

Consultancy Agreement

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Consultancy Agreement

Date	
Parties	
	_____ (Company)
	_____ (Consultant)
	_____ (Key Person)
Background	
A.	Company has begun or will soon begin the Project.
B.	The Consultant engages the Key Person from time to time to supply consultancy services.
C.	The Consultant has the expertise and resources to provide the Services and has represented to Company that the Key Person has the expertise to provide the Services and will be responsible for the provision of the Services to assist in the Project.
D.	The Key Person is an employee of the Consultant and is available to provide the Services to the Consultant in accordance with and subject to the terms of this Agreement.
E.	The parties enter into this document to record the terms of the Consultant's engagement for the provision of services.

Consultancy Agreement

1. Definitions and interpretations

1.1 Definitions

Agreement means this consultancy agreement and includes, for the avoidance of any doubt, the Schedule.

Business Day means a day other than a Saturday, Sunday or public holiday in Brisbane.

Claim means in relation to any person (including a party to this Agreement), a claim, action, proceeding, damage, loss, cost, expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Confidential Information means:

- (a) the following information, regardless of its form and whether the Consultant or the Key Person become aware of it before or after the date of this Agreement;
 - (i) all information and know-how relating to Company's business affairs and activities including without limitation the Examples of Confidential Information; and
 - (ii) all other information nominated by Company or any of its clients as confidential from time to time;
- (b) all notes and other records prepared by the Consultant or the Key Person based on or incorporating information referred to in paragraph (a); and
- (c) all copies of the information, notes and other records in any format referred to in paragraphs (a) or (b),

except information:

- (d) which comes into the possession of the Consultant or the Key Person independently and free of any Obligation of confidentiality; or
- (e) that is public knowledge (otherwise than as a result of a breach of confidentiality by the Consultant, the Key Person or any of their respective permitted disclosees).

Created Intellectual Property Rights means Intellectual Property Rights created or brought into existence by or for the Key Person or the Consultant:

- (a) in the course of or in connection with the Key Persons's engagement by the Consultant for the purpose of this Agreement, or in the course of the performance by the Consultant of the Services; or
- (b) in connection with any engagement of the Consultant by Company,

whether during or outside working hours, whether alone or jointly with Company, its employees, agents or independent contractor, and whether coming into existence before or after the date of this document.

Documents includes software (including source code and object code versions), manuals, diagrams, graphs, charts, projections, specifications, estimates, documents, accounts, plans, formulae, designs, correspondence, literary works, the words comprising the literary works, training manuals, presentations, letters and papers of every description, including all copies of and extracts from any of the same, whether in hardcopy or electronic form.

Effective Date means «COMMENCEMENT_DATE».

Examples of Confidential Information means all information which is confidential to Company, its customers, suppliers or business associates, including contractual relationships between Company and its customers, internal Documents, Company personnel information, trade secrets and confidential know-how, information concerning the market within which Company operates, technical information concerning Company's products and services, research and development operations, inventions, copyrights, methods, techniques, processes, ideas, developments, information about Company's financial performance, accounting programs and procedures, Consultant standards, customer lists and customer information, supplier lists, price lists, information concerning Company's markets, its competitors' position in the market, marketing plans and strategies, business projections, business plans and business forecasts concerning Company's performance or likely future activity.

GST has the meaning given to that term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* and regulations made under that Act.

Insolvency Event means the happening of any one of the following events:

- (a) an application is made to a court for an order or an order is made appointing a liquidator or provisional liquidator to the relevant party (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
- (b) proceedings are initiated with a view to obtaining an order for the winding up or similar process of the Consultant, or an order is made or any effective resolution is passed for the winding up of the relevant party;
- (c) a controller is appointed to or over or takes possession of all or a substantial part of the assets or undertakings of the relevant party;
- (d) the relevant party is deemed or presumed by law or a court to be insolvent;
- (e) the relevant party takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or an administrator is appointed to the relevant party;
- (f) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the relevant party under the law of any applicable jurisdiction;
- (g) only in relation to the Consultant, the Key Person is declared bankrupt or an event occurs that could reasonably, in the opinion of Company, lead to the Key Person being declared bankrupt.

Intellectual Property Rights means all rights, titles and interests throughout the world (including all rights conferred by legislation) in any intellectual property including (but not limited to):

- (a) concepts, know-how, processes, inventions (patentable or otherwise), data, copyright works (including future copyright), circuit layouts, trade secrets, inventions, discoveries, trade marks and designs, literary works or the words comprising them;
- (b) confidential information or any rights to have information kept confidential; and
- (c) any application or right to apply for registration of any of the rights referred to in paragraphs (a) and (b).

Moral Rights has the meaning given to that term in the Copyright Act 1968 (Cth).

Novation Deed means the deed in Annexure A to this Agreement.

Obligation means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability.

Project means the activity identified in the Schedule.

Right includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

Schedule means the schedule to this Agreement.

Service Related Expenses means the expenditures identified as "Expenses" in the Schedule.

Services means the services to be performed by the Consultant set out in the Schedule, including any additions or deletions made in accordance with this Agreement.

Term has the meaning given in clause 2

1.2 Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time: and
- (m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

2. Appointment & Term

- (a) Company engages the Consultant to perform the Services and the Consultant agrees to perform the Services, in accordance with the terms of this Agreement.
- (b) The Agreement shall commence on the Effective Date and shall, subject to clause 2(c) and unless earlier terminated in accordance with this Agreement, continue for a period of «TERM» (the **Term**) from the Effective Date.

- (c) The parties may, prior to the expiration of the Term, extend the Term for a period of «FURTHER_TERM» by written agreement.

3. Role of the Consultant

3.1 Engagement

- (a) The Consultant agrees to perform the Services in accordance with the requirements of this Agreement.
- (b) Company and the Consultant may by written agreement add additional services to the Services and Company may in its absolute discretion delete Services.

3.2 Consultant's Obligations

The Consultant warrants that throughout the Term, it will employ the Key Person and that the Services to be provided by the Consultant to Company under this Agreement will be provided by the Key Person. Without limitation to this, the Consultant warrants that it will:

- (a) refrain from doing anything that may hinder performance of this Agreement;
- (b) ensure that all Services are provided:
 - (i) in accordance with this Agreement with due skill and care;
 - (ii) in accordance with all applicable professional regulations and standards;
 - (iii) in compliance with all applicable laws; and
 - (iv) in a way which ensures that no representation is made to any other person that any property Right, goodwill or other interest whether legal or equitable is acquired by the Consultant in the Services, or by reason of this Agreement or performing Obligations under this Agreement;
- (c) ensure that the Key Person works and acts:
 - (i) in accordance with this Agreement;
 - (ii) with due skill and care and to the best of the Key Person's knowledge and expertise;
 - (iii) in accordance with all applicable professional regulations and standards;
 - (iv) in compliance with all applicable laws;
 - (v) in accordance with any policies and procedures of Company insofar as they are applicable to the provision of the Services; and
 - (vi) in a way which ensures that no representation is made to any other person that any property Right, goodwill or other interest is acquired by the Key Person in the Services, or by reason of this Agreement or performing Obligations under this Agreement,

and that the Key Person maintains all necessary qualifications and registrations (if any) necessary for the performance by the Key Person of the Services;
- (d) pay all costs incidental to its employment or engagement of the Key Person including all payments due to or in relation to the Key Person as a consequence of the

employment or engagement of the Key Person by the Consultant, or its termination, including, without limitation:

- (i) all wages, salaries, bonuses, penalties, loadings and allowances;
- (ii) costs of all fringe benefits as defined in the Fringe Benefits Tax Assessment Act 1986 (Cth); and
- (iii) termination payments; and
- (iv) all indirect costs of or relating to the employment or engagement of the Key Person including, without limitation:
 - (A) superannuation contributions;
 - (B) payroll tax and pay-as-you-go tax instalment deductions;
 - (C) workers' compensation insurance premiums;
 - (D) long service leave, annual leave and sick leave accruals; and other accrued employment entitlements; and
 - (E) any other payment required by a statute, industrial award or agreement applicable to the Key Person;
- (e) comply with all requirements prescribed by any law or instrument applicable to the Key Person including, but not limited to:
 - (i) industrial relations legislation;
 - (ii) industrial awards and other industrial instruments;
 - (iii) occupational health and safety legislation; and
 - (iv) discrimination legislation;
- (f) take out and maintain at its cost for the duration of this Agreement:
 - (i) all necessary statutory workers' compensation insurance (and otherwise comply with all statutory workers' compensation requirements) in respect of the Key Person; and
 - (ii) a valid and enforceable public liability insurance with a reputable insurer satisfactory to Company in an amount of AUD \$20 million for a single occurrence and otherwise satisfactory to Company;
- (g) take out and maintain any other insurance policy reasonably required by Company from time to time;
- (h) at Company's request, provide to Company within five Business Days after that request is made a certificate of currency for insurances procured pursuant to this clause 3.2; and
- (i) ensure that any insurance taken out under this clause 3.2 complies with the laws of the jurisdictions in which the Services are being provided.

3.3 Relationship

- (a) The Consultant acknowledges that it provides the Services as an independent contractor.
- (b) Nothing expressed or implied in this Agreement will mean or be construed to mean that the Consultant is the partner (whether by joint venture or otherwise), agent or employee of Company or place the Consultant in a fiduciary relationship with Company.
- (c) Nothing expressed or implied in this Agreement will mean or be construed to mean that the Key Person is the partner (whether by joint venture or otherwise), agent or employee of Company or place the Key Person in a fiduciary relationship with Company.
- (d) The Consultant must not:
 - (i) bind or commit or purport to bind or commit Company in any way;
 - (ii) pledge the credit of Company for any purpose; or
 - (iii) make any representation or give any warranty to any party on behalf of Company, whether in respect of the performance of the Services or otherwise.

3.4 Reporting

- (a) The Consultant must provide to Company such reports in respect of the Services as reasonably required by Company from time to time.
- (b) The Consultant must immediately report to the person specified in Annexure B:
 - (i) any information which is or is likely to be of significance to the Consultant's ability to perform the Services or which is or is likely to impact on Company's business in any significant way; and
 - (ii) any error or defect in any Services carried out by the Consultant.

3.5 Warranties - Consultant

- (a) As an inducement to Company to enter into this Agreement, the Consultant states, warrants and represents to Company that at the date hereof and throughout the Term:
 - (i) this Agreement constitutes legal, valid and binding Obligations of the Consultant enforceable in accordance with its terms by appropriate legal remedy;
 - (ii) this Agreement and its performance do not conflict with or result in a breach of or a default under any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound;
 - (iii) the Consultant has the power to enter into and perform this Agreement and has obtained all necessary consents and authorisations to enable it to do so;
 - (iv) no order has been made for the winding up of the Consultant and no distress, execution or other similar order or process has been levied on any of its assets;
 - (v) no voluntary arrangement has been proposed or reached with any creditors of the Consultant and no voluntary administrator has been appointed to the Consultant;
 - (vi) no receiver, receiver and manager, provisions liquidator, liquidator or other officer of the court has been appointed in relation to its assets;

- (vii) the Key Person is appropriately qualified, licensed and skilled and will remain appropriately qualified, licensed and skilled during the term of their engagement by the Consultant to perform the Services; and
 - (viii) the Key Person holds all licences required or necessary to lawfully provide the Services, and will maintain, continue to hold or attain all licences required or necessary to lawfully provide the Services.
- (b) The Consultant hereby indemnifies and shall keep indemnified Company against all Claims and demands which Company, may sustain or incur from breach of any of the warranties or representations set out in this clause 3.5, save that the maximum liability of the Consultant is limited to the amounts properly payable to the Consultant by Company under this Agreement.
- (c) Without in any way limiting the strict effect of clauses 3.5(a) or 3.5(b), if the Consultant becomes aware of any breach of any of the warranties and representations at clauses 3.5(a) or 3.5(b), it must immediately notify Company.

3.6 Warranties – Key Person

- (a) As an inducement to Company to enter into this Agreement, the Key Person states, warrants and represents to Company that at the date hereof and throughout the Term:
 - (i) this Agreement constitutes legal, valid and binding Obligations of the Key Person enforceable in accordance with its terms by appropriate legal remedy;
 - (ii) this Agreement and its performance do not conflict with or result in a breach of or a default under any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound;
 - (iii) bankruptcy proceedings have not been commenced against the Key Person;
 - (iv) the Key Person is appropriately qualified, licensed and skilled and will remain appropriately qualified, licensed and skilled during the term of their engagement by the Consultant to perform the Services;
 - (v) the Key Person holds all licences required or necessary to lawfully provide the Services, and will maintain, continue to hold or attain all licences required or necessary to lawfully provide the Services; and
 - (vi) it will provide the Services to the Consultant throughout the Term.
- (b) The Key Person hereby indemnifies and shall keep indemnified Company against all Claims and demands which Company, may sustain or incur from breach of any of the warranties or representations set out in this clause 3.6.
- (c) Without in any way limiting the strict effect of clauses 3.6(a) or 3.6(b), if the Key Person becomes aware of any breach of any of the warranties and representations at clauses 3.6(a) or 3.6(b), it must immediately notify Company.

4. Payment of Consultant

- (a) In consideration of the due and proper performance of the Consultant's Obligations under this Agreement, and subject to clause 10, the Company agrees to pay to the Consultant a fee:
 - (i) calculated on the basis of the rate set out under 'Payment' in the Schedule; and

- (ii) paid at the frequency set out under 'Payment' in the Schedule.
- (b) The Consultant will comply with all reasonable requests of Company from time to time in respect of invoices for the Services.
- (c) The Consultant acknowledges that:
 - (i) Company will not be obligated at any time to pay the Consultant anything, nor will the Consultant claim at any time that Company is obligated to pay anything, in relation to the Key Person other than as set out in this Agreement, and is not required to make any payments to the Consultant if, for any reason, the Consultant is not required to provide the Services for any period; and
 - (ii) neither it nor the Key Person acquires any property Right, goodwill or other interest in the Services by reason of this Agreement or by performing its Obligations under this Agreement.
- (d) Company may set off against any amount owing by Company to the Consultant, any amount owing to Company by the Consultant.

5. Liability and Indemnity

- (a) Company's liability to the Consultant in connection with this Agreement, howsoever arising, is limited to the amounts properly payable to the Consultant by Company under this Agreement.
- (b) The Consultant hereby indemnifies and shall keep indemnified Company in respect of all Claims, demands, actions, proceedings, costs, losses, expenses and damages whatsoever which are made or brought against Company or incurred or suffered by Company (including without limitation Claims that provision of the Services infringes any person's Intellectual Property Rights) and which arise either directly or indirectly out of the provision of the Services (which, for the avoidance of doubt, includes the Consultant's employment of the Key Person and Company's engagement of the Consultant), whether or not the Consultant has performed its Obligations under this Agreement.

6. Expenses

The Consultant will invoice Company for all Service Related Expenses and Company will pay upon receipt of the appropriate invoices such expenses.

7. Confidential information

7.1 Definition

For the purpose of this clause 7, the term "Consultant" includes the Key Person.

7.2 Use and disclosure

- (a) The Consultant:
 - (i) may use Confidential Information only for the purpose of properly performing this Agreement; and
 - (ii) must keep confidential all Confidential Information except:
 - (A) for disclosure permitted under clause 7.3; and

- (B) to the extent (if any) the Consultant is required by law to disclose any Confidential Information.

7.3 Permitted disclosure

- (a) The Consultant may:
 - (i) use and copy Confidential Information only for the purposes for which Company has disclosed it; and
 - (ii) disclose Confidential Information only:
 - (A) to persons who:
 1. have a need to know (and only to the extent that each has a need to know); and
 2. have signed any confidentiality agreement required by Company from time to time; and
 3. are aware and expressly agree that the Confidential Information must be kept confidential; and
 - (iii) to employees of Company.
- (b) The Consultant must:
 - (i) immediately inform Company if it knows or suspects that any Confidential Information has been disclosed without authorisation;
 - (ii) return Confidential Information to Company within two Business Days of Company asking the Consultant in writing to do so; and
 - (iii) provide assistance reasonably requested by Company in relation to any proceedings Company may take against any person for unauthorised use, copying or disclosure of Confidential Information.

7.4 Disclosure by law

If the Consultant is required by law to disclose any Confidential Information to a third person (including, but not limited to, any government authority or agency) the Consultant will:

- (a) before doing so:
 - (i) notify Company; and
 - (ii) give Company a reasonable opportunity to take any steps that Company considers necessary to protect the confidentiality of that information; and
- (b) notify the third person that the information is the confidential information of Company and take all reasonable steps to obtain the necessary undertakings to maintain the confidential nature of the information in question including but not limited to the execution of a confidentiality agreement on terms suitable to Company.

7.5 Continuing Obligation

After termination of the Consultant's engagement under this Agreement:

- (a) the Obligations of confidentiality set out in this Agreement continue; and
- (b) the Consultant must not record any Confidential Information in any form (including but not limited to machine readable form), nor sell or otherwise use or transfer any Confidential Information.

7.6 Security and control of confidential information

The Consultant must:

- (a) establish and maintain effective security measures to safeguard Confidential Information from access or use not authorised under this Agreement;
- (b) keep Confidential Information under the Consultant's control;
- (c) maintain complete, accurate and up-to-date records of the Consultant's use, copying and disclosure of Confidential Information and immediately produce these records to Company on request; and
- (d) immediately notify Company of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.

8. Ownership of Intellectual Property and other Property

8.1 Definition

For the purpose of this clause 8, the term "Consultant" includes the Key Person.

8.2 Ownership and assignment

The Consultant:

- (a) assigns to Company all Created Intellectual Property Rights; and
- (b) acknowledges that, during the Term, all Created Intellectual Property Rights will vest in Company upon their creation.
- (c)

8.3 Consultant's Obligations

The Consultant:

- (a) will do all things reasonably requested by Company (whether during or after the Term) to enable it to assure further the Rights assigned and vested under clause 8.2, including executing any additional documentation;
- (b) will immediately communicate to Company full particulars of any and all processes, inventions, improvements, innovations, modifications and discoveries which the Consultant may make in connection with provision of the Services or during the provision of services only, whether inside or outside working hours, relating to or capable of being used in the business of Company;
- (c) will, to the extent that any person contributes to the creation of any Consultant Created Intellectual Property Rights, do all things reasonably necessary to procure for Company, ownership of those Rights pursuant to clause 8.3(b);
- (d) warrants that it has all Rights necessary to make the assignment under clause 8.2;

- (e) warrants that no additional Intellectual Property Rights are necessary for Company to enjoy the Created Intellectual Property Rights, and to the extent that any such Rights may be necessary, the Consultant hereby grants to Company a worldwide, irrevocable, non-exclusive licence to those Rights; and
- (f) will at no time in the future claim ownership or any Rights in relation to the Created Intellectual Property Rights.

8.4 Moral Rights

- (a) It is acknowledged that the Consultant may have Moral Rights in works, material or information which the Consultant has created or may create during the performance of the Services. To the fullest extent permissible by law, the Consultant waives the Consultant's Moral Rights.
- (b) The Consultant unconditionally consents to all or any acts or omissions of Company, or persons authorised by Company, which may infringe the Consultant's Moral Rights, including without limitation, any act or omission in relation to:
 - (i) reproducing, publishing, communicating, exhibiting, performing or adapting a work without attributing authorship to the Consultant;
 - (ii) altering a work in any way, whether or not the alteration is prejudicial to the Consultant's honour or reputation; and
 - (iii) dealing in any way with a work which has been substantially altered, or a reproduction of a work which has been substantially altered, as the Consultant's unaltered work.
- (c) The Consultant must ensure that each of its employees consents in writing to the acts and omissions set out in clause 8.38.3(b) in relation to any works, material or information which any of its employees has created or may create in the course of provision of Services.

8.5 Warranties

The Consultant warrants that works, material or information which the Consultant or its employees have created or may create in the course of providing the Services do not infringe the Intellectual Property Rights or the Moral Rights of any person.

8.6 Other property

All reports, computer programs, manuals, Documents and any other documentation or data furnished to or prepared by the Consultant in connection with the delivery of the Services under this Agreement shall be the property of Company.

9. Termination

9.1 Event of Default by Consultant or Key Person

If any one or more of the following occur, an "Event of Default" at the option of Company will have occurred:

- (a) an Insolvency Event occurs in respect of the Consultant;
- (b) the Consultant or the Key Person breaches an Obligation imposed under this Agreement;

- (c) the Consultant or the Key Person is guilty of serious misconduct, gross negligence, fraud or dishonesty;
- (d) the Consultant or the Key Person fails to perform to the performance standards of Company as in force from time to time;
- (e) the Key Person is unable to perform the Services through death or incapacity.

9.2 **Default: Termination by Company**

If an Event of Default under clause 9 occurs and the default:

- (a) is not capable of being remedied; or
- (b) if capable of being remedied, is not remedied within ten (10) Business Days after notice requiring it to be remedied is given to the defaulting party by the party not in default,

Company may immediately terminate this Agreement by giving written notice to the Consultant and the Key Person, whereupon the provisions of clause 9.5 shall apply.

9.3 **Event of Default by Company**

If any one or more of the following occur, an “Event of Default” at the option of the Consultant will have occurred:

- (a) an Insolvency Event occurs in respect of Company;
- (b) Company breaches a material Obligation imposed under this Agreement.

9.4 **Default: Termination by the Consultant**

If an Event of Default under clause 9.3 occurs and the default:

- (a) is not capable of being remedied; or
- (b) if capable of being remedied, is not remedied within ten (10) Business Days after notice requiring it to be remedied is given to the defaulting party by the party not in default,

the Consultant may immediately terminate this Agreement by giving written notice to Company, whereupon the provisions of clause 9.5 apply.

9.5 **Termination**

In the event of this Agreement being validly terminated prior to the expiration of the Term:

- (a) the Consultant and the Key Person must immediately:
 - (i) cease carrying out the Services;
 - (ii) return to Company any property of Company;
 - (iii) stop using the Confidential Information and, at the option of Company:
 - (A) return to Company;
 - (B) destroy and certify in writing to Company the destruction of; or
 - (C) destroy and permit Company's to witness the destruction of,

all Confidential Information in the Consultant's possession or control or in the possession or control of the Key Person;

- (b) subject to clause 12.13, save in respect of the Obligations under this clause 9 and clauses 4, 7, 8 and 10, no party will have any further Obligations under this Agreement;
- (c) the termination will be without prejudice to any of the rights of the terminating party in respect of an Event of Default by the defaulting party; and
- (d) the termination will not affect any Right or Claim in respect of this Agreement of any party which arises before termination.

10. Tax

10.1 Interpretation

In this clause 10, a word or expression defined in the GST Act has the meaning given to it in that Act.

10.2 Gross up of consideration

- (a) Amounts given in this Agreement, unless stated otherwise, are GST exclusive amounts.
- (b) If the Consultant makes a supply under or in connection with this Agreement on which GST is imposed the consideration payable or to be provided for that supply under this Agreement (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

10.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 10.2(b).

10.4 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

10.5 Income Tax

- (a) The Consultant acknowledges that it shall be solely responsible for payment of the Consultant's own income tax and consents to Company furnishing to the Commissioner of Taxation the Consultant's name, address and all details of payments made to the Consultant by Company.
- (b) The Consultant hereby indemnifies and shall keep indemnified Company in respect of any Claim suffered by Company touching upon or arising out of the Consultant's Obligations in respect of income tax.

11. Dispute Resolution

- (a) If an issue or dispute arises under or in connection with this Agreement (Dispute) and neither party has a right to terminate or rescind the Agreement on the grounds of such issue or dispute, the parties agree that it will be dealt with under the terms of this clause.

- (b) The parties must confer at least once to resolve the Dispute or agreed methods of doing so. If the Dispute is not resolved at that level within 7 days of the Dispute arising either party may refer the Dispute to an expert.
- (c) The expert must be appointed by agreement of the parties or if they fail to agree on application of either party to the President for the time being of the Queensland Law Society.
- (d) The expert shall be instructed to:
 - (i) decide or appraise the Dispute within the shortest practical time; and
 - (ii) deliver a report stating his or her opinion with respect to the matters in dispute setting out the reasons for his or her decision or appraisal.
- (e) Any expert determination will be conducted in Brisbane.
- (f) The expert will decide the procedures to be followed in order to resolve or give his or her appraisal of the Dispute and the parties must provide the expert with all information and assistance he or she reasonably requests for the purposes of resolving the Dispute.
- (g) The parties must pay the experts fees in equal shares.
- (h) The expert appointed under this clause acts as an expert and not as an arbitrator. Where the expert is asked for a determination, his or her decision shall be conclusive and final and binding on the parties (except in the case of manifest error)
- (i) Notwithstanding the existence of any issue or dispute the parties must continue to perform this Agreement.
- (j) Each party will bear its own costs relating to the resolution of a dispute under this clause.
- (k) The expert is not liable to any party to the Dispute except in the event of fraud or any act or omission by the expert in the performance of his or her obligations as an expert. If requested to do so the parties must provide written assurances to such effect to the expert.
- (l) Any information disclosed to the expert is confidential and may only be used for the purposes described above, unless the parties making the disclosure states otherwise.
- (m) The parties agree that they shall have no right to commence proceedings in any Court in any jurisdiction (other than to enforce payment due under this Agreement or to seek urgent injunctive or declaratory relief) in connection with a dispute unless they have first complied with this clause.

12. General Provisions

12.1 Notices

Any notice or other communication in connection with this Agreement must be in writing addressed to the Notice Address of the other Party and the notice or other communication will be deemed to be received:

- (a) in the case of a posted letter on the third day after posting;
- (b) in the case of delivery by generally recognised overnight courier, on the second day after dispatch with that courier;

- (c) in the case of personal delivery on the date of delivery;
- (d) In the case of an email at the time the email is recorded as sent, provided no failure of transmission report is received in respect of the email; and
- (e) in the case of facsimile transmission at the time recorded on the transmission report from the machine from which the facsimile was sent.

12.2 **Costs**

Each party shall pay and bear its own costs of and incidental to the preparation, negotiation and execution of this Agreement and shall pay all stamp duty costs associated with this Agreement.

12.3 **Independent Advice**

Each party has been given the opportunity to seek independent legal advice with respect to the content and effect of this Agreement and has sought such advice as it deems necessary.

12.4 **No Adverse Construction**

No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part of it.

12.5 **Variations**

No variation of this Agreement nor consent to a departure by a party from a provision, shall be of effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation or consent shall be effective only to the extent to or for which it may be made or given.

12.6 **Assignment**

Neither the Consultant nor the Key Person may assign or otherwise deal with this Agreement or any Right under this Agreement without the prior written consent of Company, which may be withheld in its absolute discretion. Company may assign or otherwise deal with this Agreement or any Right under this Agreement without the consent of the Consultant.

12.7 **Novation**

The parties agree that Obligations and Rights under this Agreement may be novated with the consent of all parties. Any such novation must be in the form of the Novation Deed.

12.8 **Waiver**

The non-exercise of or delay in exercising a Right of a party shall not operate as a waiver of that Right, nor does a single exercise of a Right preclude another exercise of it or the exercise of other Rights. A Right may only be waived by Notice, signed by the party (or its Authorised Representative) to be bound by the waiver.

12.9 **Confidential Agreement**

The terms of this Agreement and any subsequent amendments are confidential and may not, without the written approval of the other parties, be disclosed by the Consultant, the Key Person or Company to any other person other than for the purpose of obtaining professional legal or accounting advice or as required by law.

12.10 **Further assurances**

Each party to this Agreement shall do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by Notice from another party to carry out and give effect to the terms and intentions of this Agreement and to perfect, protect and preserve the Rights of the other parties to this Agreement.

12.11 Governing law and jurisdiction

- (a) This Agreement is governed by and construed under the law in the State of Queensland.
- (b) Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of Queensland.
- (c) Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

12.12 Third parties

Otherwise than as stipulated in this Agreement, this Agreement confers Rights only upon a person expressed to be a party to this Agreement, and not upon any other person.

12.13 Pre-contractual negotiation

This Agreement:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.
- (c) All previous negotiations, understandings, representations, warranties (other than warranties set out in this document), memoranda or commitments in relation to, or in any way affecting, the subject matter of this document are merged in and superseded by this document and shall be of no force or effect whatsoever and neither party shall be liable to the other party in respect of such matters.

12.14 Continuing performance

The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.

- (a) Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance or termination of this Agreement.
- (b) Any indemnity agreed by any party under this Agreement:
- (c) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
- (d) survives and continues after performance or termination of this Agreement.

12.15 Remedies

The Rights of a party under this Agreement are cumulative and not exclusive of any Rights provided by law.

12.16 Liability of parties

If a party consists of more than one person:

- (a) an Obligation of those parties is a joint Obligation of all of them and a several Obligation of each of them;
- (b) a Right given to those parties is a Right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

12.17 Counterparts

This Agreement may be signed or executed in a number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.

12.18 Warranty of authority

Each person signing this Agreement:

- (a) as attorney, by so doing, warrants to the other parties that, as at the date of signing, the signatory has not received notice or information of the revocation of the power of attorney appointing that person; and
- (b) as an Authorised Representative, agent or trustee of a party, warrants to the other parties that, as at the date of signing, the signatory has full authority to execute this Agreement on behalf of that party.

12.19 Severability

This Agreement shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Agreement shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

12.20 Multi Capacity

If a party to this Agreement is a party in more than one capacity, it is only necessary for that party to execute this Agreement once and such execution shall bind that party in all capacities.

12.21 Execution by facsimile or electronic mail

The parties agree that each shall be bound to this Agreement when each party has signed a copy of the document and tendered it or sent it by facsimile or electronic mail to the other parties. In the event that this Agreement is executed in this manner, any party may require after execution that the other parties sign an original copy of the document and deliver it to the first mentioned party.

12.22 Delivery as a deed

Subject to express provisions in this Agreement to the contrary, each party by signing or executing this Agreement is deemed to unconditionally sign, seal and deliver this Agreement as a deed, with the intention of being immediately legally bound by this Agreement.

Schedule 1
PROJECT DESCRIPTION & RATES

Item 1	Project:	
Item 2	Consultant:	
Item 3	Key Person:	
Item 4	Services:	
Item 5	Payment:	In accordance with hours worked at the hourly rate of _____ per hour.
Item 6	Expenses :	_____. All other expenses must be confirmed in writing by the Company.

Executed as an Agreement

Executed _____ by)
_____ **ACN**)
_____ in)
accordance with section 127 of the Corporations Act
2001

.....
Director

.....
Director/Secretary

.....
Name (please print)

.....
Name (please print)

Executed _____ by)
_____ **ACN**)
_____ in)
accordance with section 127 of the Corporations Act
2001 by its attorney
_____ under
power of attorney no
_____ in the
presence of:

.....
Witness

.....
By executing this deed, the attorney
states that the attorney has received no
notice of revocation of the power of
attorney.

.....
Name (please print)

Signed, sealed and delivered by)
_____ Under)
power of attorney no)
_____ dated
_____ in the
presence of:

.....
Witness

.....
By executing this deed, the attorney
states that the attorney has received no
notice of revocation of the power of
attorney.

.....
Name (please print)

Consultancy Agreement

Signed, sealed and delivered by)
_____ in)
the presence of:)

.....
Witness

.....
Name (please print)

.....
Name (please print)