Brief and Call for Tender
Historian Consultant Services for
No 3 Pump Station Cunderdin,
No 4 Pump Station Merredin and
No 8 Pump Station, Dedari

Tender closing: Monday 12th September 2016, 4pm
Submissions to: The National Trust of Australia (WA),
The Old Observatory, 4 Havelock Street, West Perth
or email marlise.dossin@ntwa.com.au
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1.0 Background

1.1 Introduction

The Goldfields Water Supply Scheme (GWSS) commences at Mundaring Weir and ends at Mount Charlotte in Kalgoorlie. The GWSS comprised many components: the pipe, the dam, pumping stations, tanks, reservoirs, houses and many other small structures.

No 3, No 4 and No 8 Pump Stations are three of the six remaining steam Pump Station buildings constructed in 1902 as part of the Goldfields Water Supply Scheme. There were eight original Pump Stations but No 2 and No 7 have been demolished. The Scheme, under the direction of Chief Engineer C.Y. O’Connor, took five years to complete and was a major stimulus to economic and social development in Western Australia, pumping water 560km from Mundaring Weir to Kalgoorlie in the goldfields.

In 1998 the National Trust of Australia (WA) reached an agreement with Western Australia’s Water Corporation whereby all heritage aspects of the former Goldfields Water Supply Scheme would come together as the Golden Pipeline Project, aiming to conserve, interpret and, where appropriate, take management of all major components of the extant infrastructure of the entire original GWSS.

The heritage values of No 3, No 4 and No 8 Pump Stations are recognized by their inclusion on the following heritage registers:

- National Heritage List – Australian Heritage Council (as part of the whole of the GWSS)
- List of Classified Places – The National Trust of Australia (WA)
- Local Government Inventory (Shire of Cunderdin, Merredin and Coolgardie Municipal inventories respectively)
- State Register – State Heritage Office

1.2 Location

No 3 Pump Station, now the Cunderdin Museum, is located in Cunderdin, in the Wheatbelt region of WA, 156km east of Perth along the Great Eastern Highway. The National Trust of Australia (WA) and the Shire of Cunderdin have had joint vesting of No 3 Pump Station since 2000.
CONSULTANT HISTORIAN SERVICES BRIEF
No 3, No 4 and No 8 Pump Stations

No. 4 Pump Station is located in Merredin on Great Eastern Highway on the western outskirts of the town. The place is jointly vested in the National Trust of Australia (WA) and the Shire of Merredin.

No. 8 Pump Station is located at Dedari about 70 km west of Coolgardie 5 km north off Great Eastern Highway. The place is vested in the National Trust of Australia (WA).
1.3 Existing Conservation Plans

All of the pump stations were included in a conservation plan completed in 1999 for the whole of Goldfields Water Supply Scheme (GWSS). The Conservation Plan for Goldfields Water Supply Scheme, prepared by the Research Institute for Cultural Heritage at Curtin University for the National Trust of Australia (WA), included the following documentation:

- Volume I – Analysis of Cultural Heritage Significance containing documentary evidence for the GWSS as a whole.
- Volume II - Analysis of Cultural Heritage Significance containing physical evidence for each of the eight pump stations plus Karalee Bocks, Bullabulling and Mount Charlotte.
- Volume III for all of GWSS – containing Statement of Significance, Constraints and Opportunities, Heritage Listings and Management Guidelines and Policy Recommendations for each of the eight pump stations plus Karalee Rocks, Bullabulling and Mount Charlotte.
- Volume IV for all of GWSS – containing database information for each of the eight pump stations plus Karalee Rocks, Bullabulling and Mount Charlotte.

This conservation plan has been produced in the context of the Golden Pipeline project and the approach taken by the team of consultants was to consider the entire 560km long pipeline as a single site and to understand the whole and all its components as a key element of Australia’s heritage.

Whilst this system is useful for management of the GWSS as a whole it requires more detail for management of specific places. The history and significance of each place is also far more than as components of relevance to the whole GWSS. Each place on the pipeline has additional social history and significance in its own right and within its specific locality that needs to be investigated and documented. There have been a number of changes, engineering reports, archaeological, material investigations and conservation works completed since 1999 that also need to be recorded.
2.0 Conservation Plan - review and update

2.1 Generally
While the conservation plan for Goldfields Water Supply Scheme gives a detailed outline of the history and physical development of the GWSS including information about the places relevant to the whole GWSS, it lacks detail on each place and on the continuing history since the opening of GWSS. The conservation plan includes sound policies for management of GWSS, however since completion of the plan a number of changes have occurred including the management approach to National Trust properties in Western Australia, changes to the use of GWSS buildings, management of ongoing deterioration of the condition, of conservation works and maintenance of the place.

The National Trust is reviewing and updating the conservation plans for the No 3, No 4 and No 8 Pump Stations.

The aim of the conservation plan review and update is to refine the Statement of Significance and to produce a management tool for the place to ensure ongoing quality conservation, respecting and promoting its cultural heritage values.

2.2 Specifically
This brief is for engagement of an historian to investigate documentary evidence in support of the above review and update of the conservation plans for:

1. Goldfields Water Supply Scheme generally
2. No 3 Pump Station, Cunderdin
3. No 4 Pump Station, Merredin
4. No 8 Pump Station, Dedari

2.3 Study Areas
Goldfields Water Supply Scheme generally

Documentary evidence of GWSS based on Volume 1 of the existing conservation plan including any new information available and an update of changes since 1999. [It is expected that this component form only a small part of the work.]

No 3 Pump Station, Cunderdin

The National Trust of Australia (WA) and the Shire of Cunderdin have had joint vesting of No 3 Pump Station since 2000.

The study area comprises the site of the No 3 Pump Station, being Cunderdin Lot 418 on and Administration Plan 220560 on Crown Land Title 3115/23. The Pump Station is located at 100 Forrest Street in Cunderdin.

No 3 Pump Station has had three uses in its life of over a century. Built as a pump station in 1902, it was replaced by a new electric pumping station in 1956. The building was empty until 1964 when it was taken over as a factory for Rural Cements Products Ltd., until 1973 when it became the home of the Cunderdin Museum, managed by the Shire of Cunderdin. A display of agricultural machinery is located in a series of adjacent sheds that were not
originally part of the pump station. Since ceasing operations as a pumping station it has lost a number of important mechanical and landscape elements, but the main building and the place as a whole retains a high degree of significance.

No 4 Pump Station, Merredin

The National Trust of Australia (WA) and Shire of Merredin jointly have had a management order over Lot 1361 (Reserve 40494) since 20 July 2000.

The study area includes the Lot 1361 (Reserve 40494) and the associated weigh station on adjoining Lot 503.

Associated with the building are the electric pump station (1961) which continued the operation of the pipeline, the new pump station (2001) and the community settlement that is clearly etched into the landscape to the east of the pump station building. Remaining elements such as the pump station building, the unique round suction tank, the weighbridge and the engineer’s house, form an ensemble into which can be easily read the operational and community life of the place.
No 8 Pump Station, Dedari

The National Trust of Australia (WA) has a management order over Lot 75 (Reserve 38354) since 2 February 2000.

The study area includes the Lot 75 (Reserve 38354) containing the No 8 Pump Station compound, those parts of Water Corporation Lot 74 (Reserve 8232 Wallaroo) containing historic sites and buildings/structures, plantings and landforms associated with No 8 Pump Station and the former railway land. The electric pumping station, which replaced the steam, is situated to the north of the steam station. A large reservoir is located on the south side of the gravel pipe track.

No 8 Pump Station has managed to avoid the vandalism and thievery which other pump stations endured along the years as it is in a relatively isolated location. It was the last of the original pump stations to cease operation in 1970 and it is the most complete and representative of all the pumping stations.
2.3 Investigations and changes since 1999

Goldfields Water Supply Scheme generally

A number of investigations, studies and works have been carried out since completion of the 1999 conservation plan including but not limited to:

For No 1 Pump Station: investigations, studies and conservation works leading to opening the place to the public.

For No 3 Pump Station: investigations, studies and conservation works to upgrade the displays as part of a local museum managed by the Shire of Cunderdin.

For Mount Charlotte: investigations, studies and works to upgrade its visitor facilities to include a water wise entrance garden, an interpreted trail around the base of the hill and an interpreted trail to a covered viewing platform on top of the water tank.

Signage and interpretation projects including a walk trail at No 1 Pump Station (Weir Walk, O’Connor Trail), a multi-use trail from Mundaring Weir to Northam (Kep Track) and a drive trail from Mundaring Weir to Mt Charlotte.


*International Historic Civil Engineering Landmark* (awarded by American Society of Civil Engineers 2009)

Australian National Heritage Listing (2011)

*EPBC Heritage Management Plan Goldfields Supply Scheme, Main Conduit, Western Australia*, Griffiths Architects, July 2016

No 3 Pump Station, Cunderdin

A number of investigations, studies and conservation works have been carried out since the completion of the 1999 conservation plan including but not limited to:
Exhibition Redevelopment Plan for Cunderdin Museum, 2000
Cunderdin Eastern Entry Statement Concept, 2001
No 3 Pump Station Precinct, Cunderdin, Precinct Master Planning, 2003

No 4 Pump Station, Merredin

A number of investigations, studies and conservation works have been carried out since the completion of the 1999 conservation plan including but not limited to:

Conservation works were carried out in 2004/2005 to stabilise the place and included new roof sheeting and rainwater goods, investigation of sub-floor structure and drainage system and stabilisation works to the eastern wall opening and adjacent timber trestle.

In 2005 an archaeological report was prepared to monitor the removal of waste material and machinery from the basement area of the engine house.

Merredin Spirulina Feasibility Study prepared in February 2016

No 8 Pump Station, Dedari

A number of investigations, studies and site visits have been carried out since completion of the 1999 conservation plan including but not limited to:

Maitland Engineering structural report on Pumps No 5, 6 and 8, 2001
Platt Engineering general Inspection and conservation report on boilers and associated plant (all pump Stations), 2001
Conservation Report by Department of Materials Conservation WA Museum, 2003
Ian Maitland advice on chimney anchorage, 2004
Mechanical and engines report No 8, 2004
Rapallo Engineers structural report on No 8, 2005
Conservation Strategy for No 8 engines, 2006
Archaeological investigation at No 8 Pumping Station, Dedari, 2016

There have been a number of changes, events and progress since 1999 including but not limited to:

Removal of Asbestos -
Appointment of a Warden -
Cleaning water/sludge out of pumps, September 2003
Chalkboard conservation & report, November 2004 by Vanessa Roth
Reconstruction of roof vent, September 2005 carried out by Antonio Graneri.
Electrical upgrade of Pump Station, carried out by KEC (Dominic) in 2006.
Conservation Works to Pump Station, carried out by Norm Ioannopoulos 2006/2007.
All trees removed within No 8 Pump compound – May 2008
Pump Station toilet made operational – February 2009 by Peter Harrison
2009 Back to Dedari event
Intercom installation (Pump gate to house) – July 2009
Storm & flooding – November 2012

Available resources including reports, historic photo collection including a number of key images from the main collections holding GWSS material, oral history collection, objects collections upon request.

2.4 Scope of work
- Review and take into account existing documentation including, but not limited to, the 1999 conservation plan for the place, subsequent investigations, and National Trust of Australia (WA) property management files.
- Review existing ‘whole of pipeline history’ including the period since 1999 in relation to the pump stations.
- Review of the documentary evidence for No 3, 4 & 8 Pump Stations (Note: each pump station should have an individual documentary evidence prepared) that should include greater focus on the broader historical context and elements of life on the pump stations such as work, recreation, education, health, isolation and associations with the railway. The review should include all maps, diagrams, plans and images.
- Undertake a desk top study to outline the Aboriginal history of the area and the extent of sites of Aboriginal significance and their relationship to No 3, 4 & 8 Pump Station.
- Propose a Statement of Significance for GWSS, and each of No 3, 4 & 8 Pump Stations in conjunction with the physical evidence and National Trust of Australia (WA) staff. (Note: Each pump station should have an individual Statement of Significance proposed)

2.5 Deliverables
Provided electronic files on either disc, USB or emailed.
Unformatted Microsoft Word file (to enable insertion into the National Trust’s formatted Conservation Plan).
Photographs/images/maps/plans not dropped into the word file but provided separately with title, date, source and copyright status. Where these items will need to be inserted into the documentary evidence they are to contain a clear corresponding position reference.

2.6 Time-Frame
Consultants should submit a draft copy by 17 November 2016 and a final copy by 19 December 2016.
3.0 Contract & Tender

3.1 Form of Contract
The consultant will be engaged under the National Trust of Australia (WA)’s standard conditions of consultancy (refer Appendix 1).

3.2 Fee Proposal
Consultants should submit a lump sum fee proposal with an itemised breakdown of costs and GST.
A budget of $20,000 has been established for this project.
Progress payment will be made: 80% of fee at acceptance of the drafts and remaining 20% at acceptance of the final.
Invoices are to be made out to the National Trust of Australia (WA). The Trust expects that the Consultant will charge an additional amount for GST and show this amount separately on its invoices.

Tax Invoice Procedure - Invoices forwarded by the Consultant must be correctly addressed and shall include the following information.
(a) be clearly marked TAX INVOICE
(b) title of contractor’s firm;
(c) ABN of contractor’s firm;
(d) name of project.

Subject to acceptance of Progress Claims by the National Trust of Australia (WA), the due date for payments shall be 30 days from receipt by the National Trust of the correctly rendered invoice.

3.3 Copyright and Confidentiality
Copyright of all original material presented in the final will remain with the National Trust of Australia (WA). This includes all photographs, drawings, plans and diagrams. Use of already copyrighted material must be appropriately obtained and acknowledged. Further publication or distribution of all or part of the document must receive prior permission from the National Trust.

3.4 Form of Proposal
Proposals should not exceed 4 A4 pages and should address this brief and the assessment criteria. As a minimum, submissions should include the following information:
1. Statement demonstrating appreciation of the project, its aims and scope.
2. Name, role and relevant experience of personnel to be engaged on this project.
3. Proposed approach including major tasks and timing.

4.0 Consultant Assessment and Appointment
4.1 Assessment Criteria

The following criteria, consultant(s) performance history and CVs will be used as the basis for assessing the proposals. The weighting shown against each of the selection criteria is the weighting that will be used in the evaluation of the proposals.

- Appreciation of project and proposed approach ................................................................. 40%
- Demonstrated experience in preparing Conservation Plans Documentary Evidence .... 40%
- Value for money .......................................................................................................................... 20%

4.2 Client Liaison

The project manager for this project from the National Trust will be the Conservation Project Officer for the National Trust Marlise Dossin. The National Trust reserves the right to nominate another person as the day-to-day contact. For further information or clarification, if required, please contact: marlise.dossin@ntwa.com.au or phone 08 93216088.
Appendix 1
National Trust of Australia (W.A.)

General Conditions for Consultancy Services

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In these Conditions, unless the context otherwise requires:

The National Trust or Trust means the National Trust of Australia (W.A.).

Consultant / Consultancy means the person or body whose submission is accepted by the Principal and includes its successors and permitted assigns.

Conditions means these General Conditions for Consultancy Services.

Contract means the Contract under which the Consultancy Services are to be provided to the National Trust of Australia (W.A.) including these General Conditions.

Contract Rate means the amount specified in the successful consultancy’s submission as accepted by the Principal’s Representative.

Letter of Acceptance means the letter from the Principal to the Consultant accepting the Consultant’s Proposal (with or without amendment) and awarding the Contract.

Personnel means directors, employees, officers, agents, servants or other persons responsible for the provision of all or any part of the Services on behalf of the Consultant.

Principal means the National Trust of Australia (W.A.), its successors and assigns.

Principal’s Representative means the person nominated in writing by and representing the Principal for the purposes of the Contract from time to time.

Submission means the proposal or tender for the Services received by the Principal from the Consultant in response to the Principal’s invitation.
**Services** means all services which the Consultant is required to provide to the Principal as detailed in the Scope of Services.

**Taxes** means taxes, levies, impost, deductions, charges, withholdings and duties imposed under any written law on any matter relating to or connected with the Contract.

### 1.2 Interpretations

In these Conditions, unless the context otherwise requires:

(a) words importing the singular include the plural and vice versa and words importing a gender include every gender;

(b) clause headings are for convenient reference only and shall not be used in interpretation of these Conditions. A reference to a part, clause, party, annexure or schedule is a reference to a part, clause, party, annexure or schedule to these Conditions;

(c) reference to an Act by name includes the rules, regulations and by-laws for the time being in force thereunder for the period of the Contract and includes all Acts, rules, regulations and by-laws varying, consolidating or replacing them;

(d) where two or more persons or bodies comprise the Consultant they shall be bound hereby jointly and severally; and

(e) a reference to a person includes a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency.

### 2. GENERAL OBLIGATIONS

2.1 The Consultant shall perform and carry out the Services at all times in a skilful, competent, conscientious and professional manner and in conformity in all respects with the Contract. Where the Consultant is required to provide or utilise equipment the Consultant shall ensure that such equipment is suitable for the Services and shall maintain the equipment in good safe and proper working condition at all times. Where Personnel utilise equipment provided by the Principal or others, the equipment shall be utilised in accordance with the instructions from the manufacturer of the equipment.
2.2 The Consultant and the Personnel shall:

(a) ensure that they do not have any direct or indirect pecuniary interest in any business, company, club, corporation, organisation or group that would in any way compromise the Services unless a disclosure of that direct or indirect interest has been made to the Principal’s Representative; and

(b) declare in writing to the Principal’s Representative any direct or indirect pecuniary interest in any business, company, club, corporation, organisation or group as soon as they become aware that their interest could in any way whatsoever compromise the Services or the provision of the Services.

3. EMPLOYEES

3.1 The Consultant shall provide suitably qualified Personnel to carry out the Services in accordance with the Contract.

3.2 The Principal’s Representative may direct the Consultant to remove from the performance of the Services any of the Personnel who, in the reasonable opinion of the Principal’s Representative, is guilty of misconduct, is incompetent, is not suitable for the Principal’s requirements. The Personnel under this clause shall not subsequently be involved in the provision of the Services without the prior written approval of the Principal’s Representative.

3.3 (a) Where the Consultant proposes to replace Personnel for any reason, or is directed by the Principal’s Representative under the Contract to replace Personnel, the Consultant shall, before replacing the Personnel in question, promptly provide written notification to the Principal’s Representative containing details of the proposed replacement Personnel and details of the proposed Contract Rate which will be applicable to the replacement Personnel.

(b) If the Principal’s Representative informs the Consultant that the replacement Personnel and proposed Contract Rates specified in the written notification are acceptable or, if after a reasonable time, the Principal’s Representative does not advise otherwise, then the replacement Personnel shall be deemed to be acceptable to carry out the Services, and the Contract Rate applicable to the replacement Personnel shall be deemed to be acceptable to carry out the Services, and the Contract Rate applicable to the replacement Personnel will be deemed to have been varied to that rate set out in the Consultant’s written notification.

(c) If the Principal’s Representative informs the Consultant that the replacement Personnel or the proposed Contract Rate specified in the written or both are unacceptable, then the parties must meet as soon as possible in an attempt
to resolve that dispute. If that dispute has not been resolved within 7 days from the first meeting of the parties contemplated by this sub clause, then, without limitation to the Principal’s rights contained in the Contract or elsewhere, the Principal may terminate the Contract by giving 7 days’ notice in writing to the Consultant.

4. **COMMENCEMENT**

The Consultant shall commence to perform the Services on the date stated in the accompanying documentation.

5. **TIME FOR COMPLETION**

The Consultant shall complete the Services within the period or by the date stated in the accompanying documentation.

6. **TERMINATION**

Notwithstanding anything contained in the Contract to the contrary, the Principal may by written notice to the Consultant terminate the Contract at any time and without prior notice upon the happening of any one or more of the following events, namely:

(a) If the Consultant enters into a Deed of Arrangement or an application is made for an order for the Consultant to be wound up;

(b) If a Receiver or Receiver / Manager is appointed for the Consultant;

(c) If the Consultant is placed under Official Management;

(d) The Consultant resolves by a special resolution that it be wound up voluntarily;

(e) A controller or administrator is appointed;

(f) A mortgagee of any of the Consultant’s property takes possession of any of that property;

(g) If the Consultant being a person, or if the Consultant being a partnership, the Consultant or a partner therein becomes bankrupt, as a debtor, to a Deed of Assignment, a Deed of Agreement or a Composition under Part X of the Bankruptcy Act 1966 (Commonwealth);

(h) If the Consultant, its employees or agents is guilty of any dishonesty, misconduct or neglect or refuses to comply with any reasonable instruction or direction given by
(i) If the Consultant, its employees or agents is charged with any criminal offence which in the reasonable opinion of the Trust brings the Consultant or the Trust into disrepute;

The National Trust of Australia (W.A.) may, by written notice, terminate the Contract and recover from the Consultant any loss or damage suffered by the National Trust of Australia (W.A.) if the Consultant fails within 14 days after receipt of written notice, to remedy any default in the performance of the following obligations, namely:

a) to commence or to proceed at the rate of progress strictly in accordance with the Contract;

b) to perform or observe the terms and conditions of the Contract,

In the event the Consultant may submit a claim for compensation, the National Trust shall pay to the Consultant such sums as are fair and reasonable in respect of any loss sustained by the Consultant in unavoidable consequence provided that:

a) the Consultant shall not be entitled to compensation for loss of prospective profits; and

b) the National Trust of Australia (W.A.) shall not be liable to pay any sum which, in addition to any amounts paid or due or becoming due to the Consultant under the Contract, would together exceed the full price of the Consultancy Service ordinarily payable under the Contract.

7. ASSIGNMENT

The Contract shall not be assigned, transferred, sublet, subcontracted, mortgaged, charged, encumbered or dealt with in any way by either party without the prior written consent of the other party.

8. PAYMENTS

8.1 In consideration of the satisfactory performance by the Consultant of the Services, the Principal shall pay the Consultant the Contract Rate as quoted in the Consultant’s submission.

8.2 The Consultant shall invoice the Principal for all payments under the Contract at the times outlined in the accompanying documentation. The invoice and the content of that invoice will be in a form approved from time to time by the Principal or the Principal’s Representative.
8.3 Unless otherwise provided in the Contract, all payments shall be made by the Principal within 30 days in which the Principal received the Consultant’s invoice, provided that at that time the Services have been certified by the Principal’s Representative.

8.4 Failure by the Principal to pay the amount payable at the due time will not be grounds to invalidate or terminate the Contract.

8.5 The Consultant shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Rate unless otherwise provided in the Contract.

9. RISE AND FALL IN COSTS

Unless otherwise stated in the Contract, the Contract shall not be subject to adjustment for rise and fall in costs.

10. VARIATIONS

10.1 Unless otherwise stated in the Contract, the Principal shall not be liable to reimburse the Consultant for the amount of any expenses incurred by the Consultant in and about the performance of the Services, including without limitation travel expenses, accommodation and subsistence expenses. All such expenses of the Consultant shall be deemed to be included in the amount payable to the Consultant under the Contract.

10.2 The Principal may make any variation of the source, form, quality or quantity of the Services or any part thereof that it deems necessary and the value of the variation shall be taken into account in determining the final Contract price.

All such variations shall be valued at the Contract Rate, where it is applicable.

If the Contract does not contain any rates, or the rates or prices are not applicable to the variations, then reasonable rates or prices shall be agreed between the Principal and the Consultant. No variation shall vitiate the Contract. The Consultant shall make no variation to the Services without a prior written order from the Principal or the Principal’s Representative.

11. INSURANCES

11.1 Before performing the Services, the Consultant shall effect and maintain all insurances required by law to be effected whether by the Principal or by the Consultant. Any other insurances required by the Contract, or the Principal, which insurances must be on terms and conditions acceptable to the Principal, including without limitation, the term as to the dollar limit of liability under the relevant policy.
11.2 Without limiting the generality of this clause, the Consultant shall arrange all necessary insurance with respect to its employees under the provisions of the Worker’s Compensation and Rehabilitation Act 1981.

11.3 The Consultant shall effect Third Party Insurance including Motor Vehicle Third Party Insurance covering liability to any third party including death, bodily injury, loss of and damage to property arising out of anything done or omitted to be done in the Services for a limit of liability of not less than five (5) million dollars in respect of each occurrence and unlimited in aggregate in respect of all accidents occurring during the period of insurance.

11.4 The Consultant shall arrange Professional Indemnity Insurance with an insurer acceptable to the Principal on terms, conditions and limits of cover approved by the Principal.

11.5 Before performing the Services and on request, the Consultant shall provide to the Principal, confirmation of currency and all other evidence that the Principal may require to ensure that the insurance referred to in the preceding clauses are maintained by the Consultant. The clarification contemplated by this clause must be in the form of the completed and executed certificates.

12. INDEMNITY

The Consultant agrees to indemnify the Principal against any action, suit, claim, demand, cost or expense arising out of or referable to:

a) any damage, injury or loss caused by or resulting from any wilful or negligent act or omission or misfeasance of the Consultant or any other servant, agent or contractor of the Consultant; and

b) all injury, loss or damage sustained by any servant or agent or contractor of the Consultant incurred while attending to performance of the Consultant's duties under this Agreement or incidental or preparatory to this Agreement, unless the injury, loss or damage was caused by any wilful or negligent act or omission of the National Trust or any officer, servant or agent of the Trust.

13. OWNERSHIP

All works, items, materials, objects, articles, inventions, designs, plans, documents, records or information whatsoever produced, created, made or developed by the Consultant or under the direction of the Consultant pursuant to or in the course of providing the Services shall be and become the sole and absolute property of the Principal whether such property is tangible, intangible or is in the nature of industrial or intellectual property rights (including copyright, designs, patents and rights of confidential information). The Consultant shall not use and shall use its best endeavours to ensure that none of its Personnel use any such works, items, materials, objects, articles, inventions, designs, plans, documents, records or
information otherwise than for the purpose of performing the Services without the prior written consent or licence of the Principal first having been obtained.

14. **ACTS OF PARLIAMENT**

14.1 The Consultant must comply with the requirements of the provisions of all Acts of Parliament of the Commonwealth and State of Western Australia and with the requirements of all subsidiary legislation and other ordinances, orders, codes of practice and proclamations made or issued under any such Act and with the lawful requirements of any governmental or public body or authority of any kind whatever in any way affecting or applicable to the performance of this Contract.

14.2 Notwithstanding or limiting the application of the provisions of clause 14.1, the Consultant must and shall use its best endeavours to ensure that its Personnel duly and punctually observe, perform and comply with the provisions of the Occupational Safety and Health Act 1984 and all material regulations, notices, prohibition notices and codes of practice (if any) issued under it and having application to this Contract and shall comply with the requirements of the Principal’s Occupational Safety and Health Policy from time to time in force and relating to the Consultant.

14.3 The Consultant shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements or registered Workplace Agreements and orders of Competent Courts or Industrial Tribunals applicable to the Services to be provided under the Contract.

15. **RELATIONSHIP**

15.1 Legal relationship

The relationship between the parties will be that of Principal and independent contractor and neither the Consultant nor any of the Personnel will be deemed to be an employee or representative of the Principal.

15.2 Remuneration, leave and other benefits

(a) The Principal has no responsibility or liability to the Consultant nor to any of the Personnel for remuneration for annual leave, sick leave, long service leave, public holidays, redundancy payments or any other benefits for personnel providing the Services. The Consultant shall pay to the Personnel all remuneration for annual leave and any other entitlement required by law.

(b) Notwithstanding the preceding subclause the Principal may not require the Services for up to six (6) weeks in any twelve (12) month period or part thereof. The precise dates and times when the Services shall not be required
shall be determined in consultation with the Consultant but at the sole discretion of the Principal.

15.3 Superannuation

The Consultant agrees that it is responsible for payment of superannuation for the Personnel and that the Personnel are not entitled to any superannuation contributions from the Principal.

15.4 Taxes

The Consultant shall pay all Taxes.

16. **RIGHT TO WAIVER**

16.1 No right of the Principal shall be deemed to be waived except where such a waiver is in writing signed by the Principal.

16.2 A waiver by either party of a breach of the Contract will not prejudice the rights of that party in respect of any subsequent breach of the Contract by the other party or the Principal’s Representative.

16.3 Any failure by either party to enforce any provision of the Contract or any forbearance, delay, or indulgence granted by either party to the other shall not be construed as a waiver of the first mentioned party’s rights under the Contract.

17. **ENTIRE AGREEMENT**

These Conditions and the Letter of Acceptance and any documents annexed to or referred to therein together constitute the entire agreement between the parties for the provision of the Services by the Consultant. Any prior arrangements, agreements, representations or undertakings are superseded and any modification or alteration of the Contract will not be valid except if made in writing and signed by the parties hereto.

If there is any inconsistency or ambiguity between the documents which comprise the Contract (including, without limitation, any additional conditions of the kind referred to in clause 23), the Principal’s Representative shall determine which document is to have precedence or which interpretation is to be followed by the Consultant.

18. **ENFORCEABILITY**
If any provision of the Conditions of Contract should be held invalid, unenforceable or illegal for any reason, the Contract shall remain otherwise in full force and effect apart from such provision which shall be deemed deleted.

19. **STATE LAW**

The Contract will be governed by and construed according to the law for the time being in force in the State of Western Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

20. **NOTICES**

Any notices or other communication under the Contract given by either party shall be in writing and signed by the relevant party (or in the case of the Principal, a person authorised by the Principal), and shall be delivered by hand, by registered mail or by facsimile to the addresses of the other party.

21. **DISPUTE RESOLUTION**

21.1 **Definition of Dispute**

A dispute means a dispute or difference between the parties as to the construction of the Contract or as to any matter or thing of whatsoever nature arising, whether antecedent to the Contract and relating to its formation or arising under or in connection with the Contract, including any claim in tort, under statute or for restitution based on unjust enrichment or for rectification or frustration.

21.2 **Notice of Dispute**

When any dispute arises between the parties, then any party may give written notice to the other party that a dispute exists (“the dispute notice”).

21.3 **Nominated representatives**

Within five (5) days of receipt of the dispute notice, the parties must each nominate a person who has express authority to either settle the dispute or to initiate proceedings for resolving the dispute in accordance with this clause (“Representatives”).

21.4 **Representatives to meet**

Within 14 days of receipt of the dispute notice, the Representatives must meet and attempt to resolve the dispute. Any resolution must be reduced to writing signed by
both Representatives, and will not be binding until so reduced to writing and signed by both parties.

21.5 Further steps - mediation

(a) If the Representatives cannot resolve the dispute within 14 days of their first meeting (or such other time as agreed by the parties), the dispute must be referred to mediation. It is a condition precedent to the dispute being referred to litigation that the parties engage in the mediation procedures outlined further below in paragraph 21.6(b), unless otherwise agreed by the parties.

(b) The parties must appoint an independent mediator by agreement or if they fail to agree within 21 days of the Representatives’ first meeting, the President of the Law Society of Western Australia of the time being, or the President’s nominee, may, at the request of either party, appoint an independent mediator. The President or the President’s nominee may consult with the Western Australian representative of Leading Edge Alternative Dispute Resolution on (08) 9426 6611 or any other recognised alternative dispute organisation operating in Western Australia in choosing the mediator.

(c) The costs of the appointed mediator will be borne equally by the parties.

(d) Except to the extent inconsistent with this clause, the mediation will be conducted in accordance with the Mediation Rules of the Law Society of New South Wales.

(e) The parties will hold the mediation in Perth, Western Australia. Any resolution arising from the mediation must be reduced to writing signed by both Representatives, and will not be binding until so reduced to writing.

(f) The parties will engage in the mediation process in good faith and with the aim of reaching a resolution of the dispute. If the parties fail to achieve a resolution of the dispute by mediation within 28 days of the appointment of a mediator under clause 21.6(b) either party may take such action, as it considers appropriate, including commencing legal proceedings.

21.6 Limitation period

Nothing in this clause 21 prevents a party from issuing any originating process in a Court of competent jurisdiction to preserve for that party its claim in the dispute against the operation of any written law requiring proceedings to be commenced within a finite period after the accrual of any cause of action the subject of the dispute, but that party shall not serve those proceedings and shall procure, if
necessary, that they are stayed, until it has complied with the preceding provisions of this clause 21.

21.7 Completion of the Services

Notwithstanding the provisions of this clause 21, the parties must, if the Services have not been completed, at all times (subject to what may otherwise be provided for in the Contract) proceed without delay to complete the Services and to facilitate the completion of the Services in accordance with their respective obligations under the Contract.

22. CONFIDENTIALITY

22.1 The Consultant shall treat as confidential and shall use its best endeavours to ensure that its Personnel treat as confidential all information disclosed or made known to the Consultant or the Personnel by the Principal, or acquired or developed by the Consultant during the course of or for the purposes of the Contract ("the confidential information").

22.2 Without limiting the generality of the preceding sub-clause, the confidential information includes computer programs, client lists, the Principal's methods of operation and details of clientele and potential clientele of the Principal.

22.3 Within two (2) working days of the completion of the Services or the prior termination of the Contract the Consultant shall deliver to the Principal all documents and materials relating to the confidential information which is then in the Consultant's or the Personnel's possession, custody or control.

22.4 Without limiting the generality of the foregoing, the Consultant shall use its best endeavours to ensure that the Personnel do not use or disclose or authorise the use or disclosure of the confidential information to any person or company without the prior consent in writing of the Principal.

22.5 The Consultant shall not be obliged to treat information as confidential in the following circumstances:

(i) Where it would be unconscionable to require the Consultant to treat such information confidentially as the term "unconscionable" is defined in Section 51AA and 51AB of the Trade Practices Act 1974.

(ii) Where it would be an invalid restraint of trade under the law of the State of Western Australia to require the Consultant to treat such information confidentially.
22.6 The operation of this clause 22 shall survive the completion or termination of the Contract.

22.7 In the event that the Principal so directs, the Consultant shall cause all Personnel undertaking the Services to properly sign the Principal’s Deed of Confidentiality.

22.8 The obligations referred to in this clause 22 do not apply to information that:

(a) at the material time is in the public domain; or

(b) is required by law to be communicated to a person who is authorised by law to receive that information.

22.9 To the extent this is not inconsistent with clauses 22.1 to 22.8 inclusive, the Consultant shall comply with the principles and intent of the Privacy Act 1988 as amended from time to time as though the Consultant was subject to the provisions of the Privacy Act. If there is any inconsistency between clauses 22.1 to 22.8 and the provisions of the Privacy Act, clauses 22.1 to 22.8 will prevail.

23. SPECIAL CONDITIONS OF CONTRACT

The parties agree that the Special Conditions of Contract set out in the accompanying documentation form part of these Conditions.

24. DISCREPANCIES IN INFORMATION

There may be discrepancies in information provided by the Principal. The Consultant must check all information, whether provided by the Principal, the Consultant or anyone else and immediately draw to the attention of the Principal in writing any discrepancies. Discrepancies include, but are not limited to ambiguities, contradictions, inconsistencies, errors and omissions whether in drawings, instructions, documents, computer programs or other information.

25. FITNESS FOR PURPOSE

The Consultant must ensure that work and documents produced by the Consultant will result in an efficient design and one which is suitable in all respects for the purposes of the Principal. The Principal is relying upon the skill and knowledge of the Consultant to produce a design suitable for the purposes of the Principal.