

# LANDCORP STANDARD CONDITIONS

## CONSULTANTS

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### 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions unless the contrary intention appears:

**“Change of Control”** means:

- (a) where the Consultant is a corporation, any change in the beneficial ownership of any shareholding in the corporation or a related corporation which has the effect of changing control of the corporation whether by the issue or transfer of shares or otherwise;
- (b) where the Consultant is a Trust, any change in control of the Trust; and
- (c) where the Consultant is a partnership, a joint venture or a sole trader, any transfer or assignment of any interest in the partnership, joint venture or sole trader.

**“Claim”** means any right, cause of action, charge, claim, action, proceedings, damage, injury, loss, cost, expense or liability incurred to or made or recovered against any person or entity howsoever arising and whether present, unascertained, immediate, future or contingent.

**“Completion”** means completion of the Services other than minor omissions or defects which do not prevent the Services from being reasonably capable of being used by LandCorp for their intended purpose as determined by LandCorp (acting reasonably).

**“Confidential Information”** has the meaning given on **Condition 15.1**.

**“Consultant”** means the person or company specified in the Contract.

**“Contract”** means the contract for the provision of the Services to which these Standard Conditions form part and, where applicable, includes any drawings, specifications or other documents.

**“Commencement Date”** means the date mentioned in the Schedule and if no date is specified then the last date of execution of the Contract by the parties.

**“GST”** has the meaning given in Section 195-1 of the GST Act.

**“GST Act”** means A New Tax System (Goods & Services Tax) Act 1999 and any legislation substituting or amending that Act.

**“LandCorp”** means the Western Australian Land Authority trading as LandCorp.

**“Representatives”** means any employee, director, executive, agent or sub-consultant of the Consultant.

“**Schedule**” means the schedule to the Contract.

“**Tax Invoice**” has the meaning given in Section 195-1 of the GST Act.

“**Taxable Supply**” has the meaning given in Section 195-1 of the GST Act.

“**Term**” means the term described in **Condition 2.1**.

“**Services**” means the services mentioned in the Schedule.

1.2 In these Conditions unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) other grammatical forms of defined words and expressions have corresponding meanings;
- (d) references to persons include corporations and bodies politic;
- (e) references to a person include the legal personal representatives successors and assigns of that person;
- (f) a reference to a Statute Ordinance Code or other Law includes regulations and other statutory instruments under it and consolidations amendments re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (g) references to this or any other document include the document as varied or replaced and notwithstanding any change in the identity of the parties;
- (h) references to writing include any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (i) an obligation of two or more parties binds them jointly and severally;
- (j) if a word or expression is defined cognate words and expressions have corresponding definitions;
- (k) references to an association body or authority which is reconstituted amalgamated reconstructed or merged or the functions of which have become exercisable by any other person association body or authority in its place shall be taken to refer to the person association body or authority established or constituted in its place or by which its functions have become exercisable;
- (l) reference to any thing (including without limitation any amount or the Land) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (m) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next

succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the first day of the next succeeding calendar month;

- (n) references to the Contract includes these Conditions and any schedules and annexures;
- (o) headings are inserted for ease of reference only and shall be ignored in construing the Contract;
- (p) references to time are to local time in Perth Western Australia;
- (q) where time is to be reckoned from a day or event that day or the day of that event shall be excluded;
- (r) a reference to a business day is a reference to a day other than a Saturday Sunday or gazetted public holiday in Western Australia;
- (s) the word "include" used when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind; and
- (t) a provision of the Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract.

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## **2 TERM**

- 2.1 The engagement of the Consultant shall commence on the Commencement Date and shall continue until the earlier of:
- (a) completion of the Services; or
  - (b) termination of the Contract pursuant to **Condition 18**; or
  - (c) the date for Completion as mentioned in the Schedule (if any).
- 2.2 If LandCorp wishes to extend the period for the provision of the Services mentioned in the Schedule then it may do so by giving notice to that effect to the Consultant whereupon the Contract shall continue for a further period as specified by LandCorp and otherwise in accordance with the terms of the Contract (other than the provisions of this Condition).

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## **3 CONSULTANT'S DUTIES**

- 3.1 During the Term the Consultant shall provide the Services for the benefit of LandCorp and in doing so shall exercise a professional standard of skill, care and diligence in the performance of those Services and other obligations under the Contract as would be

expected from qualified, skilled and experienced consultants operating in Australia providing the Services.

3.2 In the discharge of the duties under the Contract the Consultant shall:

- (a) where possible, promote, advance and improve the interests of LandCorp;
- (b) subject to the policies of LandCorp as advised by LandCorp and the express directions of LandCorp, act on its own initiative and exercise all professional judgement as to the manner in which the Services shall be performed;
- (c) comply with all instructions given by LandCorp in relation to the performance of the Services;
- (d) as required by LandCorp from time to time and at its cost provide any report to LandCorp in such form as LandCorp may reasonably require in relation to the provision of any aspect of the Services under the Contract and allow LandCorp at all reasonable times to inspect and copy all work, documents and material produced in relation to the provision of the Services;
- (e) promptly notify LandCorp of any matter which will or is likely to have any effect on the Consultant's capacity to undertake the provision of the Services or the timing of the provision of those Services;
- (f) comply with all legislation and obtain all approvals, licences (including professional accreditation of Representatives) and permits required from any relevant authority for the lawful implementation and completion of the Services, the costs of which shall be borne by the Consultant;
- (g) not to pledge the credit or incur any debt on behalf of LandCorp in relation to the provision of the Services other than with the prior written approval of LandCorp;
- (h) comply in all respects with all of LandCorp's procedures and policies as advised to the Consultant from time to time;
- (i) with due expedition and without delay and in accordance with any programmes approved by LandCorp, provide all professional skill and advice required for carrying out the Services;
- (j) remain fully responsible for the Services carried out by the Consultant notwithstanding any review or acceptance of those Services by LandCorp;
- (k) promptly give written notice to LandCorp if and to the extent the Consultant becomes aware that any document or other information provided by LandCorp is ambiguous or inaccurate or is otherwise insufficient to enable the Consultant to carry out the Services;
- (l) make reasonable enquiries to ascertain the requirements of LandCorp regarding the Services;

- (m) regularly consult with LandCorp regarding the carrying out of the Services;
- (n) as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or carrying out of the Services, give written notice to LandCorp detailing the matter or circumstances and its anticipated effect on the Services;
- (o) when on LandCorp's premises and when using LandCorp's facilities, comply with all directions, procedures and policies relating to occupational health, safety and security requirements;
- (p) not to utilize the position of Consultant with LandCorp for the personal benefit of the Consultant or to gain any benefit or advantage over other persons dealing with LandCorp either during the Term or subsequently;
- (q) do all things necessary and necessarily incidental for the proper performance of the Consultant's obligation under the Contract.

3.3 The Consultant shall provide all materials, labour, tools and plant and equipment whether of a temporary or a permanent nature required for the execution of the Services.

3.4 The Consultant shall not provide any services similar to the Services to any other person during the Term if the provision of those services could materially prejudice LandCorp or materially interfere with the provision of the Services to LandCorp.

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## **4 OCCUPATIONAL HEALTH AND SAFETY**

4.1 The Consultant shall provide and maintain all safety precautions required for the protection of the Services or other property or for the safety and convenience of persons and the public. In particular, the Consultant shall comply with the Occupational Safety and Health Act 1984 and the Occupational Safety and Health Regulations 1996.

4.2 The Consultant shall be solely responsible for ensuring that whatever practicable its employees and those of its sub-consultants are not exposed to hazards.

4.3 The Consultant shall take all measures necessary to avoid disturbance to the public and to prevent nuisance, whether by the unreasonable emission of noise or dust or otherwise.

4.4 If required by LandCorp, the Consultant shall provide to LandCorp a Safety Management Plan for approval by LandCorp. Once approved by LandCorp, the Consultant shall comply with the Safety Management Plan.

4.5 In the event that any material incident occurs which impacts on LandCorp and which involves a safety issue or an issue creating a disturbance to the public, the Consultant shall report such incident to LandCorp within twenty four (24) hours of it occurring.

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## **5 WARRANTY BY CONSULTANT**

- 5.1 The Consultant warrants that it has fully considered the scope of works required in respect of the Services and that it has the knowledge, skill, experience and capacity to provide the Services in accordance with the Contract and that it holds all professional qualifications or licenses necessary for carrying out the Services.
- 5.2 The Consultant shall ensure that at all times during the term it has key personnel authorised to ensure compliance with **Condition 5.1**.

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## **6 ADMINISTRATION OF SERVICES**

LandCorp may appoint others to administer and inspect the Services on its behalf and the Consultant shall permit any such person so appointed to administer and inspect the Services and shall also comply with all lawful directions of such person.

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## **7 CONSULTANT'S REPRESENTATIVE AND ACCESS**

- 7.1 The Consultant shall personally direct the execution of the Services under the Contract. Directions of LandCorp given to the approved representative shall be deemed to be directions given to the Consultant.
- 7.2 LandCorp shall be entitled to access to the site of the Services at all times.
- 7.3 The Consultant shall ensure that any access to the site of services by the public shall be restricted to ensure proper safety procedures are followed.
- 7.4 If required by LandCorp, the Consultant shall appoint a person to be the responsible person for all dealings with LandCorp in relation to the Contract with such person to have authority to bind the Consultant.

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## **8 INTERFERENCE WITH PUBLIC**

- 8.1 All operations involving the execution of the Services shall, except where otherwise permitted by LandCorp, be carried out so as not to interfere with public convenience or the access to, use and occupation of public or private roads or footpaths or to or of Crown lands or adjoining public or private properties.
- 8.2 Where the execution of the Services includes an interference with public convenience or access as mentioned in **Condition 8.1**, the Consultant shall advise LandCorp of the nature of the interference within twenty four (24) hours of it occurring.

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## 9 VARIATIONS

LandCorp may make a variation to the source, form, quality or quantity of the Services or any part thereof that in its opinion may be necessary whereupon such variations shall be paid by LandCorp in the manner specified in the Schedule provided that the Consultant shall not be obliged to undertake a material change in the agreed scope of Services unless otherwise agreed.

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## 10 TIME FOR COMPLETION

The Consultant shall complete the Services within the time stated in the Contract subject to any extension of time which may be approved by LandCorp in accordance with **Condition 17**.

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## 11 PAYMENT OF CONSULTANT

- 11.1 LandCorp shall pay to the Consultant for the provision of the Services the fees mentioned in the Schedule.
- 11.2 LandCorp shall not be required to pay or reimburse the Consultant for any cost, expense, outlay or other outgoing of whatsoever nature incurred or required to be paid by the Consultant in order to effect the provision of the Services unless the Consultant has prior to incurring or becoming responsible for such cost, expense, outlay or other outgoing sought and obtained the written consent of LandCorp to reimburse the Consultant or pay for such cost, expense, outlay or other outgoing.
- 11.3 The Consultant shall give to LandCorp an account for the Services performed and any claim for reimbursable expenses actually incurred. The account shall contain such detail as to the work undertaken by the Consultant as required by LandCorp
- 11.4 Subject to **Condition 11.5** and the provision of a Tax Invoice in accordance with **Condition 28**, LandCorp shall pay the full amount owing in respect of each account within thirty (30) days of the receipt of the account.
- 11.5 If LandCorp upon receipt of any account disputes the amount claimed, then LandCorp shall promptly notify the Consultant in writing of such dispute provided that any failure to LandCorp to give such notice shall not constitute an agreement to pay any invoice. If the parties are unable to reach agreement in relation to any account within fourteen (14) days of the notice from LandCorp then the dispute shall be determined in accordance with **Condition 21**.
- 11.6 If required by LandCorp the Consultant shall maintain such time or other records as reasonably required by LandCorp and shall upon request provide to LandCorp copies of all such records.

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## 12 INSURANCE AND INDEMNITY

- 12.1 The Consultant shall at the Consultant's own expense effect and maintain throughout the Term the following insurance:
- (a) Workers Compensation insurance where required by law in the name of the Consultant with insurers approved by LandCorp and on terms and conditions approved by LandCorp including liability at common law;
  - (b) Public liability insurance in respect of any loss or injury to any person or damage to any property in relation to the provision of the Services by the Consultant or any act or omission of the Consultant, its employees and sub-consultants and shall extend to indemnify LandCorp as an insured (other than liability caused or contributed by LandCorp) in an amount of ten million dollars (\$10,000,000) (or such greater amount as may be reasonably required by LandCorp from time to time in order to effect sufficient and proper cover) and on terms and conditions approved by LandCorp;
  - (c) Professional indemnity insurance in relation to carrying out the Services in the name of the Consultant with insurers approved by LandCorp in an amount specified in the Schedule for any one event and on terms and conditions approved by LandCorp. The policy shall include provision for one automatic reinstatement of the sum insured and loss of any documents in relation to the provision of the Services;
  - (d) such other insurance as may be reasonably required by LandCorp in relation to the provision of the Services.
- 12.2 Insurance effected in accordance with these Conditions shall not limit the liability or obligations of the Consultant under any other provisions of these Conditions and shall not in any way limit any claim which may be made by LandCorp against the Consultant.
- 12.3 Before the Commencement Date, the Consultant shall provide evidence to LandCorp of the insurance taken out under **Condition 12.1** and at any other time when requested in writing by LandCorp, the Consultant shall produce evidence to the satisfaction and approval of LandCorp of the insurance effected and maintained in accordance with these Conditions.
- 12.4 As soon as practicable and to the extent permitted under any applicable policy, the Consultant shall give notice to LandCorp in writing of any occurrence which may give rise to a claim under a policy of insurance required under these Conditions and shall keep LandCorp informed of all subsequent developments concerning the claim.
- 12.5 The Consultant shall indemnify LandCorp and its agents and employees against:
- (a) all Claims of any nature suffered or incurred by LandCorp or its agent or employees; and
  - (b) all personal injury or death of any person or loss of or damage to property,



arising out of any negligence by way of any act, error or omission in undertaking the Services and for which the Consultant or any Representative is as the case may be legally liable.

- 12.6 The Consultant shall indemnify and keep indemnified LandCorp against any excess under any policy of insurance taken out by LandCorp under which the Consultant is an insured and in respect of a claim arising out of negligence, whether by a way of act, error or omission in the provision of the Services by the Consultant or any Representative as the case may be. In the case of the public liability insurance, the Consultant's liability to indemnify LandCorp against the excess shall be reduced proportionately to the extent that any act or omission of LandCorp or employees or agents of LandCorp may have contributed to the loss, damage, death or injury the subject of the claim.
- 12.7 The indemnities referred to in **Conditions 12.5** and **12.6** shall:
- (a) be a continuing obligation
  - (b) constitute a separate and independent obligation of the Consultant from the Consultant's other obligations under these Conditions; and
  - (c) survive termination of the Contract and, in respect of negligence the subject of a claim under the insurance referred to in **Condition 12.1(c)** shall survive for a period of six (6) years from the date of termination of the Contract.

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## **13 DELEGATED AUTHORITY**

The Consultant shall have no power to act as the agent of LandCorp other than as authorised in writing from time to time by LandCorp.

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## **14 COST PROJECTIONS**

If required by LandCorp, the Consultant will provide to LandCorp cost projections, and any information reasonably required by LandCorp before committing to the purchase of any materials or entering into any supply contract or otherwise acquiring goods and services for which LandCorp will be liable for the reimbursement of costs and fees.

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## **15 CONFIDENTIALITY**

- 15.1 The Consultant shall and shall ensure that it or any Representative does not except as authorised or required by LandCorp divulge to any person whatsoever any information, report, data, document or any trade secrets, secret or confidential operations, processes or dealings or any information concerning the organisation, business, finances, transactions or affairs of LandCorp or arising out of the performance of the Services whether provided to the Consultant by LandCorp or any other person or compiled by the Consultant in connection with the Contract.

- 15.2 The Consultant shall not use or attempt to use any Confidential Information in any manner which may injure or cause loss either directly or indirectly to LandCorp or its business or may be likely to do so.
- 15.3 The Consultant shall not use any of the Confidential Information for its own benefit except for the performance of the Services and will not copy or in any manner reproduce any of the Confidential Information except as authorised by LandCorp.
- 15.4 The Consultant agrees that the terms of the Contract shall also be kept confidential by the Consultant.
- 15.5 The provisions of this condition shall continue to apply after the termination of the Contract for any reason without limit in point of time unless the Consultant has first obtained the written consent of LandCorp for the release of such information.

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## **16 INTELLECTUAL PROPERTY**

- 16.1 All intellectual property including without limitation any Confidential Information, patent, design (whether registered or not) copyright in any report or data or other information or material compiled or prepared in accordance with the Contract and trademark or trademarks created by the Consultant within the scope of the Contract is owned by LandCorp absolutely. The Consultant agrees to take all action and to execute and deliver all documents and instruments and to procure any Representative to perform any act as may be required to vest in LandCorp the intellectual property the subject of this condition.
- 16.2 The Consultant warrants and shall ensure that the reports, any software or other works or inventions contained in or embodying the intellectual property the subject of this condition are owned by the Consultant or do not contain any intellectual property rights belonging to third parties, without that third party's authorisation and, where required, by LandCorp shall procure that authorization.
- 16.3 Where data or other information relating to the provision of Services is stored in or processed by a computer system, a copy of all the data and information from the computer shall be supplied by the Consultant to LandCorp on request.
- 16.4 The Consultant shall not publish, either alone or with others, articles, photographs or other illustrations relating to the Services without the prior written approval of LandCorp unless such articles, photographs and other illustrations are contained only in promotional material published to clients or prospective clients of the Consultant.
- 16.5 The Consultant shall indemnify LandCorp and keep LandCorp indemnified against all Claims arising in relation to any breach of this condition by the Consultant including the infringement of any intellectual property rights of any third party.

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## **17 DELAY AND EXTENSION OF TIME**

- 17.1 The Consultant shall proceed with the Services with due expedition and without delay.

- 17.2 When it becomes evident to the Consultant that anything including an act or omission of LandCorp or an employee, other consultant, contractor or agent of LandCorp, may delay carrying out the Services, that party shall promptly notify LandCorp in writing with details of the possible delay and the cause.
- 17.3 If the Consultant is or will be delayed in carrying out the Services by a cause beyond the reasonable control of the Consultant, the time for carrying out the Services shall be extended by the extent of the delay.
- 17.4 LandCorp may, at any time, by written notice to the Consultant extend the time for carrying out the Services for any reason.
- 17.5 LandCorp may direct the Consultant in what order and at what time the Services shall be performed. If the Consultant can reasonably comply with the direction, the Consultant shall do so. If the Consultant cannot reasonably comply with the direction the Consultant shall so notify LandCorp in writing, giving reasons.
- 17.6 Nothing in this condition shall limit the LandCorp's liability for damages for breach of contract.
- 17.7 LandCorp may, at any time, suspend the carrying out of Services or any part of them subject to LandCorp meeting any reasonable costs arising from the suspension.

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## **18 TERMINATION**

- 18.1 The Contract may be terminated forthwith by LandCorp by giving written notice to the Consultant if:
- (a) the Consultant commits an act of bankruptcy or if the Consultant is a company enters into liquidation (except voluntary liquidation for the purposes of reconstruction) a receiver or receiver and manager is appointed or an administrator is appointed;
  - (b) the Consultant is in default under the Contract and fails to remedy that default within seven (7) days of receipt of a written notice from LandCorp specifying the breach and requiring the same to be remedied;
  - (c) any event or circumstances has occurred which, in the reasonable opinion of LandCorp, makes it unlikely that the Services will be completed by the Consultant in accordance with the Contract;
  - (d) the Consultant fails or refuses or neglects to comply with any instruction or direction given to it by LandCorp pursuant to the Contract;
  - (e) LandCorp serves notice on the Consultant requiring the Contract to be terminated on the date specified in the notice being not less than thirty (30) days from the date of service of the notice.

- 18.2 Nothing in Condition 18.1 shall be taken in any way to restrict any rights of LandCorp to claim and institute proceedings for damages arising out of any breach of the Contract by the Consultant.
- 18.3 LandCorp may at any time by notice in writing to the Consultant, reduce, curtail or discontinue any or all Services to be provided to it. Upon such notice being given the Consultant shall cease or reduce work according to the tenor of the notice and shall immediately do everything possible to mitigate losses as a result of such reduction, curtailment or discontinuance.
- 18.4 If under the law governing the Contract, the Contract is frustrated, LandCorp shall pay the Consultant:
- (a) for work executed up to the date of frustration, the amount not then paid but which would have been payable if the Contract had not been frustrated; and
  - (b) costs reasonably incurred by the Consultant to that date in the expectation of carrying out the Services and not included in any prior payment by LandCorp.
- 18.5 On completion of the Services or on termination or frustration of the contract, the Consultant shall promptly (but in any event within 10 business days) return to LandCorp all documents, data and other information created for the purposes of the Contract or supplied to the Consultant by LandCorp.

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## **19 REVIEW OF PROVISION OF SERVICES**

- 19.1 As reasonably required by LandCorp, LandCorp may undertake a performance review of the Services.
- 19.2 The performance review shall be undertaken in such manner as required by LandCorp and may be undertaken either by LandCorp itself or by any Consultant or other third party appointed by LandCorp or for such purpose.

The Consultants performance will be measured against the following performance indicators:

- (a) Schedule Performance: was work delivered in accordance with deadlines?
- (b) Cooperation: were the Consultant's personnel professional, responsive and cooperative?
- (c) Cost: did the Consultant's cost estimates for its services match what was invoiced?
- (d) Quality of documentation: were reports, briefs, and plans detailed, accurate, relevant and analytically sound?
- (e) Quality of design: were design documents free of error, what amount of re-work was required?
- (f) Safety: did the Consultant meet all statutory and LandCorp OHS requirements?

- (g) Contract supervision: did the Consultant manage contractors (in a contract superintendent capacity) and subconsultants effectively?
  - (h) Overall quality of the work performed.
  - (i) Performance against project specific KPI's.
  - (j) Interaction, if any, with stakeholders.
- 19.3 It shall be a requirement of any performance review that the Consultant be given a reasonable opportunity to make submissions to LandCorp in relation to its performance.
- 19.4 In the event that, as a result of the performance review, LandCorp forms a view in its absolute discretion that the Consultant is not performing in accordance with the requirements of LandCorp then LandCorp may upon giving not less than fourteen (14) days notice to the Consultant to terminate the Contract.

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## **20 OTHER CONSULTANTS**

- 20.1 Where any conflict or dispute arises with any other consultant that affects the completion of the Services, the Consultant shall use its best endeavours to resolve the issue with the other consultant and promptly inform LandCorp of the terms of the resolution of the matter.
- 20.2 Where the Consultant is unable to resolve any conflict or dispute with any other contractor, the matter shall be immediately referred to LandCorp who shall resolve the conflict or dispute in such manner as it may determine.

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## **21 DISPUTE RESOLUTION**

- 21.1 If LandCorp and the Consultant are in dispute regarding any matter arising under the Contract, then LandCorp in its absolute discretion may, by notice in writing served on the Consultant, require that such dispute be resolved by expert determination of an independent third party acceptable to both parties. If the parties do not agree upon the independent third party to be appointed within seven (7) days from the date of service of a notice by LandCorp requiring determination by a third party expert, then the dispute shall be determined by an independent third party appointed by the President of the time being of the Law Society of Western Australia. The person so appointed shall act as an expert and not as an arbitrator and his or her decision shall be final and binding between the parties. The costs of such determination shall be paid by the parties in equal shares.
- 21.2 The Consultant shall continue to provide services pursuant to the Contract notwithstanding that a dispute remains unresolved.

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## **22 ASSIGNMENT**

- 22.1 The Consultant shall not assign, transfer or otherwise dispose of the whole or any part of its rights or obligations under the Contract without the prior written consent of LandCorp.
- 22.2 LandCorp shall be entitled to assign the whole or any part of the benefit and obligations under the Contract and, if applicable, subject to the assignee agreeing to be bound by the terms of the Contract in the place of LandCorp.
- 22.3 The Consultant must inform LandCorp in writing within ten (10) business days in the event that there is any Change of Control of the Consultant and provide full details of the Change of Control.

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## **23 APPOINTMENT OF SUB-CONSULTANTS**

- 23.1 If circumstances arise which require expertise outside the field of practice of the Consultant, the Consultant may with the prior written approval of LandCorp engage an appropriate sub-consultant to perform any part of the provision and relevant Services under the Contract. The Consultant shall be solely responsible for the engagement of and the payment for any Services provided by any sub-consultant and shall accept responsibility for the provision of those Services. In the event that the use of a sub-consultant is required due to Services being provided outside of the original scope of Services then the costs of such sub-consultant shall be met by LandCorp.
- 23.2 It shall be a condition of such approval given by LandCorp pursuant to **Condition 23.1** that any such sub-consultant shall at the Consultant or sub-consultant's own expense, effect and maintain throughout the term of the engagement of such sub-contract insurance in accordance with the requirements of **Condition 12** in addition to the insurance to be provided by the Consultant.

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## **24 ENGAGEMENT OF FURTHER CONSULTANT**

In the event that the Consultant for any reasons fails to perform any obligations under the terms of the Contract LandCorp may, without prejudice to any right of action or other remedy which it may have be entitled to appoint any other consultant, person, agent or otherwise to carry out such unperformed Services, the costs of which shall be immediately reimbursed to LandCorp by the Consultant.

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## **25 CONFLICT OF INTEREST**

- 25.1 The Consultant must immediately inform LandCorp in writing of any direct or indirect interest that the Consultant has or may have which conflicts with or may conflict with the Consultant's duties and obligations under the Contract.

- 25.2 LandCorp may in its absolute discretion determine how any conflict of interest shall be resolved on the part of the Consultant.
- 25.3 If the Consultant is unable to resolve the conflict of interest as required by LandCorp or if LandCorp elects not to provide any mechanism for resolving such conflict, then LandCorp may immediately terminate the Contract or may limit the engagement of the Consultant under the Contract to matters not affected by the conflict of interest.
- 25.4 Where the conflict of interest arises as a result of any action by the Consultant or any omission by the Consultant, then the Consultant shall be deemed to be in breach of the Contract as a result of such conflict being allowed to arise and LandCorp shall be entitled to all rights and damages arising from such breach.

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## 26 STATUS OF CONSULTANT

- 26.1 The Consultant acknowledges that it is an independent contractor and that it supplies the Services in such capacity only.
- 26.2 The relationship between LandCorp and the Consultant is that of principal and contractor. Nothing in the Contract shall be taken as construing the Consultant as an employee of LandCorp or constituting a partnership or joint venture.

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## 27 GUARANTEE

- 27.1 The Guarantor (if any) mentioned in the Schedule GUARANTEES payment to LandCorp on demand of the whole of the Secured Moneys and the performance and observance of all the Secured Obligations.
- 27.2 As an independent liability the Guarantor INDEMNIFIES AND AGREES TO KEEP INDEMNIFIED LandCorp against any loss, damage, action, demand, expense, claim or obligation which LandCorp has or may suffer or incur by reason of or in any way consequent upon arising out of or incidental to the non-payment of the Secured Moneys or the non-performance or non-observance of the Secured Obligations. This indemnity shall not be limited or affected in any way whatsoever by the fact that the Secured Moneys or the Secured Obligations cannot be or could never be recovered from or enforced against the Consultant for any reason.
- 27.3 The Guarantor's liability under **Conditions 27.1** and **27.2** are unlimited.
- 27.4 This Guarantee and Indemnity is a continuing security and shall not be wholly or partially discharged (even upon payment of all of the Secured Moneys that are presently owing) as long as any of the Secured Moneys are owing or payable, are contingently owing or payable or may in LandCorp's opinion become owing or payable or as long as any of the Secured Obligations have not been performed and the Guarantor shall have no right to discontinue this Guarantee and Indemnity.
- 27.5 This Guarantee and Indemnity shall not be affected by any eventuality or circumstance of any nature whatsoever including without limitation:

- (a) LandCorp granting time or other indulgence to or compromising with or partially releasing in any way the Consultant or the Guarantor;
- (b) acquiescence, delay, acts or omissions on the part of LandCorp;
- (c) a variation of the Contract with or without the consent of the Guarantor;
- (d) any assignment (whether on the part of LandCorp or the Consultant or both) or extension of the Contract;
- (e) the death, dissolution or other incapacity of the Consultant or the Guarantor;
- (f) the winding up of the Consultant;
- (g) the invalidity or unenforceability of an obligation or liability of the Consultant under the Contract;
- (h) the disclaimer of the Contract by a liquidator or a trustee of the Consultant;

27.6 For the purposes of this Condition:

**“Secured Moneys”** means all of the moneys owing or owed by the Consultant to LandCorp in any way whatsoever and at any time under or pursuant to the Contract;

**“Secured Obligations”** means all of the obligations, covenants, warranties, representations, terms and conditions express or implied to be observed, performed or fulfilled by the Consultant under the Contract.

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## 28 GOODS AND SERVICES TAX

- 28.1 The parties to the Contract agree that all Taxable Supplies to be made under the Contract are inclusive of GST. The party supplying the Taxable Supply shall provide a Tax Invoice.
- 28.2 The party or parties to the Contract providing supplies for consideration expressed otherwise than an amount of money, in accordance with the terms of the Contract, which will constitute a Taxable Supply shall provide a Tax Invoice to the other party for that Taxable Supply based on the GST inclusive market value of that consideration as determined by the party making the supply.
- 28.3 A written statement given to the Consultant by LandCorp of the amount of GST that LandCorp is liable to pay on a Taxable Supply made or to be made under the Contract is conclusive between the parties except in the case of an obvious error.
- 28.4 The Contract and supporting material is not a document notifying an obligation to make payment and is not considered an invoice under the GST Act.



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## 29 NOTICES

29.1 Any notice given or required to be given under this Contract:

- (a) must be in writing addressed to LandCorp or to the Consultant (as the case may be), to LandCorp's or the Consultant's address shown in the Contract (or to any other address specified by the Consultant to LandCorp or LandCorp to the Consultant by notice);
- (b) must be signed by the sender or an officer of, or under the common seal of the sender or by the sender's lawyer or other authorised representative (as the case may be);
- (c) is to be regarded as being given by the sender and received by the addressee:
  - (i) if by delivery in person, when delivered to the addressee;
  - (ii) if by post (which posting must be by pre-paid security post), 3 business days from and including the date of posting to the addressee; and
  - (iii) if by facsimile transmission:

on the date the notice or communication is transmitted in its entirety by a facsimile machine; and

that facsimile machine produces a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee,

but if the delivery or transmission by facsimile is on a day which is not a business day or is after 5.00 p.m. (addressee's time) it is to be regarded as being given at 9.00 a.m. (addressee's time) on the next succeeding business day; and
- (d) can be relied upon by the addressee, and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

29.2 Where the Consultant comprises 2 or more persons or corporations, or any combination of the same, notice to either 1 person or to 1 corporation is deemed notice to all persons and corporations comprising the Consultant.

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## 30 MISCELLANEOUS

30.1 Time shall be of the essence of the provision of the Services in all respects and no extension or variation thereof shall operate as a waiver of this provision.

30.2 The Contract constitutes the entire agreement between LandCorp and the Consultant and contains all of the representations, warranties, covenants and agreements of such parties and there are no oral statements, representations, undertakings, covenants or agreements

between LandCorp and the Consultant expressed or implied except as set out in the Contract.

- 30.3 The Contract may be amended or varied only by agreement in writing signed by LandCorp and the Consultant.
- 30.4 All remedies, rights, undertakings, obligations or agreements of the parties arising by law, disagreement or otherwise shall be cumulative and none thereof shall be in limitation of any other right, remedy, undertaking, obligation or agreement of such party. Each party may follow any remedies to which such party is entitled by law this agreement or otherwise concurrently or successively at that party's option.
- 30.5 Each party shall bear its own costs of and incidental to the instructions for and the preparation and execution of the Contract.
- 30.6 The parties hereto shall execute and do all such acts and things as shall be necessary or desirable in order to implement and give full effect to the provisions and purposes of the Contract.
- 30.7 For all purposes, the Contract shall be governed by and construed in accordance with the laws of Western Australia and, where applicable, the laws of Australia.

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## **31 SPECIAL PROVISIONS AND PROVISIONS OF REQUEST FOR PROPOSAL**

- 31.1 The Special Provisions (if any) mentioned in the Schedule shall apply or form part of the Contract. In the event of any inconsistency between the Special Provisions and these Conditions, the Special Provisions shall prevail.
- 31.2 Where the Contract arises as a result of a request for proposal, tender or other document issued by LandCorp ("**the Proposal**") then:
- (a) any terms and conditions of such Proposal (not inconsistent with the terms of these Standard Conditions and the Schedule) shall apply to and form part of the Contract;
  - (b) the Consultant warrants that all information provided in response to the Proposal was and at the date of the Contract is true and correct and not misleading or deceptive whether by omission or otherwise; and
  - (c) the terms of any response to the Proposal by the Consultant (unless inconsistent with the terms of the Standard Conditions and the Schedule) shall apply to and form part of the Contract.