

ANNEXURE "B"

CONSULTANCY TERMS AND CONDITIONS

1. Definitions

1.1. Except to the extent expressly provided otherwise, in these Terms and conditions:

"Charges" means the following amounts:

- 1.1.1. the amounts specified in Section 7 of the Statement of Work];
- 1.1.2. such amounts as may be agreed in writing by the parties from time to time];
and
- 1.1.3. amounts calculated by multiplying the Consultant's standard time-based charging rates (as notified by the Consultant to the Client at the date of the Contract in the Consultancy Proposal letter) by the time spent by the Consultant's personnel performing the Services (rounded down by the Consultant to the nearest quarter hour);

"Client" means the person or entity identified as such in Section 1 of the Statement of Work;

"Client Intellectual Property Rights" means the Intellectual Property Rights to which the Client is entitled or claims for the purpose of this Consultancy to be entitled;

"Client Materials" means all works and materials supplied by or on behalf of the Client to the Consultant for incorporation into the Deliverables or for some other use in connection with the Services;

"Consultant" means Latitude Development and Management Pty Ltd (ACN 606 847 750), a company incorporated in Australia;

"Consultancy" means the consultancy constituted by the Contract;

"Contract" means a particular contract made under these Terms and Conditions between the Consultant and the Client;

"Deliverables" means those deliverables specified in Section 4 of the Statement of Work that the Consultant has agreed to deliver to the Client under these Terms and Conditions;

"Effective Date" means the date of execution of the Consultancy Proposal;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

“Key Personnel” means the key personnel appointed by each party;

“Project” means the short project description following on from “RE” on page 1 of the Consultancy Proposal Letter;

“Services” means the consultancy services specified in Section 3 of the Statement of Work;

“Statement of Work” means a written statement of work agreed by or on behalf of each of the parties;

“Term” means the term of the Contract, in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

“Terms and Conditions” means all the documentation containing the provisions of the Contract, namely the main body of these Terms and Conditions and the Statement of Work, including any amendments to that documentation from time to time; and

“Third Party Materials” means the works and/or materials comprised in the Deliverables (excluding the Client Materials), the Intellectual Property Rights which are owned by a third party.

2. **Term**

- 2.1. The Contract shall come into force upon the Effective Date.
- 2.2. The Contract shall continue in force as provided for in Section 2 of the Statement of Work (Annexure A).

3. **Services**

- 3.1. The Consultant shall provide the Services to the Client in accordance with these Terms and Conditions.
- 3.2. The Consultant shall provide the Services with reasonable skill and care.

4. **Deliverables**

- 4.1. The Consultant shall deliver the Deliverables to the Client.
- 4.2. The Client must, in a timely fashion following receipt of a written request from the Consultant to do so, provide written feedback to the Consultant concerning the Consultant’s proposals, plans, designs and/or preparatory materials relating to the Deliverables and made available to the Client with that written request.
- 4.3. The Consultant shall use reasonable endeavours to ensure that the Deliverables are delivered to the Client in accordance with the timetable set out in Section 5 of the Statement of Work.
- 4.4. The Consultant will use reasonable endeavours to ensure that
 - 4.4.1. The Deliverables conform, to the extent possible, with the requirements of the Statement of Work (Annexure A);
 - 4.4.2. The Deliverables will be free from material defects;

- 4.4.3. The Deliverables when used by the Client in accordance with these Terms and Conditions will not infringe the Intellectual Property Rights or other legal rights of any person, where authority does not exist, and will not breach the provisions of any law, statute or regulation in any jurisdiction and under any applicable law.

5. **Licence**

The Consultant hereby grants to the Client a non-exclusive, worldwide, perpetual and irrevocable licence to copy, store, distribute, publish, adapt, edit and otherwise use the Deliverables (excluding the Third Party Materials and the Client Materials) for the purpose of the Project. The Deliverables shall not be otherwise disclosed to any third party or utilised without the consent of the Consultant first obtained in writing.

6. **Confidential Information**

The parties agree to hold such information in strict confidence, and only to disclose such information as may be required by law or that parties' regulators or legal or accounting advisors strictly to the extent necessarily only.

7. **Charges**

- 7.1. The Client shall pay the Charges to the Consultant in accordance with these Terms and Conditions.
- 7.2. All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable Goods and Services Tax levied by the Commonwealth of Australia, which will be added to those amounts and payable by the Client to the Consultant.

8. **Payments**

- 8.1. The Consultant shall issue invoices for the Charges to the Client monthly in arrears during the Term.
- 8.2. The Client must pay the Charges to the Consultant within the period of 30 days following the issue of an invoice in accordance with this clause 8.
- 8.3. If the Client does not pay any amount properly due to the Consultant under these Terms and Conditions, the Consultant may charge the Client interest on the overdue amount at the rate of 2% per annum above the standard interest rate charged by Westpac Banking Corporation Limited for business overdrafts under AUD\$100,000.00.

9. **Warranties**

- 9.1. The Consultant warrants to the Client that:
 - 9.1.1. The Consultant has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions;
 - 9.1.2. The Consultant will use reasonable endeavours to comply with all applicable legal and regulatory requirements applying to the exercise of the Consultant's rights and the fulfilment of the Consultant's obligations under these Terms and Conditions; and

- 9.1.3. The Consultant has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.
- 9.2. The Client warrants to the Consultant that it has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions.
- 9.3. The Client warrants to the Consultant that it has full right and title to the Client Intellectual Property.
- 9.4. All of the parties' warranties and representations in respect of the subject matter of the Contract are expressly set out in these Terms and Conditions and the applicable Statement of Work. Subject to Clause 9.1, no other warranties or representations will be implied into the Contract and no other warranties or representations relating to the subject matter of the Contract will be implied into any other contract.

10. **Limitations and exclusions of liability**

- 10.1. Nothing in these Terms and Conditions will:
 - 10.1.1. Limit or exclude any liability for death or personal injury resulting from negligence;
 - 10.1.2. Limit or exclude any liability for fraud or fraudulent misrepresentation;
 - 10.1.3. Limit any liabilities in any way that is not permitted under applicable law; or
 - 10.1.4. Exclude any liabilities that may not be excluded under applicable law.
- 10.2. The limitations and exclusions of liabilities set out in this Clause 10 and elsewhere in these Terms and Conditions:
 - 10.2.1. Are subject to Clause 10.1; and
 - 10.2.2. Govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.
- 10.3. Neither party shall be liable to the other party in respect of any loss of profits, anticipated savings, business contracts or opportunities, use or production of revenue or income.
- 10.4. Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software.
- 10.5. Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

11. **Termination**

- 11.1. Either party may terminate the Contract by giving to the other party not less than 30 days' written notice of termination.

- 11.2. Either party may terminate the Contract immediately by giving written notice of termination to the other party if:
 - 11.2.1. The other party commits any material breach of the Contract and the breach is not remediable;
 - 11.2.2. The other party commits a material breach of the Contract, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied.
- 11.3. Either party may terminate the Contract immediately by giving written notice of termination to the other party if:
 - 11.3.1. The other party:
 - 11.3.1.1. Is dissolved;
 - 11.3.1.2. Ceases to conduct all (or substantially all) of its business;
 - 11.3.1.3. Is or becomes unable to pay its debts as they fall due;
 - 11.3.1.4. Is or becomes insolvent or is declared insolvent ;or
 - 11.3.1.5. Convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - 11.3.2. An administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - 11.3.3. An order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract);
- 11.4. The Consultant may terminate the Contract immediately by giving written notice to the Client if:
 - 11.4.1. Any amount due to be paid by the Client to the Consultant under the Contract is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
 - 11.4.2. The Consultant has given to the Client at least 30 days written notice, following the failure to pay, of its intention to terminate the Contract in accordance with this Clause 11.4.

12. **Effects of termination**

- 12.1. Upon the termination of the Contract, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect in accordance with their express terms or otherwise indefinitely: clauses 1, 6, 8.2, 10, 12, 13.2 and 16.
- 12.2. Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Contract shall not affect the accrued rights of either party.

13. **Status of Consultant**

13.1. The Consultant is not an employee of the Client, but an independent contractor.

13.2. The termination of the Contract will not constitute unfair dismissal; nor will the Consultant be entitled to any compensation payments, redundancy payments or similar payments upon the termination of the Contract.

14. **Personnel**

14.1. David Hewson shall be the key person assigned to the Consultancy by the Consultant with primary responsibility.

14.2. The Client shall specify a primary person to whom the Consultant can report and seek instructions or information.

15. **Subcontracting**

15.1. The Consultant must not subcontract any of its obligations under the Contract without the prior written consent of the Client, providing that the Client must not unreasonably withhold or delay the giving of such consent.

15.2. The Consultant shall remain responsible to the Client for the performance of any subcontracted obligations.

16. **General**

16.1. No breach of any provision of the Contract shall be waived except with the express written consent of the party not in breach.

16.2. If any provision of the Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

16.3. The Contract may not be varied except by a written document signed by or on behalf of each of the parties.

16.4. Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under these Terms and Conditions.

16.5. The Contract is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Contract are not subject to the consent of any third party.

16.6. Subject to Clause 10.1, these Terms and Conditions shall constitute the entire agreement between the parties in relation to the subject matter of these Terms and Conditions, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

- 16.7. These Terms and Conditions shall be governed by and construed in accordance with the Laws of Australia.
- 16.8. The courts of Western Australia shall have non-exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Contract.