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1 AGREEMENT

The Agreement shall be governed by and construed with reference to the laws of the Jurisdiction. The courts of the Jurisdiction shall have exclusive jurisdiction to determine any proceeding in relation to the Agreement.

This Agreement may be executed in any number of counterparts, each signed by a party. A party who has executed a counterpart of this Agreement may exchange it with another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this Agreement.

This Agreement may be executed by a party in soft copy by electronic means, including by affixing a signature by an electronic execution platform such as DocuSign. Any electronically executed soft copy, and any print out of such a copy, will constitute an executed original counterpart.

Unless otherwise provided, prices shall be in Australian currency and payments shall be made in Australian currency by electronic funds transfer.

Communications between Perkins and the Consultant shall be in the English language.

Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the Weights and Measures (National Standards) Act 1960 as amended from time to time.

The Services must be performed by the dates set out in the Agreement and, in the absence of any dates, as Perkins reasonably determines during the Term. Time will be of the essence in the performance by the Consultant of its obligations under the Agreement.

To the extent that this Agreement contains Special Conditions in Schedule 3, the Special Conditions amend the General Conditions and to the extent there is any ambiguity, inconsistency or contradiction then the order of precedence in clause 4 of the Formal Instrument of Agreement applies.

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

In the Agreement, except where the context otherwise requires:

"Aconex" means the project management database tool that is enabled on the internet website www.Aconex.com;

"Agreement" means this document including all schedules;

"Approvals" means certificates, licences, consents, permits, approvals and requirements made or authorised by an Authority or by a Legislative Requirement;

"Authority" means any government or government department or agency or authority or body, local government authority, statutory authority or body, public, ministerial, administrative, authority, tribunal, agency or entity that has jurisdiction with the Services or any part thereof or whose certificate, licence, consent, approval or permission is required in connection with the Services or any part thereof;

"Business Day" means any day other than a Saturday, Sunday, a day between Christmas Day and New Year's Day and any public holiday in Western Australia;

"Claim" includes any claim against Perkins for an increase in the Fee, for payment of money (including damages) or for an extension to the time for completion of the Services:

- (a) under, arising out of or in any way in connection with, any direction of Perkins;
- (b) under, arising out of or in any way in connection with, the Agreement, the Services or the conduct of either party before or during the term of the Agreement;
- (c) otherwise at law or in equity including by statute; in tort for negligence or otherwise, including negligent misrepresentation, for restitution, unjust enrichment and / or quantum merit; or rectification;

"Commencement Date" means the date for commencement of the Services specified in Item 7;

"Confidential Information" means all information in respect of the Project or the Services received or obtained by the Consultant from or on behalf of Perkins or the Principal, their employees, agents, consultants or contractors and includes, without limitation, the Intellectual Property referred to in clause 7.1;

"Consultant" means the entity stated in the Formal Instrument of Agreement and includes heirs, executors, successors and permitted assigns;

"Consultant's Representative" means the person named by the Consultant as the Consultant's Representative under clause 4.2 and stated in Item 2;

"Contract Documents" means the documents listed in clause 4 of the Formal Instrument of Agreement;

"Contractor's Quality Assurance Management System" means Perkins' quality assurance management system which is maintained to ISO 9001;

"Design" means the design evidenced by the Design Documents and includes any materials and methods of using, fixing or working required or inferred by the Design Documents;

"Design Brief" means the preliminary design brief describing or outlining the design parameters for the Project set out in Schedule 4, and all design related directions given by Perkins or Perkins' Representative to the Consultant from time to time as part of the Services;

"Design Documents" means correspondence, plans, sketches, drawings, models, calculations, specifications, information and other documents and all design documentation prepared by the Consultant other than the Design Brief;

"Design Programme" means the design programme attached at Schedule 5 or provided to the Consultant under clause 6.3.

"Fee" means the fee for the Services stated in Item 9 and particularised in Schedule 6;

"Fit for Purpose" means that the Services are:

- (a) fit for their intended purposes, objectives, functions, uses and requirements as specified in, or reasonably inferred from this Agreement; and
- (b) in accordance with the requirements of the Agreement, all Legislative Requirements and Quality Standards;

"Force Majeure Event" means each of the following events:

- (a) earthquake, tropical cyclone, natural disaster, landslide, seismic activity, tsunami or mudslide;
- (b) war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion, act of sabotage or other like hostilities;
- (c) chemical, nuclear or biological contamination;
- (d) ionising radiation or contamination by radioactivity;
- (e) any act of terrorism, except to the extent a declaration is made under the TCI Act 2003 (Cth);
- (f) fire, flood or explosion caused by events referred to in paragraph (a) or (b) or;
- (g) epidemics or pandemics declared by the World Health Organisation;

which:

- (h) occurs at or directly in the vicinity of the Premises; and
- (i) prevents the Consultant from carrying out all or a material part of the Services; and
- (j) could not have been prevented, avoided, remedied or overcome by the Consultant taking those steps which a prudent, experienced and competent designer would have taken (including the expenditure of reasonable sums of money);

"General Conditions" means these general conditions;

"GST" means a goods and services tax or similar value added tax levied in Australia pursuant to the GST Act or otherwise on a supply;

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"Intellectual Property" means all present and future forms of intellectual property rights (whether in a material form or otherwise) including without limitation:

- (a) copyright, design, patent, trademark, plant breeder rights, electronic layouts and any other intellectual or industrial property rights, including know-how, whether registered or not;
- (b) invention, discovery, secret process, novel design, improvement or modification of any nature; and

- (c) computer program material (including computer software, computer object code, computer source code, tables, charts, flow charts, algorithms, diagrams, plans, techniques, data, structures, logical ideas, concepts and processes);

"Item" means an item in Schedule 1;

"Ipso Facto Stay" means any limitation on enforcement of rights or self-executing provisions in a contract, agreement or arrangement pursuant to sections 415D, 415F, 434J, 434L, 434LA, 451E, 451G or 451GA of the Corporations Act 2001 (Cth).

"Jurisdiction" means the jurisdiction of the State or Territory stated in Item 15;

"Key Personnel" means those personnel of the Consultant named in Item 14 and any replacement person appointed in accordance with clause 4.3;

"Legislative Requirements" means:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth or the State or Territory applicable to the Services;
- (b) Quality Standards;
- (c) certificates, licences, consents, permits, Approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services;
- (d) fees and charges payable in connection with any of the foregoing;

"Main Contract" means the contract entered into or to be entered into between Perkins and the Principal in respect of the Project;

"Material Breach" means, in the case of Perkins, an ongoing failure for more than 14 days to make a payment in accordance with clause 13.4;

"Modern Slavery Legislation" means the Modern Slavery Act 2018 (Cth) and other similar legislation in effect from time to time;

"Moral Rights" means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, which rights are created by the Copyright Act 1968 (Cth), and if any work is used in any jurisdiction other than in Australia, any similar right capable of protection under the laws of that jurisdiction;

"Perkins Representative" means the person named by Perkins as the Perkins' Representative under clause 4.1 and stated in Item 3;

"Personnel" means:

- (a) in relation to the Consultant, any of its employees, subcontractors (including Subcontractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Agreement;
- (b) in relation to Perkins, means any of its past or present officers, employees, agents or representatives of Perkins or joint venture of Perkins.

"Premises" means the premises of the Consultant where it is required to perform the Services;

"Principal" means the principal under the Main Contract and is the entity referred to in Item 6;

"Project" means the project described in Item 5;

"Quality Standards" means all standards, codes, specifications, guidelines, policies and other requirements including:

- (a) the standards, codes, specifications, guidelines, policies, instructions and other requirements set out in the Agreement;
- (b) all Approvals (including any requirements under them) and any requirements of Authorities having jurisdiction over the Services;
- (c) Australian Standards, the National Construction Code and any other relevant standards;
- (d) the Disability (Access to Premises – Buildings) Standards (2010) under the Disability Discrimination Act 1992 (Cth);
- (e) all relevant national and State policies;

- (f) all relevant standards, codes and guides of Standards Australia and Standards New Zealand (with the year of the standards, codes, and guides to be as referenced by the National Construction Code, unless noted otherwise in the Output Specifications or otherwise approved by the State), and, where an Australian standard or a New Zealand standard does not exist, the relevant British standard or international standard;
 - (g) all relevant standards, codes, and guides published by WorkCover Corporation of Western Australia and WorkSafe WA or similar standards, codes and guides in effect in the State or Territory in which the site is located;
 - (h) to the extent they do not conflict with the standards, codes or guides published by WorkSafe WA, the standards, codes and guides published by the Work and Safety Commission and Safe Work Australia;
 - (i) National Environment Protection (Assessment of Site Contamination) Measure 1999 (Cth);
 - (j) all other standards, codes, specifications, guidelines, policies and requirements relevant to the Services,
- as amended, updated or replaced from time to time;

"Services" means the services described in Schedule 2 and the associated and included obligations established by this Agreement;

'Special Conditions' means the special conditions (if any) contained in Schedule 3;

"Sub-consultant" means a person, sub-consultant, or subcontractor engaged by the Consultant, or any person, sub-consultant or subcontractor that person, sub-consultant or subcontractor may engage to perform work which forms part of the Services;

"Term" means the period from the Commencement Date for completion of the Services or the date for completion of the Services set out in Item 8;

"WH&S Legislation" means the Work Health and Safety Act 2020 (WA) (**"WH&S Act"**) and the Work Health and Safety (General) Regulations 2022 (WA) (**"WH&S Regulations"**) and any other legislative requirements dealing with health, safety or protection of workers on building sites in the Jurisdiction, as amended from time to time;

"Workers Compensation Act" means the Workers Compensation and Injury Management Act 2023 (WA) as amended from time to time.

2.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of the Agreement; and
 - (b) no rule of contract interpretation is to be construed against Perkins merely because Perkins was responsible for preparing the Agreement,
- and unless otherwise stated or the context indicates otherwise:
- (c) words in the singular include the plural and vice versa;
 - (d) words importing a gender include every gender;
 - (e) reference to a person includes a reference to a firm, a body incorporate or an individual and the successors and permitted assigns;
 - (f) a reference to the Agreement, the Main Contract or any other agreement includes the Agreement, the Main Contract and any other agreement as amended, novated, supplemented varied or replaced from time to time;
 - (g) a reference to 'including', 'includes' or 'include' shall be read as if it is followed by "(without limitation)";
 - (h) where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Agreement;
 - (i) any provision of the Agreement which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Agreement;

- (j) *any consent or approval required under the Agreement shall be in writing and may be given conditionally or unconditionally or withheld in the absolute discretion of the person whose consent or approval is required unless otherwise expressly provided; and*
- (k) *an amendment or modification to the Agreement shall be in writing and signed by the parties;*
- (l) *none of the following items limit or otherwise reduce the Consultant's obligations under the Agreement:*
 - (i) *an approval or consent given by or on behalf of Perkins; or*
 - (ii) *any review, consultation, monitoring, or audit undertaken by or on behalf Perkins; or*
 - (iii) *any comments made by Perkins;*
- (m) *the fact that Perkins fails to do, or delays in doing, something that Perkins is entitled to do under this Agreement, does not amount to a waiver of any obligation by Perkins. A waiver by Perkins is only effective if it is in writing.*

3 ENGAGEMENT

3.1 Engagement

Perkins engages the Consultant to perform and provide the Services.

3.2 Prior services

Any services performed by the Consultant before the date of this Agreement which fall within the scope of the Services will be regarded as governed by the terms of this Agreement and included in the Fee.

3.3 Relationship between the parties

The Consultant:

- (a) *is independent of Perkins, and in performing the Services is not for any purpose a partner, joint venturer, or agent of Perkins; and*
- (b) *acknowledges that the relationship between Perkins and the Consultant is not that of an employer and employee; and*
- (c) *must not engage in any negotiations or discussions with any statutory authority on behalf of Perkins except as authorised by Perkins.*

3.4 Conflict of interest

The Consultant agrees, confirms and acknowledges that:

- (a) *the performance of the Services does not and will not give rise to any conflict of interest; and*
- (b) *the Consultant will not engage in any activity which may give rise to a conflict of interest.*

If the Consultant becomes aware of any potential or actual conflict of interest that exist, arise or may arise (either for the Consultant or the Consultant's employees, agents, consultants or Sub-consultants) in the course of performing the Services the Consultant shall notify Perkins, in writing, immediately once the Consultant becomes aware of the conflict of interest.

4 REPRESENTATIVES

4.1 Perkins representative

- (a) *Perkins will appoint a representative ("Perkins' Representative") to exercise the functions of Perkins under the Agreement not as an independent certifier, valuer or assessor but as an agent for Perkins.*
- (b) *The appointment of Perkins' Representative shall not prevent Perkins from exercising any function, duty, power or discretion, and Perkins may, at any time, cancel the appointment and appoint another person as Perkins' Representative by notice to the Consultant.*
- (c) *Perkins' Representative will be as stated in Item 3.*

4.2 Consultant's representative

- (a) *The Consultant will appoint a representative ("Consultant's Representative") who will act on behalf of the Consultant for all aspects of the Services and is authorised to act for the Consultant in all matters under this Agreement.*
- (b) *Directions given to the Consultant's Representative by Perkins or Perkins' Representative shall be deemed to have been given to the Consultant.*
- (c) *The Consultant's Representative will be as stated in Item 2.*

4.3 Consultants key personnel

The Consultant must procure the Key Personnel to perform the Services required of their designated positions.

4.4 Replacement personnel

The Consultant must:

- (a) *not replace or remove the Consultant's Representative nor any Key Personnel without Perkins prior written consent (which must not be unreasonably withheld);*
- (b) *replace the Consultant's Representative or any of its Key Personnel who in the opinion of Perkins (acting reasonably) are unsatisfactory or not performing to the expectations of Perkins and the Consultant must promptly appoint a replacement.*

4.5 Resourcing

The Consultant must:

- (a) *provide sufficient and suitable resources to perform the Services in accordance with this Agreement; and*
- (b) *perform the Services expeditiously.*

5 CONSULTANT'S UNDERTAKINGS

The Consultant acknowledges, represents and undertakes to Perkins that in connection with this Agreement:

- (a) *it has full power and authority to enter into and perform its obligations under the Agreement;*
- (b) *it shall perform the Services in a proper, competent and professional manner, with a standard of care, skill, competence and diligence to be expected of a consultant who regularly acts on projects like and at least as complex as the Project, in a timely and expeditious way;*
- (c) *in exercising the standard of care required in subclause (b), it has examined the Contract Documents and the Scope of Services in Schedule 2 and agrees that the Services will be suitable, appropriate and Fit for Purpose;*
- (d) *it shall prepare all documents including Design Documents in a professional manner with all due care and skill so that they are Fit for Purpose and is responsible for any error, omission, ambiguity, discrepancy or inconsistency in any document produced in the performance of the Services;*

- (e) *it shall ensure that any items provided to Perkins as part of the Services are Fit for Purpose and free from defects;*
- (f) *it shall use the best practices current in the Consultant's profession;*
- (g) *without limiting the generality of the foregoing, it shall provide to Perkins documents (including Design Documents) and any other items in connection with this Agreement that:*
 - (i) *give due consideration to work, health and safety and operational requirements, so as to minimise work, health and safety risks;*
 - (ii) *are suitable for the local environmental conditions;*
 - (iii) *minimise the impact of any structure, item or works to be built, constructed, made or installed in accordance with this Agreement;*
 - (iv) *allow for safe and convenient access for the servicing, maintenance and cleaning of any structure, item or works to be built, constructed, made or installed in accordance with this Agreement;*
 - (v) *allow for ease of replacement of the parts of any structure, item or works to be built, constructed, made or installed in accordance with this Agreement;*
 - (vi) *allow for the safe demolition, dismantling and removal of any structure, item or works to be built, constructed, made or installed in accordance with this Agreement; and*
 - (vii) *give appropriate consideration to any other matter that may affect the effective operation or utility of any structure, item or works to be built, constructed, made or installed in accordance with this Agreement.*
- (h) *if on Perkins' of the Principal's premises, it must make all necessary inquiries and investigations to ascertain all of the Perkins or the Principal's requirements relating to work, health and safety and security and comply with same;*
- (i) *it must keep proper books and records in relation to any time based component of the Fee (including for any variation) and allow Perkins reasonable access to such books and records (including for copying and removal) to enable assessment of any payment claim by the Consultant;*
- (j) *it shall act only in the interests of Perkins and without favour to any other person and/or organisation;*
- (k) *the Fee is sufficient to complete the Services according to the provisions of the Agreement and that in arriving at the Fee the Consultant has considered and fully taken into account all the Services to be performed and the liabilities and expenses imposed upon the Consultant in the Agreement; and*
- (l) *all employees, subcontractors, agents, and Sub-consultants engaged or retained by the Consultant to undertake the whole or part of the Services are appropriately qualified, skilled and experienced for the work assigned to them. The Consultant shall be responsible for the performance of employees, subcontractors, agents, and Sub-consultants, and shall ensure that the Services are performed in accordance with the Agreement.*

If circumstances arise which alter/amend part of the Services and which require the services of a specialist, or expertise outside the Consultant's profession, the Consultant may, with the prior written consent of Perkins, engage the appropriate person. Perkins' consent shall not be unreasonably withheld.

6 CONSULTANT'S OBLIGATIONS

6.1 Performance

The Consultant acknowledges that Perkins is engaged under a Main Contract that includes for these Services. The Consultant acknowledges and agrees that insofar as the Main Contract may be applicable to the Services, the Main Contract or extract(s) from the Main Contract relating to the Services have been made available to the Consultant to review at Perkins office prior to the Commencement of the Agreement.

The Consultant must:

- (a) *not do anything or omit to do anything which puts Perkins in breach of the Main Contract;*
- (b) *assist Perkins to achieve its objectives under the Main Contract;*
- (c) *not specify for use in the Project any materials which at the time of the specification or use (as the case may be) are known to be deleterious (either to health and safety or to the durability of the Project);*

- (d) regularly consult, confer and inform Perkins about all aspects of the Services;
- (e) immediately advise Perkins of any matter, circumstance or occurrence of which the Consultant becomes aware, which may affect any aspect of the Services or the Project;
- (f) attend and participate at meetings and workshops at times reasonably required by Perkins' Representative;
- (g) if the Consultant is appointed by Perkins as the 'Lead Consultant', regularly consult with and coordinate the other contractors and procure consultation between each of the other contractors and integration between each of the services (including any deliverables the subject of those services) being provided by the other contractors;
- (h) present work in progress in a full, coherent, coordinated and professional way;
- (i) liaise and cooperate with Perkins and other consultants and subcontractors as necessary for the performance of the Services;
- (j) co-ordinate and integrate the Services performed by the Consultant with the work performed and services provided by Perkins and all other consultants and subcontractors;
- (k) comply with all lawful directions, instructions and requirements of Perkins; and
- (l) as a component of the Services and as a condition precedent to completion of the Services or a stage of the Services, provide Perkins with a Consultant's Certificate in the form set out in Schedule 7.

6.2 Time

The Consultant must:

- (a) commence the Services on the Commencement Date;
- (b) perform the Services diligently and with due expedition and without delay and at a rate of progress reasonably satisfactory to, and as directed by, Perkins so that the Services are completed within the Term; and
- (c) if required by Perkins, perform the Services on a staged basis.

6.3 Programme

- (a) Perkins may provide a Design Programme or other programme for the Services from time to time and the Consultant must comply with the programme to the extent they relate to the Services.
- (b) Perkins may request the Consultant confirm and agree with Perkins a schedule of deliverables, identifying in particular dates for issue of Design Documents in a documentation delivery programme.

6.4 Delay

- (a) The Consultant must take all reasonable steps to avoid, or if it cannot be avoided, minimise any delay in the performance of the Services.
- (b) If there is or may be a delay which results in the Consultant being unable to comply with its obligations under clause 6.2 the Consultant must within 10 Business Days provide written notice to Perkins of the event causing the delay or the potential delay, together with full particulars of the cause and effect or likely effect of that delay to the Services. If the event which has given rise to the delay is continuing, the Consultant must provide a final claim containing the information required in in subclause together with the actual extent of the delay within 10 Business Days of the delay ceasing.
- (c) If the Consultant has complied with clause 6.4(b) and the delay was caused by a matter outside of the reasonable control of the Consultant, Perkins must assess the extent of the delay, if any, and notify the Consultant of any extension to the Term.
- (d) If the Consultant has been granted an extension of time in respect of any act or omission or breach of the Agreement by Perkins, except to the extent it is permitted under the Agreement or arises out of or as a consequence of a breach of the Agreement by the Contractor, and the Contractor has necessarily and reasonably incurred extra cost as a direct consequence of the delay, the Consultant must give to Perkins notice of its claim for delay costs (limited to actual direct costs necessarily incurred) at the same time as the notice referred to in 6.4(b).

- (e) Perkins may, at any time, by written notice to the Consultant extend the Term for any reason notwithstanding that the Consultant has not claimed or has no entitlement to claim an extension. Perkins is not required to exercise its discretion for the benefit of the Consultant.

6.5 Acceleration

- (a) Perkins may, at any time, direct the Consultant to accelerate the performance of the Services by giving a written notice entitled "Acceleration Direction" (**Acceleration Direction**).
- (b) Perkins may give the Consultant notice of a proposed acceleration under clause 6.5(a). The Consultant must, as soon as practicable after receiving such notice, and in any event within 5 Business Days after receiving the notice, notify Perkins whether the proposed Acceleration Direction can be effected, together with, if it can be effected, the Consultant's estimate of the effect on the programme and cost.
- (c) The Consultant must accelerate the performance of the Services at its own cost if the requirement for acceleration results from the Consultant being in breach of its obligations under clause 6.2.
- (d) If the Consultant is not in breach of clause 6.2 and the Consultant accelerates the performance of the Services in accordance with Perkins' Acceleration Direction issued under clause 6.5(a), the Consultant will be entitled to an adjustment to the Fee for the reasonable costs or expenses incurred by the Consultant in excess of the costs or expenses which would have been incurred by the Consultant had the Acceleration Direction not been given.
- (e) The adjustment required under clause 6.5(d) will be valued under clause 12.3.

6.6 Compliance with Legislation

The Consultant in performing its obligations under this Agreement shall satisfy and comply with all applicable Legislative Requirements and Approvals.

6.7 Payment of fees

Where it is necessary to give notices or obtain Approvals to comply with the acts, subordinate legislation or requirements as specified in clause 6.6, the Consultant shall give the required notices and obtain the Approvals and shall pay and bear all fees payable in connection with them.

6.8 Safety in design

The Consultant must:

- (a) identify and where practicable eliminate health and safety risks and hazards relating to the construction, end use, maintenance, repair and demolition of structures and buildings forming part of the Project; and
- (b) attend and participate in any meetings or workshops related to safety in design, to identify, mitigate and manage any risk associated with the Design.

6.9 Perkins' participation and review

The Consultant must do everything necessary to enable Perkins to review and comment on the performance of the Services as often as Perkins reasonably requires and in line with the Main Contract. The Consultant must revise any of the Services which do not comply with this Agreement at the Consultant's sole cost until acceptable to Perkins (acting reasonably). No review, comment or recommendation by Perkins relieves the Consultant of its obligations under this Agreement or affects its responsibility for the proper performance of the Services.

7 INTELLECTUAL PROPERTY AND MORAL RIGHTS

7.1 Ownership of intellectual property

- (a) All Intellectual Property in the Design and the Design Documents created by the Consultant, its officers, agents' employees, Sub-consultants and contractors remains with the Consultant.

(b) *The Consultant:*

- (i) *grants to Perkins an unrestricted, worldwide, royalty free, irrevocable, perpetual and transferable licence (which arises immediately on creation of any relevant materials and including the right to sub-licence to others), to use the Design, the Design Documents and other products of the Services for any purpose related to the Project, including but not limited to producing, repairing, rectifying, maintaining, improving, servicing, adding to or altering the Project or any part of it; and*
- (ii) *must not licence any Intellectual Property in the Design, the Design Documents or other products of the Services to a third party without Perkins' prior written consent.*

7.2 Services must not infringe rights

The Consultant must ensure that in performing the Services, the Consultant, its officers, agents' employees, Sub-consultants and contractors will not infringe the Intellectual Property Rights or Moral Rights of any person.

7.3 Moral rights

The Consultant must use its best endeavours to procure from any individual, including each of its officers, employees, Sub-consultants, contractors and agents, who is or may claim to be the author of any Design Document (in whole or in part) a completed Moral Rights consent and waiver form required by Perkins in the form contained in Schedule 8. Any such agreement or consent must be genuinely given and not by duress or by the making of any false or misleading statement.

8 ASSIGNMENT AND NOVATION AND SUBCONTRACTING

8.1 No assignment or novation by the Consultant

- (a) *The Consultant must not assign or transfer any of its rights or obligations under this Agreement or novate this Agreement to any person without the prior written consent of Perkins which consent shall not be unreasonably withheld.*

8.2 Novation by Perkins

- (a) *Perkins may assign or novate its rights under this Agreement by giving 5 days prior written notice to the Consultant.*
- (b) *If required by Perkins (including where the Main Contract has been terminated for any reason) the Consultant must:*
 - (i) *agree to assignment or novation of the Agreement to the Principal or the Principal's nominee; and*
 - (ii) *not unreasonably withhold or delay its consent to a novation of the Agreement to any other third party nominated in writing by Perkins (including executing any document required to effect that novation).*

8.3 Subcontracting

The Consultant:

- (a) *must not subcontract the performance of the whole or any part of the Services without the prior written consent of Perkins;*
- (b) *is liable to Perkins for the acts, defaults and omissions of any employees, agents, Sub-consultants and subcontractors as if they were acts defaults or omissions of the Consultant;*
- (c) *must ensure that the terms and conditions of any subcontract in respect of the Services are consistent with the Agreement; and*
- (d) *must ensure that all Sub-consultants and subcontractors obtain at least the coverage of professional indemnity insurance that the Consultant is obliged to obtain under this Agreement.*

9 QUALITY ASSURANCE

- (a) *Where the Consultant does not hold or maintain current certification to ISO 9001, the Consultant shall be subject to a design consultant verification process and complete a design checklist. Upon successful verification and acceptance of the design checklist by Perkins, the Consultant shall adhere to the requirements of the Contractor's Quality Assurance Management System which is maintained and certified to ISO 9001.*

(b) *The Consultant must:*

- (i) *establish quality assurance procedures satisfactory to Perkins' Representative; and*
- (ii) *thoroughly review all documentation in accordance with Contractor's Quality Assurance Management System procedures before giving them to Perkins' Representative for review.*

10 SAFETY / HAZARDS AND ENVIRONMENTAL AWARENESS

10.1 Managing hazards

Before commencing and during the execution of the Services, the Consultant shall take appropriate steps to identify and manage risks and hazards associated with providing the Services including providing employees and Sub-consultants of the Consultant and Perkins with appropriate instructions, training and supervision to ensure their safety at all times and for the protection of property.

10.2 Workplace health and safety

The Consultant must:

- (a) *perform its obligations and the Services under this Agreement so as to ensure the health and safety of the Perkin's personnel and property, the Consultant's personnel and property and any member of the public or other third party and their property;*
- (b) *comply with and ensure that the Subcontractor's personnel comply with the Work Health and Safety Act 2020 (WA), the Work Health and Safety (General) Regulations 2022 (WA) and any applicable Laws;*
- (c) *ensure that safe work practices are in place in relation to the performance of its (and the Consultant's personnel's) duties;*
- (d) *ensure that the Consultant and its personnel comply with any policies and procedures of Perkins notified to the Subcontractor from time to time (including those listed in Schedule 9), any directions of Perkins and any applicable safety directions issued by Perkins or the Principal from time to time.*

11 INSURANCE AND INDEMNITY

11.1 Insurance

Before commencing the provision of the Services the Consultant must take out and maintain for the duration of the Term insurance with reputable insurers acceptable to Perkins (acting reasonably):

- (a) **Public and products liability insurance** *in the name of the Consultant on terms satisfactory to Perkins (acting reasonably) and include Principals Indemnity being for not less than the sum stated in Item 11 for any one event;*
- (b) **Professional indemnity insurance** *in the name of the Consultant on terms satisfactory to Perkins (acting reasonably) with a limit of liability of not less than the amount specified in Item 12 for any one event and in the aggregate in any one policy period. The policy must be maintained at all times whilst this Agreement is in force and for the period of years stated in Item 13 from the end of the Term or earlier the termination of this Agreement; and*
- (c) **Workers compensation insurance** *in accordance with the applicable worker's compensation legislation, including a common law limit of \$50,000,000.*
- (d) **Motor Vehicle and Equipment Insurance**
 - (i) *The Consultant shall insure against all loss and/or damage to all items of the Consultant's plant and equipment (whether owned, hired or leased) used in then provision of the Consultant's obligations under the Agreement.*
 - (ii) *The Consultant must insure all Vehicles with:*
 - (A) *compulsory motor vehicle third party insurance; and*
 - (B) *a comprehensive motor vehicle and third party liability policy.*
 - (iii) *The limit of third party liability must be no less than \$30,000,000.*

- (iv) Other than for compulsory third party motor vehicle insurance, the insurance must be in the name of the Consultant and, to the extent permitted by law, be extended to indemnify the Principal as principal for Claims from Third Parties.

Perkins in specifying levels of insurance in the Agreement accepts no liability for the completeness of their listing, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability.

The Consultant acknowledges and agrees that it is the Consultant's responsibility to assess and consider the risks and scope of insurances required under this Agreement.

11.2 Evidence of insurance

- (a) Before the Commencement Date and on 1 July in each year and whenever Perkins (acting reasonably) requests, the Consultant must provide to Perkins certificates of currency issued by the insurer for each insurance policy required in clause 11.1.
- (b) The Consultant must notify Perkins in writing of any claim against insurances effected by the Consultant under this Agreement immediately upon becoming aware of such claim and provide such reasonable information as Perkins requires if the claim jeopardises the ability of the Consultant to perform the Services.

11.3 Indemnity

- (a) The Consultant indemnifies Perkins and must keep Perkins indemnified against all actions, claims, demands, losses, damages, expenses and other liability, (including legal costs on a full indemnity basis and whether incurred by or awarded against Perkins) suffered or incurred as a result of, or in connection with:
- (i) any breach of this Agreement by the Consultant;
 - (ii) fraudulent, reckless, unlawful or negligent act or omission by the Consultant and/or its Personnel;
 - (iii) personal injury, illness or death of any person;
 - (iv) loss of or damage to any property;
 - (v) for any infringement of Intellectual Property rights or moral rights of any person; or
 - (vi) any non-compliance by the Consultant or its personnel with any Legislative Requirements or in connection with the loss, termination or suspension of any Approvals, arising or in connection with or as a consequence of the performance or purported performance or non-performance of any obligation of the Consultant under this Agreement.
- (b) The indemnity under clause 11.3(a) shall be reduced proportionally to the extent that the actions, claims, demands, losses, damages, expenses and other liability was caused by any negligent act or omission of Perkins or its officers, agents or employees.

12 VARIATIONS

12.1 Variations to the services

Perkins may direct the Consultant to vary the Services at any time during the Term and to do all or any one or more of the following things:

- (a) increase, decrease or omit any part of the Services; or
- (b) change the character, quality, timing or sequence of the Services; or
- (c) perform additional Services.

The Consultant must not otherwise vary the Services, unless agreed in writing by the parties.

12.2 Notice

- (a) *If the Consultant considers that a direction given by Perkins constitutes a variation but the direction is not in writing or does not specify that it constitutes a variation, then prior to commencing the Services the subject of the direction, and within 10 Business Days of receiving the direction, the Consultant must notify Perkins in writing that it considers that the direction constitutes a variation.*
- (b) *If Perkins agrees that the direction constitutes a variation, then it must notify the Consultant in writing and clause 12.3 will apply as if the direction was given by Perkins under clause 12.1. If Perkins does not agree that the direction constitutes a variation, then it must notify the Consultant in writing and the Consultant must carry out the relevant Services but may seek to have the dispute resolved under clause 23.*
- (c) *If the Consultant does not give the required notice strictly in accordance with clause 12.2(a) then the Consultant will be bound to implement and complete the required Services and is not entitled to have the Services valued as a variation under clause 12.3 or to make any Claim in respect of those Services.*

12.3 Valuation of variations

Where the Agreement provides that a valuation shall be made under this clause 12.3, the Fee will be adjusted as follows:

- (a) *by agreement between the parties;*
- (b) *if agreement cannot be reached, where a schedule of rates forming part of this Agreement is applicable, by applying the rates appearing in that schedule of rates (where applicable); or*
- (c) *otherwise by the assessment by Perkins of a reasonable price for the varied Services.*

12.4 Omissions

If Perkins directs a variation under this clause 12 omitting or deleting any Services:

- (a) *Perkins may employ or engage another person or persons to carry out and execute the omitted or deleted Services.; and*
- (b) *Perkins will not be liable upon any Claim by the Consultant as a result of any Services being omitted or deleted whether or not Perkins thereafter engages another person to carry out and execute the omitted or deleted Services.*

12.5 No invalidation

Any variation to the Services does not invalidate this Agreement.

13 FEE AND PAYMENT

13.1 Fee

The Fee is not subject to any adjustment except as expressly set out in the Agreement.

13.2 Payment claims

Payment Claims must be submitted on the date stated in Item 10 of the month for Services completed for that month.

13.3 Contents of claim

Each payment claim must:

- (a) *be given in writing;*
- (b) *be submitted to the address given in Item 10A;*
- (d) *detail the value of the Services performed under the Agreement up to the submission of the payment claim with sufficient detail and evidence to enable Perkins to verify the amount claimed;*
- (e) *include a copy of relevant documentation to support the Claim; and*
- (f) *include any other information as may be reasonably required by Perkins, including the Consultant's Certificate in the form set out in Schedule 7 where required under clause 6.2(l) or otherwise at any time that a Consultant's Certificate is requested by Perkins in writing.*

13.4 Payments

Perkins must within 15 Business Days of receiving the payment claim issue a written payment schedule which sets out:

- (a) the details of the relevant payment claim;
- (b) the amount certified for payment less any amounts:
 - (i) previously certified; and
 - (ii) which may be deducted under this Agreement or under Perkins' rights of set off under clause 13.6.
- (c) the amount (if any) that Perkins proposes to pay in respect of the payment claim to which it relates or the amount Perkins considers the Consultant owes to Perkins ("**Scheduled Amount**")
- (d) if the Schedule Amount certified is less than the claimed amount or no payment is proposed, the reason why it is less; and
- (e) if the payment is withheld, the reason why Perkins is withholding payment.

If the Consultant does not submit a payment claim in accordance with clause 13.2, Perkins may nevertheless issue a payment schedule.

The Consultant must issue a tax invoice to Perkins within 2 Business Day of receiving a payment schedule for the amount certified in the payment schedule.

Perkins shall pay the Scheduled Amount no later than 20 Business Days from the date of the payment claim.

13.5 Payment not admission

The payment of any money to the Consultant does not constitute:

- (a) approval of any Services or work or other matter;
- (b) approval of documents prepared by the Consultant;
- (c) an admission of the proper performance of the Services or any part of them; or
- (d) an admission of the accuracy of any claim or demand by the Consultant or that additional or varied Services or works have been directed or approved by Perkins.

Nor will any payment by Perkins negate or prejudice any of the rights, powers or remedies of Perkins. Any payment is taken to be a payment on account only.

13.6 Set Off

- (a) Perkins may deduct from amounts payable to the Consultant any amount due from the Consultant to Perkins or the amount of any claim which Perkins considers (acting reasonably) that it has against the Consultant (whether for damages or otherwise) in connection with the Services .
- (b) Any failure by Perkins to set off against an amount that would otherwise be payable under clause 13.4 will not limit or affect Perkins right to subsequently set off the amount payable under a subsequent determination of payment.
- (c) Any exercise of rights by Perkins under this clause shall be without prejudice to other rights or remedies available to Perkins.

13.7 Conditions precedent

Perkins is entitled to withhold payment of any money in connection with this Agreement until the following conditions precedent have been met::

- (a) the Formal Instrument of Agreement has been executed by the Consultant;
- (b) all of the information required to be submitted in a payment claim is delivered to Perkins including the certification in Schedule 7; and
- (c) the Consultant has provided evidence of insurances required by clause 11.2.

14 GOODS AND SERVICES TAX ('GST')

14.1 Definitions

In this clause words or expressions which are defined in the GST Act have the same meaning.

14.2 Consideration is exclusive of GST

The consideration for a Supply under this Agreement is exclusive of any GST imposed on the Supply.

14.3 Recovery of GST

If a Supply under this Agreement is subject to GST:

- (a) *the Recipient of the Supply must pay, in addition to the other consideration payable or to be provided for the Supply, an additional amount equal to the GST payable in respect of that supply; and*
- (b) *the Recipient must pay the additional amount to the supplier at the same time as the other consideration.*

However, the Recipient need not pay the additional amount until the supplier gives the Recipient a Tax Invoice.

15 TERMINATION

15.1 Termination by Perkins for cause

Without prejudice to any rights of Perkins and subject to any Ipso Facto Stay, Perkins may terminate the Agreement immediately by giving notice in writing to the Consultant if:

- (a) *actions are instituted by or against the Consultant which may result in bankruptcy, insolvency, receivership, administration or winding up of the Consultant;*
- (b) *the Consultant's staff who have been nominated by the Consultant to perform the Services or the Key Personnel referred to in Item 14 are not available for the performance of the whole or part of the Agreement, and the proposed substitute staff are not acceptable to Perkins; or*
- (c) *the Consultant is in breach of its obligations under the Agreement and has failed to rectify the breach to Perkins' satisfaction within 5 Business Days of a written notice to do so by Perkins.*

15.2 Termination for convenience

Without prejudice to any rights of Perkins, Perkins may at any time upon 5 Business Days written notice terminate this Agreement by giving notice in writing to the Consultant. The notice must state that it is given under this clause 15.2.

15.3 Termination of the Main Contract

If the Main Contract is terminated, Perkins may immediately terminate this Agreement by giving the Consultant written notice of that termination.

15.4 Termination by the Consultant for cause

If:

- (a) *Perkins is in Material Breach of the Agreement and the Consultant has given written notice specifying the nature of the Material Breach to Perkins requiring the breach to be remedied; and*
- (b) *15 Business Days has elapsed since receipt of the notice under clause 15.4(a) without the breach being remedied by Perkins,*

then the Consultant may terminate this Agreement after providing a further 5 Business Days written notice to Perkins of its intention to terminate.

Consultant's obligations on termination

- (a) Upon termination of this Agreement the Consultant must:
- (i) immediately cease performing the Services; and
 - (ii) promptly hand over to Perkins all Design Documents produced by the Consultant or by others at the request of the Consultant in respect to or relevant to the Services at the time of termination. The Consultant may keep a copy for its records.
- (b) When any notice of termination is in effect Perkins may take over the whole or any part of the Services remaining to be completed.
- (c) If Perkins elects to exercise the power to complete the whole or any part of the Services remaining to be completed Perkins may, for that purpose let a contract or contracts for the Services remaining to be completed or, as the case may be, for any part of those Services or may employ any person or persons other than the Consultant to carry out the Services or, as the case may be, the part of the Services.

15.5 Preservation of rights after termination

Any termination of the Agreement by a party is without prejudice to any rights, remedies or actions either party may have against the other party which may have arisen prior to the date of the termination.

15.6 Perkins costs to complete

If the Agreement is terminated under clause 15.1 the Consultant shall be liable for all additional costs incurred by Perkins to reach completion of the Services which are incomplete at the date of termination.

15.7 Monies due to Consultant

- (a) If the Agreement is terminated under clause 15.1, subject to clause 15.7, Perkins will pay to the Consultant the proportion of the Fee due and payable for Services carried out up to the date of termination and that payment will be the Consultant's full and final compensation under this Agreement and generally at law for any Claim arising out of the termination.
- (b) If Perkins elects to exercise the power to complete the whole or any part of the Services remaining to be completed the Consultant shall not be entitled to any further payment until the Services taken over by Perkins are completed.
- (c) If the Agreement is terminated under clause 15.2, 15.3 or 16(a)(i) Perkins will pay to the Consultant the proportion of the Fee due and payable for Services carried out up to the date of termination and that payment will be the Consultant's full and final compensation under this Agreement and generally at law for any Claim arising out of the termination.

The amount paid to the Consultant under this clause 15.8 shall take into account any previous payments made to the Consultant prior to the date of termination, and the total sum due to the Consultant cannot exceed the Fee payable by Perkins if the Agreement had not been terminated.

15.8 Preservation of Agreement and Perkins rights

No action taken by Perkins under clause 15.1, 15.2 or 15.3 shall invalidate the Agreement or prejudice any of the rights, powers and remedies of Perkins, whether under the provision of the Agreement or otherwise.

15.9 Monies paid by Perkins

On termination of the Agreement all moneys which have been previously paid together with all moneys then payable under or pursuant to any provision of the Agreement to the Consultant will be deemed to be in full satisfaction of all Claims of the Consultant of any kind or description whatsoever under or in respect of the Agreement.

16 FORCE MAJEURE

- (a) If a party is prevented in whole or in part from carrying out its obligations under the Agreement (other than an obligation to pay money) as a result of a Force Majeure Event, it must promptly give a notice to the other party that complies with clause 16(c).

- (b) *Following this notice, and while the Force Majeure Event continues, the obligations which cannot be performed (other than an obligation to pay money) because of the Force Majeure Event will be suspended if the party giving notice has taken all proper precautions, due care and reasonable alternatives with the intention of avoiding the delay or failure and of carrying out its obligations under the Agreement.*
- (c) *A notice given under clause 16(a) must:*
 - (i) *specify the obligations a party cannot perform;*
 - (ii) *fully describe the Force Majeure Event;*
 - (iii) *estimate the time during which Force Majeure Event will continue; and*
 - (iv) *specify the measures proposed to be adopted to remedy or abate Force Majeure Event.*
- (d) *The parties must meet within 5 Business Days of receipt of a notice under clause 16(a) and use best endeavours to agree how the consequences of the Force Majeure Event may be dealt with in a mutually satisfactory way which may include the parties' agreeing to terminate the Agreement.*
- (e) *The party that is prevented from carrying out its obligations under the Agreement as a result of a Force Majeure Event must remedy the Force Majeure Event to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.*
- (f) *If a party is prevented from carrying out its obligations under the Agreement as a result of a Force Majeure Event for a continuous period of 120 days, either party may terminate the Agreement by giving 5 days' notice to the other party, without prejudice to any of the rights of either party accrued prior to the date of termination.*

17 SUSPENSION

- (a) *Perkins may suspend the performance of the Services at any time by giving a notice in writing to the Consultant.*
- (b) *Unless the suspension has been directed due to a wrongful act or omission of the Consultant or as a result of a Force Majeure Event, Perkins must pay the Consultant the reasonable and directly incurred and substantiated costs incurred by the Consultant as a result of the suspension, provided that the Consultant's Claim is notified by the Consultant to Perkins' Representative within 10 Business Days following the commencement of the suspension.*
- (c) *The cost incurred under clause 17(b) will be valued under clause 12.3.*
- (d) *The Consultant must recommence the performance of the Services when directed to do so by Perkins.*

18 MITIGATION OF COSTS

Upon termination of the Agreement or suspension of the performance of the Services, each party shall take all reasonable measures and do everything reasonably possible to prevent or mitigate costs to the other party resulting from such termination or suspension of Services.

19 RIGHT OF PERKINS TO RECOVER MONEYS

Perkins can withhold payment of any amount which Perkins disputes (acting reasonably) is payable and Perkins can set-off from any payment to the Consultant any amount the Consultant owes to Perkins under the Agreement.

Nothing in this clause shall affect the right of Perkins to recover from the Consultant the whole of the debt or any balance that remains owing after deduction.

20 CONFIDENTIALITY

Each party must keep confidential and must not disclose the Confidential Information to any person other than:

- (a) *if a party is required to disclose this Agreement to its employees and advisers for the purpose of obtaining advice in relation to this Agreement but only if disclosed on a confidential and "need to know" basis;*
- (b) *if required by law provided that the disclosing party gives the other party prior written notice; or*
- (c) *to the extent that it is required by order of a court or tribunal, if the disclosing party makes reasonable efforts to ensure that the other party is given the opportunity to make submissions to the court or tribunal in relation to any proposed order.*

21 ELECTRONIC COMMUNICATION

- (a) Perkins will maintain the web-based document management system Aconex for the duration of the project.
- (b) The Consultant must:
 - (i) register itself on Aconex and comply with the requirements for use of Aconex and comply with Perkins reasonable instructions and protocols regarding its use;
 - (ii) have, and maintain, the minimum required software, hardware and infrastructure recommended or set out by Aconex;
 - (iii) maintain an email address throughout the performance of the Agreement;
 - (iv) notify Perkins of any changes to its email address;
 - (v) use Aconex to receive electronic documents and communications;
 - (vi) use Aconex to provide documents electronically and for the transmission of documents and communication; and
 - (vii) be responsible for providing its Personnel with access to Aconex and sufficient training to ensure its Personnel can use Aconex.
- (c) If Aconex cannot be used by either party due to technical details or failure of Aconex, the parties must use an alternative means of communication.
- (d) Perkins has no liability, nor is the Consultant entitled to make a claim for any cost, loss, damage or expense the Consultant suffers or incurs arising out of or in connection with its access to or use of Aconex or any technical difficulties or failure of Aconex.

22 NOTICES

Notices under the Agreement must be served by hand, mail, email or Aconex at the address or email address set out in Item 4 or, if notice of a change of address or email address is given, at the last such notified address or email address.

All notices shall be in writing and signed by or on behalf of the sender (i.e. either Perkins' Representative or the Consultant's Representative as the case may be) addressed to the other party at the address as provided for that purpose and once given or made shall be deemed to be duly given or made in the case:

- (a) of a letter, at the expiry of five Business Days after the time of posting by prepaid ordinary post (whether or not received by that time) or at the time of actual receipt by the addressee, whichever occurs first;
- (b) of a certified letter, when delivered;
- (c) of electronic mail, when sent, unless the sender receives notice that the email transmission has been unsuccessful or could not be delivered, or an out of office notice indicates that the recipient is unavailable;
- (d) of Aconex (if in use on this Project), then the next Business Day after the day shown on Aconex; and
- (e) of personal delivery, when delivered.

A notice sent by Aconex under this clause will be taken to be a notice in writing signed by the person identified as the sender of the notice.

23 DISPUTE RESOLUTION

- (a) If either party considers a dispute or difference has arisen between the parties out of or in connection with this Agreement:
 - (i) the party shall deliver to the other party by certified mail a notice in writing stating that it is a notice under this clause 23 and adequately providing details of the dispute or difference(s).

- (ii) *Within 15 Business Days of the notice given under this clause 23 a senior representative of Perkins and the Consultant shall meet and undertake genuine and good faith negotiations with a bona fide objective of resolving the dispute (or difference) by agreement or by agreeing a process to resolve the dispute.*
- (iii) *If Perkins and the Consultant cannot resolve the dispute (or difference) within 10 Business Days of that meeting, or before any later time agreed by the parties, either party may commence legal proceedings.*
- (b) *Unless the parties agree otherwise, the meeting under this clause 23 will be held in Perth, Western Australia.*
- (c) *Notwithstanding the existence of a dispute, except where Perkins has terminated the Agreement:*
 - (i) *the Consultant must (unless requested in writing by Perkins not to do so) continue to perform the Services; and*
 - (ii) *Perkins must pay the Fee in according with the Agreement (other than any part of the Fee referable to a dispute).*
- (d) *Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Agreement or to seek injunctive or urgent declaratory relief in respect of a matter arising under the Agreement.*

24 CIVIL LIABILITY ACT

Pursuant to section 4A of the Civil Liability Act 2002 (WA), Part 1F (Proportionate Liability) of the Civil Liability Act 2002 (WA) is excluded from operating under or in connection with this Agreement.

25 MODERN SLAVERY LEGISLATION

25.1 Compliance with modern slavery requirements

Without limiting any other provision of this Agreement, the Consultant:

- (a) *must comply with Modern Slavery Legislation to the extent that such legislation is applicable to the Consultant;*
- (b) *warrants that it does not utilise Modern Slavery and that as far as it is reasonable to do so, it has investigated the labour practices of the entities in its supply chain and that no entity in the Consultant's supply chain utilises Modern Slavery in its operations;*
- (c) *must immediately notify Perkins if it becomes aware or suspects that an entity in the Consultant's supply chain utilises Modern Slavery;*
- (d) *must provide all reasonable assistance (including the prompt provision of information and access to documents and Consultant's Personnel as Perkins may require) to Perkins to enable Perkins to comply with its obligations under the Modern Slavery Legislation;*
- (e) *must, at Perkins request, provide Perkins with the details of each entity in the Consultant's supply chain and deliver to Perkins a report summarising the operating and labour practices of any particular entity in the Consultant's supply chain; and*
- (f) *must ensure that such information provided to Perkins under this clause 25.1 is accurate, complete and in such a form as Perkins reasonably requires.*

25.2 Termination

If the Consultant or Consultant's Personnel:

- (a) *are found guilty by a court of, or admit guilt or accept liability in relation to, a contravention of any Modern Slavery Legislation; or*
- (b) *breach clause 25.1,*

then (notwithstanding any other clause of this Agreement and without limitation to any other right or remedy available to Perkins) Perkins may terminate this Agreement under clause 15.1.

26 BUSINESS CONDUCT

The Consultant represents and warrants to Perkins that in connection with the Agreement and the Services:

- (a) *it is knowledgeable about anti-corruption laws applicable to the performance of the Agreement and shall comply with all such anti-corruption laws; and*
- (b) *it has not offered, promised, given or agreed to give and shall not during the term of the Agreement offer, promise, give or agree to give to any person any bribe on behalf of Perkins or otherwise with the object of obtaining a business advantage for Perkins or otherwise; and*
- (c) *it will not engage in any activity or practice which would constitute an offence under any anti-corruption laws; and*
- (d) *it will report to Perkins as soon as practicable of any breach of any undertakings contained in this clause 26.*

Failure to comply with any obligation under this clause 26 will be regarded as due course for Perkins giving notice to suspend performance of any work under the Agreement or terminate all or any part of the Agreement.

27 MEDIA

The Consultant must not issue for publication any information concerning the Services, the Agreement or the Project in any media without the prior written consent of Perkins. The Consultant must immediately refer any enquiries from any media about the Project to Perkins.

28 TIME BARS

The Consultant acknowledges and agrees that:

- (a) *it has reviewed the time periods (including any time bars) for performing actions and obligations under this Agreement*
;
- (b) *each time period (including each time bar) is reasonably possible to comply with and not overly onerous having regard to the Consultant's ability to perform that act or obligation, the consequence for the Services, the Project or Perkins if such act or obligation is not performed within that time period and Perkins' obligations under the Main Contract; and*
- (c) *Perkins has a legitimate interest in being informed contemporaneously of whether the Consultant considers that:*
 - (i) *it is entitled to make any claim/s;*
 - (ii) *direction constitutes a variation; or*
 - (iii) *it is entitled to delay costs,*

and that notification may have an impact on the manner in which Perkins addresses the direction, claim or other aspects of the Services (for example withdrawing the direction).

29 CLAUSES THAT SURVIVE TERMINATION

Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination of the Agreement, clauses 7, 11.3, 15.5-15.8, 18, 20, 23, 26 and 27 survive the termination of the Agreement.

SCHEDULE 1 – CONTRACT PARTICULARS

Item	
1 Consultant:	[[insert#]]
2 Consultant's Representative (clause 2.1 & clause 4.2)	[[insert#]]
3 Perkins' Representative (clause 4.1)	[[insert#]]
4 (a) The address for the service of Notices to Perkins is: (b) The address for the service of Notices to the Consultant is:	1 Hales Street, Bunbury WA 6230 Email: [[insert#]] [[insert address#]] Email: [[insert#]]
5 Project (clause 2.1)	[[insert#]]
6 Principal (clause 2.1)	[[insert#]]
7 Commencement Date (clause 2.1)	[[insert#]]
8 Term (clause 2.1)	[[insert#]]
9 Fee (clause 2.1)	As set out in Schedule 6.
10 Date for Payment Claims: (clause 13.2)	23rd day of the month
10A Address for the service of payment claims	By email to 'accounts@perkinsbuilders.com.au'
11 The amount of Public Liability Insurance shall not be less than: (clause 11.1 (a))	\$20 million for any one event
12 The amount of Professional Indemnity Insurance shall not be less than: (clause 11.1 (b))	\$10 million, for any one event and in the aggregate during a policy period.
13 The period for which the Consultant's Professional Indemnity Insurance shall be maintained after the completion of the	7 years



Agreement is: (clause 11.1 (b))		
14 Key Personnel (clause 4.3)	Name	Role in the Performance of the Services
	[#insert#]	[#insert#]
	[#insert#]	[#insert#]
15 Jurisdiction (clause 1)	Western Australia	

SCHEDULE 2 – SCOPE OF SERVICES

The Consultant must perform and provide the services described in this Schedule 2 and any services necessarily incidental to the performance or provisions of those Services:

[Drafting Note: insert detailed description of the Consultant's scope of services]

SCHEDULE 3 – SPECIAL CONDITIONS OF CONTRACT

Precedence of special conditions

These special conditions amend the General Conditions to the extent stated in the special conditions.

Special Conditions

SC 1	#insert#
SC 2	#insert#

SCHEDULE 4 – DESIGN BRIEF

	Document	Revision	Date
1	[include the preliminary "Design Brief" PPR and any other relevant specification and quality requirements]		
2	Insert additional rows as required		



SCHEDULE 5 – DESIGN PROGRAMME

SCHEDULE 6 – FEE

1 The fees will be made up of lump sums for each Stage as follows:

Stage	Description of Services <i>[Description of the part of the Services comprising a Stage]</i>	Lum Sum \$
Stage 1	e.g. Concept Design	[insert]
Stage 2	e.g. Design development	[insert]
Stage 3	e.g. Construction services	[insert]
Stage 4	e.g. Construction	[insert]
[insert]	[insert]	[insert]
	TOTAL FEE (excluding GST) <i>[Drafting Note the total fee must match the amount entered in Item 9 of Schedule 1]</i>	[insert]

2 Hourly rates for Variations to the Services

Role	Rate per hour (excl. GST)
Director	[\$[insert]]
[insert]	[\$[insert]]
[insert]	[\$[insert]]
[insert]	[\$[insert]]
[insert]	[\$[insert]]

SCHEDULE 7 – Consultant's Certificate

CONSULTANT DESIGN CERTIFICATE

To:

Perkins WA Pty Ltd (ABN 60 008 844 862)
1 Hales Street, Bunbury, Western Australia 6230
("Perkins")

«FirmName»

«FirmAddress», «FirmCity», «FirmState»
«FirmZip» ("Principal")

From:

«FirmName» (ABN: «AusBusNbr»)

Address

("Consultant")

For: «ProjectDescription» ("Project")

Perkins has entered into a contract with the Principal dated [Insert date] for the provision of design and construct works ("D&C Contract"). Perkins and the Consultant have entered into an agreement dated [Insert date] for the provision of professional services/design works ("Consultant Agreement") in respect of the works the subject of the D&C Contract.

The Consultant hereby certifies to Perkins and the Principal that the Contract Material:

1. has been properly prepared and complies with the requirements of the Consultant Agreement;
2. satisfies all legislative requirements, including, without limitation, all applicable requirements of the National Construction Code as well as the Australian Standards, having due regard to the assumptions that the Consultant can be reasonably expected to make in accordance with relevant professional standards and exercising the level of skill, care and attention required of an experienced consultant under an agreement similar to the Consultant Agreement;
3. is suitable in all respects for the purpose for which it is required; and
4. will be capable of being used by a competent contractor to deliver the Project.

The Consultant acknowledges that:

1. Perkins and the Principal will rely upon this certificate; and
2. the terms of this certificate are in addition to and in no way limit or derogate from any other obligation or liability which the Consultant has or would otherwise have to Perkins and the Principal whether under the Consultant Agreement or otherwise.

Contract Material: means the design, specifications and other documents prepared by the Consultant for the Project prior to the date of this Consultant's Certificate.

Executed as a deed poll

Executed by [insert] in accordance with section 127 of the Corporations Act 2001 (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

SCHEDULE 8 - MORAL RIGHTS CONSENT FORM (clause 7.3)

To:

Perkins WA Pty Ltd (ABN 60 008 844 862) ("Perkins")

Project name: Design and construction of the «ProjectDescription»

In relation to any services/design that we supply to Perkins, we agree that, given the nature of the work, and the purpose, manner and context of its intended use:

- (a) Nothing in this consent prevents you describing yourself as an author or the author of Design or as the project comes to be known from time to time.
- (b) We will also be attributed as an author in circumstances that you consider reasonable and practicable, or as otherwise agreed with you in writing.
- (c) You need not advise us if you are notified of any intended alteration to or demolition of any project, building or structure related to our work.
- (d) You may provide a copy of this consent to Perkins.
- (e) We have the right to give this consent on behalf of our employees and our own consultants (if any).
- (f) We will provide you with copies of such consents within a reasonable time if you request them.

Signed by the Consultant on behalf of each holder of Moral Rights: _____

Name and ABN of the Consultant: _____ ABN: _____

Date:

SCHEDULE 9 – HEALTH, SAFETY AND ENVIRONMENTAL COMPLIANCE

Perkins Occupational Health and Safety Policy

Perkins is totally committed to the elimination of work-related injury and disease and the provision of a safe and healthy working environment for workers, subcontractors, visitors and the public. Safety excellence is recognised as good business and the safety of workers is a value which is not to be compromised.

Consultants

Perkins is committed to working with companies who share our philosophy and objectives to achieve zero harm. Perkins recognise the value of workers that demonstrate a commitment to working safely.

The Consultant must be familiar with the requirements of all current industrial safety and health legislation and provide all protective clothing and equipment required under current legislation.

Conditions of entry to the site

The Consultant and its employees, contractors, Sub-consultants and agents must report to Perkins' site manager on arrival to the site.

The Consultant must comply with the requirements of the OSH Legislation; must abide by the Principal's and Perkins environment policies, site safety rules, safety policies and safety procedures and any other requirements regarding, building, construction safety and/ or other regulations as they may apply, and as directed by Perkins site manager or Perkins Representative.

The Consultant must ensure that it and all of its employees, contractors, Sub-consultants and agents have completed a recognised industry-based safety induction course (e.g. White Card - Safety Induction Course). In addition, they will be required to undergo a Perkins (and, if applicable the Principals) site specific induction in accordance with the procedures for the site prior to entry to the site.

The Consultant must ensure that no persons, unrelated to the Services, enter the site without the express permission of Perkins.

Consultants and its employees, contractors, Sub-consultants and agents must participate in trial emergency procedures evacuations as they occur on the site.

A statement of the emergency procedures and a site plan for the evacuation areas will be communicated to the Consultant at the induction. In an emergency, all workers should leave the area immediately, using the approved exit path, and proceed to the evacuation assembly area.

On all Perkins' sites, smoking is only permitted in areas designated by Perkins. On sites where the site is within or adjacent to school or university grounds smoking is forbidden on the site at all times.

Perkins may require the Consultant or its employees, contractors, Sub-consultants and agents to submit to random, blanket, or 'for cause' drug or alcohol tests before or whilst attending the Site

A person who returns a non-negative result for any unauthorised drugs or alcohol or refuse to take a test will no longer be authorised to work at, and will immediately be dismissed from, the Site.

Consumption of alcohol is not permitted on the Site.

General Requirements

The Consultant will ensure that its employees, contractors, Sub-consultants and agents comply with the requirements of the OSH Legislation, Codes of Practice and Australian Standards in accordance with the requirements of State and Territory requirements.

The Consultant shall supervise its employees, contractors, Sub-consultants and agents to ensure they comply with Perkins minimum Occupational Safety & Health standards and requirements.

If requested by Perkins (acting reasonably) the Consultant must provide documentation to evidence of compliance with these requirements.

Incidents / Accidents / Near Miss

All hazards, actual personal injury, equipment or property damage, near misses, incidents or accidents must be reported to Perkins immediately.

If the Consultant or its employees, contractors, Sub-consultants or agents require medical treatment, the Consultant must ensure that Perkins site manager is informed prior to departure from the workplace. If the incident is of a type that requires notification to any statutory authority, the Consultant must provide notice in accordance with the relevant statutory regulations.

An injured person requiring medical treatment shall be accompanied by a representative of Perkins or the Consultant with the ability and aptitude to liaise with medical personnel regarding the injury management/return to work plan of the injured worker.

If the Consultant or its employees, contractors, Sub-consultants or agents are involved in or are witness to any incident at site, the Consultant must cooperate and ensure that its employees, contractors, Sub-consultants and agents cooperate with Perkins or any other authorities' investigation of the incident.

Security

The Consultant must sign in and sign out each time they enter or leave the Site on the site attendance register.

Emergency exits must not be used except in the event of an emergency.

Motor Vehicles

Any motor vehicles within the boundary of the Site or the site compound must adhere to the site speed limit and enter and leave in accordance with the project site HSE management plan. Where no speed limit is stated, motor vehicles within the boundary of the Site or the site compound should not exceed 10 km per hour.

If parking is permitted on the site it is only permitted in designated parking areas.

Use of Personal Protective Equipment

The Consultant and its employees, contractors, Sub-consultants and agents must provide its own personal protective equipment (PPE).

The minimum PPE requirement on Site is :

- hard hat
- safety boots or safety shoes
- hi-vis safety vest
- long trousers
- long sleeved shirt

Failure of any person to wear the appropriate PPE will result in the refusal of that person's access to the site;

Other PPE, as indicated by signage at the Site, must be worn in designated areas.

Environment

All Consultants will adhere to environmental aspects on site as per the site induction and Perkins Environmental Management Policy and Procedures which is available upon request from Perkins site manager.

Perkins complies with the requirements of AS/NZS ISO 14001:2016 Environmental Management Systems and requires all Consultants to comply.

In addition to the above certification all Consultants are to comply with State Environmental Protection Agency (EPA) legislation.

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