



Our ref: PP118239-Flying Fox Camp Noise-190909 Rev1

Your ref: PP118239

By email  
openspace@nca.gov.au

23 October 2019

Michelle Jeffrey/ Carly Lowe  
National Capital Authority

Dear Michelle/ Carly

**Flying-fox Camp Management Plan, Commonwealth Park  
Noise monitoring and consultancy**

We thank you for the opportunity to provide acoustic consulting services to support the development of the Commonwealth Park Grey Headed Flying-fox Camp Management Plan.

Based on your email dated 20 August 2019 and our subsequent phone conversation we understand that the National Capital Authority (NCA) is currently working on developing the management plan to protect the flying-fox camp that resides in Commonwealth Park during the Spring and Summer seasons.

The presence of the flying-fox camp coincides with the period when numerous pre-planned noise events take place in the same locality, which typically generates short-term but high level of noise. One of considerations of the management plan includes establishing an understanding of the correlation between flying-foxes' behaviour and noise levels.

WSP understands that the NCA has engaged ecologists/ bat experts to conduct observations of flying-foxes during these upcoming events in Spring and Summer. From a noise perspective, NCA requires noise monitoring to be undertaken concurrent with these ecological observations and events.

From our understanding of NCA's requirements, the following items will require consideration:

- Determination of overall monitoring strategy and coordination with Australasian Bat Society (ABS) and NCA;
- Performance of noise monitoring at events along with associated organisation;
- Frequency range of hearing and response for bats, which is beyond typical human's range of hearing.

WSP Australia operates the largest noise consultancy team in the ACT, with four locally-based full time employees. Our acoustics team cares about the ACT (and region) and knows it well. Our personnel

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have more than ten years' experience working with private and government clients across wide-ranging projects.

## 1. SCOPE

Based on our discussion, WSP primary role is to conduct noise monitoring concurrent with planned events and to coincide with ecological observations of the flying foxes. It is noted that due to the varying nature and duration of each event, the level of involvement required for noise consultancy is likely to vary between different events. The general scope of noise consultancy for each event is described below.

It should be noted that the general scope proposed is based on conducting noise monitoring using 'standard' noise monitoring devices that are primarily designed for frequency range of sounds audible to human (20 Hz to 20 kHz typically). Noise monitoring for the entire frequency range of bats (>20 kHz) will require specialised equipment, which is further discussed in Section 1.4.

### 1.1 INITIAL PLANNING AND STRATEGY WORKSHOP

Due to unique nature of the proposed noise monitoring, WSP proposes a workshop as soon as practicable with ABS and NCA to discuss and determine a strategy. WSP expects that this workshop will discuss general monitoring approach, strategies, program, coordination, positioning etc.

In addition, discussion should also ideally include discussions in regard to the noise measurement technique and potential need of using specialised monitoring equipment to cover the frequency response range of bats >20 kHz (see Section 1.4).

### 1.2 LIMITED LITERATURE REVIEW (OPTIONAL)

Based on a preliminary research, there appears to be multiple studies done in regard to the relationship between noise and bats' behaviour. In consultation with ABS, WSP proposes to conduct a limited review of available literature about this to supplement the monitoring program.

It is understood that NCA has invited the community to provide input to help shape the Management Plan. As the monitoring program is likely to be the first of its kind in the ACT, completion of a literature review as part of the noise consultancy is expected to add value and supplement the Management Plan.

### 1.3 EVENT NOISE MONITORING

- Where possible, liaise with the respective event organiser to obtain general information that would be helpful with the monitoring (e.g. program).
- Noise monitoring: this comprises of both unattended noise logging and operator-attended noise monitoring (using 'standard' noise monitoring equipment measuring up to 20 kHz):
  - Unattended noise logging to capture general ambient noise levels *without* an event taking place – deploy noise monitoring equipment at up to two pre-agreed locations.
  - Unattended noise logging to capture event noise – prior to the commencement of the event, set up the noise monitoring equipment at up to two pre-agreed locations. These will record noise levels continuously until conclusion of the monitoring.

In general, the unattended noise logger will be deployed on a normal business day prior to the event and then retrieved on a business day post-event. Data processing and analysis will

- Operator-attended noise monitoring – in addition to noise data logging, a WSP personnel would attend the pre-agreed noise monitoring locations to conduct observations and noise measurements to quantify the source of noise.
- Deliverables:
  - One written deliverable for each event, which will include noise monitoring locations, recorded noise level charts, as well as WSP’s observations and notes made during the site visits.
  - Provide the deliverables for the first event within two weeks upon the conclusion of the event. Discuss with ABS and/or NCA representatives to discuss format of the deliverables, suitability of the data presentation format to ensure expectations are met. Where required, refine the deliverables and approach/ strategy for subsequent monitoring events.

NCA has broadly identified a total of 14 monitoring events to take place in the next six months. All identified upcoming (noise-generating) events near or at Commonwealth Park are listed in Table 1.1.

*Table 1.1 Identified monitoring events near or at Commonwealth Park (Spring, Summer 2019/2020)*

| REF | EVENT                                     | DATES                         | OVERALL EVENT DURATION                                | LIKELY SOURCES OF NOISE   |
|-----|---|-------------------------------|---|---|
| 1   | Background noise monitoring without event | During the absence of events  | -   | General ambient noise   |
| 2   | Spiltmilk                                 | 23 Nov 2019<br>11 am to 11 pm | One day, morning to late night                        | Crowds, amplified music and speech                                  |
| 3   | Regatta Point café construction           | TBC                           | Likely weeks, day time only                           | Construction activities, tools, machinery                           |
| 4   | Carols by Candlelight                     | 19 Dec                        | One evening   | Crowds, amplified music and speech                                  |
| 5   | Australian Day                            | 26 Jan 2020                   | Treated as one continuous unattended monitoring event | Fireworks, music and speech   |
| 6   | Cold Chisel                               | 30 Jan 2020                   |   | Crowds, amplified music and speech                                  |
| 7   | Symphony in the Park                      | 8 Mar 2020<br>7 pm to 10 pm   |   | Amplified music and speech  |
| 8   | Canberra Day                              | 9 Mar 2020                    | Treated as one continuous unattended monitoring event | Fireworks, music and speech   |
| 9   | Skyfire                                   | 14 Mar 2020                   |   | Fireworks, aircraft low flyover display, amplified music and speech |
| 10  | Anzac Day                                 | 25 April                      | One day   | Fireworks, music and speech   |
| 11  | Park maintenance                          | Ongoing                       | Ongoing   | General maintenance equipment, leaf blower or the like              |

## 1.4 NOISE MONITORING FOR SOUNDS >20 kHz

Standard noise monitoring devices have an effective frequency range of up to 20 kHz, which matches the threshold of hearing for humans. It is understood that bats typically have a hearing frequency response from 10 kHz up to 200 kHz and higher.

Noise monitoring for >20 kHz will require specialised equipment that is not readily available, and will require devising a bespoke methodology in consultation with ABS and a specialist equipment supplier. On this basis, WSP therefore does not provide a scope and fee for this, pending further discussion with ABS and NCA.

## 2. FEES AND CASH FLOW

Per discussion with NCA, as the exact requirements of noise consultancy support has not been fully determined and that the general approach of noise monitoring could change after the first monitored event, a fixed lump sum fee could not be provided at this time for the entire monitoring program. Fee has therefore been provided in the following to cover estimated fee for monitoring of each event as well as recommended activities in the initial planning phase.

To assist with planning of an overall financial budget for the entire monitoring program, an estimated lump sum fee has also been provided based on our best understanding of the requirements.

*Table 2.1 Acoustic consultancy estimated lump sum fee for identified tasks*

| ITEM   | FEE PER UNIT<br>(AUD EX GST) | LIKELY NO.<br>OF UNITS | SUBTOTAL<br>(AUD EX GST) |
|--|------------------------------|------------------------|--------------------------|
| <b>Planning activities and literature review</b>   |                              |                        |                          |
| Initial planning activities, workshop with NCA/ABS, set up of reporting template   | \$3,650                      | 1                      | \$3,650                  |
| <b>Unattended noise logging (site attendance pre-event and post-event)</b>   |                              |                        |                          |
| Unattended noise monitoring at two pre-agreed locations, including site attendance, data processing/analysis, reporting<br>(Per monitoring event, up to seven days)<br>Event REF: 1, 3, 5+6, 7+8+9         | \$2,000                      | 4                      | \$8,000                  |
| Unattended noise monitoring at two pre-agreed locations, including site attendance, data processing/analysis, reporting<br>(Per monitoring event, up to two days)<br>Event REF: 2, 4, 10, 11               | \$1,350                      | 4                      | \$5,400                  |
| <b>Operator-attended observations during event, up to 14 events</b>  |                              |                        |                          |
| Operator-attended noise observations during noise events identified as high risk to quantify noise sources and supplement the unattended noise logging<br>(Per site visit, up to three hours on-site time) | \$850                        | 5                      | \$4,250                  |
| <b>Subtotal</b>  |                              |                        | <b>\$21,300</b>          |

Other possible tasks in addition to the initial tasks identified above may include:

## 2.2 Acoustic consultancy provisional fee allowance – possible further tasks

| ITEM   | FEE PER UNIT (AUD EX GST)                                   |
|--|---|
| <b>Literature Review</b><br>Limited review of available literature on relationship between bats' behaviour and noise (up to 30 hours consultants' time)  | \$4,200   |
| <b>Additional operator-attended noise monitoring</b><br>Operator-attended noise observations during noise events to quantify noise sources and supplement the unattended noise logging<br>(Per site visit, up to three hours on-site time) | \$850   |
| <b>Other additional tasks</b>  | Hourly rates per Table 2.3                                  |
| <b>Specialised noise monitoring for &gt;20 kHz</b>   | <b>To be confirmed pending discussions with ABS and NCA</b> |

Acoustic consultancy hourly rates are given in Table 2.3, but we will endeavour to agree a lump sum scope and fee for any additional scope, if this is required.

**Table 2.3** Acoustic consultancy hourly rates

| TITLE              | HOURLY RATE (AUD EX GST) |
|--------------------|--------------------------|
| Associate Director | \$280 / hour             |
| Associate          | \$240 / hour             |
| Senior Engineer    | \$200 / hour             |
| Engineer           | \$180 / hour             |
| Graduate           | \$140 / hour             |

## 2.1 CLARIFICATIONS AND ASSUMPTIONS

The quoted scope and fee are based on the following assumptions:

- The proposed scope of noise consultancy is generally limited to noise monitoring at the pre-agreed locations and the associated reporting of the processed noise monitoring results.
- As discussed and agreed with NCA, the scope and strategy of the noise monitoring is subjected to review and possible adjustment subsequent to the first monitoring.
- Most of the consultancy work is proposed to be undertaken by an Engineer/ Graduate with appropriate supervision by a Senior Engineer and/ or Associate at any time.

## 3. TERMS OF ENGAGEMENT

The offer is made to **National Capital Authority (ABN 75 149 374 427)**, whom we understand would be our client for the project. Our offer is based on the terms of this letter as appended as Attachment A. Any professional services we undertake subsequent to this proposal will be on these terms, and this is so even if certain material matters remain to be agreed. If we commence work on the project it will be deemed to be on these terms of engagement unless we subsequently agree otherwise in writing.

#### 4. QUALITY ASSURANCE

WSP Australia (Pty) Ltd is a quality endorsed company, in accordance with ISO9001-2000, Licence No.3936. Our professional service would be carried out in compliance with our accredited quality procedures. We trust the above is suitable for your immediate needs and we look forward to working with you on this project.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Zhang Lai', written in a cursive style.

Zhang Lai  
Associate, ACT Acoustic Engineering Manager

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# **ATTACHMENT A**

## **TERMS OF ENGAGEMENT**



# **PROFESSIONAL SERVICES AGREEMENT (Aust. Only)**





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# Professional Services Agreement (Aust. only)

## SCHEDULE

|  |  |  |  |                                      |  |  |
|--|--|--|--|--------------------------------------|--|--|
| 1.   | <b>WSP contracting entity:</b>   |  | WSP Australia Pty Limited ABN 80 078 004 798 |                                      |  |  |
|  | WSP contact:   | Zhang Lai  | Project no:                                  | PP117007                             |  |  |
| Registered address: Ernst & Young Centre, Level 27, 680 George Street, Sydney NSW 2000 |  |  |  |                                      |  |  |
| 2.   | <b>Client:</b>   |  |  |                                      |  |  |
|  | Client:  | National Capital Authority   |  | Address:                             |  |  |
|  | Contact:   | Michelle Jeffrey/ Carly Lowe   |  |                                      |  |  |
|  | Phone:   |  |  | ABN:                                 | 75 149 374 427                                       |  |
|  | Fax:   |  |  | Email:                               | Marc.Blackmore@aecom.com                             |  |
|  | Other (name):  |  |  | Address:                             |  |  |
|  | Contact:   |  |  |                                      |  |  |
|  | Phone:   |  |  | ABN:                                 |  |  |
|  | Fax:   |  |  | Email:                               |  |  |
| 3.   | <b>Project:</b>  | Flying-fox Camp Management Plan, Commonwealth Park – Noise consultancy |  |                                      |  |  |
| 4.   | <b>Deliverables:</b>   | <input checked="" type="checkbox"/> Report                             | <input type="checkbox"/> Specification       | <input type="checkbox"/> Tender docs | <input type="checkbox"/> Drawings                    | <input type="checkbox"/> Other (specify) |
| 5.   | <b>Duration:</b>   | Commencement Date:   |  |                                      | Date for Completion:                                 |  |
| 6.   | <b>Basis of Fee:</b>   | <input checked="" type="checkbox"/> Lump Sum                           |  |                                      | <input type="checkbox"/> Time charged                |  |
| 7.   | <b>Description of Services</b>   |  |  |                                      | <b>Amount</b>  | <b>Timing (weeks)</b>                    |
|  | Initial planning activities, workshop with NCA/ABS, set up of reporting template   |  |  |                                      | \$3,650  | TBC                                      |
|  | Unattended noise monitoring at two pre-agreed locations, including site attendance, data processing/ analysis, reporting<br>(Per monitored event, up to seven days)                |  |  |                                      | \$2,000 per event,<br>4 events expected              | TBC                                      |
|  | Unattended noise monitoring at two pre-agreed locations, including site attendance, data processing/ analysis, reporting<br>(Per monitored event, up to two days)                  |  |  |                                      | \$1,350 per event,<br>4 events expected              | TBC                                      |
|  | Operator-attended noise observations during noise events to quantify noise sources and supplement the unattended noise logging<br>(Per site visit, up to three hours on-site time) |  |  |                                      | \$850 per event,<br>5 (high risk)<br>events expected | TBC                                      |
|  | Other additional tasks and possible specialised noise monitoring for >20 kHz   |  |  |                                      | Times and<br>material basis                          | TBC                                      |
|  | (Optional) Limited review of available literature on relationship between bats' behaviour and noise (up to 30 hours consultants' time)   |  |  |                                      | \$4,200<br>(optional)                                | TBC                                      |
|  |  |  |  |                                      |  |  |



# Professional Services Agreement (Aust. only)

|            |   |  |  |
|------------|---|--|--|
|            | <b>Estimated Fee (excluding GST)</b>                                | <b>\$21,300</b><br><b>(excluding optional items)</b> |  |
| <b>8.</b>  | <b>Purpose of the Services (clause 3.3):</b>                        |  |  |
| <b>9.</b>  | <b>Percentage applicable to Reimbursable Expenses (clause 5.1):</b> |  |  |
| <b>10.</b> | <b>Project location:</b>  |  |  |
| <b>11.</b> | <b>Governing Law (clause 1.10):</b>                                 |  |  |

# Professional Services Agreement (Aust. only)

|            |  |   |                                   |
|------------|--|---|-----------------------------------|
| <b>12.</b> | <b>Insurances to be provided by the Consultant (clause 6):</b>   |   |                                   |
|            | 1. Professional indemnity insurance:   | (if nothing stated, \$1,000,000 per claim and in the aggregate)                               |                                   |
|            | 2. Public Liability insurance:   | (if nothing stated, \$10,000,000 per occurrence)  |                                   |
|            | 3. Workers Compensation insurance:   | According to the law of the State or Territory where the Consultant's employees are employed. |                                   |
|            | 4. Motor Vehicle insurance:  | \$30,000,000 for third party property damage  |                                   |
| <b>13.</b> | <b>The Consultant's liability is limited to (clause 8.1):</b>  |   | (if nothing stated, Fee)          |
| <b>14.</b> |  |   |                                   |
|            | Annexures:   |   |                                   |
|            | (a) Special Conditions (Annexure A)  | <input type="checkbox"/> Yes  | <input type="checkbox"/> No       |
|            | (b) Proposal (Annexure B)  | <input type="checkbox"/> Yes  | <input type="checkbox"/> No       |
|            | (c) Program (Annexure )  | <input type="checkbox"/> Yes  | <input type="checkbox"/> No       |
|            | (d) []   | <input type="checkbox"/> Yes  | <input type="checkbox"/> No       |
|            | Intellectual Property Rights (clause 7.1) (Option 1 being the default position)  | <input type="checkbox"/> Option 1   | <input type="checkbox"/> Option 2 |
| <b>15.</b> | <b>Documents forming the Agreement in order of priority (clause 1.9)</b> [select including Annexures identified in Item 14 above eg Annexure C could be omitted if incorporated in Annexure B] |   |                                   |
|            | 1. Annexure A - Special Conditions<br>2. General Terms of Business<br>3. Annexure B – Proposal dated<br>4. Annexure C – Program<br>5.  |   |                                   |
| <b>16.</b> | <b>Date of this Agreement (clause 1.6)</b>   |   |                                   |
|            | 07 August 2019   |   |                                   |



# Professional Services Agreement (Aust. only)

## SIGNING PAGE

### Signed as an agreement

Signed for and on behalf of **WSP Australia Pty Limited ABN 80 078 004 798** by its authorised representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name [in capital letters]

\_\_\_\_\_  
Name [in capital letters]

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

Signed for and on behalf of **National Capital Authority [ABN: 75 149 374 427]** by its authorised representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name [in capital letters]

\_\_\_\_\_  
Name [in capital letters]

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

## TERMS OF BUSINESS

### 1. Definitions and Interpretation

#### 1.1 In this Agreement:

*"Benchmark Rate"* means the base lending rate at HSBC Bank Australia Limited ("HSBC"), as established and quoted from time to time by HSBC in national daily newspapers or financial papers applicable at the time interest is to be charged.

*"Client"* means the person or entity specified in Item 2 of the Schedule.

*"Commencement Date"* means the date stated in Item 5 of the Schedule.

*"Confidential Information"* means all information or data in whatever form, nature or media disclosed by either Party to the other but does not include:

- (a) information which, at the time it is disclosed or communicated to the receiving Party:
  - i. is publicly known; or
  - ii. is already known to or is in the possession of the receiving Party and was not acquired from the disclosing Party; or
- (b) information which, after the time it is disclosed or communicated to the receiving Party, comes into the public domain other than as a result of any breach by the receiving Party of its obligations under this agreement.

*"Consultant"* means the contracting entity specified in Item 1 of the Schedule.

*"Contract Documents"* means any drawings, designs, reports, electronic records and other documents and concepts provided by the Consultant to the Client as part of or in connection with the Services and includes the Deliverables.

*"Date for Completion"* means the date stated in Item 5 of the Schedule.

*"Deliverable"* means any design, report, specification, tender document, drawing or any other deliverable prepared by the Consultant in the course of or incidental to the performance of the Services and including the Deliverables identified in Item 4 of the Schedule.

*"Fee"* means the Lump Sum Fee and/or Time Charge Fees, being the amount specified in Item 6 of the Schedule as adjusted in accordance with clause 4 and any Additional Amount calculated in accordance with clause 14.3.

*"Governing Law"* means the law governing the Agreement and identified in Item 11 of the Schedule

*"Gross Negligence"* means any act or omission done or omitted to be done with reckless and serious disregard to the consequences of a risk of which the relevant Party was aware or ought reasonably to have been aware would result in loss being incurred by incurred by the other Party to this agreement, but does not include an act or omission which occurs in a reasonable and honest attempt to fulfil its obligations referred to or in relation to this Agreement.

*"GST"* means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

*"Intellectual Property Rights"* means all intellectual property rights whether or not registered including all applications and the right to apply for registration which is owned by or licensed to the Consultant including, without limitation:

- (a) any trade marks, service marks, trade names, domain names, brands and company names, trade secrets and copyright works, drawings, discoveries, inventions, technical data, formulae, computer programs, software, know-how, logos, symbols and similar industrial or intellectual property rights;
- (b) all patents, patent applications, registered designs and unregistered design rights; and
- (c) all confidential information of the Consultant.

*"Legislative Requirements"* includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the Governing Law; and
- (b) certificates, licenses, consent, permits, approvals and requirements of organizations having jurisdiction applicable to the Services.

*"Lump Sum Fee"* means that part of the Fee payable by the Client as a lump sum.

*"Party"* means each of the Client and the Consultant and *"Parties"* means both of them.

*"Project"* means the project described in Item 3 of the Schedule.

*"Proposal"* means the document described in Item 7 of the Schedule (if any).

*"Reimbursable Expenses"* means the cost plus the percentage specified in Item 9 of the Schedule, of all travel and accommodation, equipment use/hire, communications, printing, photocopying, third party fees and other out of pocket expenses incurred by the Consultant in the course of performing the Services.

*"Related Body Corporate"* has the meaning given to that term in the *Corporations Act 2001* (Cth).

*"Services"* means the services specified in Item 7 of the Schedule as varied in accordance with this Agreement.

*"Schedule"* means the schedule at the front of this Agreement.

*"Site"* means the lands and other places to be made available by the Client for the purpose of performing the Services and includes the place referred to in Item 10 of the Schedule.

*"Time Charge Fees"* means that part of the Fee calculated on a time spent basis.

*"Wilful Misconduct"* means an intentional act or omission with the knowledge that the act or omission was likely to have harmful consequences but does not, include any innocent or negligent act, omission, mistake or error of judgment.

- 1.2 The word "includes" in any form is not a term of limitation.
- 1.3 Headings are for convenience only and shall not be taken into consideration in interpreting the terms of this Agreement.
- 1.4 A reference to the singular includes the plural.

- 1.5 Monetary references are references to the currency identified in Item 7 of the Schedule. If not specified, the currency will be Australian currency (AUD).
- 1.6 The date of this Agreement is the date specified in Item 16 of the Schedule. If nothing stated, then the date of execution.
- 1.7 This Agreement may only be varied by a document signed by or on behalf of each Party or agreed to in writing.
- 1.8 To the extent permitted by law, in relation to its subject matter, this Agreement (consisting of the documents listed in Item 15 of this Schedule):
  - (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
  - (b) supersedes any prior written or other agreement of the parties.
- 1.9 In the event of any inconsistency between any documents forming part of this Agreement (including the Schedule) the order of priority set out in Item 15 of the Schedule shall apply.
- 1.10 The Agreement is subject to and is to be construed in accordance with the laws of the State or Territory referred to in Item 11 of the Schedule or if the State or Territory is not stated, the law of the State or Territory where the Services are to be substantially performed, and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in that State or Territory.

## 2. Engagement

- 2.1 The Client engages the Consultant to provide the Services in accordance with this Agreement.
- 2.2 If the Services require access to the Site, the Client will provide sufficient access to the Site from the Commencement Date during normal working hours.
- 2.3 The Consultant will perform the Services in a timely manner from the Commencement Date and in accordance with any program for the provision of the Services attached to the Agreement or otherwise agreed in writing between the parties to achieve the Date for Completion.
- 2.4 The Consultant will be entitled to an extension of time to the Date for Completion for the performance of the Services where it is delayed by an event, circumstance or matter beyond its reasonable control (including without limitation, failure by the Client to provide sufficient access to the Site). This extension of time shall be for a reasonable period not less than the duration of the period of actual delay.
- 2.5 In addition to an extension of time to the Date for Completion under clause 2.4, the Consultant will be entitled to an adjustment of the Fee by a reasonable amount to compensation the Consultant for any additional costs incurred by the Consultant calculated in accordance with clause 4.7.
- 2.6 In providing the Services, the Consultant will exercise the degree of skill, care and diligence normally exercised by professional consultants performing services of a similar nature
- 2.7 The Consultant will:
  - (a) take all reasonable measures to inform itself of the Client's requirements in respect of the Services;
  - (b) promptly inform the Client if it:
    - (i) considers that it has insufficient information to enable it to satisfactorily perform the Services; or

- (ii) becomes aware of any matter (including any inaccuracies in information provided to it) which may materially affect the scope of the Services.

- 2.8 Where the Consultant informs the Client that it requires further information to enable it to satisfactorily perform the Services by the Date for Completion, the Client must promptly provide such further information to the Consultant.
- 2.9 The Consultant may subcontract the Services or part thereof to another consultant.

## 3. Obligations of confidentiality

- 3.1 The receiving Party shall not disclose or provide any Confidential Information to any person other than the officers and employees of the receiving Party on a "need to know" basis and who have been informed that the Confidential Information is confidential and remains the property of the disclosing Party.
- 3.2 The receiving Party shall protect and preserve the confidential nature and continued secrecy of the Confidential Information. The receiving Party will ensure that the Confidential Information is dealt with in such a manner as is appropriate to private, confidential and restricted information.
- 3.3 The receiving Party shall not use the Confidential Information other than in relation to the purpose of the Services described in Item 8 of the Schedule.
- 3.4 The receiving Party may disclose Confidential Information if required by Legislative Requirement, but only:
  - (a) to the extent required by the Legislative Requirement; and
  - (b) where the receiving Party has given the disclosing Party not less than seven (7) days' notice in writing that it intends to disclose the Confidential Information and provides at the time of giving that notice particulars of the Legislative Requirement and particulars of the Confidential Information intended to be disclosed.

## 4. Fee and Scope of Services

- 4.1 The Fee is based on the Services specified in the Schedule.
- 4.2 The Client may, by notice in writing, request that the Consultant change the scope of the Services described in Item 7 of the Schedule. Any such change must be within the general scope of the Services. Unless it is not reasonably practicable for the Consultant to do so, the Consultant must give effect to any change to the Services requested by the Client which is within the general scope of the Services.
- 4.3 If a new Legislative Requirement or a change in a Legislative Requirement after the date of the Agreement, or any other event beyond the control of the Consultant, necessitates a change to the Services, the Consultant must provide details of the extent to which the Services need to change due to the Legislative Requirement or other event and seek the Client's approval to the change in the Services. For the avoidance of doubt, the approval of the Client is not required to entitle the Consultant to an extension of time to which it is entitled pursuant to clause 2.4.

The Client must approve or reject the change within 10 days of receipt of the Consultant's notice. If the Client rejects the change the Consultant is not required to change the Services to accommodate the Legislative Requirement or event and may (in its absolute discretion) terminate this Agreement immediately.
- 4.4 Where a change to the Services:

- (a) requested by the Client under clause 4.2 is one which the Consultant must give effect to; or
  - (b) is approved by the Client (including pursuant to clause 4.3), the Consultant will be entitled to;
  - (c) an adjustment of the Fee in accordance with clause 4.7; and
  - (d) a reasonable extension of time for providing the Services.
- 4.5 If the Consultant considers that additional services are required to be performed, it may provide a written proposal to the Client specifying the time and cost of the proposed change.
- 4.6 Following receipt of the Consultant's written proposal, the Client may in writing instruct the Consultant to change the Services.

4.7 The value of a change to the Services or an extension of time which entitles the Consultant to an adjustment of the Fee or compensation (together with a reasonable amount for overheads and profit) will be determined using a Time Charge Fee on the hourly rates set out in Item 7 of the Schedule. If Item 7 of the Schedule does not include relevant hourly rates, reasonable rates will apply.

4.8 The Consultant is under no obligation to provide additional services in the absence of a written instruction from the Client.

## 5. Payment

- 5.1 The Client must pay to the Consultant the Fee, Reimbursable Expenses and Additional Amounts in accordance with this Agreement.
- 5.2 The Consultant may render invoices:
- (a) Monthly; or
  - (b) when the Services have been partly completed or otherwise terminated earlier in accordance with this Agreement.
- 5.3 The Client must pay all amounts invoiced within 21 days after the date of the invoice. Any amount not paid within that period will attract interest at a rate of 2% above the Benchmark Rate per annum from the date payment was due until the amount is paid in full. Payments received will be applied firstly against any interest owing under this clause and secondly against the outstanding invoice amount.

## 6. Insurance

- 6.1 The Consultant will:
- (a) maintain professional indemnity, public liability, motor vehicle and workers compensation insurance with the level of cover specified in Item 12 of the Schedule; and
  - (b) if requested by the Client, provide certificates of currency evidencing such insurance.

## 7. Ownership, use and nature of materials

- 7.1 Option 1: The Consultant retains title to and copyright and other Intellectual Property Rights in the Contract Documents.

OR

Option 2: Other than title to and rights in respect of drawings, designs, reports, electronic records and other documents and concepts created prior to the date of this Agreement, the Consultant assigns to the Client any title to and copyright and other Intellectual Property Rights it holds in any Contract Documents.

- 7.2 The Consultant is not required to provide the Client with an editable version of any of the Contract Documents. The Client

must not, without the prior written approval of the Consultant, alter or authorise or permit the alteration of any editable version of the Contract Documents.

- 7.3 The Client has a licence to use the Contract Documents for the purposes for which those documents are prepared and provided to the Client. The Client must not use (including make copies) of the Contract Documents for any purpose other than that for which they were originally prepared.

- 7.4 The licence in clause 7.3 terminates on the termination of this Agreement by the Consultant pursuant to clause 12.3, 12.4 or 12.5.

- 7.5 The Consultant, unless specifically instructed otherwise by the Client, is entitled to:

- (a) refer to the Services and any related project in respect of which the Services are provided; and
- (b) identify the Client,

for the purposes of promoting the services of the Consultant to third parties.

## 8. Liability and Indemnity

- 8.1 To the extent permitted at law, the liability of the Consultant arising out of or in connection with the performance or non-performance of the Services (whether under the law of contract, tort (including, but not limited to negligence), under any warranty or indemnity, under statute, in equity or otherwise) is limited to an amount set out in Item 13 of the Schedule in the total aggregate, except in the case of Gross Negligence, Wilful Misconduct or fraud, in which case the liability of the Consultant is not limited.

- 8.2 In no event will the Consultant be liable for any economic loss, loss of profit or revenue, loss of any contract, loss of business opportunity, loss of data, loss of production or production stoppage, financing costs or expenses however characterised, loss of use (including without limitation, loss of use or the cost of use of property, equipment, materials and services including without limitation, those provided by contractors or subcontractors of every tier or by third parties) increased costs and expenses of construction or operation or any other economic or consequential loss (whether direct or indirect) of the Client arising out of or in connection with the performance or non-performance of the Services (whether under the law of contract, tort (including but not limited to negligence), under any warranty or indemnity, under statute, in equity or otherwise).

- 8.3 If any warranty is implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law, hereby excluded. Nothing in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to this Agreement of all or any of the provisions of the *Competition and Consumer Act 2010* (Cth) (as amended) or any relevant State or Territory legislation which by law cannot be excluded, restricted or modified.

- 8.4 The Services are performed solely for the benefit of the Client and the Client shall not permit any third party to use or rely upon the Deliverables.

- 8.5 The Services and the Deliverables are also subject to inherent limitations having regard to the nature and the scope of the Services, and the circumstances in which they have been commissioned and are to be delivered.



8.6 The Consultant shall be entitled to include limitation and disclaimer wording in all of its Deliverables to the foregoing effect, and no third party may use or rely upon any aspect of those Deliverables without the prior written consent of the Consultant (which consent may be given or withheld in its absolute discretion, and subject to such conditions as it may wish to impose).

## 9. Special Conditions

9.1 Any special conditions specified in Annexure A apply.

## 10. No Assignment

A Party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. Unless otherwise agreed in writing, no assignment, novation or transfer shall release the assignor, novator or transferor from any obligation under this Agreement.

## 11. Ethical Conduct

11.1 Each Party shall at all times:

- (a) conduct business in accordance with high ethical standards, and in connection with the performance and subject matter of this Agreement, in compliance with all applicable laws and regulations (local or international) prohibiting bribery and any and all other forms of corruption and/or bad faith (including without limitation the *Corruption of Foreign Public Officials Act SC 1998 (Canada)*, *Criminal Code Act 1995 (Cth)*, the *Bribery Act 2010 (UK)* and the *Foreign Corrupt Practices Act U.S. 1977*) and shall not do anything that might prejudice the other Party from complying with the same; and
- (b) undertake that it (including its officers, directors, employees and agents) not directly or indirectly, through any third party, pay, give, offer, promise or authorise payment of any money or anything of value to any person, including without limitation any agency or entity issuing a solicitation for bids, for the purpose of improperly incentivising or rewarding favourable treatment or advantage in connection with the Services, proposal or project underlying this Agreement.

## 12. Termination

12.1 Either Party may terminate this Agreement for convenience by giving 30 days prior written notice to the other Party.

12.2 The Client may terminate this Agreement if the Consultant is in material breach of this Agreement and that breach has not been remedied within 30 days after receipt by the Consultant of a written notice from the Client identifying the breach and requiring it to be remedied.

12.3 The Consultant may suspend the provision of the Services or terminate this Agreement:

- (a) if any money payable to the Consultant has been outstanding for more than 14 days;
- (b) if the Client is in material breach of this Agreement and that breach has not been remedied within 14 days after receipt by the Client of a written notice from the Consultant identifying the breach and requiring it to be remedied; or
- (c) immediately:
  - (i) if the Client becomes an "externally administered body corporate" or a person or entity is appointed as a "controller" of any of the Client's property (as those terms are defined in section 9 of the *Corporations Act 2001 (Cth)*);

- (ii) if the Consultant has reason to believe that the Client is or is likely to become not able to pay its debts as and when they fall due; or

- (iii) in the circumstances specified in clause 4.3.

12.4 If the Consultant suspends the provision of the Services pursuant to clause 12.3 it may at any time thereafter:

- (a) if the event which entitled the Consultant to suspend the performance of the Services is remedied, recommence performance of the Services; or
- (b) otherwise terminate the Agreement at any time after commencing the suspension.

If the Consultant recommences the performance of the Services pursuant to paragraph (a) the Client must indemnify the Consultant against any costs, losses or expenses suffered or incurred by the Consultant arising out of or in connection with the suspension and/or the recommencement of the performance of the Services.

12.5 This Agreement shall terminate immediately upon delivery of a written notice by either Party (the "Delivering Party") to the other or a Related Body Corporate of that Party (the "Receiving Party") in the event that:

- (a) the Receiving Party has been charged by a competent authority with any criminal offence including without limitation offences relating to bribery, corruption, theft or fraud (excluding any offence relating to the operation of a motor vehicle), which in the reasonable opinion of the Delivering Party, renders the engagement or relationship between the parties unfit to continue; or
- (b) on the reasonable suspicion of the Delivering Party, the Receiving Party offering or having offered any person any bribe or other improper inducement or reward for doing or forbearing to do anything in connection with this Agreement.

12.6 Upon termination of this Agreement the Consultant is:

- (a) immediately entitled to payment of that portion of the Fee and Reimbursable Expenses in respect of Services performed up to and including the date of termination, and any interest payable on that amount; and
- (b) where the Consultant has terminated the Agreement pursuant to clause 12.3 or 12.4, entitled to recover any costs, losses and damages suffered or incurred by it arising out of or in connection with any breach of contract by the Client or the termination of the Agreement.

12.7 Without limiting any other provision which as a matter of interpretation may survive the termination of this Agreement, the provisions of clauses 3, 6, 7, 11 and 13 survive termination of this Agreement.

## 13. Disputes

13.1 If a difference or dispute (together called a "dispute") between the parties arises in connection with the subject matter of the Agreement, then either Party may, by hand or by registered post, give the other Party a written notice of dispute adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the parties must, subject to clause 13.5 continue to perform the Agreement.

13.2 Within 14 days after receiving a notice of dispute, the parties must confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each Party will be represented by a person having authority to agree to such

resolution or methods of resolution. All aspects of every such conference except the fact of occurrence will be privileged.

- 13.3 If the dispute has not been resolved within 28 days of service of the notice of dispute, the parties agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre ("ACDC") before having recourse to litigation. The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation ("Guidelines") which are operating at the time the matter is referred to ACDC.
- 13.4 The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- 13.5 Nothing in this clause 13 will prejudice the right of a party to institute proceedings to enforce any payment due under the Agreement or to seek injunctive or urgent declaratory relief.

#### **14. GST**

- 14.1 The parties acknowledge and agree that:
- (a) except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
  - (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14; and
  - (c) any amount payable by the Client to the Consultant under or by reason of this Agreement is exclusive of GST. Any consideration

that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 14 or additional amount payable under clause 14.3. Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred by the Consultant will be limited to the total cost, expense or amount less the amount of any input tax credit to which the Consultant is entitled for the acquisition to which the cost, expense or amount relates.

- 14.2 If GST is payable in relation to any supply made under or by reason of this Agreement:
- (a) the Client must pay to the Consultant an additional amount ("Additional Amount") equal to the amount of that GST at the same times as any other consideration is to be first provided for that supply. Any Additional Amounts will not be refundable in any circumstance; and
  - (b) the Consultant will provide a tax invoice to the Client no later than 14 days after the day on which any consideration is to be first provided for that supply.
- 14.3 If the GST payable in relation to a supply made under or in connection with this Agreement varies from the Additional Amount paid by the Client under clause 14.2 such that a further amount of GST is payable in relation to the supply, then the Consultant will be entitled to receive from the Client, and the Client will promptly pay, the amount of that variation. Any payment under this clause 14.3 is deemed to be a payment of the additional amount payable under clause 14.2.

Clause 14.4 will not merge on completion of this Agreement.



## **ANNEXURES**

## ANNEXURE A - SPECIAL CONDITIONS (CLAUSE 9.1)

### A1. Special Conditions relevant to the provision of geotechnical services

- (a) Proposals are generally based on access to test sites for truck mounted drilling rig or rubber tyred backhoe. Repair or reinstatement of any surface disturbance or damage caused by gaining access to the sites by normal methods is the Client's responsibility unless a specific cost has been included in the Fee to cover repair or reinstatement.
- (b) At the completion of site works, boreholes will be loosely backfilled (unless a piezometer is installed) with spoil distributed around the site in open areas and concrete surfaces washed down. Test pits will be backfilled with spoil and wheel rolled with material mounded above surface. If the Site is required to be reinstated to original conditions, for example, with sealed surface, excess spoil removed, an extra charge will be incurred.
- (c) The Client will provide copies of all service plans relevant to the area of work. Whilst all care will be taken to avoid damage to underground services, any damage to underground services will be the Client's responsibility.
- (d) Samples recovered during investigations will be stored for 28 days from the date of submission of the final report. Unless a written request from the Client is received, samples will be disposed of after 28 days. Longer storage can be arranged for an additional monthly charge.
- (e) The Client will retain ownership of all waste materials and samples (including purge water from well development and drill cuttings) generated during site investigation works. The Consultant is entitled to leave or deposit all waste materials and samples on the Site. The disposal of waste materials and samples is the responsibility of the Client unless such disposal is expressly included in the Services.
- (f) The Deliverables will be based on a subsurface investigation and on factors specific to the site such as the nature of any development, its size, configuration, location, orientation and the location of access roads and parking areas.
- (g) The Client acknowledges that subsurface conditions may be affected by changing natural forces or man-made influences. Construction activities at or adjacent to the site and natural events such as floods or groundwater fluctuations are examples of forces which may affect subsurface conditions. The Deliverables are based on sub-surface conditions which existed at the time of subsurface investigations and exploration by the Consultant.
- (h) The Client:
  - (i) releases the Consultant from and against all claims, costs, expenses, losses or damages suffered or incurred by the Client arising out of or in connection with any damage, loss, deterioration or destruction of:
    - A. any of the Client's samples or property to be tested or analysed by the Consultant except to the extent that the damage, loss, deterioration or destruction arises due to the negligence of the Consultant; or
    - B. the site in respect of which the Services are to be provided and the surrounding land, to the extent that the damage, loss, deterioration or destruction arises out of or in connection with any geotechnical services described in Annexure A carried out by the Consultant as part of the Services; and
  - (ii) indemnifies the Consultant from and against all claims, costs, demands, expenses, losses or damages suffered or incurred by the Consultant arising out of or in connection with:
    - A. any claims by any person that has contracted with the Client and for which the Services are being procured by the Client;
    - B. any claims arising out of or in connection with the Client using or permitting the use of the Contract Documents in a manner not authorized by this Agreement; and
    - C. any claims arising out of or in connection with any damage to equipment used in the provision of the Services, which resulted from adverse Site conditions.
    - D. any claims by:
      - A. an owner of any property adjacent to or in the vicinity of the site in respect of which the Services are being performed; or
      - B. an owner of any services (including water, gas, fuel, telephone, electricity, drainage, sewerage, railway, airport, industrial waste and electronic communications services),
 arising out of or in connection with any loss or damage caused to the property or services where such loss or damage arises out of or in connection with the performance of the Services.

## A2. Special Conditions for the Property Business Group

- (a) The Client must brief the Consultant accurately and completely by:
  - i. providing the Consultant with details of any existing services (including so far as practicable any “as installed” documentation) associated with the Project which may be relevant to the Services;
  - ii. requiring (or authorize the Consultant to require) trade contractors to investigate the actual site conditions of the Project to identify any departures from the “as installed” documentation. Any investigation undertaken by the Consultant pursuant to this clause will be a Reimbursable Expense payable by the Client and does not form part of the Fee; and
  - iii. providing sufficient documentation to enable any associated services to be incorporated in the work packages of others engaged on the Project, if such associated services are required for the performance of the Services.
- (b) To the extent relevant to the performance of the Services, the Consultant will:
  - i. co-ordinate the design services being performed as part of the Services, with any services of other consultants engaged by the Client, but under no circumstances will the Consultant be responsible for:
    - 1. design co-ordination of services for a building structure, architectural finishes or for any other function which the Consultant reasonably considers to be normally within the ambit of the scope of the services being provided by another consultant engaged by the Client;
    - 2. on-site co-ordination management and programming;
    - 3. shop drawings and “as installed” drawings at the completion of the Project; or
    - 4. commenting on or approving any design documentation prepared by a third party;
  - ii. carry out inspections of the Project for the purpose of assessing compliance by others engaged on the Project with the design intent of the Services, but under no circumstances will the Consultant be responsible for:
    - 1. performing the quality assurance requirements for the Project;
    - 2. providing defects reports;
    - 3. a trade contractor’s scope of services, whether under the quality assurance requirements of the Project or otherwise; or
    - 4. certifying the work or services of a third party, including (without limitation) that of a trade contractor.
  - iii. participate in the final inspections of the Project prior to the end of the defects liability period (if any) and prepare a schedule of items requiring attention including issues identified by the Client or its representative. In engaging in this activity, the Consultant shall not be responsible for overseeing the rectification of any defects, errors, omissions or malfunctions that arise during the defects liability period. If no fee is agreed for the Consultant’s involvement in this stage of the Project, then a fee calculated on a time spent basis at the Time Charge Fees rate in accordance with clause 4.7 of the Terms of Business, shall apply; and
  - iv. correct errors or omissions in any Deliverables at the Consultant’s own expense, to the extent that the error or omission is due to an error or omission by the Consultant in the performance of the Services.
- (c) To the extent that the Client requires the Consultant to upload, publish, communicate or otherwise provide access to the Client to Contract Documents, or communicate with the Client or other third parties engaged on the Project in relation to matters relevant to the Services via a document management system which is hosted by the Client or a third party (the “Document Management System”), the Client must ensure that:
  - i. the Consultant is given adequate access to the Document Management System to enable the Consultant to perform the Services;
  - ii. the Consultant is permitted to access and copy any materials hosted on the Document Management System which relate to the performance of the Services at any time:
    - 1. prior to completion of the Services; and
    - 2. during the period which is seven (7) years after completion of the Services.

The Client accepts responsibility and liability for all work and services outside the scope of the Services including defining the responsibilities of all consultants, contractors and trade contractors working on the Project.

## A3. Special Conditions in relation to a project involving construction activities by the Client

- (a) Where the Services are provided in connection with a project involving the construction (including refurbishment) of works (“construction work”) the Client must:
  - i. require any construction contractor it engages to include the Consultant as an additional insured on its contractors all risk and public liability insurance policies in respect of the construction work; and;
  - ii. if any Legislative Requirements relating to occupational health and safety require the appointment of a person to be responsible for the overall management of safety at the site (“principal contractor”) for the construction work, appoint or procure the appointment of the person responsible for the construction work as the “principal contractor” and notify the Consultant of that appointment.
- (b) If the Client fails to make or procure an appointment of a “principal contractor” the Client will be deemed to have appointed itself as the “principal contractor” for that construction work.
- (c) Any opinion of construction costs prepared by the Consultant (whether as part of the Services or otherwise) and provided to the Client is supplied for the general guidance of the Client only and the Consultant provides no guarantee as to the accuracy or suitability of any such opinion for any purpose.

#### **A4. Special Conditions for the Environment Business Group**

- (a) The Client acknowledges and agrees that:
  - i. the Services will not include an assessment of any ownership of, or the title to, any properties, buildings and structures referred to in the Deliverables, nor the application or interpretation of relevant laws to those properties, buildings and structures;
  - ii. the Deliverables will rely on data, surveys, analyses, designs, plans and other information provided by the Client or made available to the Consultant by the Client and which have not been verified for accuracy or completeness;
  - iii. the Consultant will not be liable to update or revise any Deliverable to take into account any events, circumstances or facts occurring or apparent after the date of the Deliverable



## **ANNEXURE B – PROPOSAL**



## **ANNEXURE C – PROGRAM**