitioners Requirements means the obligations in Attachment 4 relating to the *Design and Building Practitioners Act 2020* (NSW), which the Consultant must comply with if specified in item 9 of the Particulars.

Detailed Claim Notice has the meaning given by clause 16.2(b).

Dispute means any dispute, difference or issue between the parties concerning or arising out of or in connection with or relating to this Contract or the subject matter of this Contract or the breach, termination, validity, repudiation, rectification, frustration, operation or interpretation of this Contract and a reference to a Dispute, where the Dispute is partly resolved, refers to the unresolved part of the Dispute.

Dispute Meeting has the meaning given by clause 17.

Fees the amount to be paid by the Principal to the Consultant in respect of the Services in accordance with Attachment 2.

Initial Claim Notice has the meaning given by clause 16.2(a).

Intellectual Property Rights means:

- (a) any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, know-how, trademarks and any other right in respect of intellectual property;
- (b) rights under licences and consents in relation to any of them; and
- (c) other forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

Key Personnel means each of the Consultant's personnel identified in item 6 of the Particulars.

Legislative Requirements includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, policies, awards and proclamations of the Commonwealth and the State or Territory applicable to the Services or the Project;
 - (a) the National Construction Code (including the Building Code of Australia) and all applicable Australian Standards;
 - (b) certificates, licences, consent, permits, approvals and requirements of organisations and authorities having jurisdiction applicable to the Services or the Project;
 - (c) the requirements of any public or private authorities, service providers and utility providers; and
 - (d) fees and charges payable in connection with all of the foregoing,
- each as amended from time to time.

Notice has the meaning given by clause 19.

Notice of Dispute has the meaning given by clause 17.

Other Contractors means contractors, consultants or suppliers engaged by or on behalf of the Principal to perform services, undertake works or provide materials or equipment in respect of the Project, but excluding the Consultant and others engaged by or on behalf of the Consultant (including, for the avoidance of doubt, the Consultant's subcontractors).

Pre-Existing Materials means all materials or things prepared and provided by the Consultant (including but not limited to circuit layouts, designs, trademarks, documents, reports, photographs, video tapes, statements, diagrams, technical information, plans, drawings, results, calculations, tables or schedules) which the Consultant can establish to the satisfaction of the Principal:

- (a) existed, in substantially the same form and with substantially the same contents, prior to the engagement of the Consultant;
- (b) are the property of the Consultant; and
- (c) are of general application and do not relate specifically to the Services, the Project, or to the operations, responsibilities or business interests of the Principal.

Principal Information means all information supplied to the Consultant for the purposes of this Contract.

Project means the project described in Attachment 1.

Services means the services to be performed by the Consultant as set out in Attachment 1 and any services necessarily incidental to them, including:

- (a) the provision of all services, professional advice and skills required for or incidental to the provision of such services; and
- (b) any such services performed before the date of this Contract.

Services Program the program included at Attachment 3 providing the dates by which the Services must be performed and completed.

1.2 Interpretation

In this Contract, unless the context requires otherwise:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Contract;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Contract have a corresponding meaning;

- (e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Contract;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to Australian Standards or codes in accordance with which the Services are to be performed or tested is a reference to the version of the standards or codes current on the date of this Contract;
- (i) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (j) a reference to a party to a document includes that party's successors and permitted assignees;
- (k) a promise on the part of two or more persons binds them jointly and severally;
- (l) a reference to an agreement other than this Contract includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (m) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (n) a reference to an "item" is a reference to the applicable "item" in the Particulars to this Contract;
- (o) no provision of this Contract will be construed adversely to a party because that party was responsible for the preparation of this Contract or that provision;
- (p) a reference to a body, other than a party to this Contract (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) specifying anything in this Contract after the words 'include' or 'for example' or similar expressions does not limit what else is included; and
- (r) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.3 Agreement components

This Contract includes any schedule and attachment to it and each of the terms and requirements set out therein, and which terms and requirements will apply as if they were set out in full herein, save that the higher or better standard or requirement will apply in the event of any inconsistency.

The Principal may instruct the Consultant how to interpret or resolve any ambiguity, discrepancy or inconsistency in this agreement. The Principal's instruction is not a variation and does not entitle the Consultant to any claim against the Principal.

2 Provision of Services

2.1 Consultant to provide Services

The Consultant must provide the Services in accordance with this Contract and so as to meet the requirements of the Principal.

At the absolute discretion of the Principal, the Principal may instruct the Consultant to commence all, none or any of the Services in any order whatsoever.

2.2 Commencement of Services

- (a) Unless the Principal instructs otherwise in writing, the Consultant must commence the Services no later than the date specified in item 1 of Particulars.
- (b) If the Services have been commenced before the date of this Contract, the provisions of this Contract apply to those Services.

2.3 Conclusion of Services

Unless the Principal instructs otherwise in writing, the Consultant must continue to provide the Services until the earlier of:

- (a) the date specified in item 2 of the Particulars; and
- (b) the date this Contract is terminated in accordance with clause 18.

Notwithstanding clause 2.3(a), the Consultant acknowledges and accepts that the date specified in item 2 of the Particulars may be adjusted by the Principal from time to time, including in response to actual Project activities and durations.

3 Standard of Services and Deliverables

3.1 Consultant's obligations

The Consultant must perform the Services:

- (a) in accordance with this Contract;
- (b) in a thorough, careful and expeditious manner;
- (c) with due expedition and without delay;
- (d) with the degree of professional skill, care and diligence expected of a competent professional consultant experienced in carrying out services of a similar nature to the Services;
- (e) to meet or exceed the objective of the Project and having regard to the Principal's Information;
- (f) to ensure that the Deliverables and anything else created by or for the Consultant pursuant to this Contract do not contain, and will be free of, any errors, inconsistencies, ambiguities, discrepancies, defects, deficiencies, faults, non-conformances, conflicts and/or omissions;
- (g) in a safe manner, taking all reasonable precautions to prevent harm to persons or damage to property;
- (h) in accordance with Principal's instructions;
- (i) in compliance with (and so that any design or information produced complies with) all relevant Legislative Requirements in respect of the Services and the Project;

- (j) to ensure that everything designed or specified by or for it will be capable of being installed, built, commissioned, used, decommissioned, dismantled and demolished in accordance with all applicable Legislative Requirements, in a safe manner and without risks to the health and safety of any person; and
- (k) if the Particulars specify that the Design and Building Practitioners Requirements apply to the Project, in compliance with the Design and Building Practitioners Requirements in performing the Services.

3.2 Deliverables

The Consultant must provide the Deliverables to the Principal in accordance with the Services Program and whenever requested to do so by the Principal. The Consultant must ensure the Deliverables:

- (a) comply with the requirements of this Contract;
- (b) are complete and suitable for the purpose stated in the Contract and purposes reasonably inferred from this Contract and the nature of the Services;
- (c) comply with the objectives of the Project and all relevant Legislative Requirements;
- (d) do not infringe any Intellectual Property Rights; and
- (e) if the Particulars specify that the Design and Building Practitioners Requirements apply to the Project, comply with the Design and Building Practitioners Requirements.

3.3 Principal may require amendments

- (a) The Consultant must allow the Principal to review and discuss the Deliverables (whether complete or in progress) produced by the Consultant in performing the Services.
- (b) If any Deliverable:
 - (1) contains any error, inconsistency, omission or defect; or
 - (2) does not comply with the requirements of this Contract,
 the Consultant must, if requested by the Principal, amend the Deliverable so that the error, inconsistency, omission, defect or non-compliance is rectified, at the Consultant's cost.
- (c) Any approval, consent, review, direction, instruction or comment from the Principal (or any failure by the Principal to provide any approval, review, direction, instruction or comment) will not in any way:
 - (1) diminish, extinguish or in any way affect any of the responsibilities, obligations or liabilities of the Consultant;
 - (2) affect any warranty given or required to be given by the Consultant; or
 - (3) amount to a waiver by the Principal of any right of the Principal under or in connection with this agreement.

4 Information and documents provided by the Principal

4.1 Principal may provide information or direction

- (a) The Principal may make available to the Consultant, at appropriate times, information and documents relevant to the Services, including the Principal's Information.
- (b) The Consultant must examine the information and documents provided by the Principal. Subject to this clause 4.1, the Consultant is deemed to have satisfied itself of their

sufficiency, clarity and suitability for the purpose of satisfying its obligations under this agreement.

- (c) If the Consultant is not so satisfied, it must immediately advise the Principal in writing requesting the further direction, information, documents or amendments it requires.
- (d) The Principal must use its reasonable endeavours to promptly provide the further direction, information, documents or amendments requested by the Consultant so as not to delay the Consultant in the provision of the Services.

4.2 Principal's requirements and instructions

The Consultant must:

- (a) perform the Services having regard to the Principal's Information and any other information available to the Consultant by making reasonable enquiries;
- (b) clarify and confirm the Principal's requirements for the Services;
- (c) have regard to any relevant cost plan or budget for the Project that is communicated by the Principal;
- (d) advise the Principal of reasonable alternative approaches for the Project including alternative designs or methods; and
- (e) if requested by the Principal, prepare and implement a quality assurance system that is approved by the Principal acting reasonably.

4.3 Ambiguities

Without limiting the Consultant's obligation to comply with this Contract in all respects, if it is proposed or it appears that the Services performed by the Consultant under this Contract, including any of the Deliverables, will not comply with Legislative Requirements or will differ from any of the Principal's requirements and instructions in any way, the Consultant must immediately inform the Principal as to how the Services differ.

5 Principal's Agent

- (a) The Principal has authorised the Agent to enter into this Contract on its behalf and as its agent.
- (b) The Principal discloses, and the Consultant acknowledges and agrees, that unless otherwise notified in writing by the Principal, the Principal has engaged the Agent to be its agent for and in connection with this Contract and that (without limitation) the Agent has the authority to:
 - (1) represent the Principal and to act for and on behalf of the Principal under and in relation to this Contract, including by (in the Agent's absolute and sole discretion) making payment(s) for and on behalf of the Principal; and
 - (2) perform and exercise all rights and functions of the Principal under this Contract.
- (c) Notwithstanding any other provision of this Contract, and unless otherwise notified in writing by the Principal, the Consultant acknowledges and agrees that (without limitation):
 - (1) the Agent may exercise any and all of the Principal's powers under this Contract, including:
 - (A) acting as agent of the Principal for the purposes of verifying, assessing and certifying the Consultant's claims for payment;
 - (B) giving and receiving any notices and other documents required to be given by or to the Principal; and

- (C) approving, rejecting, authorising, directing or considering or performing any other function as if it were the Principal;
- (2) any notice, claim or other document that the Consultant serves on the Principal pursuant to this Contract or otherwise must also be served on the Agent in order for that notice, claim or other document to have been validly and properly served pursuant to, or for the purposes of, this Contract; and
- (3) all undertakings and indemnities given by the Consultant under this Contract may be enforced by the Agent and/or the Principal.

6 Consultant's personnel

6.1 Consultant's representative

- (a) The Consultant must appoint a representative and notify the Principal in writing of that representative.
- (b) An instruction given to the Consultant's representative is deemed to be given to the Consultant.
- (c) The Consultant must ensure that the Consultant's representative is available to attend and provide advice to the Principal and the Principal's representative at all reasonable times from the date of this agreement until this agreement terminates.

6.2 Personnel must be competent

The Consultant must ensure that all personnel (including its employees and any other person or party performing any part of the Services) engaged in the performance of the Services:

- (a) are competent and professional;
- (b) are suitably licensed, registered and insured in accordance with all applicable Legislative Requirements; and
- (c) have the qualifications and experience necessary to ensure full and proper performance of the Services in accordance with this Contract.

6.3 Key personnel

- (a) The Consultant must provide the Key Personnel to perform the Services.
- (b) The Consultant must ensure that the Key Personnel are performing the Services and allocating as much of their time as necessary to properly perform the Services and the Consultant's other obligations under this Contract.
- (c) The Consultant must not, without the Principal's prior written consent:
 - (1) remove any of the Key Personnel: or
 - (2) substitute another person for one or more of the Key Personnel.
- (d) If any of the Key Personnel is not available due to circumstances beyond the reasonable control of the Consultant, the Consultant must promptly notify the Principal and arrange a replacement approved by the Principal of equivalent or greater qualifications and years of relevant experience (such approval not to be unreasonably withheld).
- (e) If the Consultant is unable to arrange a replacement that meets with the approval of the Principal, then the Principal may terminate this Contract in accordance with clause 18.

6.4 Subcontracting

- (a) The Consultant must not subcontract any part of the Services without the Principal's prior written consent.
- (b) The Consultant must not subcontract the whole of the Services.
- (c) The Principal's consent may be subject to any conditions which the Principal in its absolute discretion imposes.
- (d) Any consent by the Principal to subcontract any part of the Services does not relieve the Consultant from any of its liabilities or obligations under this Contract.
- (e) Despite consent by the Principal to subcontract, the Consultant is liable for any act or omission, default or negligence of any subcontractor or any employee or agent of the subcontractor as if it were the act, omission, default or negligence of the Consultant.
- (f) The Consultant must ensure that subcontractors engaged in the performance of the Services:
 - (1) are competent and professional; and
 - (2) have the qualifications and experience necessary to ensure full and proper performance of the duties allocated to them and that those duties are performed in accordance with this Contract as if the subcontractor was named as the Consultant in this Contract.
- (g) The Consultant must upon the Principal's request, immediately withdraw any subcontractor from performance of the Services if in the Principal's opinion, that subcontractor may or has not provided the Services in a manner satisfactory to the Principal.

7 Other Contractors

7.1 Coordination with Other Contractors

- (a) The Consultant must liaise, consult, cooperate and meet with the Other Contractors to integrate and coordinate the Services with the activities of the Other Contractors in respect of the Project.
- (b) The Consultant must immediately notify the Principal if it becomes aware of any delay affecting or caused by another Other Contractor in respect of the Project.
- (c) The Consultant must use its best endeavours to perform the Services in a manner that does not delay the Project and must not interfere with, delay or hinder the performance of activities by Other Contractors in respect of the Project.

7.2 Limit on authority

- (a) The Consultant must ensure the Principal receives a copy of any written communication between the Consultant and any Other Contractor in respect of the Project.
- (b) The Consultant has no authority to, and must not, issue instructions to Other Contractors which would result in the performance by any of the Other Contractors of variations or duties outside the scope of their terms of engagement.
- (c) The Consultant has no authority to, and must not, consent to any waiver or release of any obligation of any of the Other Contractors.

8 Time for performance

- (a) The Consultant must perform the Services expeditiously and without delay, having regard to any timing requirements notified to the Consultant by the Principal.
- (b) The Consultant must perform the Services by the dates set out in the Services Program.
- (c) The Principal may at any time extend the dates set out in the Services Program by providing the Consultant with an updated program in writing. This right is solely for the benefit of the Principal.
- (d) The Consultant must notify the Principal in writing of any event which the Consultant believes will or is likely to delay the performance of the Services as soon as practical and, in any event, not later than 5 Business Days after the Consultant first becomes aware of the event.
- (e) If the Consultant does not complete any part of the Services by the date set out in the Services Program, the Consultant must:
 - (1) immediately use its best endeavours and take all reasonable steps (which includes the use of additional personnel, materials, resources and expenditure at the Consultant's cost):
 - (A) to complete the Service as soon as reasonably practicable;
 - (B) to provide a mitigation program showing the anticipated impact of the delay and how the Consultant will accelerate or resource the Project to complete the Services by the date set out in the Services Program;
 - (C) complete the remaining Services by the dates set out in the Services Program;
 - (D) promptly provide to the Principal a written notice setting out why the Service was not completed by the date set out in the Services Program and how the Consultant intends to comply with this clause 8; and
 - (E) unless the delay was caused by an act or omission of the Principal that is not expressly or impliedly permitted under this Contract, the Principal will be entitled to recover from the Consultant or set-off against any payment otherwise required to be made under this Contract any loss or damage it suffers as a result of the Consultant's failure to perform the Services expeditiously and without delay.

9 Variation to Services

9.1 Variations permitted

- (a) The Principal may at any time give written directions to the Consultant to vary the nature and extent of, or increase, decrease or omit any part of, the Services. If so, the Consultant must carry out the Services as varied by such direction as if the Services were originally defined in this Contract to be the Services as varied.
- (b) If the Consultant:
 - (1) considers that any direction given by the Principal involves a variation; or
 - (2) becomes aware that a service is required which is additional to the Services;
 - (3) considers that there is a need to vary the Services (including in relation to changes to Legislative Requirements),
 the Consultant must immediately notify the Principal in writing, and in any event within 5 Business Days, giving details of the nature and extent of the variation including any time

and/or cost implications having regard to any appropriate rates set out in Attachment 2 of this Contract and seeking the Principal's written direction before carrying out any varied Services.

- (c) Subject to clause 9.1(d), the Principal and Consultant must agree in writing the scope and extent of the variation to the Services before the Consultant carries out the varied Services.
- (d) If an emergency occurs where the health and safety of persons is at risk or damage to, or loss of, property is threatened, the parties must record in writing their agreement as to any variations to the Services within 10 Business Days after the Consultant commences the varied Services.
- (e) Subject to clause 9.1(d), if the Consultant commences any work deemed by the Consultant to be a variation to the Services without prior written agreement from the Principal, the Consultant will have no entitlement to claim for any of the variation works undertaken.
- (f) If the Principal gives the Consultant a written direction to omit part of the Services, the Principal may engage other consultants to carry out the omitted Services and the Fees shall be reduced by a reasonable amount and the Consultant shall have no claim against the Principal in respect of the direction (including any claim for repudiation of this Contract).
- (g) If the Particulars specify that the Design and Building Practitioners Requirements apply to the Project, the Consultant must also comply with clause 3 of Attachment 4.

10 Suspension of Services

10.1 Principal may suspend Services

The Principal may immediately suspend the performance of any or all of the Services at any time and for any reason by giving written notice to the Consultant.

10.2 Recommencement of Services

- (a) If the Principal suspends any of the Services under clause 10.1, the Principal may at any time give the Consultant a written notice to resume performing the suspended Services.
- (b) The Consultant must resume performing those Services as soon as practicable after the date of the written notice, and in any event no later than 5 Business Days after the date of the written notice.
- (c) If the Consultant's acts or omissions in breach or non-compliance of this Contract make suspension under clause 10.1 necessary, the Consultant must bear all losses or damages incurred in connection with suspension.

11 Payment

11.1 Entitlement to Fees

In consideration of the provision of the Services by the Consultant, the Principal must pay the Consultant the Fees. The Fees are deemed to include provision for all costs and expenses incurred by the Consultant in complying with all its obligations under this Contract.

11.2 Consultant to submit payment claims

- (a) The Consultant is entitled to claim for payment at each date for submission of payment claims set out in item 3 of the Particulars.

- (b) The Consultant is only entitled to claim for disbursements set out in Attachment 2 if approved in writing by the Principal prior to the disbursement being incurred.
- (c) Any claim for disbursements must be for the actual cost of the disbursement and must be accompanied by relevant invoices and receipts for payment. The Consultant is not entitled to claim any administration fee or service fee on the disbursement amount.

11.3 Format of payment claims

A payment claim under clause 11 must:

- (a) set out the value of the Services, as varied by any variations, completed up to the date stated in the claim;
- (b) include a payment breakdown generally in the format provided in Attachment 2, unless otherwise agreed with the Principal;
- (c) include evidence of compliance with the insurance requirements in this Contract; and
- (d) include all evidence required by the Principal to assess the value of the Services completed under this Contract.

11.4 Principal to pay Consultant

Within 10 Business Days of receipt of the respective claim, the Principal must certify the amount it proposes to pay the Consultant and if the amount is less than the amount claimed, the Principal must give written reasons for withholding payment.

The Principal must pay the Consultant the amount stated as due to the Consultant in the Principal's payment certificate under clause 11.4 within 30 calendar days end-of-month after receipt of the Consultant's claim for payment.

The Consultant must not withhold the release of any Deliverables the subject of this Contract, until payment for that Deliverable is made.

The Consultant agrees that no upfront deposit is payable to initiate the commencement of any Deliverables the subject of this Contract.

11.5 Set-off

The Principal may deduct from amounts due to the Consultant any amounts the Principal claims are due from the Consultant to the Principal whether under, or in connection with, this Contract or otherwise.

11.6 Payment not approval

- (a) The payment of a claim by the Principal does not constitute approval of any of the Services provided, nor will it be taken as an admission or evidence that the part of the Services covered by the claim for payment have been satisfactorily carried out in accordance with this Contract.
- (b) All payments to the Consultant are payments on account only.

11.7 Goods and Services Tax (GST exclusive prices)

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Contract, the recipient will pay to the supplier an amount equal to the GST payable on the supply. That amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement will be reduced by the amount of any input tax credits or reduced input tax

credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.

- (c) This clause is subject to any other specific agreement in writing regarding the payment of GST on supplies.
- (d) Unless otherwise stated, all amounts payable for any supply under or in connection with this Contract exclude GST.

12 Liability and indemnity

12.1 Consultant's indemnity

The Consultant is liable for, and indemnifies each Indemnified Party from and against, all claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoings or payments (including any legal costs) suffered or incurred by any Indemnified Party and which relate to, or arise from or in connection with:

- (a) any breach of this Contract by the Consultant or any of its employees, officers, representatives, subconsultants, contractors or agents;
- (b) any:
 - (1) personal injury to, or the death of, any person;
 - (2) loss of or loss of use of (whether or not damage has occurred), or damage, to any property, including property of the Principal;
 - (3) defect, fault, non-conformance or omission in the Services or the need to rectify any aspect of the Services;
 - (4) claim brought under, or any breach of Legislative Requirements;
 - (5) claim brought under, or any breach of, the *Design and Building Practitioners Act 2020* (NSW); or
 - (6) claim brought under, or any breach of, the *Home Building Act 1989* (NSW) in relation to the Project, including in respect of any breach of the statutory warranties under that Act,

to the extent caused or contributed to by the act, default or omission of the Consultant or any of its employees, officers, representatives, subconsultants, contractors or agents; and/or

- (c) the default of, or any wrongful or negligent act or omission by or on behalf of, the Consultant or any of its employees, officers, representatives, subconsultants, contractors or agents.
- (d) The Consultant's liability under clause 12.1 is reduced by the extent to which a breach of this Contract by, or the negligence of, the Principal contributes to the claim, action or loss.
- (e) In this clause, Indemnified Party means the Principal, the Agent and each related entity, related party and related body corporate (as each such term is defined in the *Corporations Act 2001* (Cth)) of the Principal or the Agent.

13 Consultant's insurances

13.1 Public liability insurance

The Consultant must effect and maintain a public liability insurance policy:

- (a) in terms satisfactory to the Principal;
- (b) covering and noting the Principal's and the Consultant's respective rights, interests and liabilities to third parties, including the liability of the Consultant to the Principal;
- (c) for an amount of not less than that specified in item 7 in the Particulars for any one occurrence; and
- (d) from the earlier of the date of this Contract and the date of commencement of the Services until the Consultant ceases performing the Services.

13.2 Workers compensation insurance

The Consultant must effect and maintain workers compensation insurance:

- (a) at all times; and
- (b) against any liability which may arise at common law or under any relevant workers or accident compensation legislation,

in respect of any person employed by the Consultant in connection with the Services.

13.3 Professional Indemnity Insurance

The Consultant must effect and maintain professional indemnity insurance for an amount not less than the amount stated in item 8(a) in the Particulars for any one occurrence and in the aggregate. The professional indemnity insurance must be maintained for the entire duration of this Contract and thereafter for not less than the period set out in item 8(b) in the Particulars.

13.4 Other insurance

The Consultant must effect and maintain any other insurance necessary to ensure compliance with Legislative Requirements.

13.5 Evidence of insurance

- (a) The Consultant must, both before commencing performance of the Services and within 10 Business Days of any written request by the Principal, provide evidence, to the Principal's reasonable satisfaction, that the Consultant has obtained and maintained insurance required under clauses 13.1, 13.2, 13.3, and 13.4 in accordance with this Contract.
- (b) Without limiting the Consultant's other obligations under this Contract, if the Consultant fails to promptly provide evidence when required under clause 13.5(a), the Principal may give the Consultant a written notice requiring the Consultant to provide the evidence required within a specified period of not less than 5 Business Days from when the notice is served and specifying the Principal's intent to exercise its rights under this clause 13.5(a) if the Consultant does not comply. If the Consultant does not comply, the Principal may effect and maintain the insurance, pay the premiums and deduct these payments from moneys due or to become due to the Consultant from the Principal or otherwise treat the failure as a breach of Contract.

14 Confidentiality

14.1 Confidential Information

The Consultant must:

- (a) keep secret and confidential; and

- (b) not disclose to a third party without the Principal's prior written consent (which will not be withheld if the disclosure is otherwise required by law),

all information, designs, data, specifications, drawings, reports, accounts or other documents or things which are:

- (c) supplied or made available by the Principal to the Consultant in relation to the Services; or
- (d) brought into existence by the Consultant in performing or for the purpose of performing the Services,

(Confidential Information).

14.2 Maintaining confidentiality

The Consultant must:

- (a) take or cause to be taken all reasonable precautions necessary to maintain secrecy and confidentiality and prevent disclosure of Confidential Information; and
- (b) (without limiting clause 14.2(a)) where necessary, obtain confidentiality agreements in a form satisfactory to the Principal from the Consultant's employees, agents and subcontractors.

14.3 No publicity

- (a) The Consultant must not advertise, publish or release to the public:
 - (1) Confidential Information; or
 - (2) other information concerning this Contract, the Services, the Project or the Principal's operations,without the Principal's prior written consent.
- (b) The Principal will not withhold its consent if the information is legally required to be disclosed.

15 Work Health and Safety

15.1 General

- (a) Prior to commencing the Services, the Consultant must submit a work health and safety plan detailing the Consultant's approach to work health and safety with respect to the Project for approval by the Principal.
- (b) In performing the Services, the Consultant must comply with the approved work health and safety plan and comply with all Legislative Requirements relating to work health and safety, including the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).
- (c) To the extent they are not inconsistent with any Legislative Requirements, comply with the Principal's policies, guidelines, requirements and directions in respect of work health and safety.
- (d) The Consultant must ensure that all of its employees, personnel, subcontractors and other agents comply with the requirements of clause 15.1(b) and 15.1(c).
- (e) The Consultant indemnifies the Principal against all loss arising out of or in connection with the Consultant's failure to comply with the provisions of this clause 15.

15.2 Design of structures

In so far as the Consultant designs any structure which is to be constructed, the Consultant shall:

- (a) consult with the Principal about how to ensure that risks to health and safety arising from the design during the construction work are:
 - (1) eliminated, so far as is reasonably practicable; or
 - (2) if it is not reasonably practicable to eliminate the risks, minimised so far as is reasonably practicable; and
- (b) prepare and keep updated a safety in design matrix that is tabled for discussion at the monthly meetings; and
- (c) provide to the Principal a written report in accordance with clause 295 of the *Work Health and Safety Regulation 2017* (NSW) that specifies the hazards relating to the design of that structure including any applicable safety in design factors which, so far as the Consultant is reasonably aware, creates a risk to the health or safety of persons who are to carry out any construction work on the structure or part.

16 Claims

16.1 Consultant must notify Principal of claims

If the Consultant wishes to make a claim against the Principal in respect of:

- (a) any direction of the Principal; or
 - (b) any other matter arising out of or in any way connected with the Services or this Contract,
- the Consultant must give the Principal an Initial Claim Notice and a Detailed Claim Notice, as defined in clause 16.2.

16.2 Claim notices

The meanings of the terms used in clause 16.1 are set out below:

- (a) Initial Claim Notice means a written notice within 5 Business Days of the date the Consultant becomes aware or ought reasonably to have been aware of the claim, expressly specifying:
 - (1) that the Consultant proposes to make a claim; and
 - (2) the direction or other matter on which the claim will be based.
- (b) Detailed Claim Notice means a written claim within 15 Business Days of giving the Initial Claim Notice, which must include the full particulars (factual and legal) of the claim including any estimated time and/or cost impact.

16.3 Result of failure to comply

If the Consultant does not comply with clause 16.1 in relation to a claim:

- (a) the Principal is not liable on the claim by the Consultant; and
- (b) the Consultant is absolutely barred from making the claim against the Principal.

17 Dispute resolution

17.1 Notice of Dispute

In the event of a Dispute, either party may deliver a written notice to the other party which:

- (a) states that it is a Notice of Dispute under this clause;
- (b) identifies the Dispute;
- (c) states the alleged relevant facts that are relied on;
- (d) identifies any documents common to the parties which are relied on and refers to any relevant parts;
- (e) identifies and encloses a copy of any other document relied on and refers to any relevant parts; and
- (f) states the terms on which it is alleged the Dispute should be resolved.

17.2 More than one Dispute

A Notice of Dispute may deal with more than one Dispute.

17.3 Response

Within 10 Business Days after a party has delivered a Notice of Dispute, the other party must deliver a written response (**Response**) to narrow and clarify the scope of the relevant Dispute and explain the position of the responding party. A Response must:

- (a) identify areas of agreement;
- (b) identify any relevant documents not referred to in the Notice of Dispute;
- (c) refer to any relevant parts of documents not referred to in the Notice of Dispute; and
- (d) identify and enclose a copy of any document referred to in the Response which is not common to the parties.

17.4 Convening a Dispute Meeting

If, within 20 Business Days of delivery of a Notice of Dispute, the relevant Dispute has not been wholly resolved:

- (a) either party may give the other party not less than 5 Business Days and not more than 10 Business Days written notice of the time (which must be within normal business hours) and place (which must be at or reasonably proximate to the place of the business of the Principal or at a place reasonably convenient to both parties) for a without prejudice meeting; and
- (b) representatives of the parties who have authority to resolve the Dispute must meet at the time and place referred to in the notice given under clause 17.4(a).

17.5 Purpose of a Dispute Meeting

At a Dispute Meeting, both parties must use their best endeavours to:

- (a) resolve the whole of the Dispute, or as much of the Dispute as possible; and
- (b) to the extent that the Dispute is not wholly resolved:
 - (1) identify any relevant facts, documents and parts of documents which are agreed;
 - (2) identify relevant facts, documents or issue with respect to which there is genuine disagreement; and

- (3) agree an appropriate process by which to resolve the matters of disagreement.

17.6 Communications at a Dispute Meeting

Communications between the parties during a Dispute Meeting, whether oral or in writing, will not be admissible as evidence in any legal process unless in writing and signed by both parties.

17.7 Continued performance of this Contract

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Contract.

17.8 Conditions precedent to litigation

No party may commence proceedings in court in relation to a Dispute unless:

- (a) a Notice of Dispute has been delivered in relation to that Dispute; and
- (b) the party commencing proceedings has complied with its obligations under clause 17.3 (if applicable) and clauses 17.4 and 17.5 (to the extent reasonably possible),

or the only relief sought is urgent injunctive or urgent declaratory relief.

18 Termination

18.1 Termination by Principal for insolvency or breach

The Principal may terminate the Consultant's engagement under this Contract immediately by giving written notice to the Consultant if the Consultant:

- (a) informs the Principal or creditors generally that it is insolvent or unable to pay its debts as they fall due, or if the Principal on reasonable grounds suspects that the Consultant is insolvent or unable to pay its debts as they fall due;
- (b) enters into a composition or arrangement with its creditors or calls a meeting of creditors with a view to entering into a composition or arrangement;
- (c) has a mortgagee seeking to exercise a right of possession or control over the whole or a part of its property;
- (d) has execution levied against it by creditors, debenture holders or trustees under a floating charge;
- (e) is a company to which the definition of Company Insolvency applies;
- (f) is a natural person who dies or commits an act of bankruptcy; or
- (g) is in breach of this Contract and has failed to rectify the breach to the Principal's satisfaction within 5 Business Days following service of a written request to do so by the Principal.

18.2 Termination by Consultant for failure to pay

The Consultant may terminate this Contract immediately by giving written notice to the Principal if:

- (a) the Principal has failed to pay to the Consultant any part of the Fees that are due and payable;

- (b) those Fees remain unpaid by the Principal for more than 20 Business Days after the Principal receives written notice from the Consultant stated to be under this clause 18.2 identifying:
 - (1) the part of the Fees due and payable; and
 - (2) the due date for payment; and
- (c) the unpaid Fees are not the subject of a Dispute.

18.3 Termination by Principal for convenience

- (a) Despite clause 18.1, the Principal may at any time at its absolute discretion by written notice to the Consultant terminate this Contract, whether or not the Consultant is in default of the Contract.
- (b) Termination will be effected in the manner specified in the notice and will not prejudice the Principal's and Consultant's rights, obligations and duties under this Contract in respect of that part of the Services performed up to the time this Contract is terminated.

18.4 Consultant's obligations on termination for convenience

When the Consultant receives a termination notice given under clause 18.3(a), the Consultant must, in respect of the Services terminated (unless the notice states otherwise), immediately discontinue the Services and return all materials given by the Principal to the Consultant.

Upon termination, the Consultant must deliver to the Principal all Deliverables and all Documents which, on completion, would be Deliverables in electronic format within 5 Business Days of the date of termination.

The Consultant's sole right and remedy in respect of the termination is payment of the amount calculated in accordance with clause 18.3.

18.5 Consultant's waiver on termination for convenience

If the Principal terminates this Contract under clause 18.3(a):

- (a) the Consultant must, in respect of the uncompleted portion of the Services, waive any claims for damages (including loss of anticipated profits); and
- (b) the Consultant's sole right and remedy will be to require the Principal to pay a proper valuation under this Contract of all parts of the Fees payable and not previously paid to the Consultant for Services completed in accordance with this Contract before and to the date of the notice of termination.

18.6 Consequences of termination generally

- (a) The termination of the Consultant's engagement under this Contract does not affect any of the Principal's other rights or remedies.
- (b) If the Consultant's engagement under this Contract is terminated under clause 18.1, the Consultant:
 - (1) is liable for and indemnifies the Principal against any loss suffered by the Principal as a result of the termination, including any additional costs incurred by the Principal in procuring the completion of the Services; and
 - (2) must comply with any request or direction of the Principal, including by promptly issuing to the Principal, whenever requested, a copy of any Deliverables and other documents created by or for the Consultant, in any editable form (and format) requested by the Principal.

18.7 Clauses surviving termination

- (a) Clauses 3, 7, 11, 12, 13.2, 13.3, 14, 16, 18.6(b), 21 and any other obligations which are expressed to or, by their nature, survive expiry or termination of this Contract, and are enforceable at any time at law or in equity.
- (b) The provisions of this Contract survive expiry or termination of this Contract to the extent necessary to give effect to clause 18.7(a).

19 Notices and document management system

19.1 How and where Notices may be sent

A notice or other communication under this Contract must be in writing and delivered by hand or sent by pre-paid post or email or Procore to a party at the address or the email address for that party listed in item 4 and item 5 of the Particulars or as otherwise specified by a party by Notice.

Any notice delivered under clauses 16, 17 or 18 must be delivered by hand or registered post.

19.2 Email and Procore

Communications under or pursuant to this Contract may be given by email or Procore unless otherwise directed in writing by the Principal and will be deemed to be in writing for the purposes of this clause 19.

19.3 When Notices are taken to have been given and received

- (a) A notice (and other documents) shall be deemed to be given and received:
 - (1) if addressed or delivered to the relevant address specified in the Particulars (or last communicated in writing to the person giving the notice); and
 - (2) on the earliest date of:
 - (A) actual receipt;
 - (B) the second Business Day following the date of postage;
 - (C) if 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; or
 - (D) if sent by Procore, upon delivery to the receiving party's inbox, with evidence that delivery to the relevant inbox has been successful, constituting proof of delivery by Procore.
- (b) A notice delivered or received other than on a Business Day is regarded as received on the following Business Day.
- (c) A notice given by hand is regarded as given and received on the day it is delivered if it is delivered before 4pm on a Business Day or, if it is delivered after 4pm or on a day other than a Business Day, the next Business Day after it is delivered.

19.4 Document management system

- (a) The Consultant must, at its own cost, utilise an online document management system for the Project and conduct all communications with the Principal under the Contract via that system.
- (b) The online document system approved for this project is Procore.

- (c) The Consultant is responsible for maintaining all correspondence and documentation on Procore for the Services and providing the Principal with an electronic copy of all Deliverables or documents upon the date for the Conclusion of Services.
- (d) The Consultant shall provide, at its cost, all necessary training to facilitate the use of Procore for its own personnel.
- (e) The Consultant must strictly follow the Principal's requirements and guidelines for using Procore as notified by the Principal in writing from time to time.

20 Conflict of Interest

- (a) A conflict of interest in connection with this Contract includes a conflict between a duty owed by the Consultant to a person and a duty owed by the Consultant to the Principal.
- (b) The Consultant represents that to the extent reasonably ascertainable at commencement of this Contract, after making all reasonable enquiries, no conflict of interest exists or is likely to arise.
- (c) The Consultant must notify the Principal immediately on becoming aware of a conflict of interest or a significant risk of a conflict.
- (d) Where a conflict of interest arises or is likely to arise, the Principal may proceed to terminate this Contract under clause 18 (as if the conflict were a breach of this Contract by the Consultant).

21 Copyright and Other Intellectual Property Rights

- (a) The Principal licenses to the Consultant such Intellectual Property Rights in Principal Information as are necessary to enable the Consultant to perform the Services in accordance with this Contract.
- (b) The Consultant retains the Intellectual Property Rights in Pre-Existing Materials. The Consultant grants to the Principal a royalty-free, non-exclusive, irrevocable, perpetual and assignable license to use such Pre-Existing Materials for any purpose related to the Project or for which the Services are provided.
- (c) On creation, all Intellectual Property Rights in the Deliverables and all other designs and documents created by or for the Consultant (excepting only any Pre-Existing Materials) vest in the Principal.
- (d) The Principal grants the Consultant a royalty-free license to use, adapt, reproduce, amend, publish and sublicense any documents covered by clause 21(c) for the Project.
- (e) To the extent the Intellectual Property Rights in or relating to the Deliverables are not capable of being vested in the Principal because the Consultant does not own the Intellectual Property Rights, at its own cost the Consultant must obtain a royalty-free, non-exclusive, irrevocable, perpetual and assignable license in favour of the Principal allowing the Principal to use those documents for any purpose, unless the Principal accepts otherwise in writing.
- (f) The Consultant must ensure:
 - (1) the use of any Deliverables and all other designs and documents created by or for the Consultant will not infringe the Intellectual Property Rights of any third party, and
 - (2) no fees, royalties or other payments are payable in respect of any third party rights as a result of the use of any Deliverables or any other designs and documents created by or for the Consultant.

- (g) The Consultant must, in relation to the authors of any work that comprises or forms part of the Deliverables:
 - (1) use its best endeavours to include in the Deliverables an attribution of those authors, and
 - (2) procure from those authors their genuine written consent for the Principal to:
 - (A) attribute the authorship of the work to the Principal or a third party where that attribution was inadvertent;
 - (B) not attribute the authorship of the author when using the work (including exhibiting or performing the work in or to the public); and
 - (C) materially alter the work in any way.
- (h) The Consultant must promptly, whenever requested by the Principal, issue to the Principal a copy of any Deliverables and other designs and documents created by or for the Consultant, in any editable form (and format) requested by the Principal.
- (i) The Consultant indemnifies the Principal from and against all claims, costs, losses or damages suffered or incurred by the Principal and which relate to, or arise out of or in any way in connection with, the Consultant's breach of this clause 21.

22 General

22.1 Assignment and novation

- (a) The Principal may at any time assign, novate, subcontract or otherwise transfer all or any part of its rights, interests or liabilities under this Contract without the consent of the Consultant. The Consultant must execute any document reasonably required by the Principal to give effect to the assignment, novation or other transfer.
- (b) The Consultant must not assign its rights under this Contract without the Principal's prior written consent.

22.2 Governing law and jurisdiction

- (a) This Contract is governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Contract. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

22.3 Invalidity and enforceability

- (a) If any provision of this Contract is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 22.3(a) does not apply where enforcing the provision of this Contract in accordance with clause 22.3(a) would materially affect the nature or effect of the parties' obligations under this Contract.

22.4 Waiver

- (a) No party to this Contract may rely on the words or Conduct of any other party as a Waiver of any Right unless the Waiver is in writing and signed by the party granting the Waiver.

- (b) The meanings of the terms used in clause 22.4(a) are set out below:
 - (1) Conduct includes delay in the exercise of a right;
 - (2) Right means any right arising under or in connection with this Contract and includes the right to rely on clause 22.4(a); and
 - (3) Waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

22.5 Variation

A variation of any term of this Contract must be in writing and signed by the parties.

22.6 Further action

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Contract and the transactions contemplated by it.

22.7 Entire agreement

This Contract states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

22.8 Counterparts

- (a) This Contract may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Contract by signing any counterpart.

22.9 Relationship of the parties

- (a) Nothing in this Contract gives a party authority to bind any other party in any way.
- (b) Nothing in this Contract imposes any fiduciary duties on a party in relation to any other party.

22.10 Civil Liability Act

- (a) The Consultant agrees that, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising out of or in connection with the Contract or the Services, whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or on the basis of quantum meruit, quasi contract or of any other principle of law or equity.
- (b) The Consultant will use its best endeavours to ensure that for any further contract it enters into with others in relation to carrying out the Services, it will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in terms equivalent to clause 22.10(a).

22.11 Retrospective

The Consultant agrees that this Contract will apply to and cover all services performed by the Consultant in respect of the Project, whether those services have been performed before, on or after the date of this Contract. All services performed by the Consultant before the date of this Contract, are deemed to form part of the Services and to have been performed under and subject to the terms of this Contract.

22.12 Exercise of discretions

- (a) Unless expressly required by the terms of this Contract, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Contract.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Contract. Any conditions must be complied with by the party relying on the consent, approval or waiver.

Attachment 1 – Services

The Services, and the Consultant's obligations include, without limitation, everything set out or described below and within each attachment to this Contract:

Scope of Services

2.3 MECHANICAL SERVICES

2.3.1 Mechanical Services - Extent

The extent of mechanical service will comprise:

- Car park ventilation system.
- Garbage exhaust.
- Fire pump room ventilation.
- Warm shell design to 4 off commercial tenancies.
- Air conditioning system design to apartments.
- Toilet and laundry ventilation to apartments.
- Rangehood exhaust system to apartments.
- Outside air system design for noise affected apartments.
- Plant room ventilations, including storage rooms, main switch room, grease arrest room, garbage rooms, etc.
- Other ventilation to AS 1668.2.
- Electrical services associated with mechanical plant and equipment.
- Coordinate with architect, electrical, hydraulic fire service and other relevant parties.

2.3.2 Mechanical Services - Deliverables

Design Development	PDF spatial sketch as required DWG drawings as required 6 coordination meetings
Construction Documents	PDF spatial sketch as required Equipment specification Full set of drawings in PDF and AutoCAD 2D 6 coordination meetings D&BP Act class 2 building design declaration
Construction Phase Service	Review contractor's shop drawings Answer RFI and site related inquiries Site inspection and defect report, 4 off Comissioning witness inspection, 2 off Provide Asbuilt drawings

2.3.3 Mechanical Services - Clarifications

We have not yet allowed for the following in our scope of service and fee.

- Fire engineering;
- Assessment of compliance with environmental noise regulations;
- Preparation of Performance Solutions where Deemed to satisfy requirements of the BCA do not suit the project requirements;
- Refrigeration systems to cool rooms and freezers;
- Assessment of compliance with environmental noise regulations (however, we have the capability for this service and are able to provide an acoustics consultancy fee, if required).

2.4 CAR PARK VENTILATION CFD SERVICE

Car Park Ventilation CFD scope of services will be as clarified below:

2.4.1 CFD (Computational Fluid Dynamics) - Extent

- Car Park Ventilation CFD scope of services will be as clarified below:
- Review of all drawings relevant to the car park design.
- Creation of a three-dimensional model for the car park suitable for the CFD simulations.
- CFD ventilation simulations to assess the performance of the proposed design. This will provide a basis on which to compare subsequent designs.
- CFD ventilation simulations for up to three design changes. This includes altering natural ventilation openings, supply/exhaust flow rates, re-locating jet fans, etc.
- Preparation of a Technical Report detailing the results and recommendations.

2.4.2 Car Park Ventilation CFD - Deliverables

- PDF spatial sketch as required
- Car park CFD ventilation report
- NSW regulated design and submission
- 1 meeting

2.4.3 Car Park Ventilation CFD - Clarifications

We have allowed 3 off model simulation/modification, if additional simulations are required (for example, in the event of still unacceptable CO levels) then these will be discussed with the client and will be subject to a variation.

We have not allowed fire engineering solution for jet fan which might affect sprinkler performance, this will need to be addressed by fire engineer on the job.

Attachment 2 - Fees

Fee Schedule

Phase	Fee (Excl. GST)
1 Schematic Design	\$ N/A
2 Concept Design	\$ N/A
3 Development Application	\$ N/A
4 <u>Construction Certificate and Construction Documentation</u>	
• Design Development (Tender Document)	\$ 28,000
• Construction Document (Final document + Certifications)	\$ 28,000
• Carpark Ventilation CFD (Jet Fan) – Kick off	\$ 4,500
• Carpark Ventilation CFD (Jet Fan) – Final Report	\$ 4,500
5 <u>Construction Services</u>	\$
Optional Services	Fee (Excl. GST)
Option 1: Construction phase services	\$ 20,000
Option 2:	
Option 3:	

Schedule of Rates

Nominated Personnel	Hourly Rates (Excl. GST)
Project Coordinator	\$ 320
Engineer	\$ 280
Administration	\$ 150
Site Visit / Meeting (Extra) per 3 hrs	\$ 450

Disbursements (Clause 11.2(c))

- Nil

Format of Payment Claims (Clause 11.3)

Sample format of content to be included by the Consultant in each progress claim.

Project Phase	Agreed Contract Amount	Claimed to Date	This Claim	Revised total Claimed to Date	Paid to Date	Amount Due
Schematic Design						
Concept Design						
Development Application						
Construction Certificate and Construction Documentation						
Construction Services						
Sub-total (Excl. GST)						
Option 1						
Option 2						
Option 3						
Sub-total Options only (Excl. GST)						
Total (Excl. GST)						

Attachment 3 – Services Program

Attachment 4 – Design and Building Practitioners Act Requirements

1 Definitions

Term	Meaning
Building Practitioner	has the meaning given in the DBP Act.
DBP Act	means the <i>Design and Building Practitioners Act 2020</i> (NSW).
DBP Regulations	means the <i>Design and Building Practitioners Regulations 2021</i> (NSW).
Design Compliance Declaration	has the meaning given in the DBP Act.
Design Practitioner	has the meaning given in the DBP Act.
Principal Design Practitioner	has the meaning given in the DBP Act.
Professional Engineering Work	has the meaning given in the DBP Act.
Prescribed Area of Engineering	has the meaning given in the DBP Act.
Registration	has the meaning given in the DBP Act.
Registered Design Practitioner	has the meaning given in the DBP Act.
Registered Principal Design Practitioner	has the meaning given in the DBP Act.
Registered Professional Engineer	has the meaning given in the DBP Act.
Registered Specialist Practitioner	has the meaning given in the DBP Act.
Regulated Design	has the meaning given in the DBP Act.
Specialist Work	has the meaning given in the DBP Act.

2 Registration

- (a) If the Consultant is required to prepare Regulated Designs as part of the Services, the Consultant must, on and from the date of commencement of Services and until the date of conclusion of the Services, maintain Registration as a Registered Design Practitioner or Registered Principal Design Practitioner and the Consultant's registration must authorise the Consultant to provide a Design Compliance Declaration in respect of each Regulated Design that forms part of the Services.
- (b) If the Consultant is required to carry out Professional Engineering Work in a Prescribed Area of Engineering as part of the Services, the Consultant must, on and from the date of commencement of Services and the date of conclusion of the Services, maintain Registration as a Registered Professional Engineer and the Consultant's registration must authorise the Consultant to carry out the Services.
- (c) If the Consultant is required to carry out Specialist Work as part of the Services, the Consultant must, on and from the date of commencement of Services and until the date of conclusion of the Services, maintain Registration as a Registered Specialist Practitioner and the Consultant's registration must authorise the Consultant to carry out the Services.

- (d) If the Consultant's Registration is varied, cancelled or suspended at any time from the date of the commencement of the Services until the date of conclusion of the Services, the Consultant must promptly (and no later than 2 Business Days) inform the Principal of the variation, cancellation or suspension of the Registration and provide all details reasonably requested by the Principal.
- (e) If the Consultant is subject to any investigation or disciplinary action under the DBP Act at any time from the date of the commencement of the Services until the date of conclusion of the Services, the Consultant must promptly (and no later than 2 Business Days) inform the Principal of the investigation or disciplinary action of the Registration and provide all details reasonably requested by the Principal.

3 Variations

- (a) When performing any variation, the Consultant must ensure that the variation is recorded in accordance with section 20(1) of the DBP Act and provide to the Principal a copy of that record.
- (b) If the Consultant is required by a variation order to vary a Regulated Design by a variation, the Consultant must provide a Design Compliance Declaration at the same time as delivering the varied Regulated Design to the Principal.
- (c) The Consultant acknowledges that:
 - (1) under the DBP Act, a Building Practitioner is not permitted to commence building work for which an 'issued for construction' Regulated Design is required prior to receiving a Design Compliance Declaration from a Registered Design Practitioner or Registered Principal Design Practitioner;
 - (2) variations to building work for which a Regulated Design and Design Compliance Declaration are required may become necessary during the Project; and
 - (3) delay by the Consultant in the provision of a Regulated Design or Design Compliance Declaration for varied building work may cause delay to the Project and associated loss including delay costs payable from the Principal to the builder, for which the Consultant will be liable.

4 Insurance

The Consultant warrants that its insurance policies provide an adequate level of indemnity for the liability that could be incurred by the Consultant in the course of, or resulting from, delivering the Services.

5 Design Practitioners

- (a) If the Consultant is required to prepare Regulated Designs as part of the Services, the Consultant must ensure that it provides Design Compliance Declarations in accordance with the DBP Act and DBP Regulations:
 - (1) which state that the Regulated Designs provided as part of the Services comply with the requirements of the Building Code of Australia and any other requirements or matters prescribed by the DBP Regulations for the purpose of section 8(a) of the DBP Act;
 - (2) which state whether or not the standards, codes or requirements have been applied in preparing the design; and

- (3) in the form prescribed by the Department of Fair Trading.
- (b) If requested by the Principal, the Consultant must provide a list of persons who provided the Services, identifying the work done by each person and any other documents relevant to the Services that are required under section 17(6) of the DBP Act.
- (c) The Consultant acknowledges that under the DBP Act, a private certifying authority must not issue an occupation certificate unless a Design Compliance Declaration has been provided for each Regulated Design, certifying compliance with the requirements of the Building Code of Australia and any other requirements or matters prescribed by the DBP Regulations for the purpose of section 8(a) of the DBP Act. If the Principal cannot obtain, or is delayed in obtaining, an occupation certificate for the Project as a result of the Consultant:
 - (1) providing a Design Compliance Declaration that does not comply with the DBP Act or DBP Regulations; or
 - (2) failing to provide a Regulated Design or Design Compliance Declaration in accordance with the Contract,

the Principal will claim against the Consultant the loss it suffers as a result.